RURAL DEVELOPMENT COMMITTEE

Tuesday 8 October 2002
(*Afternoon*)

Session 1

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RURAL DEVELOPMENT COMMITTEE
23rd Meeting 2002, Session 1

CONVENER

*Alex Fergusson (South of Scotland) (Con)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

*Rhoda Grant (Highlands and Islands) (Lab)
*Richard Lochhead (North-East Scotland) (SNP)
*Mr Jamie McGrigor (Highlands and Islands) (Con)
*Mr Alasdair Morrison (Western Isles) (Lab)
*John Farquhar Munro (Ross, Skye and Inverness West) (LD)
Irene Oldfather (Cunninghame South) (Lab)
*Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD)
*Elaine Smith (Coatbridge and Chryston) (Lab)
*Stewart Stevenson (Banff and Buchan) (SNP)

COMMITTEE SUBSTITUTES

George Lyon (Argyll and Bute) (LD)
Mr John McAllion (Dundee East) (Lab)
Alasdair Morgan (Galloway and Upper Nithsdale) (SNP)
John Scott (Ayr) (Con)

*attended

WITNESSES

Hugh Allen (Mallaig and North West Fishermen's Association)
Euan Beaton (Macduff Shellfish (Scotland) Ltd)
Paolo Caricato (European Commission Health and Consumer Protection Directorate-General)
David Ford (Scottish Executive Environment and Rural Affairs Department)
John Hermse (Scallop Association)
Doug McLeod (Association of Scottish Shellfish Growers)
Gabby Pieraccini (Scottish Executive Environment and Rural Affairs Department)
Martin Reid (Food Standards Agency Scotland)
Hector Stewart (Western Isles Fishermen's Association)
Patrick Stewart (Clyde Fishermen's Association)
Lydia Wilkie (Food Standards Agency Scotland)

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LOCATION

The Hub

Scottish Parliament

Rural Development Committee

Tuesday 8 October 2002

(*Afternoon*)

[THE CONVENER *opened the meeting at 14:05*]

Scallop Industry

The Convener (Alex Fergusson): I welcome everyone to this meeting of the Rural Development Committee. We have apologies from Irene Oldfather but, aside from that, I have had no intimation that all members will not be present.

John Farquhar Munro (Ross, Skye and Inverness West) (LD): George Lyon will not be coming.

The Convener: George Lyon would have been attending as a visiting member.

Today, the committee will take evidence on issues affecting the Scottish scallop industry. Members will recall that the committee has examined the issue on several occasions, with a particular focus on amnesic shellfish poisoning.

A briefing note from the committee's reporters gives us an update on ASP and on proposals from the Scottish Executive for technical conservation measures for the fishery.

We are delighted to hear evidence from a number of representatives of the scallop industry and various bodies that have a regulatory role.

We will hear from three panels of witnesses. The members of our first panel are: Patrick Stewart, the secretary of the Clyde Fishermen's Association; Doug McLeod, the chairman of the Association of Scottish Shellfish Growers; and Euan Beaton, the managing director of Macduff Shellfish (Scotland) Ltd.

I invite each of our witnesses to make a brief introductory statement—two minutes at the most—outlining the main points that they want to make. You are welcome to cover ASP and the proposed technical conservation measures but the shorter your statements, the more questions we can put to you. The committee has seen the written material that some of you have submitted, so there is no need to repeat any of that.

Patrick Stewart (Clyde Fishermen's Association): I am grateful to have the opportunity to address the Rural Development Committee on two matters, one of considerable importance and one of vital importance to members of the Clyde Fishermen's Association, of which I have had the honour to be the secretary for more than 30 years. The passage of time has seen the membership more and more thirled to the status of artisanal fishermen, whose principal source of capital arises through family partnerships rather than third-party investors. The fragile and peripheral communities from which they hail—Carradale, Tarbert, Tighnabruich, Port Ellen, Ling and Tobermory—daily become more dependent on the product of their labours. They understand more than anyone that the preservation of the stocks on which they depend is crucial not only to their enterprises but to their and their families' way of life, which is as valued in this august chamber as it is in those remote villages.

Therefore, it was with considerable relief that, in 1998, the association was able to agree with the Mallaig and North West Fishermen's Association measures for the precautionary protection of the stocks of scallops in the waters to the west of Scotland. The stocks are not subject to protection either by regulation or by the imposition of a total allowable catch. The membership of the association was even more encouraged when the measures, with the addition of a weekend ban in the east of Scotland waters, were adopted as the policy of the Scottish Fishermen's Federation. That policy remains in place.

That momentum gave hope for early legislation but, alas, for reasons that are not yet clearly understood, that did not happen. In the interim, neighbouring administrations exercised their initiative. The Isle of Man introduced gear and curfew restrictions and a closed season. Northern Ireland has done the same with the addition of a weekend ban. It does not take a genius to understand—and even I can see—that the resulting displaced effort, added to the effort that has accreted to the fleet since 1998, makes the introduction of effort capping even more pressing.

It is important for committee members to understand that two scallop dredging industries exist in Scotland. One is represented by the artisanal fleet, to which I have referred, and fishes principally in daylight hours for four or five days a week. The other is a nomadic fleet that is driven by intensifying economic imperatives. Would members be surprised to know that the length of its working week is somewhat different? Both industries are represented here today. Can members guess from the presentations which association represents which?

It is argued on behalf of the latter that effort capping is either not required or should be introduced in a much more benign way. It is even argued by some that the irregular effect of the closure of fishing areas for indeterminate periods

as a result of amnesic shellfish poisoning is a rational alternative to clearly drawn statutory rules. I trust that the committee will detect the real motives behind those arguments.

For the first time since devolution, the committee has the opportunity to support initiatives that are designed to ensure a sustainable future for a section of the Scottish fisheries. Its failure to embrace that chance whole-heartedly would not be readily understood by fishing communities in rural Scotland, or by many others well beyond those communities who are dependent on fisheries and who look to the committee for support and understanding.

I have mentioned ASP. The procedures that are now in place and those that—ominously—are being proposed by the Food Standards Agency Scotland bring an unusual spirit of unity to the diverse fishing interests before the committee.

I shall not detain members with the details. The committee has my paper. Please let me know whether there are any matters that require further explanation.

The FSAS has proposed to shift the expense of bureaucracy and administration of the scheme—which will see an enormous increase under the new regime—to local authorities and industry. That would be reprehensible enough if the procedures were intended to apply to the product of the scallop dredging industry, but they are not.

It is the considered view of the Clyde Fishermen's Association, supported by most if not all of the rest of the industry, that the present consultation by the FSAS, which is without just legal foundation, must be wound up without further ado.

Doug McLeod (Association of Scottish Shellfish Growers): I thank the convener and the committee for inviting me to say a few—I hope—short words on ASP and scallops, because technical conservation is not my bag.

The proposed FSA tiered marketing regime will be expensive and will have nothing but negative impacts on all sections of the scallop harvesting industry. There will be no benefits for public health. We believe that it is time to go back to the starting point in 1999. Then, the industry stated that there is nothing wrong with the white meat and roes of scallops; all the problems are with the bits that are shucked. It seems to me mind-numbingly unbelievable that we have ended up with such a complex regime for such a simple process.

Having said that, I believe that we must go back to the science. I know that today's meeting is about the impact of the FSA approach, but that is based on a Commission decision and, before that, a Fisheries Research Services report to a Commission expert working group. Our view is that the fundamental assumptions that supported the FRS conclusions were flawed. They assumed that there was no variability in the processing or handling of scallops and that all the variability was the result of natural variability within the animals. A recent study by the FSA indicates the exact opposite. It suggests that five times more variation is due to handling; virtually none is due to inter-animal variation.

On that ground alone, the whole circus that is based on the Commission decision should be terminated forthwith. We believe that it would be perfectly safe for the public if the monitoring regime were based on the upper limit that the Commission has indicated of 250mg per kg for the whole animal. As long as the processing and handling are carried out correctly, that would result in no product ever going on the market with more than the 20mg action level in a portion of scallops.

14:15

The emphasis should be not on this huge circus, with environmental health officers taking samples at ports in the middle of the night, and tags that cost a fortune for a fishing industry that is already under financial stress; instead, the emphasis should be on training, education and the provision of laminated information sheets, to be put in the kitchen of every restaurant and catering outlet in the country and, indeed, anywhere that scallops go. Scallops should not come with a health warning; they should come with a piece of paper advising people how to handle them. That would remove the problem totally.

I think that I have been speaking for two minutes, so I will draw the line there.

The Convener: That was probably spot on.

Euan Beaton (Macduff Shellfish (Scotland) Ltd): I thank the committee for giving me the opportunity to speak today. My name is Euan Beaton. I am managing director of Macduff Shellfish (Scotland) Ltd, which is based six miles west of Peterhead. We currently employ about 140 people, mainly in scallop processing, although we do process other shellfish. We have an annual turnover target of about £15 million this year. We have a 75,000 sq ft factory, with cold storage. We have made an investment of more than £4 million over the past two years. It is a family business—me, my two brothers and my parents are involved. We are the fourth generation to run the business, which is now 127 years old. We deal mainly in Europe, but we also export to the far east and directly supply supermarkets in the United Kingdom. We currently take from about 22 scallop boats per week. The boats may be fishing for one night or for up to 14 or 15 days at sea. Anything

between one bag of scallops and 40 to 50 tonnes of scallops may be landed at any one time.

For the past three to four years, we have adhered to the requirements of the European Food Safety Inspection Service—EFSIS. The higher-level status that we currently hold is required by UK supermarkets in particular. It allows our cooked foods to go directly to the UK supermarkets without further inspection. Our EFSIS status basically proves that we have taken care of all our due diligence throughout the entire process, whether for scallops or other products.

We believe that the Food Standards Agency Scotland's consultation documents are pretty much a waste of time. We would like a quality assurance scheme to be implemented in the industry, comprising one set of standards to which all processors must adhere. At the moment, we have—and have had for three or four years—100 per cent traceability of all products. We believe that the need to tag bags—which can involve a bit of a carry-on in the middle of the night with the EHOs and fishery protection officers, as Doug McLeod was saying—would be unworkable. Whether for processing reasons or in connection with returns to fishing vessels, we must currently tag and follow our entire shipments from each vessel, through the factory to our customers and end consumers.

The Convener: Thank you all for keeping within or almost within my two-minute brief. I invite members' questions.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): Each of the three witnesses has delivered a scathing indictment of the FSA's consultation paper. Will the gentlemen confirm that the FSA undertook to consult representatives of the industry before the consultation paper was published and that it broke that undertaking, as there was no such prior consultation? Have I understood the situation correctly?

Euan Beaton: That is absolutely correct.

Fergus Ewing: Let me go on from there and put it to you that—

The Convener: I am sorry to interrupt, but I suggest that, for the sake of clarity, the first part of our questioning should be on ASP and the Food Standards Agency's recommendations. We will move on to technical conservation measures later. I assume that Mr Stewart would prefer to stick to the TCMs.

Patrick Stewart: No.

The Convener: No? Are you happy to talk about ASP?

Patrick Stewart: Yes, that is—[*Interruption.*]

The Convener: I am sorry, but we have a problem with the sound system.

I apologise for the delay—I invite Fergus Ewing to proceed with his question.

Fergus Ewing: I was going to ask about the testing not of scallops, but of mussels. Does each of the witnesses consider that the scientific basis for the proposals is adequate, or are they inadequate? Do the witnesses agree that further independent scientific research must be commissioned—the marine laboratory has costed such research—before the measures are introduced if we are not to risk losing the industry for ever?

Patrick Stewart: I am not a scientist; I am a lawyer. If the FSA's science is as good as its law, you can abandon hope.

Doug McLeod: How can I follow that? I confirm that the action level of 20mg per kg, which is part of EC health directive 91/492, is based on a Canadian study, following the ASP outbreak there, which related to mussel meat. One of the conclusions that the industry has drawn from that is that there should be an investigation—a research project—into portion sizes, meaning the amount of scallop meat on a plate that the average consumer consumes. Someone consuming 250g of mussel meat, which is constituted of the entire animal, including its gut, is very different from someone consuming 150g of scallop meat, excluding the hepatopancreas and the other soft tissues where 95 per cent of the toxin resides. We feel that the starting point was illogical and that more research should be carried out. The level is flawed.

Also, the approach that considers the roe is totally flawed. What matters to consumers is the amount of ASP or domoic acid that they consume; yet the critical criterion is a concentration of so much domoic acid per gram of flesh. I shall try to put this politely. During the reproductive cycle, the amount of flesh that is involved in the roe oscillates. The amount of domoic acid stays the same but, following spawning, the concentration rises tenfold. A scallop that was perfectly safe to be harvested and consumed on Monday can close an entire fishery's box on Wednesday purely because it has spawned. That is illogical. The more that the science behind the directive and the decision on the level are examined, the more flawed they are found to be.

The one coherent element of the directive is the bit that talks about measuring what is provided to the consumer, which refers to

"the whole body or any part edible separately".

In 1999—or it might have been spring 2000; I am sure that one of my fellow industry representatives will correct me if I am wrong—we went to Brussels and talked to the guy who drafted that element of directive 91/492/EEC. He said that

he wrote that provision for scallops because he had seen how scallops were marketed in Japan. That is the reason for the phrase

"the whole body or any part edible separately".

I have never got my head around one issue on which the FSA's submission touches. Our understanding from officials in Brussels was that the directive allowed a tiered marketing regime, but I recollect that the Scottish Executive's legal advisers said that it would be better to have a Commission decision—a clear steer. The FSA's submission says that its memory is that the Brussels Commission officials said that specific legal clearance would be better.

We should stick with the directive, which refers to the parts that are sold, which are to be "edible separately". We sell a roe-on product, which is what we should test but the FSA does not allow us to test, which it says is because of Brussels.

Fergus Ewing: That is incredible. Does Mr Beaton wish to answer my question?

Euan Beaton: I could not add to what Doug McLeod has said. I agree with him.

Fergus Ewing: You suggested that a quality assurance scheme that is operated by the industry—I presume by your company and fellow processors—would be an acceptable method of protecting public health. Will you expand on how such a scheme would operate? How would it be enforced? Would the FSA enforce it? How would the scheme work?

Euan Beaton: I do not know whether members are aware that the Scottish salmon authorities have the label rouge and other initiatives. That is a quality standard that is adhered to. We have met on numerous occasions the people who established the salmon standards, which are accredited by the United Kingdom Accreditation Service.

Under the proposed quality scheme, all processors would be audited quarterly or checked spasmodically to ensure that they were adhering to all the testing that is required on traceability and other matters. An inspection could be conducted at any stage. Processors are open to random environmental health inspections at any time. The FSA would be welcome to inspect whether we were adhering to the directives.

Fergus Ewing: Am I right in saying that you gave details of the proposed scheme to Mr Finnie, to the Scottish Executive environment and rural affairs department and to the Department for Environment, Food and Rural Affairs in England about two years ago?

Euan Beaton: That is correct. It has been mooted that the scheme would be partly sponsored by those bodies.

Mr Alasdair Morrison (Western Isles) (Lab): Will Patrick Stewart expand on his denunciation of the FSA's interpretation of the directive?

Patrick Stewart: The directive is the preliminary document—the first document that we had amended to deal with ASP in scallops. The FSA has failed to interpret that document correctly. Mr McLeod mentioned just one instance of that. There is no doubt that the directive allows tiered testing. I think that the directive allows a wider interpretation of the regulations that were imposed on us. For example, in my view, it applies only to live bivalve molluscs, not to dead ones. The forwarding of processing, at which the FSA struck, refers not to the sending of scallops to factories, such as Mr Beaton's, but to the relaying and depuration of scallops. Those are technical matters.

The more important fact is that the decision in March this year—apart from being entirely unnecessary—relates only to the placing of live scallops on the market for immediate human consumption. It does not apply to the products of those whom I represent—scallop dredgers—because the scallops that they fish are not live and are not intended for immediate human consumption.

In its rush to judgment, the Food Standards Agency will destroy the industry for the sake of bureaucratic neatness. I look to the committee to protect us from the agency.

14:30

Mr Morrison: My supplementary question is addressed to any one or to all of the gentlemen present. Will you give us a brief overview of the economic fallout of the trigger level of 4.6mg, where implemented?

The Convener: The witnesses do not need to press their request-to-speak buttons. Their microphones will be switched on automatically.

Patrick Stewart: That is wonderful.

The Convener: I am aware of the sensitivities of machinery at the moment.

Patrick Stewart: I do not want to blow up the system.

The Convener: I share that view.

Patrick Stewart: I cannot say what the fallout of the trigger level would be. On the basis of the analysis that we receive from the FSA more or less weekly—although we do not always receive it that regularly—I think that the roe-in industry would be finished. It is likely that there would be a market for white meat only, in which our people do not indulge. I cannot say what the situation would be, because we have no experience of it. The

industry would need to invest even more effort to produce the same return and we would not receive the higher value of the roe-in product. The measure would be disastrous.

Euan Beaton: Once the trigger level reaches 4.6mg, we will move to a white-meat product. White scallop meat is a worldwide commodity that is imported from Canada and South America. It is also imported from Japan and China, although not at the moment. If the measure is introduced, the value of the product returned to boats will drop by at least 50 per cent. There will be a 50 per cent reduction in gross returns to vessels and a reduction of about 33 per cent in the weight returned to boats. Fishermen would experience a double hit.

Mr Morrison: In other words, the measure would be a disaster.

Euan Beaton: It would be catastrophic.

Doug McLeod: The farming sector is different from the dredging sector. We rely on developing this embryonic industry on the basis of the live in-shell market. That is the premium market, with the highest prices for the most sought-after bivalve in all European waters. If the tiered marketing regime is introduced and there is a series of regular ASP events, the farming sector will not be stillborn—it is less an infant than a juvenile adolescent—but it will never reach puberty. We suspect that the industry will be a European leader. It is also a very generous industry. By providing, through the several orders, a no-go area for mature scallops, we are reseeding the wild scallop fisheries, which would otherwise be in decline—at least in inshore waters. Scallop farming has many benefits.

The problem for us is how to maintain sales of live in-shell animals in the face of difficulties with ASP. The most recent scientific information indicates that 99 per cent of the domoic acid that is associated with scallops is consistently removed by processing. In other words, as long as the sale of whole animals goes hand in hand with clear instructions for processing them, ASP should have no impact on public health. The one criterion is that scallops should have a whole-animal level of domoic acid that is below 250mg per kg—the upper level that was set by the Commission decision of March this year.

There is a simple solution to the matter. There is no problem. We do not need the JCB of the proposed regime to safeguard public health and to keep scallops flowing on to the market.

Mr Morrison: Could the panel update us on the most recent reported instance of someone being made ill by eating Scottish scallops?

Doug McLeod: To the best of my knowledge, there is not a single instance.

Euan Beaton: I can second that. There has been no instance of anyone being made ill from eating scallops.

I would like to add to what Doug McLeod said. In our library, we have about 300 results for the past three years of end-product testing. We always test the whole animal and only once have we had a sample that has breached the 20mg limit. In meat, I have never had a result of more than 6mg, which breaches the limit of 4.6mg, but I have never had a result that breaches the current safe level for the market of 20mg.

The Convener: Thank you. That is very informative.

John Farquhar Munro: I had several questions on the testing regime and the scientific evidence, but they have been answered quite adequately already. However, there is one point that I would like to put to Mr Stewart. In his submission, he suggested the benefits of a weekend ban and said that some of our counterparts on the Irish coast also supported such a principle. Is there unanimous support for that concept up and down the west coast of Scotland?

Patrick Stewart: Unanimity is never attained in any fisheries matter, and I think that this is no exception.

The Convener: Thank you for such a brief answer.

Rhoda Grant (Highlands and Islands) (Lab): I will begin with a question about what Doug McLeod was saying earlier. You suggested that, if scallops were sold with instructions on how to shuck them properly, they would be perfectly safe. To do that, do we need to go back to the veterinary committee in Europe to get a derogation, or is it possible under the present derogation?

Doug McLeod: Unlike Mr Stewart, I am not a lawyer, so I could not possibly say. As a simple oyster farmer and economist, I think that what you suggest is possible under the directive as it is currently written. If it is not, that should be a major thrust of any Scottish or UK submissions to what used to be called the Standing Veterinary Committee but now has an incredibly long name to do with the food chain and animal health. I am sure that any change could be made and made swiftly—the Commission can move swiftly when it wants to.

Rhoda Grant: My next question is to Euan Beaton. You said in your opening statement that you were able to attain 100 per cent traceability. Do you mean traceability of scallops as they come in through your factory, or do you mean traceability of scallops from the boats and where they were fished as well?

Euan Beaton: We can trace scallops from each boat and from where they have been fished. Before the registration documents were enforced, we were already operating a system of transportation documents. Our customers required us to have that system in place, so we track from the catch area right through to the end user.

Rhoda Grant: If it will not take too long, could you talk us through that process, as that is the subject of the consultation that has just finished? If you have a system that works, is 100 per cent foolproof and causes no problems, it would be useful to hear about it as part of the consultation.

Euan Beaton: I shall explain what happens at the moment. Let us suppose that a vessel comes into Macduff with 50 bags of scallops. One of our lorries or transporters will collect the scallops and the skipper will give us a transportation or registration document—these days, it is a registration document—which will come back into the factory. Under our goods inwards system, all product coming in at the door is noted, weighed off and palletised accordingly.

The product then goes in for processing and the product from each boat is run through the system separately. That is because the boat has to be paid on the basis of its meat yield for shucking. The meat is taken from the girls who have shucked it and then it is weighed, checked and coded with a tag that shows the name of the boat from which it has come and a day code.

Last Friday was day 277 on the Julian calendar, which means that the number 277 and the boat's initials would have been placed on every 5kg of meat that was landed that day. The meat, whether it is to be dried or soaked, is taken out for packing or freezing and the coded label is passed to the office or factory terminal. At that stage, the coded label is produced as a finished label with a colour coding and is attached to the product, whether it is packed in a 500g or a 15kg unit.

The quality-control staff note the product that each customer receives from each boat, which is normally between 100kg to 1 tonne at any one time. The dispatch documentation includes the initials of the boat. The product is easy to follow through the system. It does not matter whether one bag or 10 tonnes is sold from a boat; it is all logged and kept on record by the quality-control staff.

Rhoda Grant: So the system works perfectly, regardless of the size of the batch.

Euan Beaton: Yes. It has been working well for the past four or five years and it has been tested. Two years ago, around Christmas, a block was put against our EC approval number, which meant that no product bearing our number was allowed to be sold commercially. The issue arose because veterinary inspectors in Vigo took samples of scallops from a freezer in a restaurant and the sample had a high level of ASP.

The inspection took place on 29 December. We were shut for the holiday, but received a call from our customer that all our produce in France, Italy and Spain was blocked. We had to go into the office, dig out the paperwork and prove our case. We generally do not market whole scallops. We have only one vessel that lands whole, frozen scallops, which have been tested in the labs.

Because of those tests, we knew the boat and the batch involved and we sent the testing documentation to the vet in Spain. It turned out that our scallops were okay and that someone else's scallops were involved. Within 48 hours, we were able to release our code and allow our product to be sold in the market again. The system has been tested. We have been there—we have done that.

The Convener: I move on to Richard Lochhead, but say to members that we should begin to move the accent on to technical conservation measures. We have another panel of witnesses and we will want to ask further questions about ASP. However, Richard may have a question about ASP.

Richard Lochhead (North-East Scotland) (SNP): I have a quick couple of questions on ASP. Doug McLeod mentioned that manhandling, not inter-animal variation, is the biggest determining factor of the quality of the product. Why does he believe that the scientists are coming up with the current European proposals?

14:45

Doug McLeod: The problem is that the assumption that supported the one in-depth study was wrong. The assumption was based on a belief that there was a variability in scallops. However, the variability was to do with concentrations. One of the problems is that everything is done in concentrations. As the mass fluctuates, the concentration has an inverse relationship with it. The assumption was that everyone handles the scallops in the same way—a processor is a processor and a laboratory is a laboratory. No one investigated that. Happily, the recent FSA-funded study came up with the opposite conclusion and said that a lot of the variability can be attributed to the handling of the scallops rather than to the inter-animal variability.

Richard Lochhead: Are Doug McLeod and Euan Beaton both saying that the best way of ensuring the best-quality product is to have in place a good quality assurance scheme, which is monitored and enforced vigorously? Is that the best way of ensuring a safe product?

Doug McLeod: It is one of the critical elements of making progress, rather than shutting down the industry or—I do not want to use the word "inventing"—bringing in a new criterion that is so low as to be a proxy for shutting down the industry. That is what the 4.6mg hurdle will be. We want to find best practice—Euan Beaton and his supporting act from the deep south are the people to talk to about that. I am not a processor, but I believe that there is variability in processing standards. If we accept the best standards and promote those throughout the industry, that should resolve the problem.

Euan Beaton: I agree with Doug McLeod. The quality scheme should be run by the industry. We would appreciate as much help as we can get from the FSA and the EHOs, even if that takes the form of—dare I say it—another committee. However, the scheme should be run and informed by industry. We are already doing that, so the scheme is proven. Why not continue the scheme on a wider scale?

Richard Lochhead: During the consultation exercises, were any of the panellists asked about the economic impacts of the proposals?

Euan Beaton: No.

Doug McLeod: The Scottish Scallop Advisory Committee has been the progenitor of an economic impact study, which was funded by the Scottish Executive environment and rural affairs department and the FSA. I am not sure about the details, but the study should report in the near future. It should provide a benchmark in relation to the economic impact of ASP on the scallop industry in general. It should also identify the varying impacts on the farming or cultivation, dredging and processing sectors.

Mr Jamie McGrigor (Highlands and Islands) (Con): The portion size of 12 scallops on which the science appears to be based seems excessive. The average portion size is in the region of three to four king scallops.

With most fish, it would be logical to remove the guts. Normally, when people buy fish, the guts are removed, so there is a feeling that the guts should be removed anyway. My questions are for Doug McLeod. Who is liable to eat fish with the guts in? Was it fair to identify the portion size as being 250g of scallop meat?

Doug McLeod: The portion size came from the fall-out of the Canadian experience of ASP.

Mr McGrigor: But that was based on mussels.

Doug McLeod: It was based on mussels and has been transformed into the internationally accepted 20mg per kg level. Because scallops are so different from mussels and oysters, where the entire animal is consumed, we believe that there should be different criteria, as has happened with crab in the United States. In the US, a Food and Drug Administration study came up with a significantly higher level for the edible parts of crabs. We believe that a similar exercise should be done for scallops and that a higher level than 20mg should be allocated to scallop meats.

You say that the portion of 250g of scallop meat sounds excessive. I believe that it is way over the top. We have not yet carried out the definitive, scientifically robust study that we want. Strange as it may seem, our embryonic industry does not have £350,000 in its hip pocket for the necessary research, although we are trying to raise the money. From a survey of our producers' customers, we believe that the average scallop portion size is around 150g. That means that an action level for scallop meats of around 40mg to 45mg per kg would be acceptable.

Historically, there have been different culinary traditions in Europe. There are places where the gonad is used to produce gonad sauce and where restaurants never waste anything. Some restaurants toss the guts into the stockpot, which concentrates the hepatopancreas material and the toxin. That is why there must be training. The situation is the same with cigarettes, which cause damage but are still sold, although with a health warning. A health warning should be given with whole scallops; loosely, it should say, "Do not consume, utilise for stock or in any way put into your system the soft parts of the animal." If people continue to do that, then caveat emptor.

Mr McGrigor: I have a question on conservation measures for Patrick Stewart. He said that in 1998 there was an agreement between his association and the Mallaig and North West Fishermen's Association on conservation measures, which included a reduction in dredges and a weekend ban. The general view seems to be that, because of ASP and one or two other matters, times have changed since 1998. Has anything changed, or does the field remain the same?

Patrick Stewart: Times have changed. We have moved on four years, but we still do not have the legislation, although that makes the situation no less pressing—in fact, it is more pressing. To answer your question, the requirement for effort capping remains the same. In fact, because of displacement from the similar but more draconian measures in Northern Ireland and the Isle of Man, capping has even more effect. As Mr McGrigor knows, I live in an area that is close to those places.

Euan Beaton: From a processor's point of view, weekend bans would be catastrophic. I do not have a big problem with capping the capacity to catch, but I have a problem with weekend bans. As a processor, I have 22 vessels fishing. If all the

vessels went to sea on Sunday night and came in on Friday night for the weekend ban, goodness knows how many scallops I would have to deal with. Our staff will not work any later than 12 o'clock on Saturdays—although we have tried to get them to do that—and they will not work on Sundays, because they need one day off.

If all the vessels came in on Friday night, it would be Monday before we began to touch the 22 boats' worth of catch and probably Thursday or Friday before we got through the product. We would then have to test the catch, which takes another three days. At that point, the product would be unsellable as a fresh product. It would be 14 days old and unsuitable for the fresh market. The product would have to be frozen, which lessens its value. A weekend ban is completely unworkable for processors.

Richard Lochhead: My question is for Patrick Stewart. Is there a voluntary ban at weekends on the Clyde?

Patrick Stewart: The ban is statutory. We have vast experience of weekend bans. Mr Beaton's fears are not well placed. A statutory or voluntary weekend ban has been in place for decades.

Richard Lochhead: Is there any scientific or other evidence that the weekend ban has conserved stocks?

Patrick Stewart: I would not say that there is scientific evidence—the scientists have not produced any. Obviously, if you are fishing for less of the time, you are doing less damage to the stocks. That much is clear—savoir sans dire, as the French would say.

Euan Beaton: That is not the case. The proposal is for a 10-day system. For example, a boat would be allowed freely to work from Monday to the Wednesday week, when the catch would be landed. It would not fish from the Wednesday to the Friday, but would go out on the Friday until the Monday week, with a long weekend from the Monday to the Thursday. The proposal that fishermen should work Monday to Friday and have a categoric Saturday to Sunday ban does not make sense. There are only a few vessels in the Clyde, and we are not speaking about Clyde vessels only—the proposal for a Saturday to Sunday ban will affect the entire fleet and is nonsense.

The Convener: We have about two minutes left to talk about technical conservation measures.

Fergus Ewing: In the light of what Mr Beaton has just said, can Mr Stewart explain what limit in effort and what conservation benefit will derive from moving from the current practice of fishermen in places such as Mallaig, who work a 10-day fortnight in the cycle that Mr Beaton just described, to a five-day week? There will be no reduction in effort or increase in conservation. I do not understand why you are dogmatically pursuing the idea that fishermen in Mallaig, the north-west and elsewhere have to go for a weekend ban. What benefit will come from that?

Patrick Stewart: I understand your question, but I do not think that there is a division between fishermen in Mallaig and our association. At least, there was no division in 1998, because the Mallaig and North West Fishermen's Association agreed with the proposition, although they had every opportunity to make the argument that you suggest. As recently as 2000, the chairman of the association agreed with the proposition at a meeting in Carradale.

Fergus Ewing: I am not asking you to say what I presume Mr Allen will say later. I am asking you to explain what the benefit will be of a weekend ban, given that the fishing effort will be exactly the same or even greater.

Patrick Stewart: Let us start with the proposition that was agreed to. The proposition went to the department and was consulted on and I understand that the minister accepted it. You will have to ask the department about that, but I suggest that it will say that enforcement of the alternative that you have referred to is impossible, in comparison with our proposition—and by "our", I mean the Scottish Fishermen's Federation and the Clyde Fishermen's Association.

Fergus Ewing: Boats have log books, so—

Patrick Stewart: You will have to ask the enforcers why they confirm that my view is valid—I invite you to do so.

Euan Beaton: The industry was never consulted about a weekend ban.

Patrick Stewart: The department will answer for itself, but according to the information that I have with me, the consultation was conducted in the middle of 2001.

The Convener: We will take both those points of view on board and discuss them later.

Rhoda Grant: I have a tiny supplementary question on that point. If there was no problem with enforcement, would you have a problem with the 10-day fortnight?

15:00

Patrick Stewart: I do not know. I am not a fisherman—I work a seven-day week. I would need to ask the fishermen that question. However, I think that the customary way of doing business is weekday fishing, not weekend fishing. The tendency would be for fishermen to stick with the proposal that passed the consultation process.

Rhoda Grant: A 10-day fortnight could accommodate both points of view: fishermen who were accustomed to stopping at the weekend could continue to do so and those who were used to working 10 days in a row could continue to do that.

Patrick Stewart: That may well be the case, but I did not come here to talk in terms of hypotheses; I came to give the committee the view of the Clyde Fishermen's Association and of the Scottish Fishermen's Federation. You should make no mistake that that view was passed by the industry. The proposition that you put to me is a latter-day suggestion, which was not made in response to consultation.

The Convener: A final very short question from Jamie McGrigor.

Mr McGrigor: What proportion or number of boats in the Clyde Fishermen's Association are scallop dredgers?

Patrick Stewart: About 20 per cent.

Mr McGrigor: What proportion is that of the Scottish fleet?

Patrick Stewart: I do not know.

The Convener: Do the part timers want to comment on what has been said?

Euan Beaton: I know that the number of vessels that are affected on the Clyde is about two. The scallop fleet is probably nearer 120 vessels. The Clyde view should be a small voice in a big industry.

Patrick Stewart: Good gear goes in wee bulk, so being small does not make us wrong.

The Convener: On that note, I ask the witnesses to step down. Thank you for your evidence and for the time that you have taken to come here this afternoon. You have given us excellent information. Please feel free to stay on and listen to the rest of the afternoon's deliberations.

I welcome our second panel. John Hermse is secretary of the Scallop Association; Hector Stewart is a member of the executive committee of the Western Isles Fishermen's Association and Hugh Allen is secretary of the Mallaig and North West Fishermen's Association. Thank you for giving up the time to come before us today. You have seen the format; I invite you to make a brief—and I mean brief—introductory statement so that we can get on with questions. I will go from my left to my right again, so I ask John Hermse to start.

John Hermse (Scallop Association): Good afternoon and thank you for inviting me. The Scottish Fishermen's Federation does not represent all scallop fishermen in Scotland; indeed, there are organisations within the SFF that do not agree with weekend bans. I have written a management document for the Isle of Man Government and I have considered carefully weekend bans and other measures. It is thought within the Isle of Man that weekend bans and night-time curfews are not a conservation measure; rather, they just carry on a fishery for a while longer than it would usually last—two or three weeks being a general example.

It is unfortunate that the scallop sector, which has looked after itself largely without the miasma of over-regulation that is prevalent in other sectors, is about to be regulated out of existence. Not only do we have to cope with the costly pattern-altering proposed tiered testing system, but SEERAD in its infinite wisdom has resurrected five or six year old out-of-date technical conservation measures, despite the fact that the majority of the industry wants those measures to be revisited. The fact that the industry already suffers from regular and lengthy ground-control closures because of algal toxins, regulating orders, spiralling fuel costs and third-country imports was not even taken into account.

The committee has heard from the previous panel of witnesses about the effects of tiered testing and SEERAD wants to impose yet more restrictions on us. It is particularly galling that the majority of the industry disagrees with the discriminatory principal measures of weekend bans and dredge limitations and thinks that we should have more equitable controls, such as days-at-sea restrictions and proper enforcement of minimum landing sizes.

It is even more difficult to determine the support for the weekend ban and dredge limitations. It would appear that those who do not fish principally for scallops, but are in possession of scallop entitlements because of serious mishandling of the allocation criteria, have been counted in the ghost numbers of those who have been included in bans.

From a processing point of view, a weekend ban would create bottlenecks of supply, which would be detrimental in both quality and marketing terms. Glut situations would develop; indeed, the white fish sector has been trying to eradicate that scenario for years. Scallop fisheries need the flexibility to cope with weather situations and the onerous travel requirements that are caused by the migratory nature of the fisheries. It is well known that scallops stored for two to three days—for example, over a weekend—can lose up to 15 per cent of their weight through moisture loss, which means a return to catchers that is 15 per cent less than it should be. As such losses must be recouped through more fishing effort, weekend bans will increase, rather than reduce, effort.

As for dredge limitations, the proposal to establish a maximum limit of 14 dredges a side on vessels working outside the 12-mile limit is discriminatory and is a retrograde step, to boot. Those larger vessels work offshore grounds all around the UK coast up to 180 miles from land. Scottish vessels will be faced with the prospect of working at a disadvantage alongside other UK and EC vessels. Over the past six years, that lucrative offshore fishery has been opened up and invested heavily in, but SEERAD is simply casting those vessels aside and making it possible that their owners will become bankrupt. SEERAD does not realise that two smaller vessels, which will place more effort on inshore grounds while the offshore grounds remain largely untouched, will replace each of the large vessels. Surely that is the antithesis of the aims of any conservation policy.

We are not against conservation or sustainability and we would welcome properly consulted-on and agreed non-discriminatory measures.

Hector Stewart (Western Isles Fishermen's Association): As we have already circulated our submission to committee members, I will say very little. I come from North Uist in the Western Isles. I have a share in a scallop dredger and am a partner in a processing firm.

We have been consistently in favour of a weekend ban through the summer months in the Western Isles. The technical measures are a red herring when we are faced with ASP; indeed, I do not know why so much emphasis has been placed on them. As previous witnesses have pointed out, we will have to catch a lot more scallop if we have to move to a white-meat fishery. In any case, we will have a white-meat only fishery if we follow the Food Standards Agency's proposal, which will mean closures, because such a proposal is not economically viable. As a result, there is no point in talking about how many days fishing we get and so on. The technical measures are a secondary issue—the important issue is that we have a fishery.

That is all I have to say at the moment. I will answer any of the committee's questions, particularly on the weekend ban and the 10-day fortnight.

The Convener: Thank you very much indeed. I appreciate your brevity.

Hugh Allen (Mallaig and North West Fishermen's Association): I am the secretary of Mallaig and North West Fishermen's Association, which is one of the largest fishermen's trade associations in Scotland, with a multisectoral membership that is drawn from ports all around the Scottish coast from the Clyde to the Forth, including the Western Isles and the Orkney Islands. We represent at least 20 scallop dredgers, including some of the most modern in the fleet, and we represent some scallop divers and members who have extended their scallop interests into processing and retailing.

The future of the industry is extremely important to the association and all our members who have scallop interests contribute to the internal debate, so what we advance as policy is the corporate view of all our scallop fishermen, among whom there is complete consensus. Although no one knows how long ASP will be a feature of the Scottish scallop industry, we have long felt that we should formulate policies on the basis that we will always have to contend with interference from algal toxins.

The two options that were presented in the FSA's recent consultation exercise are equally unpalatable. Aside from the fact that they are unworkable in practice, tiered analysis would lead to a virtual white-meat fishery for which no market exists. The whole-animal test would result in wholesale closure of boxes. My written submission includes figures that highlight the losses that would be incurred if it were possible to move to a white-meat fishery.

Of course, tiered analysis is only an option under European legislation. However, the directive that sets the levels is not based on science and even the committee on toxicity admits that the levels are pragmatic. Therefore, it is our view that scientific research into the biochemistry of the scallop should be conducted as a matter of urgency. Such research would establish safe levels for the presence of domoic acid and would determine the correct portion size. It would also confirm whether inter-animal variability occurs on the seabed or is more the result of the human element in the testing process.

Given that there is no recorded incident of anyone ever having suffered even mild illness from eating a scallop—contaminated or otherwise—the best and most proportionate option would be to maintain the status quo until the science has been completed. The excellent traceability mechanisms that are in place can be better enforced and, at times of high readings, the shucking-only advice can be strengthened. There is always the final and definitive safeguard of end-product testing.

On the proposed technical measures, it would be wholly inappropriate to introduce restrictive new legislation when the future of the scallop industry is so uncertain. The industry has already undergone major changes since the measures were drafted four years ago and the latest stock assessment is good. We have argued consistently that any legislation should be kept under constant review, because circumstances change.

The present case is a classic example. It is intended to introduce a statutory instrument that is designed to cap effort on the basis of wildly out-of-date proposals. In relation to the weekend ban, the proposed measures would contradict the recommendations of the two most recent Government-sponsored meetings of the scallop sub-group of the fisheries conservation group.

Since the conservation measures were drawn up, the fleet has reduced in size, partly through decommissioning and partly through containment by the restrictive licensing system. As well as seriously affecting the activities of the industry, ASP has made a contribution to conservation. Working a five-day week as opposed to a 10-day fortnight offers no conservation benefits. In fact, more days in the year are worked in the area in which the weekend ban exists than are worked in other areas because of the sheltered nature of the waters, which means that the time-limiting effects of adverse weather conditions are not suffered so keenly.

It is fallacious to argue that the weekend ban represents an advantage in relation to enforcement, because if days-at-sea restrictions were imposed, it would be easy to apply enforcement effectively through the logbook. There is also the prospect of the satellite.

Unfortunately, we can no longer enjoy the luxury of adopting a parochial attitude to management of our fisheries, because we operate in a hostile international market. We have already suffered the detrimental consequences of starving supplies to the market when fishing is curtailed through ASP closures. Other countries move rapidly to fill the gap that Scotland leaves.

I will give an example of the competition that exists. Last Thursday, French scallopers from 22 ports landed 102 tonnes, or 3,500 bags, of live in-shell scallops at Rungis market. There is an issue there. On Friday, they landed 69 tonnes, or 2,033 bags; on Saturday, they landed 28 tonnes; and yesterday they landed 41 tonnes from the weekend fishing. In the past seven days, they have landed 10,800 bags, or 323 tonnes, in total. If we were to apply an artificially created hiatus in the continuity of our supplies by operating a weekend ban when perfectly good alternatives exist for restricting effort, if that is needed, we would be cutting our own throats.

Some of the measures in the draft statutory instrument, such as those that relate to teeth spacing and belly ring size, are acceptable. We are totally opposed to the proposed reduction in dredge numbers from 10 a side to eight a side within the 6-mile limit, at least on the west coast of Scotland, where all scallop grounds are within 6 miles.

15:15

The Convener: I must ask you to come to a close.

Hugh Allen: The cost of the proposed reduction—only six vessels are involved—would be £180,000 per vessel annually. The cost to the west coast's rural economy of removing 24 dredges would be more than £1 million annually. There would also be job losses, because each vessel would have to drop a crewman. The risk assessment is done on the basis of five crewmen rather than four.

Our proposals involve two alternatives; to make the scallop licence more robust or to introduce days-at-sea restrictions. Either would be more equitable and non-discriminatory than the measures in prospect.

The Convener: Thank you. I am sorry that I had to curtail you, but it is important that we get to members' questions as soon as possible.

Richard Lochhead: My first question is about the technical measures, and the fact that they are before us. According to your members, what state are stocks in currently? I would have thought that all the box closures over the past two or three years might have helped to conserve stocks.

The Convener: We will take witnesses in the same order.

John Hermse: The feedback that I have received from our skippers is that stocks are generally in a good state. Strangely enough, the landings by the French vessels that Hugh Allen talked about were made from fisheries that were discovered by Scots fishing vessels, so the French are benefiting from our hunting nature. In general, the stocks are in fairly good health and that is backed up by the recent report by the marine laboratory in Aberdeen.

Hector Stewart: I also say that stocks are in a fairly good state and can stand the current amount of fishing. The 10-month ban in 1999 allowed stocks to recover considerably. Prior to that, they had shown a decline.

Hugh Allen: I will add to what my two colleagues said. John Hermse has the latest stock assessment from the marine laboratory and it paints a healthy picture. There is a question mark over recruitment in parts of the north-east coast, which dates back to what is referred to as an "unusual event" in the 1980s; however, when I asked the scientists what the unusual event was they could not remember.

Richard Lochhead: Hector Stewart's submission to the committee clearly outlines the economic importance of the scallop fishery to the Western Isles. What assessment, if any, has been

carried out of the potential impact of the FSA's proposals on the Western Isles's industry?

Hector Stewart: I do not know whether any assessment has been made, but we can tell you that about 40 or 50 fishermen are scallop fishing in the Western Isles and about 50 people are involved in scallop processing in the Western Isles. It is the second most important fishery to the Western Isles. Catches from all the waters in which we fish have been consistently over the 4.6mg trigger level during the past year, so we would be in a white-meat only fishery 11 months of the year, which would mean that it would be uneconomic and unviable to fish for scallops at all. The result of that would be that people would have to diversify into something else if they could, but some of them do not have licences to do that. It might mean that processing staff would all have to be laid off.

Richard Lochhead: So the conservation proposals and the FSA proposals are a double whammy, which would have a huge impact on the Western Isles.

Hector Stewart: We do not believe that the conservation proposals are harmful to us. We support them fully.

Richard Lochhead: What if they are introduced at the same time as the FSA proposals?

Hector Stewart: If the FSA proposals are introduced—even if not at the same time as the conservation measures—the industry is finished. There is no point in talking about conservation measures along with those proposals. Let us get the FSA proposals sorted out first, then we can talk about conservation measures, because if the FSA proposals come in as proposed, there will be no scallop fishery in the Western Isles.

Hugh Allen: We did an exercise to answer the question that Richard Lochhead just asked. We did the exercise on a typical operation, starting with the costs to the factory and going down to the wages of the crewmen. I included the figures in my written submission, but I will summarise them. For a factory that turns over £2 million and handles the catches of six vessels, the total cost of changing to a white-meat only fishery, including reduced sales and increased costs for removal of roe and waste disposal, would be £576,000. Going right the way through to the boats, there would be a 30 per cent reduction to the vessel. That means that the earnings of a crewman on a vessel that tows six dredges a side would go down from £18,000 a year to £12,600 a year, if the white-meat only market existed, which it does not.

John Hermse: My calculations show that for vessels and processing factories, the overall decrease in earnings and turn-out would be in the region of £8 million in any calendar year.

Mr Morrison: I want to refer to Hector Stewart's submission, which represents the views of Barratlantic Ltd, Kallin Shellfish and the Stornoway Shellfish Co Ltd. The submission states:

"it is morally wrong of the Food Standards Agency to shift the majority of costs of implementation to industry".

From his experiences as a fisherman and processor, can Hector Stewart give us a practical example of what keeping blocks open means for boats?

Hector Stewart: The Food Standards Agency would require a sample every seven days to keep a block open. For instance, we fish on both the Western Isles side of the Minch, which is sheltered from the south-west, west and north-west winds, and on the Skye side of the Minch, which is sheltered from winds coming from the eastern part of that 180 deg angle. If westerly winds of force 5 or 6 meant that we had to fish on the Western Isles side for seven days, we could not then fish on Skye at all, although we face that shore.

The next week, the wind might be from the east, so we would have to go across to Skye to fish. However, we would not be allowed to do so because no sample would have come from that area in the previous week. We would have to go over to Skye on the Monday to get a sample, return from whence we came and send the sample away. We would then have to go back over again on the Tuesday and do the same and wait for the sample to be returned. In that time, the wind might have changed and we might not be able to fish there at all. Who could absorb those costs?

Mr Morrison: Is it Hector Stewart's view that the proposed testing regime is completely unworkable?

Hector Stewart: Yes. It is completely unworkable.

Mr Morrison: The submission also refers to the fact that, under the current regime, some 12 million scallops have been landed in the Western Isles in the past two years. How many scallops and what kind of products have been recalled? How many complaints have been received?

Hector Stewart: We have never had any complaints. As far as I am aware, no one has become ill through eating them. I see no reason for the proposed change. When we had our first closure in 1999, the trigger level was 20 micrograms per gram. At that time, we campaigned that the level was set too low and that it ought to be increased because there had been no incident of any illness. Instead, three and a half years later, the trigger level has been brought down to 4.6 micrograms per gram. That seems to point to the fact that some people want to see the end of the scallop industry.

Mr Morrison: I have two further short questions that I will roll into one. Hector Stewart's submission states:

"As an Island community we would be prepared to invest in end product testing equipment".

That means that the testing would be done in the Hebrides. What would be the advantages of doing that?

Hector Stewart: There is the monitoring programme and there is the end-testing programme. The monitoring programme is carried out in Aberdeen, but the end-testing programme would have to be carried out by us. We would be happy to invest in such machinery, which would mean that we would be able to test our product. We would be able to give an end-product analysis of the product that would be sold to the market.

Mr Morrison: The submissions from other colleagues say that there are disadvantages in a weekend ban. Why does the Western Isles Fishermen's Association and its processors take a different view?

Hector Stewart: We take a different view because we believe the weekend ban to be a good tool for conservation. In answer to Fergus Ewing's question to the director of the Clyde Fishermen's Association, the reason why it would be better to have a weekend ban so that people would fish for five days rather than 10 is that fishing is determined by the state of the tide. Every second week, there is a spring tide. The people who are on 10-day trips take advantage of that by staying at home during those strong spring tides, when far fewer fish than normal would be caught. In that way, they lose very little in the way of fishing.

Mr McGrigor: My first question is about the trigger level. There seems to be some confusion as to whether the 4.6mg level is a limit or a trigger to a limit. Both Mr Stewart and Mr Allen have said that such a level would result in a white-meat only fishery, for which there is no market in Scotland. Can Mr Allen explain why the 4.6mg level is a limit and not just a trigger?

Hugh Allen: The directive allows the selling of the gonad or the white meat if the ASP level is under 20mg, but the trigger level of 4.6mg kicks in at the harvesting stage. In other words, the 20mg level at the marketing stage could not be reached because the scallops would have to be taken out of the sea and disposed of at 4.6mg of ASP per kilogram, if the proposals were implemented. In effect, if the trigger level for the gonad is 4.6mg, that will remove the ability to sell it at 20mg.

Mr McGrigor: My second question is for Mr Stewart on dredges. Why did you say that you see the future in terms of bargains rather than numbers of dredges? The other witnesses may want to say whether there should be capping. You said that you do not like capping at eight dredges. Should there be capping at all?

Hector Stewart: I did not say that there should not be capping at eight dredges.

Mr McGrigor: Nobody has said that there should not be any capping. Should there be a conservation measure that uses some capping?

Hector Stewart: The issue relates to the bar length. People would overcome any size of dredge. Currently, there are 2ft dredges and 2ft 6in dredges. In future, there may be 1ft dredges or 3ft dredges. The bar length will give the fishing area.

Mr McGrigor: Do you agree that there should be weekend bans?

Hector Stewart: Yes.

Mr McGrigor: Mr Hermse referred to the loss of 15 per cent of the weight of stored scallops. Do you disagree with what he said?

Hector Stewart: As a processor, I disagree with him. I have been a fisherman for 25 years and a processor for two years. We process from our own boats. My brother would be annoyed with me if he saw that we had lost 15 per cent of the weight of his scallops over a weekend. I think that we lose about 2 per cent.

John Hermse: I have canvassed all my processors and it should be borne in mind that our processors represent more than 80 per cent of the UK processing capacity. They have told me that the loss is about 10 per cent to 15 per cent when scallops are kept over the weekend. That would be the return to the boat.

Not all Western Isles processors agree to a weekend ban—in fact, the major processor in the Western Isles is against a weekend ban.

15:30

Fergus Ewing: We are resisting the temptation to become confused between the two issues that we are debating today, which are ASP and technical conservation measures. It is clear that if the Food Standards Agency's ASP proposals go ahead, there might not be an industry to adopt any conservation measures. I think that Mr Stewart said that at the outset; I agree with him.

What method of testing would be a practical and workable alternative? Would that method be along the lines of the quality assurance scheme, which Mr Beaton and Mr McLeod spoke about?

John Hermse: The method that I propose, which would be equitable to all concerned, is a well audited end-product testing system, coupled

with the quality control scheme that was outlined by the first panel of witnesses—I will not go into that. That method is all that our industry requires.

Hector Stewart: We would be happy to install machinery that would give us an end-product test for everything that we sell. We would test every batch of meat and roe that we sell and we would abide by the results of such tests. If the results are that there is less than 20mg, we ought to be able to sell the products.

Hugh Allen: We draw an analogy between scallops and other products that may be contaminated, such as chickens that are supposed to have salmonella. Steps can be taken to counteract that—chickens can be gutted. The time to apply a test to any edible product is the moment that it enters the market. I do not want to pre-empt evidence from the FSA, but its position with the Standing Veterinary Committee was that there should be either a trigger level or an end-product test. We have always advocated an end-product test as the correct way of testing scallops. The problem comes not at harvesting, but when scallops are placed on the table to be eaten.

Fergus Ewing: I am grateful for those answers, which seem to be unanimous.

Although, as Mr Stewart pointed out, the technical conservation measures may be an academic issue, I must give Mr Allen an opportunity to comment on the matter. The Executive may proceed with the measures, irrespective of the argument that ASP should be dealt with first. What are your objections to a weekend ban? How would it affect crews? Would it expose them to danger? I ask you to address the points that other witnesses have made about conservation and effort.

Hugh Allen: Members have seen that the industry is divided on the weekend ban. If we were to do a straw poll of scallop vessels, a majority would not favour the ban.

Fergus Ewing raises the issue of the effect of the ban on crews. We have received many representations from crews expressing alarm at the prospect of a weekend ban. At the moment they are able to have quality shore time with their families at the end of a 10-day trip. However, if crews were to work weeks, those who take a considerable time to steam to grounds—which is not the case for all crews—would have very little time ashore. They do not want that.

People will work the same number of days, regardless of whether they work a five-day week or a 10-day fortnight. The proposed weekend ban is a geographical ban. This year—in fact, most years—many areas are outwith the area that would be affected by the ban. However, crews would be unable to work outside that area at weekends because of the closures that are in place. Mr Beaton expressed very forcefully his views, as a processor, on the continuity of supply. In my statement—I apologise for rushing through it, because it was rather long—I said that, because of the curtailment of supplies with ASP, Scotland has struggled to continue to supply the international market. What is the point of exaggerating the problem when there is no need to?

If there is a need to reduce effort, that can be done through a central days-at-sea scheme. Precedents for such a scheme already exist in the pelagic and beam-trawl sectors. Our preferred option for conservation is to make much more robust use of the scallop licence, which is pretty loose at the moment.

Fergus Ewing: Will you address the argument that having a weekend ban would force members of the Mallaig and North West Fishermen's Association to fish at a certain time, irrespective of weather, and could expose them to more dangerous conditions? Is that a valid argument?

Hugh Allen: That is absolutely clear. In many years boats hardly leave the harbour until March because of the weather. That is not the case in all areas where a weekend ban exists. In the winter, in particular—but also in the summer—boats may be in the harbour all week because of bad weather. The only two decent days may be the Saturday and Sunday. If crews cannot work then, what will they do? Who will pay the bills?

Rhoda Grant: What is your impression of the traceability system outlined by Euan Beaton on the previous panel? As you were in the audience, you will have heard him talk about how he could deliver 100 per cent traceability, which would be required under the new directive.

John Hermse: I have seen how Euan Beaton's factory operates. In the scallop industry, more than in any other industry, the vessels must co-operate with the processors because the vessels are paid by the weight of the end product after processing. If a skipper expects a certain weight at the end of processing and the factory makes a mistake and gives him a weight much less than expected, as you can imagine, there will be an absolute explosion.

The scallop sector is, therefore, way ahead of other sectors in having traceability systems in place—they have evolved over the past 10 to 20 years. The larger processors, who supply chains such as Marks and Spencer's and so on, must have proper traceability schemes in place and proper UKAS-accredited systems in place to cope with the limits and controls that those companies require.

Hugh Allen: The quality assurance scheme that was described by Mr Beaton is standard practice

for many of the processors. Just as John Hermse has knowledge of Euan Beaton's factory, I have knowledge of another factory and I know that its traceability system is such that, if there were a problem with any of its scallops, it would be able to say which boat caught them, on what date and exactly where. The system was developed a long time ago for commercial reasons.

Hector Stewart: I agree with that. It is easier to trace the end product in the scallop industry than it is in other industries. Once it has gone to a customer, we can still find out from which boat, on which day and from which box any batch of scallops was landed. Unlike some of the larger processors, our boats land every day or every second day and we are trying to ensure that we get a good-quality product into the market and get a premium price for it.

Rhoda Grant: Is there a need for a new system of traceability, given that one already operates effectively?

Hugh Allen: I suppose that the systems that are undertaken voluntarily at the moment could be made statutory, which I think is what Euan Beaton was suggesting.

John Hermse: I agree with that. The systems could probably be enhanced and fine-tuned to ensure that they can cope with what is required by the new directive.

Hector Stewart: Yes, the voluntary system could be made mandatory. However, our local environmental health officers constantly come in to see us and check that we are adhering to the system. They set rules for us and ask us to keep to them. Even though the system is voluntary, we do that.

John Farquhar Munro: We have heard quite a lot about ASP and paralytic shellfish poisoning and the various methods of testing. Could you tell us about the official procedure for box closures? Who decides that boxes should be closed? Who takes the relevant samples?

John Hermse: Boats are sub-contracted to gather samples from various boxes around the Scottish coast. Those vessels land the scallops, which are transported to Aberdeen. Three to four days later, usually on a Thursday, the results of the tests are published. If there are any boxes that need to be closed, the order is put before the minister and the box is closed within a couple of days of the results being published. At the moment, there is a two-tier system that means that if the whole scallop, rather than just the roe, has a toxin level of over 20mg per kg, we can land from those areas as long as the scallops are processed. We think that the system works very well. It is one of our favoured systems for the monitoring at sea of the scallop fishery.

John Farquhar Munro: What is the procedure for overcoming closure? How is the box officially opened again?

John Hermse: Samples have to be taken from the box.

John Farquhar Munro: Who does that?

John Hermse: The sample is taken by the same boat that was hired by the FSAS. That boat must enter the box on two subsequent occasions and get clear samples—or samples that are below the limit—to allow the box to be reopened.

John Farquhar Munro: So even that is an added expense on the cost of the vessel?

John Hermse: Yes.

Hugh Allen: What John Hermse has explained is what happens at the moment, but we will not be able to continue with that, because the directive is not being applied as it should be—regardless of any legal challenge. If tiered testing comes in, the boxes will, in effect, be closed—every single one of them—until two clear samples have been taken. Hector Stewart described steaming across the Minch to take the sample from Skye waters; but, in the North sea, people could be steaming more than 100 miles to get their samples. Therefore, before you can even shoot a dredge, you may have steamed up to 500 miles—more than 100 miles out for the first sample, back again to land it, and then the same again. If it is all clear, you can then go out. However, if a week goes by without the box being sampled, it will close again until the whole process has been repeated. That is bad enough on the west coast, where fishing is concentrated in smaller areas, but in the North sea the situation is obviously worse.

An answer to the problem may be to increase the production area from which samples come, but the down side of that would be that, if the readings were high, a much bigger area would be shut.

The Convener: Gentlemen, that draws this session to a close. Thank you very much for your time and for the evidence that you have given us. Please join us for the rest of the afternoon if you wish to.

We will now take a comfort break and reconvene shortly.

15:44

Meeting suspended.

15:53

On resuming—

The Convener: For our third and final panel of witnesses, I would like to welcome Martin Reid and Lydia Wilkie, from the Food Standards

Agency Scotland, and Gabby Pieraccini and David Ford, from the Scottish Executive environment and rural affairs department. I would particularly like to welcome Paolo Caricato, who is part of the secretariat of the Standing Committee on the Food Chain and Animal Health at the health and consumer protection directorate-general of the European Commission.

With Paolo Caricato is a good friend of the Rural Development Committee, Liz Holt, who is head of the European Commission office in Edinburgh. She will provide any required interpretation. We are particularly grateful to Mr Caricato for travelling to Edinburgh especially for this meeting. I welcome him to the Scottish Parliament.

As seems to have become habitual, I will start from the left side of the panel. I ask David Ford to lead off. If both Executive officials want to speak, I would be grateful if they could keep within the two-minute time scale.

David Ford (Scottish Executive Environment and Rural Affairs Department): I handle the technical measures proposals.

Gabby Pieraccini (Scottish Executive Environment and Rural Affairs Department): I am head of the inshore fisheries branch in the Scottish Executive. My main responsibilities are for measures under the Inshore Fishing (Scotland) Act 1984 and the Sea Fisheries (Shellfish) Act 1967. I regulate orders and such. My branch also has the main liaison with the Food Standards Agency Scotland over the issue of ASP. That is all that I want to say.

The Convener: Thank you. I believe that Martin Reid from the Food Standards Agency Scotland will give a brief introduction.

Martin Reid (Food Standards Agency Scotland): I am the head of the policy branch within the Food Standards Agency Scotland that is responsible for fish and shellfish. Lydia Wilkie is the assistant director on the policy side. I would like to make a brief statement before we continue.

For background, the question of the tiered system was first proposed by the industry in the late 90s. The FSA Scotland was approached in the summer of 2000, soon after our launch, about the possibility of introducing a tiered system in light of the increasing impact of ASP, particularly on the west coast. Allied to that was advice on toxins from the EU national reference laboratories that stated that control systems based on testing the roe—as is the case in Scotland—may not adequately be protecting public health in the context of the increased toxicity of whole animals that go on the market.

That was the spur for the need to change from a roe-testing system to a whole-animal testing system—or the possibility of that. As I said earlier, that possible change was suggested alongside the possibility of having a tiered system. The two possible regimes came from that context. From that, the European Commission, when we approached it in September 2000, indicated that a scientific study on a clear basis would be needed to take the issue forward. That is what led to the formulation of the Commission decision with which we are all familiar.

We welcome some of the statements that have been made by industry, particularly those about traceability issues. We see them as positive statements. If there were any elaboration or enhancement of those comments that could be taken on board as part of the consultation exercise, we would welcome that.

We should also like the committee to note that, during the negotiation of the Commission decision, the FSA was successful in securing a provision to allow future scientific evidence to be taken into account. That leaves the door open for any developing science to be taken back quickly to the Commission to seek an amendment to the decision. That is a positive step.

The agency is supportive of any industry-led or joint research to consider the scientific issues behind questions such as action levels in ASP and whether those are correct relative to portion size. We would see such research as positive.

I have a few points of clarification on the briefing provided by the committee's reporters. The fourth paragraph of the background section mentions that if end-product testing shows ASP below the trigger level, it would be prohibited. That is not the case. If end-product testing shows ASP below the action level of 20 micrograms per gram—not the trigger level—it would be prohibited.

Secondly, the sixth paragraph of the background section states:

"If sampling shows the level of toxin in edible parts to be below 4.6 micrograms the processed parts can still be marketed."

That is also incorrect. The correct word is "harvested" not "marketed".

The Convener: We come now to Mr Caricato. I should point out to members that Mr Caricato is here to address the ASP side of the debate only. On that basis, I ask him to make his introductory statement.

Paolo Caricato (European Commission Health and Consumer Protection Directorate-General): I am happy to be here today because I believe that the issue is very important for you and for the European Commission. I would like to clarify something about the directive and the new decision.

First, I will introduce myself. I work in the biological risk unit of the health and consumer protection directorate-general. I am responsible for legislation on fishery products and bivalve molluscs. I was in Dublin as an inspector for two years and I have had the opportunity to visit many countries around the world. Now I work in Brussels.

As you will understand, English is not my mother tongue and I will try to do my best with speaking English. If I have a problem, my colleague Elizabeth Holt will help me—I will speak in French and she will translate for you.

I am quite surprised by today's discussion because we are discussing EC directive 91/492, which is 11 years old. I do not understand why the problem with ASP is being discussed today. The ASP limit has been foreseen since 1997. I also do not understand what system was used before. Why has the problem arisen only now?

16:00

The Commission's recent decision has been considered to be of help to the fishermen in the sense that, previously, only bivalve molluscs with a toxicity level of less than 20mg per kg were marketed. Our decision allows the possibility of scallops with a level exceeding that legal limit of 20mg to be marketed: the limit is now 250mg per kg.

I agree with Martin Reid's position on the trigger level. We have to apply it only for scallops in the range of 20mg to 250mg per kg, not to every scallop. The scallops that come under the limit of 20mg are free: they can be marketed without any problems—roe on, roe out or the whole scallop. We took the decision to increase the limit from 20mg to 250mg in order to help the industry, but under certain conditions, one of which concerns the trigger level. The trigger level was the product of a big discussion that we held in Brussels with the most important representatives of the member states involved in the working group—Spain, Italy, the Netherlands, the UK and France. As a result, it is possible to put on the market scallops with a level higher than 20mg per kg but no higher than 250mg per kg.

We had to fix a trigger level because there is a big variation among scallops. The data that the experts presented to us were quite clear, in the sense that some scallops had a big amount of toxin in the whole body, but a very low toxin content in the gonads and in the adductor muscle. The contrary is true for other scallops, in which all the toxin has been found in the gonads and in the adductor muscle. The experts felt that a trigger level of 4.6mg per kg in the gonads or the adductor muscle would ensure that only one out of 1,000 scallops would be put on the market with a level higher than the 20mg per kg limit. I do not know whether that concept is clear to the committee; it is quite difficult and my English is not the best.

The Convener: It is very good.

Paolo Caricato: I am surprised that we are discussing the 20mg per kg limit today and that some representatives of the industry mentioned that in certain regions the limit was considered for mussels but not for scallops. That is true. In 1997, the 20mg per kg limit was considered on that basis.

However, the limit was not considered by our working group, because we felt that it was a legal limit. Instead, our discussions centred on the possibility of putting on the market scallops with a level of between 20mg and 250mg per kg. The Commission is open to suggestions for modifying the legal limit; however, the correct way of doing that is not by discussing the trigger level or the limit's history. We should submit a report to the Commission that makes it clear that the 20mg per kg limit is correct for mussels but not for scallops. If the Commission decides to accept a dossier of evidence that supports that modification, it would be no problem for the working group to investigate the matter and submit such a dossier to the scientific committee. If that committee or the Commission decides that the 20mg per kg limit is correct for mussels but not for scallops, the limit can be modified.

That position would be the best one to take. For example, I received some documents about the contamination of scallops during manipulation. Perhaps that is true. However, I also received a report from the national reference laboratory at Aberdeen that contradicts those data. To have the possibility of doing something, I must receive data, on the basis of which I can make a submission to the scientific committee. Those are my thoughts about today's discussion.

The committee has discussed whether the decision is applicable to Scottish scallops. The answer is yes, unfortunately. It is true that Council directive 91/492 lays down the rules for live bivalve molluscs, but once the molluscs are processed, we must apply directives 91/492 and 91/493. That is clearly established in both directives. The decision applies to Scottish scallops. That is one consideration about the decision's application.

The United Kingdom is free to apply or not to apply the decision, because the decision is a derogation. The decision establishes clearly that a member state may apply it, but that is not an obligation. It is important to start a discussion from those points. The discussion may help everybody.

16:15

The Convener: I thank Mr Caricato and assure him that his English is more than adequate for the purposes of the committee and I expect that it is considerably better than our Italian. I hope that members will approve of my allowing Mr Caricato more than the two minutes that other witnesses had.

Stewart Stevenson (Banff and Buchan) (SNP): Initially, I will address my remarks to the Food Standards Agency and pick up some of Paolo Caricato's comments. I will initially test my understanding, rather than probe the FSA's position. I took it from what Paolo Caricato said that if, on testing, mussels—or tethered molluscs—showed contamination of 20mg of domoic acid per kg, that would suggest statistically that one in 1,000 scallops was unacceptably contaminated. Is my understanding correct?

Martin Reid: No. That is incorrect.

Stewart Stevenson: I got a nod from Paolo Caricato.

Martin Reid: The figure of one in 1,000 to which Paolo Caricato referred was the statistical risk that is associated with the trigger level. If a level of 4.6mg per kg were applied at the point of harvesting, an end-product test after processing might show that the product exceeded the action level of 20mg per kg.

Stewart Stevenson: I understand that in relation to scallops, which are free swimming rather than tethered. I was focusing on the differentiation that was made between mussels and scallops—[*Interruption.*] I am being corrected by somebody who may know better than me. The 4.6mg per kg and the 20mg per kg are the same, but the sampling is different. Is that correct?

Martin Reid: No similar analysis of trigger levels has been carried out on mussels to find out whether the figure would be one in 1,000. It is not possible to give you a direct answer.

Stewart Stevenson: So, if we reach 4.6mg per kg, is that the point at which there is a one in 1,000 chance of contamination?

Martin Reid: For scallops at the point of harvesting, yes.

Stewart Stevenson: If the level is 4.6mg per kg at the point of harvesting, there is a one in 1,000 chance that there is an unacceptable contamination at the point of consumption?

Martin Reid: Yes.

Stewart Stevenson: That is the scientific basis on which we are proceeding?

Martin Reid: That is the basis on which the Commission's decision was drafted.

Stewart Stevenson: Does the FSA support that?

Martin Reid: The science that was used to develop the basis for the decision is the best science that is available to us at present. Therefore, that is the science that the FSA must take into account.

Stewart Stevenson: What research is there and at what level has it been demonstrated that the risk has crystallised into incidence of contamination in humans?

Martin Reid: As previous witnesses indicated, there has been little incidence of illness associated with ASP, particularly in relation to scallops. Evidence seems to suggest, however, that some signs of human illness might be observed at a level of around 200mg to 250mg.

Stewart Stevenson: You said that there is some evidence. Will you give us that evidence or is there no evidence, in fact?

Martin Reid: There is evidence, but it does not relate specifically to scallops. There are incidences of illness associated with ASP, but they are from around the world and not necessarily from the UK.

Stewart Stevenson: At the present time, and as far back as we know, is there no known incidence of a human health problem occurring from the consumption of scallops under the present regime?

Martin Reid: Since we started testing for ASP in accordance with the Council directive in the UK, we have had no recorded instances of illness associated with ASP.

Stewart Stevenson: How much will it cost the FSA to introduce new measures for implementation? How much will be spent and how much will it cost as a proportion of the overall budget of the FSA?

Martin Reid: In order to achieve its statutory requirements in accordance with the Council directive, the agency is spending in the region of £1.5 million per annum on charter vessels, for example. To clarify, the agency pays fishermen to contract to get the samples—it is not done on a voluntary basis at the moment. That is the approximate cost. If we moved to a system of sampling all the boxes that we have—somewhere in the region of 250 plus—on a weekly basis, we estimate that the additional costs on the current basis, and not the future basis, would be an additional £2 million per annum.

Stewart Stevenson: What is the budget of the FSA in Scotland?

Martin Reid: It is £5.7 million per annum.

Stewart Stevenson: Therefore, we are talking about spending approximately 60 per cent of the FSA budget to address a problem that represents no known health risk. Is that an unfair characterisation of the situation?

Martin Reid: If that is what the figures demonstrate—

Stewart Stevenson: Do you agree that it is of the order of 60 per cent of the budget—£3.5 million from £5.5 million?

Martin Reid: That would appear to be the case.

Rhoda Grant: We heard evidence today that, if scallops are processed properly, the variation on which the trigger level is based does not occur. How quickly could the Commission consider that evidence and how quickly could it have an effect on the trigger level?

Martin Reid: We have done research into end-product testing, the point of which was to examine the possibility of approaching the Commission on the level of end-product testing that the industry is required to do. The purpose of the research was to discover whether white meat as an end-product is less of a risk than the whole animal. If it is, that might justify a less intense end-product testing regime. That study has been concluded and we are considering its outcome.

We will try to draw from cases of good practice among processors and demonstrate that, by applying those practices, we can reduce the risk that produce might fail the end-product test because of bad processing. Early indications are that there is some variability across the processors. At the most fundamental level, the point is that we are addressing the issue of different and appropriate regimes for different products.

Rhoda Grant: When evidence is provided, how quickly can the Standing Veterinary Committee consider it and change the European guidelines?

Paolo Caricato: That is not easy to answer. First, we must receive evidence that justifies the modification of the directive. Directive 91/492 is a Council directive, so a discussion must take place in the Council, not only in the Standing Veterinary Committee. The Council and the European Parliament are discussing the modification of directives 91/492 and 91/493 and other directives on food of animal origin. We are modifying those directives, but it will take a long time because we must submit data to the Scientific and Technical Committee and wait for an answer. On the basis of that answer, a proposal would be made to the Council and the European Parliament.

Modifying a directive is a strong measure, which is why we have not modified the limit in directive 91/492. It is possible to make small modifications to the directive through the procedures of the Standing Veterinary Committee. However, the procedures for modifying a limit are lengthy.

Rhoda Grant: I want to ask about the system and how it might be administered. Would boxes in which the levels are below 20mg remain open for any kind of fishing and not need to be end-product tested?

Martin Reid: They would not have to be comprehensively end-product tested in the way that the decision requires for those that are harvested under the tiered regime, but there would still be a requirement to demonstrate that they met the end-product standard as required under the directive. There would still be a requirement for end-product testing, but not at the same frequency.

Rhoda Grant: So anything that was harvested from an open box would still have to be tested and must not exceed the trigger level of toxicity.

Martin Reid: It must not exceed the action level.

Rhoda Grant: Is that the action level of 20mg?

Martin Reid: Yes.

Rhoda Grant: So once the level is between 20mg and 250mg, whatever is harvested has to be below the trigger level, which is lower—it is not possible to market something that has a toxicity level of 4.6mg or above after processing. Is that correct?

Martin Reid: Once we are into the regime for a toxicity level of between 20mg and 250mg, the trigger level applies. It applies at the point of harvesting, rather than at the point of marketing. The trigger level, therefore, applies to our statutory sampling and monitoring programme of the harvesting conditions.

For example, when we send out a charter vessel to pick up a sample, if the result for the whole animal is between 20mg and 250mg and the roe result is 5.2mg but the white-meat result is 2.1mg, we would be able to process the white meat. That white meat would be end-product tested to a level of 20mg, not 4.6mg.

The action level applies at end-product testing; the trigger level applies at the official sampling and monitoring stage.

Rhoda Grant: I want to turn to how you administer the system. We heard evidence about how processors provide traceability to their customers. Surely that traceability would allow the system to work properly without any—or only small—added measures to allow traceability back to boxes and boats.

16:30

Martin Reid: As far as we possibly can, we will use the traceability systems that are already in place. The system that we described in the consultation document as our proposal is simply that. If better systems exist that would meet the requirements of the Commission decision and the Council directive, we are open to comments or suggestions on whether we can implement them. If there are systems that we can use, we are open to them.

Fergus Ewing: Many people will welcome the undertaking that has just been given that the proposals that are set out in the consultation document are simply proposals. I hope that Mr Reid will take away from this meeting the body of evidence that has been submitted.

Earlier you heard a witness state that fishing representatives were assured before the publication of the consultation document that they would be consulted on the proposals that would be made, and that that undertaking had been breached. Others have said the same thing to me in private. Do you dispute that?

Martin Reid: Throughout the development of these proposals we have been in regular contact with everyone—

Fergus Ewing: The witness's statement was quite specific. I would like you to answer my question. It was stated that the FSA gave an undertaking, before it published the consultation document, to consult industry representatives. I understand that that undertaking was minuted at a meeting of the Scottish Scallop Advisory Committee. The undertaking was given, but it was not met. There were no discussions of the specific proposal that is set out in the consultation paper and that has led to all the controversy. Do you accept or dispute that interpretation?

Martin Reid: The advisory committee did not have an opportunity to consider the draft written document before it was issued.

Fergus Ewing: It was told that it would be given an opportunity to consider the document, but that did not happen.

Martin Reid: The intention was to ensure that everyone was given the best possible opportunity to consider the proposals before they were issued. However, the advisory committee did not have an opportunity to consider the written document before it was issued.

Fergus Ewing: We are clear on that.

We heard Paolo Caricato say that if a submission is made to the effect that what is correct for mussels is not correct for scallops, the Commission will consider it. Can we proceed on the basis that Mr Caricato's suggestion will be considered further while your consultation paper is put quietly to one side?

Martin Reid: We need to consider the results of the consultation that has concluded and the options that are now available to us. We, along with ministers, are obliged to ensure that we meet the requirements of EU law. We need to consider whether we can address practically some of the difficulties that have been highlighted today, without being seen either to put public health at risk or to put the Scottish Executive in the position of failing to meet the requirements of EU law.

Fergus Ewing: We all need to protect public health. However, it is accepted—and you admitted—that there is no case on record of a human having suffered ASP. We can acknowledge that the current regime is not altogether bad.

I would like to put the same question to Gabby Pieraccini from the Scottish Executive. We heard Paolo Caricato make a very helpful suggestion: that we can put to one side everything that has been done and move forward by submitting to the Commission that what is correct for mussels is not necessarily correct for scallops. Today we have heard a weight of evidence from representatives of the industry—people who know and are intimately involved with the practicalities of this issue. I appreciate that this is a decision for the minister, but can you explain whether the Scottish Executive has any objections of a technical or other nature to shelving the proposals and proceeding with the Caricato option?

Gabby Pieraccini: I will not comment on public health issues. It is for the Food Standards Agency Scotland to decide whether the consultation should be put aside.

Fergus Ewing: The witnesses from the Food Standards Agency Scotland said that this would be a decision for the minister. I hope that witnesses are not passing the buck—although I do not suggest that that is the case.

Lydia Wilkie (Food Standards Agency Scotland): Perhaps I could clarify matters. The Food Standards Agency Scotland is a Government department that is separate from the administration of the Scottish Executive. Naturally, all legislation must go through Scottish ministers, and we work to Scottish ministers on legislation. We are not under the administration of officials within the Scottish Executive.

Fergus Ewing: Would the FSA or the minister make the decision, or would both make it?

Lydia Wilkie: The FSA will advise the minister on taking this matter forward, but the final decision is for Scottish ministers.

Fergus Ewing: Can we go back to my question? Are there any technical reasons why we should not proceed with the Caricato option that we heard about today?

Gabby Pieraccini: Through the Scottish Scallop Advisory Committee, which was mentioned earlier, the Executive has indicated that we would be happy to try to find some funds to support scientific work that would improve the availability of information. We have discussed that with the marine laboratory in Aberdeen and with the industry, through the advisory committee, and we are happy to try to obtain some more scientific information to help to inform decisions that are made at the European level.

Fergus Ewing: I appreciate that answer. We all want more science because everyone, including the Commission and the FSA, acknowledges that the science is incomplete at best; indeed, as we heard today, the science may not be robust. If the proposals are implemented, they will decimate the industry—the result will be either a "disaster" or a "catastrophe". There is no division among the industry representatives about that—none expressed a different view. If the FSA proposals go through, that will mean the end of the industry—kaput. All of us, particularly the fishing representatives, want to know whether the Executive is minded to shelve the proposals in the light of the evidence that we have heard today, and to move forward with an open consultation in which industry representatives are totally involved, not just as consultees but as partners. Any such process must meet the twin aims of protecting public health and allowing the scallop industry to continue to be viable.

Gabby Pieraccini: Ministers have yet to see the recommendations that will come from the FSA consultation. I do not want to pre-empt the conclusion of that consultation or the advice that will be provided to ministers. Therefore, I do not want to guess what policy direction may be taken as a result of the consultation that has just been completed.

Fergus Ewing: I fully appreciate your predicament. That just shows that we must get the minister to come to the committee to answer some of the questions that officials obviously cannot be expected to answer. I will leave matters at that.

Paolo Caricato: I will make a brief point before the discussion continues. In my opinion, which is supported by scientific tests, ASP is a dangerous toxin. It is not like DSP, in which the diarrhoea goes away after two days. The problem with the ASP toxin is that it works on the brain—it is called amnesic shellfish poisoning because the toxin alters the mechanism of the neural transmitters. The results may not be evident immediately but will appear after a year or two or three. It is true that the FSA is spending a lot of money on the matter, but I believe that the risk—the danger—is present, and that the money that the FSA is spending has not been wasted.

I come back to my proposal. I want to underline the point that we have to do something in the time between today and the modification of the ASP limit. We have to try to modify the directive, but in the interim we have to apply the directive and the legal rules and limits for ASP, PSP and DSP in the whole of Europe. This period is not a free period. We have to continue the application of directive 91/492 and the recast directive when it is published.

It is important that the Commission is able to modify the limit, but during the period of clarification and study we have to apply the rules. I clarify that point, because it is important.

Fergus Ewing: Perhaps if I go slowly, my question can be translated, if necessary, as I go along.

I understand that this is not a free period and that we need to do something. However, do you agree that we do not need to do what the Food Standards Agency proposes in its consultation paper? We could find a better method, as described by the industry representatives today, with end-product testing and a quality assurance scheme as an alternative to the FSA's proposal.

16:45

Paolo Caricato: That is a very difficult question. I believe that the answer is quite simple. There are rules in the directive and in the decisions on ASP and DSP. Nobody is talking about the new decisions on DSP and the new limits and methods, but we have to apply those decisions. I am not in a position to say, "Yes you can work with a new system." The Food Standards Agency is the competent authority. It is responsible for the application of directives 91/492 and 91/493 in Scotland and the United Kingdom and it has to follow the rules in those directives.

The directive gives to the competent authority the possibility of organising the controls. However, the main framework is the directive. The competent authorities are obliged to follow the directive here as they are in Italy, Spain, Greece and the other members of the European Union.

The proposal to have a different situation here is not acceptable because the directive was published 11 years ago and the new decision is, I hope, quite clear on DSP and ASP. There was also an inspection by the Commission food and veterinary office two or three months ago. During that inspection, some problems were detected and the FSA had to follow the published rules.

Fergus Ewing: It is therefore the responsibility of the FSA. We are back to the FSA reconsidering matters.

Lydia Wilkie: It is early in our consideration of the many detailed responses that have come back to us or that have arisen in the meetings that we have had with fishermen. It is our intention to continue to develop the policy to be able to meet the Commission decision and, as far as possible, take on issues such as quality assurance and size of boxes. We are in the early stages of developing what will be given to the ministers, although I recognise that we have to do that relatively quickly.

Stewart Stevenson: I want to follow up on what Paolo Caricato said in his opening remarks. From his remarks, I wrote down "The UK is free to apply or not to apply the decision". The directive would appear to suggest that that is the case. In any event, recital (5) of the Commission decision says:

"The provisions of this Decision should be re-evaluated when scientific evidence indicates the need to introduce other health checks, or to amend the parameters established for the purpose of protecting public health."

Today, we have established from the Food Standards Agency that there appear to be no public health issues. Does it not therefore fall under the provisions of recital (5) of the Commission decision that we can amend the parameters established for protecting public health? Was I correct in saying that the UK could apply or not apply the decision?

The Convener: I assume that that question is to Mr Caricato.

Stewart Stevenson: Yes, or whoever feels they are able to answer it.

Martin Reid: I will answer while Paolo Caricato is checking his papers.

The decision is indeed optional. It is up to individual member states to decide whether they want to apply it. As Paolo Caricato pointed out, the alternative is compliance with the conditions that are set out in directive 91/492, which is the other option that is described in our December consultation paper. In that consultation, we asked the stakeholders whether they wanted the tiered approach or the directive approach.

The response to that question was clear. Although there were strong reservations about the conditions that are contained in the Commission decision—our stance on the decision is well known—we moved forward by producing a consultation package intended to allow for the implementation of the tiered regime. That was the basic response to the consultation exercise.

Where we are now is the result of another phase of consultation. However, ultimately the choice remains as to whether we want to go ahead and implement the Commission decision.

Stewart Stevenson: If the results of the consultation indicate that there are serious difficulties with the current proposals, will you confirm that it is perfectly legitimate under EU rules for us not to proceed and that we are not under the cosh of time or EU action? If we choose not to proceed at the moment, we might decide to proceed at a later date or in another form. I want to be sure that, under EU rules, we are not legally required to proceed now, during the time that we wait to establish what our real needs are.

Martin Reid: That is correct, provided that we comply with existing Community law.

Paolo Caricato: Article 1 of decision 2002/226 states that member states "may" authorise harvesting. I believe that the English meaning of "may" allows for possibility. The meaning does not imply compulsion. If a member state decides not to authorise the harvesting and not to apply the decision, the member state has to follow the EU rules in directive 91/492. The directive sets out that bivalves with a level that exceeds 20mg per kg for ASP are not fit for human consumption.

Rhoda Grant: Is the choice either to implement tiered testing or to close all boxes at 20mg per kg?

Paolo Caricato: Those are the rules that are applied under directive 91/492 throughout Europe, from Greece to Finland. Many areas off Galicia are closed because the level of ASP is above 20mg per kg.

The question was raised as to whether it was possible to harvest scallops that are above the limit. The answer was yes. It is possible to harvest scallops with levels from 20mg to 250mg per kg, but rules have to be followed. There are three possibilities: scallops with an ASP level of lower than 20mg per kg present no problem; we apply the decision in the case of those with a level of between 20mg and 250mg per kg; and in the case of those with a level over 250mg per kg, the area is closed.

If a member state decides to avoid the application of the decision, it has to follow directive 91/492. All scallops in which the contents exceed 20mg per kg are considered toxic and they have to stay in the sea.

Mr Morrison: I will begin with a few questions for the FSA. Although I appreciate that we all have to work within the parameters of the directive, does it concern you that your interpretation, in the proposals as they currently stand, has been so roundly condemned by both fishermen and processors?

Lydia Wilkie: Yes, we are very concerned. We have a duty to consult stakeholders, including the

enforcers, and to look after consumers. The proposals on the table are open for amendment to make them as practical as possible. We have been trying to engender responses from the industry to give us more information and material, so that we can work with existing systems and therefore meet the bones of the European decision while making things as practical as possible for the industry. There is still time to do that, and we are willing to do so.

Mr Morrison: How much time—weeks, days, hours?

Lydia Wilkie: I hope that the main elements of the system will be in place so that we are able to take legislation forward before the end of this calendar year. As I have said, we are still at the early stages. The consultation finished on 27 September and some detailed issues came out of that. It will take us time, but it is important to get things as correct as we can. We will continue to consult the industry throughout this period and certainly over the next two or three months.

Mr Morrison: You say that you want to deliver by the end of this calendar year but, in the context of the wealth of evidence that we have heard today, and of decisions that have been made, are you prepared, if not to let the time scale slip, to—

Lydia Wilkie: I thought that some very positive things were said, especially in relation to traceability. Traceability is one of the main planks required by the Commission's decision to make things workable. We want to take the traceability systems that we have now and see whether we can make them meet the requirements of the Commission's decision.

Members of the industry spoke about the sampling regime. There is clearly a limit to the amount of central Government money that can be used to support a sampling regime. We will need to take further advice on certain areas, such as the size of the boxes and whether they ought to be uniform in size for offshore and inshore fishing.

Mr Morrison: I hope that that indicates that the FSA is willing to subject the proposals as they stand to some major surgery, and that you are willing to move closer to the industry position as opposed to the position in your original proposal.

Lydia Wilkie: We are willing to listen to comments from the industry and elsewhere. Some of the information in front of us has not been put to us clearly before. We will work with people as far as we can but, ultimately, we still have to meet the requirements of the Commission's decision in order to meet our overall European requirements. The proposals and the various options will then be put to ministers for a decision.

Mr Morrison: Your colleague Mr Reid said, and I hope that I have his words correctly, that the science on which proposals have been based is the best science currently available. When will you commission new research? Whom will you partner?

17:00

Gabby Pieraccini: As I mentioned earlier, the Executive is already working with the Scottish scallop advisory group. We are working out what the specifications should be, we are working with scientists to translate for us, and we are working with the industry to identify where funding may come from—centrally or from other pockets.

Mr Morrison: I know that Gabby Pieraccini has a detailed knowledge and understanding of the importance of the inshore fishing fleet, as she heads the division. Will you be progressing this issue with colleagues at a UK level?

Gabby Pieraccini: I am not clear at the moment whether we need to do that at a UK level. We will certainly consider all the options. Obviously, if things are to be presented to Europe, that will be done on a UK basis. However, I imagine that the bulk of the work will be done at a Scottish level.

Mr Morrison: There is a necessity for new, robust and accredited research, but how does that sit with Lydia Wilkie's timetable? She spoke about having things complete by the end of this calendar year.

Lydia Wilkie: The Commission has made it clear today that the major scientific review of the overarching 20mg level is likely to be a lengthy process. Paolo Caricato has also indicated the member states' duty to meet the European requirements, as they stand at the moment. We will address the issues in the context of the governing directive and the governing decision that is on the table. At the same time, we will work with colleagues in other parts of central Government and with other funders, as we can find them, to address the wider scientific issues.

Mr Morrison: I direct my final questions to Paolo Caricato. Welcome to Scotland and to the committee, Paolo. We have something in common, as English is not my mother tongue either. You said that the modification process is a lengthy and complex process. How often does the Commission or the Council modify directives?

Paolo Caricato: Yes, the process is complex. For instance, directive 91/493 was modified two or three times and directive 91/492 was modified four times, in 1994 and 1997. Now we are working to recast all the directives governing fish, meat, eggs and poultry. The recasting is seen as a procedure to modify a directive. The procedure has always involved the scientific committee on food; now it will involve the new agency, but it will be more or less the same.

We must be supported by scientific opinion. Once we have that opinion, we have to submit to the European Council and the European Parliament the text for discussion. In this case, because the issue is a technical one, the discussion will be quite short. However, we need time. Depending on the subject, the scientific committee on food has to meet two or three times and it takes more or less a year to obtain the scientific opinion. More time is then needed to modify the directive.

Mr Morrison: Are you able to advise your friends at the Food Standards Agency on how they might do things differently? I am not saying that they could do things better, but perhaps they could do things differently.

Paolo Caricato: It is not a problem of the Food Standards Agency; the question is whether we have enough data to modify the directive on ASP. I believe that that is the first question, because we cannot submit a question to the scientific committee on food without a justification. If the data are present, it is quite easy. If we have solid data to justify the modification of the directive, we must propose a modification to the scientific committee on food, but it is not for the Food Standards Agency to produce those data.

When new scientific evidence becomes available, a decision could be made for ASP similar to the decision that was taken to set a level of 25mg for DSP. When we took the decision on DSP, we did so because there were a lot of data about new toxins, new limits and new methods. We put all the data together and made a decision. If such data are also available for ASP in scallops, they will be welcomed.

Mr McGrigor: The reality of the situation is that we appear to have a perfectly healthy industry, which is worth £40 million to the Scottish economy and which is being destroyed—perhaps by bureaucracy rather than by anything else. It appears that there is nothing wrong with most of the scallops. What is wrong with most of the scallops is identified as being 90 per cent in the gut and the mantle—the pieces that can be removed.

I do not like to draw analogies, on the whole, but I would like to draw an analogy with BSE. When we had a problem with BSE, the spinal cord was taken out of the carcase. The fishermen are asking for an end-product test, which seems to me to be the obvious way ahead. I would like to ask the witnesses from the Food Standards Agency whether they consider that the obvious answer.

Martin Reid: The proposal that you outline—the removal of the hepatopancreas and gill, which are the most contaminated parts of the scallop—is one that has been put to us during the course of the consultation exercise. In the interests of pursuing all possible options, we have sought the advice of our legal advisers as to whether that would meet the requirements of either the Commission decision or the Council directive. The advice that we have received is that it would not. I will not go into the detailed legal reasons as to why that is the case, but the current advice is quite clear. Opting for the removal of the hepatopancreas and gill when the level for the whole animal is over 20mg means that you have to comply with all the conditions of the Commission decision. You cannot choose which bits of law you will apply and which bits you will disregard. The advice is quite clear on that proposal and, in a nutshell, that is why.

Mr McGrigor: Signor Caricato has just told us that it may take a little while to get things going. Who will pay for the extra research that will be needed? It appears from your proposals that the fishermen will have to pay a lot more for collecting much of the data.

Martin Reid: Correct me if I wrong, but I think that you are probably referring to the collection of samples.

Mr McGrigor: Well, obviously that will have to happen.

Martin Reid: Part of that goes back to our wider consideration of what will emerge from the consultation exercise. Lydia Wilkie mentioned that issues such as box sizes will be examined. If we move to larger box sizes, we will need fewer samples and it will be easier to collect them. However, such an approach has swings and roundabouts, because it will mean that when an area is open, a large area will be open, but when an area is closed, a large area will be closed. We will also have to ensure that the sampling regime is statistically sound and seek advice on the correct statistical basis for such a regime.

As I said, the consultation document contains proposals. The agency will most certainly take into account any suggestions that will allow us to adjust elements of the proposals to accommodate such issues, reduce the burden on industry and make the system more practical while ensuring that we meet our European obligations.

Mr McGrigor: You mentioned the minister's responsibilities. Were you referring to the Minister for Health and Community Care, the minister with responsibility for fisheries or both?

Martin Reid: These issues fall between two stools. However, any health considerations will concern the FSA. In that respect, Gabby Pieraccini is probably best placed to comment on the matter.

Lydia Wilkie: Perhaps I should clarify the FSA's statutory position. It is a UK Government

department working in a devolved area and it reports to Scottish ministers—in the plural. However, because of our public health remit, the reporting mechanism is through the Minister for Health and Community Care, although the Minister for Environment and Rural Development has a major interest in what we do because of the effects on the industry.

Mr McGrigor: Can any of the panel justify what is happening to the scallop industry, given the fact that, as far as we know, no one has been made ill by ASP in scallops?

Gabby Pieraccini: Instead of staying silent, I should point out that it is not really for Executive officials to justify particular policies. However, we are happy to explain them. I would just want to record that rather than allow our silence to be taken as agreement.

Richard Lochhead: Other members have asked most of my questions. However, I want to ask whether the FSA thinks that the current proposals will further the cause of food safety.

Martin Reid: They will, in as much as the two options represent a regime that will ensure that there is less risk of whole animals that are above the current action level being placed on the market. At the moment, such a risk exists.

Richard Lochhead: Have you already given advice to ministers on the proposals?

Martin Reid: Yes. Ministers are fully aware of the proposals.

Richard Lochhead: Did you advise them that the proposals would further the cause of food safety?

Martin Reid: Our advice to ministers was based simply on our proposals. We also advised them that we would consult on the basis of those consultations. We will consider the outcome of the consultation exercise, develop our recommendations and then try to gauge the ministers' views on the most appropriate way forward.

17:15

Lydia Wilkie: It is important to note that the FSA, which is a Government department, has reached the stage of developing options. The consultation period finished only recently and we will develop the options over the next two to three months.

Richard Lochhead: Is there a view that the response from Europe and the FSA to the threat posed by ASP and other toxins is disproportionate compared with the response to other food-related problems with which the FSA has to deal?

Lydia Wilkie: I do not think that it is appropriate for me, as an official, to comment on that question. We have come to the committee to explain how we are attempting to develop our policy advice in this area.

Richard Lochhead: Did either the FSA or the Executive take cognisance of the economic impact on the industry of the proposals when they were drawn up?

Martin Reid: Any consultation exercise includes the development of an impact assessment, and the consultation package includes a partial regulatory impact assessment. In addition to the information that we gathered during the consultation exercise, members have heard the economic data that the industry has provided in evidence this afternoon. That information will be fed into the development of a full regulatory impact assessment.

Gabby Pieraccini: The Scottish scallop advisory group, of which the Executive is a member, commissioned the consultants' report that John Hermse mentioned. The report examined the economic impact on the fishing industry of closures to date. We received that report a few days ago and it should be made public soon. We will share its results with the committee.

Fergus Ewing: I have a supplementary question that follows on from an answer that Mr Reid gave to Mr McGrigor about end-product testing. Today, we have received a united corpus of evidence from fishermen and processors alike that they wish to go the way of end-product testing combined with a high-quality quality assurance scheme. However, in response to Mr McGrigor's penultimate question, Mr Reid stated that the FSA has had legal advice that that approach would not comply with the Council directive and the Commission decision. Can we see that legal advice?

Martin Reid: I do not believe that that would be a problem. The legal advice was provided by the Scottish Executive's legal team in response to a letter that was sent to the FSA by an industry representative. We would have responded to the point raised in any event, so the information would have been made public.

Fergus Ewing: I am pleased to hear that. I say that as a lawyer, and I am conscious that lawyers can sometimes get things wrong. It seems absurd to rule out end-product testing on the basis that the Commission requires it to be ruled out. If that were the case—I hope that it is not—there would be an anti-European reaction in the west Highlands, particularly if people thought that Europe was responsible for shutting down the scallop industry. That is what we are talking about,

and I hope that that can be taken into account, although the most recent evidence has made pretty grim listening, if I may say so.

The Scottish Executive witness told Mr Morrison that there was a need to introduce proposals for legislation before the end of the year. [*Interruption.*] I am sorry—I understand that it was an FSA witness who made that point. Is there a legal requirement that the proposals be made within such a short time scale? The time scale is totally insufficient, will not work and will lead to more problems, because once the fishermen find out what has happened here today, there will be cold fury. Is the decision discretionary?

Lydia Wilkie: The initial consultation, which sought guidance from the industry following the clarification of the Commission's decision, took place in December last year. We have recently completed a lengthy consultation process and it is certainly our aim to proceed expeditiously.

Fergus Ewing: The question was whether there was a legal requirement.

Lydia Wilkie: That question would be for the Commission to answer. The UK has a duty to meet European requirements.

Fergus Ewing: But there is no time limit.

Lydia Wilkie: It has already been made clear that it is open to member states to determine whether to put the tiered regime in place.

Fergus Ewing: So there is no time limit.

Lydia Wilkie: Not as far as the tiered regime is concerned.

Fergus Ewing: So why do you feel compelled to introduce in such a ludicrously short time scale proposals that are, in my opinion and in the opinion of many of the previous witnesses, almost doomed to fail?

Lydia Wilkie: The proposals were introduced after our initial consultation, which took place at the end of last year, in the light of the Commission's views, and sought advice from the industry about whether it wanted us to progress with a tiered regime. The consultation process on the detail started to develop throughout the year. I have said that I hope to make meaningful progress before the end of the year and that, as an official, I consider that progress should be made in a reasonable time scale. At the same time, as I keep repeating, we are at the early stages of considering the detail of the views that have come in and of the meetings that we have had with fishermen. We will have further discussions with the industry enforcers and other stakeholders.

Fergus Ewing: If that is the case, how come research into end-product testing was commissioned only recently?

Martin Reid: The research is not all that recent. It was undertaken immediately that the Commission's decision was known. Research takes a while. As soon as we knew the detail of the Commission's decision and that there would be a requirement to test every batch of end-product, we immediately considered trying to lessen the impact by seeking to develop a scientific case for reducing the level of testing.

The Commission's decision allows us to provide scientific evidence that certain provisions should be relaxed or increased. The research is being completed and we are considering the outcome of it, which will be fed back to the Commission for consideration, to see whether a reduction in the level of testing can be achieved. Ultimately, the decision will be for the European Commission to take and the committee that replaces the Standing Veterinary Committee will have to vote on it. The work has only just been completed, but it was undertaken almost immediately that we knew that the decision had been made.

Mr Morrison: I have a question on end-product testing in the context of the other important work that the Food Standards Agency does. I am not a scientist, so please forgive my ignorance. If you are testing beef for E coli, do you test the bullock in the field or do you wait until it has been through all the processes and is heading for the consumer's plate?

Lydia Wilkie: Food science is a complex area. A significant amount of research is being undertaken at the moment by agricultural departments and the Food Standards Agency. E coli is relatively new and bears no relevance to ASP, which is a toxin and a completely different area of science.

Mr Morrison: My question is about when your scientists test.

Lydia Wilkie: The regime that we have in place for ASP in Europe is clear: we have up-front testing plus a requirement for producers to do some end-product testing to ensure that none of their material is unsafe. There is no similar regime for E coli.

Paolo Caricato: I return to the point about end-product testing, about which there was a big discussion in the working group. The experts said that variability among scallops is high so, to be sure that the product that is put on the market is safe, we would have to test every scallop. The problem is that the trigger-level approach does not work in the same way as it does for E coli or something like that where one can verify the end-product and if one finds E coli, the product is withdrawn from the market. Some scallops have a high toxin content, but contain only a small quantity in the edible parts. The contrary is also

true. On that basis, it was decided to take a statistical approach. Only on the basis of the trigger level can we avoid the possibility that the scallops on the market are contaminated. The possibility is 1 in 1,000.

If we performed end-product testing, we would have to check all scallops—considering their variability—because in one sample, one might find a level of 100mg per kg and in another, the level might be 10mg per kg. The trigger level was proposed because of the variability problem. The first approach was to put on the market scallops without the hepatopancreas and soft tissues and to test the end-product, but that approach was not accepted by the experts, because of the variability among scallops.

I return to my proposal about changing the 20mg per kg limit. We could involve the European reference laboratory at Vigo in the research. The FSA could send me an official letter saying that it is receiving lots of queries about the new regulations and about the 20mg per kg limit and asking whether there is scientific evidence that the limit is too old or that it might be possible to change it. I could send the letter to the Vigo laboratory. If they replied that they know that there are data that allow the possibility of modifying, we could start on that basis. Perhaps that would be better than nothing, because we could start to involve our laboratory and the process could be speeded up.

17:30

The Convener: Perhaps I could put that very point to Mr Reid.

Martin Reid: We will certainly consider Paolo Caricato's suggestion. I shall take it away and consider whether we could take that forward as a positive step.

The Convener: What reasons might there be for not taking that forward as a positive step?

Martin Reid: Nothing immediate springs to mind.

The Convener: Lydia Wilkie said that she has heard arguments today that the FSA has not come across before. Given that fact, is not it incumbent on the FSA to proceed down the route suggested by Mr Caricato, even if that means a delay in the time scale, which some committee members consider to be frighteningly short?

Lydia Wilkie: It is useful to have an indication from the Commission that that is the way that it would like to go. It is a UK consideration and would have to be developed, but we will examine the proposal and put it to other colleagues as quickly as we can.

Richard Lochhead: Are you saying that you cannot make a unilateral decision to send a letter?

Lydia Wilkie: Scotland has been very much at the forefront on this issue and is leading in the UK. The Food Standards Agency Scotland is part of a UK Government department working in a devolved area. In taking forward an official decision, I would want to ensure that all parts of the UK were in agreement with me, and that is what the Commission would expect. I assure members that our office in Scotland is in the lead as far as ASP in scallops is concerned. Speaking to colleagues should not cause undue delay.

Mr Morrison: That is an important development. Although we all have a sense of urgency and appreciate the significance of what we are discussing, I sympathise with the officials, who may have to consult others. Nevertheless, the proposal is an important development and I hope that the FSA will act on it immediately.

The Convener: Given your admitted leading role, which I am pleased to hear about, I hope that you will take on board the committee's grave concerns and pursue that route with vigour.

Lydia Wilkie: Very much so.

The Convener: I advise members that any further agenda items are well and truly out the window. It was important to give this item the time that we have given it, and I do not want to curtail the discussion, but we must now begin to draw to a close.

Mr McGrigor: I have a question for the FSA witnesses. When people said that they wanted a tiered testing system, were they aware that a 4.6mg trigger level would be involved?

Martin Reid: Yes. The consultation letter made it quite clear what the conditions of the regime—which reflect those set out in the Commission decision—would be. The question of action levels and trigger levels is quite complex if you do not deal with them day to day. We sent out an abbreviated guide to help people to understand the implications of the trigger levels, so that people were fully aware.

Mr McGrigor: My final question is for Signor Caricato. You referred to toxin levels of 20mg to 250mg in one in 1,000 scallops. You would have to eat 12 such scallops to get ill, so what are the chances of getting ASP from eating scallops?

Paolo Caricato: I do not know. I believe that the statistical approach showed that one scallop out of every 1,000 might be affected. The Commission considered that that was an acceptable risk management level. The limit of 20mg is not the toxic limit—it is more or less 10 times lower than the toxic limit. We considered that that was a good approach, although some experts said that we

should take a tougher approach. They proposed a trigger level of 2.6mg, which would create the possibility that only one scallop out of 100,000 was affected. However, that limit was considered to be too strict.

Mr McGrigor: One would still have to eat 12 such scallops to become ill. One scallop with that level would not make a person ill.

Paolo Caricato: We do not take the portion into account. We considered only whether one scallop out of 1,000 was a safe limit.

The Convener: We will leave our discussion of the issue there, as I want to draw the session to a close, but first I want to put a question to Mr Ford. That may come as a shock to him, as he has sat here patiently since half past two and has given only his name. I welcome Mr Ford to the committee, and I hope that he will bear with us in the light of the industry's striking comment that, until we sort out ASP, technical conservation measures are irrelevant and there is not much point considering them. Do you have sympathy with that view? Is the introduction of the new testing regime intertwined with the introduction of new conservation measures, or are they completely independent of each other?

David Ford: Thank you. With respect, whether I am sympathetic or not is irrelevant. I acknowledge the committee's view that there is an argument about delaying the introduction of the measures, but I also recognise that the issues are not separate. However, it is not for me to decide whether the measures should be implemented. To date, no statutory instrument has been introduced, so perhaps your question prejudges the situation a little.

In August, the Minister for Environment and Rural Development announced that he intended to lay before the Parliament an SI on technical measures. It remains open to the minister to revise his decision, particularly in the light of current arguments; indeed, he has been asked to revise the decision. I do not wish to predict the minister's response to that request, but there is no doubt that the comments made at today's meeting will be fed back to him. Whatever he finally decides—whether to revise his earlier decision or to maintain it—I assure you that the committee will be advised

The Convener: Who asked the minister not to lay the SI?

David Ford: Some, but not all, of the industry representatives.

The Convener: Thank you for that information.

With that, I bring this evidence-taking session to an end. I thank all the witnesses. You have had a long and hard session, but the technical and controversial nature of the matter justifies the time that we have spent on it. I am sorry that we have had to go into overtime. You are welcome to listen to our deliberations if you wish to stay.

Members understand the need for that lengthy session, which was useful, although it may not have clarified the issues. We cannot close the meeting until we have considered the options for the action that we could and should take.

We must go first to a point raised by Fergus Ewing. Given the evidence that we have heard from all the witnesses, do we think that we should take evidence from the minister and put some of the points to him?

Mr Morrison: It always makes sense to speak to the relevant ministers from SEERAD and the Scottish Executive health department. I would prefer to hear from Ross Finnie and Malcolm Chisholm, as they will seek and, I hope, follow the advice that will be informed by Mr Ford's memorandum. That advice will be given in the context of what the Commission has offered the Parliament.

As convener, you should spell out clearly what we have all agreed today about the urgency of the situation and the nonsense of the FSA's time scale, which seeks to get things done and dusted by the end of the year. That timetable is simply no longer tenable, given this afternoon's evidence and the news that the Commission has offered to take further scientific advice and to make its own laboratories available. As a result, I would prefer to hear from Ross Finnie and Malcolm Chisholm and seek an assurance that the timetable is not set in stone but will move into next year.

The Convener: Given our work programme, which has taken on a fairly horrendous air, I am sympathetic towards that outlook. If we insisted on hearing from ministers, that would necessitate either having an extra meeting or meeting much earlier.

Mr Morrison: To be frank, I would prefer to have the correct decision instead of a meeting.

The Convener: I am open to input from all members.

Fergus Ewing: As we have heard, two ministers—the Minister for Environment and Rural Development and the Minister for Health and Community Care—have responsibility for the matter. If we are going to hear evidence from ministers, it would be best if we heard from the both of them. If we invited only Mr Finnie, it is understandable that he would be able to say that he could not reply to certain questions because he is not responsible for public health. Logically, it would be a mistake not to hear from both ministers. Of course, it might well be that the Deputy Minister for Health and Community Care

will deal with the matter. That said, I am pleased that the whole committee agrees that we should hear from ministers as soon as possible.

The Convener: With respect, I do not think that all committee members have agreed to that. I think that Mr Morrison's point—

Fergus Ewing: Mr Morrison wants to hear from the ministers.

The Convener: No. Mr Morrison's point was that we could obtain the clarification that we seek by letter and by memo rather than have an extra meeting with ministers.

Mr Morrison: What is important is ministers' decision, not their performance in this room or any other forum. What is important is that we get a decision on the timetable and that the FSA understands clearly that the end of the year is no longer acceptable. I am far more concerned with that outcome than with bringing ministers before the committee.

Richard Lochhead: If we were to follow Alasdair Morrison's logic, we would never see ministers before any committee. I am not sure that that is relevant—

The Convener: That remark was entirely irrelevant, but carry on.

Richard Lochhead: The issue is very serious. Is not the Minister for Environment and Rural Development due to come before the committee anyway?

The Convener: The minister is due to come before the committee on 29 October, when we have a very full programme, and on Tuesday 12 November.

Richard Lochhead: Perhaps, for the sake of urgency, we could write him a letter about the time scale. However, as far as the other issues are concerned, we might be able to use that other opportunity.

The Convener: I propose that we write to Ross Finnie and Malcolm Chisholm in the very strong terms that Alasdair Morrison has suggested. If we receive reasonably timeous, but unsatisfactory, replies to our letters we could consider bringing the minister before us on 26 November. However, if we are satisfied by the responses, we could consider that to be a job well done.

Rhoda Grant: I agree. The decisions will have been made by 26 November. We need to get our markers out, because the regime will be introduced to the industry at the end of the year. Even if we have a good outcome from our meeting on 26 November, we have still left things until the 11th hour. The industry needs to know what is happening as soon as possible.

Fergus Ewing: I agree that we could write to the minister right away about the time scale. However, that is not the only issue. Mr Caricato told us that, as far as he is concerned, something needs to be done. As a result, we are not talking just about postponement; we need to know the minister's response to the consultation and what he proposes to do about several matters, not just the consultation. For example, Mr Caricato made the interesting suggestion that a submission should be made on the basis that scientific evidence is now out of date. He suggested earlier that the FSA could submit that what is correct for mussels is not necessarily correct for scallops.

We also need to hear the minister's response to the technical conservation measures, because it is not clear—as the civil servants said—whether those measures will be forged ahead with. There is not only postponement to consider and, in any event, until when would the postponement last? We cannot shelve those issues indefinitely. There is an urgent need to have the ministers before the committee and I suggest that we invite them. In the interim we should write a letter raising the specific issue of the timing of the introduction of any FSA proposal.

17:45

Mr Morrison: I represent a fishing constituency. I have at the forefront of my thoughts and, I hope, my actions the best interests of the industry. That is why we should get ministers' decisions in writing. They can give us decisions quickly through the October recess, after which there will be time for further discussion with the minister, but we have to move quickly. As we heard today, we are in a potential deathbed situation as far as the industry is concerned. Rather than trying to score cheap political points, we should move quickly by letter.

The Convener: A letter does not have to be on only one subject. Given the evidence that we have heard today, any letter from the committee will cover all the concerns that have been raised. I do not think that any of us disagrees that we should send a letter. The point of disagreement is whether we should summon the ministers before we have seen their replies to the letter.

Fergus Ewing: I am surprised by Mr Morrison's remarks. I, too, represent an area that has strong fishing interests. To be perfectly fair to civil servants and officials, they were unable to answer the questions because, as was made perfectly plain, it was not within their scope to do so. The people who make the decisions should answer the questions because they, as elected ministers, have the responsibility to do so. It would hardly be setting precedent for the committee to take evidence from ministers. We tend to do so when

important matters are at stake. The future of an industry is at stake, so with that in mind I propose—I will press this to a vote if necessary—that we write straight away reflecting the urgency of the situation, which all members accept, and that as soon as is reasonable we also see the minister on the wider issue; namely, the future of the scallop industry.

Mr Morrison: I return to my earlier proposal and the terms that I stated originally. As the convener rightly pointed out, we are capable of asking more than one question in the letter that we write to the minister.

Rhoda Grant: I offer a third way. I suggest that we write a full letter to the minister, because it is important that we do so. We should reflect on the response when we receive it and, if need be, call the minister before the committee. That would be a sensible procedure to follow. It is a matter of urgency that we get the letter away as soon as possible, reflect on the response and decide whether we want to hear from the minister. That is a fair compromise position.

The Convener: That is exactly the compromise that I suggested. I am delighted that Rhoda Grant has backed me up.

Stewart Stevenson: There are in my constituency a number of shellfish processing interests. I am keen to ensure that the industry is able to thrive and prosper. We should write immediately to the minister, but I do not see the logic of waiting for a response before we decide whether to see him. We know that there are unanswered questions from today and it might well be that the nature of the meeting that we will have with the minister will change in the light of the response to the letter. However, what will not change is the need to have the minister, or ministers, before us. I believe that we should regardless encourage the minister to come before us in early course.

Richard Lochhead: The minister will be at our next meeting—excluding Friday's meeting in Kingussie—so why cannot we ask him to give 30 minutes extra evidence on the matter? Is that beyond the realms of possibility?

The Convener: On a purely practical basis, I should point out that the meeting on Tuesday 29 October is likely to last until about half-past six anyway without any alteration to its agenda. I do not believe that half an hour will be enough for a session of evidence taking from ministers, especially if there are two of them. I am just trying to take into account the practicalities of our forward work programme.

Richard Lochhead: I did not realise that the meeting was scheduled to go on until 6.30pm.

The Convener: As I have intimated, the next meeting that the minister could attend is on Tuesday 12 November.

Fergus Ewing: We could go for that.

The Convener: Otherwise, if members agreed to call the minister to the committee, we could have an extra meeting. I am not sure that I agree totally with Stewart Stevenson; I think that we can wait to see whether the minister's response to our letter answer our questions thoroughly.

John Farquhar Munro: The evidence that we heard today was so overwhelming and compelling that I do not think that we should wait and extend the time lag. Even if we have to sit late into the evening on 29 October, we should still use that meeting because it is the earliest possible meeting at which we could raise the issue with the minister.

The Convener: The only possibility would be to start the meeting considerably earlier than normal, if that is what members want to do.

Mr McGrigor: I want to point out that we might be taking evidence from two ministers. We keep talking about "the minister".

The Convener: We could start earlier, if members insist on going down that route.

Elaine Smith (Coatbridge and Chryston) (Lab): I want to clarify something. What will happen if we receive responses that suggest that there is no pressing need for the meeting? Could we put off bringing the minister before us until a later date? Do we have to decide now?

The Convener: The evidence today suggests that the issue is urgent and that, however we agree to act, we should do so reasonably quickly.

Elaine Smith: I did not ask questions this afternoon because other members asked my questions and I did not see any point in repeating things. However, I was listening to the evidence and it seems that any need for urgency depends on the response to our letter. There might not be any need for urgency, depending on the response.

The Convener: Is Rhoda Grant's commendable suggestion—I have to say that because I also proposed it—agreeable to committee members?

Members *indicated disagreement.*

The Convener: That suggestion is not agreed by all members. Fergus Ewing has made a proposal. It seems to me that we are not going to reach consensus on the matter, so I think that we have to—

Mr McGrigor: Can we hear the proposals again?

The Convener: All members have agreed that, following this meeting, we write as soon as

possible to both ministers in a robust and full fashion. That will happen. However, Fergus Ewing has suggested that, as well as writing that letter, we arrange for the ministers to appear before the committee at the earliest possible date, which appears to be 29 October. That meeting would have to start earlier.

Alasdair Morrison has suggested that we should not do that, but that we should instead just write to the minister and leave it at that. However, Rhoda Grant has expanded that proposal by suggesting that we wait until we receive the ministers' responses and thereafter determine whether we wish to call them in front of us. Those are the options. I do not think that we will reach a consensus, so we will have to vote on the matter.

We will vote first on Fergus Ewing's proposal, because it was the first to be put to the committee. The proposal is, that as well as writing a letter, we arrange for the ministers to appear before the committee at the earliest possible date, which is 29 October. Are members agreed?

Members: No.

The Convener: There will be a division.

FOR

Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Lochhead, Richard (North-East Scotland) (SNP)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Fergusson, Alex (South of Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
Morrison, Mr Alasdair (Western Isles) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)

The Convener: Fergus Ewing's proposal is defeated by five votes to four. We will therefore adopt Rhoda Grant's proposal and write to the ministers in strong terms and wait for their responses. Do members agree to allow me and the committee reporters on ASP—Rhoda Grant, Fergus Ewing and Jamie McGrigor—to sign off that letter?

Members *indicated agreement*.

The Convener: Are members also agreed that no further action need be taken at this point?

Fergus Ewing: In light of the fact that the members who voted against my proposal still agreed that we should review the decision on whether we need to take ministerial evidence after we receive the responses from the ministers, can we place the item on the agenda for the next committee meeting?

The Convener: Those are the exact terms of the proposal that we have agreed to. The item will be put on the agenda for the next meeting, assuming that we have received a response.

I also suggest that copies of the letter be sent to the Health and Community Care Committee. Are members agreed?

Members *indicated agreement*.

The Convener: With that, I call this lengthy meeting to a close.

Meeting closed at 17:57.

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