# TRANSPORT AND THE ENVIRONMENT COMMITTEE

Monday 26 November 2001
(*Morning*)

Session 1

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## Monday 26 November 2001



## TRANSPORT AND THE ENVIRONMENT COMMITTEE
**30th Meeting 2001, Session 1**

**CONVENER**

*Mr Andy Kerr (East Kilbride) (Lab)

**DEPUTY CONVENER**

*Nora Radcliffe (Gordon) (LD)

**COMMITTEE MEMBERS**

*Robin Harper (Lothians) (Green)
Mr Adam Ingram (South of Scotland) (SNP)
*Maureen Macmillan (Highlands and Islands) (Lab)
*Fiona McLeod (West of Scotland) (SNP)
*Des McNulty (Clydebank and Milngavie) (Lab)
*Bristow Muldoon (Livingston) (Lab)
*John Scott (Ayr) (Con)

*attended

**WITNESSES**

Dominic Counsell (Scottish Natural Heritage)
Michael Cunliffe (Crown Estate)
Matt Dalkin (Scottish Natural Heritage)
Patricia Henton (Scottish Environment Protection Agency)
Jamie Lindsay (Scottish Quality Salmon)
Bruce Mainland (Orkney Salmon Company)
Councillor Bill Manson (Shetland Islands Council)
Andy Rosie (Scottish Environment Protection Agency)
David Sandison (Shetland Salmon Farmers Association)
Colin Wishart (Highland Council)

**CLERK TO THE COMMITTEE**

Callum Thomson

**SENIOR ASSISTANT CLERK**

Tracey Hawe

**ASSISTANT CLERK**

Alastair Macfie

**LOCATION**

Committee Room 1

# Scottish Parliament

## Transport and the Environment Committee

*Monday 26 November 2001*

(*Morning*)

[THE CONVENER *opened the meeting in private at 10:34*]

11:34

*Meeting continued in public.*

**The Convener (Mr Andy Kerr):** I welcome everyone to the 30th meeting in 2001 of the Transport and the Environment Committee. I have received no apologies for today's meeting, at which our main business is to take further evidence in our rolling inquiry into aquaculture.

## Petition

### Organic Waste Disposal (PE327)

**The Convener:** Colleagues, I do not mean to bounce this on you, but there is a proposal that we deal with the Blairingone petition now, as it is a fairly straightforward piece of business. I know that George Reid has discussed the matter with members.

**Fiona McLeod (West of Scotland) (SNP):** May I pass my comments to you for consideration?

**The Convener:** Excepting the comments on Argaty, where some legal concerns arise, I was happy with almost everything that I saw in your document, Fiona.

Are members content that we deal with the Blairingone petition first?

**Members** *indicated agreement*.

**The Convener:** My apologies to members of the public who might be baffled by what we are doing. We have agreed to bring forward our consideration of the report, which I wrote in my capacity as reporter to the committee, on petition PE327 from the Blairingone and Saline Action Group. I seek the committee's views on the content of the report, which has been given to members. Can we make progress based on the report?

**Fiona McLeod:** Andy, you are to be congratulated on a well-written and well-informed report that takes on board the petitioners' key concerns. I want to make a few additions, which are more stylistic than anything else. Given that we are short of time, I am happy to give those to you for incorporation into the report.

**The Convener:** That is fine. I am happy to receive those changes. Obviously, I shall deliver a second draft of the report to members.

It was useful that George Reid and I got out and discussed the petition with the community. Bruce Crawford also attended. We were on site listening directly to people's views. It is a real strength of the Parliament and its committees that we do such work. My thanks go to Alastair Macfie, the clerk who supported me in that task; he did a good job liaising with me and others to ensure that we produced the report.

As Fiona McLeod suggested, the report identifies the concerns and points a way forward. The message from the report is largely that the Executive must give the issue time, effort and priority; we need to get on with some of the things that have been hanging about in the system for far too long. I am pleased to hear Fiona McLeod's comments. Do any other members wish to comment at this stage?

**Maureen Macmillan (Highlands and Islands) (Lab):** I congratulate you as well, convener. I am pleased that the report contains a section on odour nuisance, which is a problem that has gone unregarded for a long time.

**Robin Harper (Lothians) (Green):** Similarly, I congratulate the convener on an excellent and detailed report. I signify my whole-hearted agreement with its conclusions and recommendations.

**John Scott (Ayr) (Con):** I, too, welcome the report. It is well done, but there is a slight danger that we may unintentionally be using a sledgehammer to crack a nut. I have no trouble with the report's dealing with the blood-and-guts issue at Blairingone. However, it seems to have broadened out to include the code on the prevention of environmental pollution from agricultural activity—PEPFAA—as well as the spreading of other animal wastes. I am not happy that that is required. There is quite enough regulation. At the moment, there are not necessarily many problems with the spreading of other animal wastes. In fairness to the agriculture industry, no more regulation should be imposed than is necessary.

**The Convener:** You are absolutely right about regulation. Any regulation needs to be at the right level with the right focus. However, the PEPFAA code came up for discussion everywhere we went. It was felt that the code is implemented fairly haphazardly and that some resolve is required to ensure that it is implemented more consistently. We were given the report of a study that was done

in Ayrshire, which showed that the PEPFAA code was not being implemented in some areas.

Underpinning my report is the fact that, unless we raise the game by strengthening the advice and guidelines into a regulatory framework, the situation will simply not change much. Those who observe the correct and appropriate levels as set out in the PEPFAA code are put at a disadvantage to those who do not. We must target those who do not keep to the PEPFAA code. Our aim is not to increase regulation but to ensure that everyone involved in the process reaches the benchmark. I was conscious of the fact that we do not want additional unnecessary regulations, paperwork and forms—

**John Scott:** That is the general principle.

**The Convener:** However, something must be done about those who abuse the current code. Fiona, are you indicating that you want to say something?

**Fiona McLeod:** I was just agreeing with you.

**John Scott:** The point that I wanted to make is that I do not want an unnecessary increase in the burden of regulation on anyone.

**The Convener:** I can assure you that that is not the intent.

**John Scott:** I want the problem of Blairingone to be addressed.

**The Convener:** If there are no further comments, we will incorporate into the report Fiona McLeod's minor textual amendments and return to the committee with the amended report at a later date. I must say that I found the experience of being a reporter interesting; I enjoyed it a great deal. The public will be baffled by our exchange, but we will move on.

## Aquaculture Inquiry

**The Convener:** The next item on the agenda is our aquaculture inquiry. I welcome Jamie Lindsay from Scottish Quality Salmon, David Sandison from the Shetland Salmon Farmers Association, and Bruce Mainland from the Orkney Salmon Company. Our aquaculture inquiry is moving on at a good rate, so we will move straight to the question-and-answer part of the meeting.

**Robin Harper:** There seems to be a unanimous view that an assessment of the environmental carrying capacity of Scottish coastal waters is needed. What work do you believe needs to be undertaken for that assessment?

**Jamie Lindsay (Scottish Quality Salmon):** We would all agree that further research is needed into the carrying capacity, although it should not be forgotten that a fair amount is already known. The depositional modelling—DEPOMOD—that the Scottish Environment Protection Agency can do is based on knowledge that has already been gained into some dimensions of carrying capacity.

At Scottish Quality Salmon, we believe that codes of practice should complement the fact that carrying capacity remains a concern and that, therefore, a precautionary principle should be adopted.

People should not forget the relative size of the footprint that we occupy. If all our cages were gathered into one block, it would cover 300 acres, which is the size of a small sheep farm. The area of Scottish coastal waters is around 2.7 million acres. Although it is critical that carrying capacity is properly understood and accommodated in the regulation and operation of the industry, the small proportion of the area that we occupy is also worth bearing in mind.

**Robin Harper:** In your submission, you mention codes of practice. Is there a publicly available manual on your codes of practice?

**Jamie Lindsay:** Our codes of practice may not be in a manual, but I will undertake to make them available in one bundle. I am sure that David Sandison and Bruce Mainland will do likewise.

We have five mandatory—not voluntary—codes of practice. The strength of adopting independently inspected environmental management systems is that they enable codes of practice to be made compulsory. In other words, the operator does not have the option of complying on good days but not on bad days—there is a continuous discipline. We would all subscribe to the principle of making those codes of practice available in a format that is as easy to access as possible.

**Maureen Macmillan:** Codes of practice are all very well, even if they are not voluntary, but what sanctions do you have and how do you monitor the codes? What do you do if people break them?

**Jamie Lindsay:** Appropriate action is taken. Last year, we had to expel a member, even though they had not breached a statutory threshold. The statutory body concerned conducted an exhaustive investigation to determine whether the threshold had been breached, and that was not proven. However, there had been a serious breach of a code of practice and we felt compelled to expel that member.

**Maureen Macmillan:** Do you rely on SEPA to monitor the codes of practice or does your organisation undertake monitoring?

11:45

**Jamie Lindsay:** I shall be more specific about the incident to which I referred. SEPA conducted investigations but could not find the breach that it required. However, pursuing the same allegation, we found a breach of the standard that we required and the member was expelled.

David Sandison, Bruce Mainland and I have voluntarily imposed on ourselves mandatory requirements that are independently inspected, on top of what the public sector demands of us. As you will know, it is often claimed that we have the most heavily regulated aquaculture industry in the world. That is not an idle claim. We have 10 statutory bodies armed with 63 pieces of legislation, 43 directives, three EC regulations and 12 EC decisions. There is no shortage of regulation, although there is undoubtedly a confusion of regulation. Over and above that complex, statutory jungle, we have adopted our own requirements, which the customer expects of us, which wider society demands of us, in relation to environmental management, and which enable us to meet other aspirations. We impose our own independent inspections by properly accredited inspectorates in addition to what the public sector imposes on us.

**The Convener:** We will revisit some of those issues later in our questioning.

**Robin Harper:** Previous witnesses have suggested that, until questions of carrying capacity can be answered, there should be a moratorium on the issuing of new consents for salmon farming. They have accepted, however, that any moratorium should not prevent the relocation of farms for sound environmental reasons or minor cage expansions for sound husbandry reasons. What are your views on a moratorium?

**Bruce Mainland (Orkney Salmon Company):** In Orkney, we have a fairly low-volume industry and quite a lot of fairly small players—many with only one site—who are facing a fallowing regime, which everybody accepts and wants. If we were to have a moratorium now, that would put an even greater strain on those people.

**David Sandison (Shetland Salmon Farmers Association):** We need to consider the implications of what will be achieved through a moratorium. A significant amount of reorganisation is going on in the industry, purely to meet its obligations on such things as the code of practice on infectious salmon anaemia. Smaller-scale businesses that previously existed on two sites and did not quite meet what is currently considered best practice on fallowing and the rotation of sites are always looking for opportunities to develop their structure. The vast majority of the shifts in the industry are made to meet that challenge and, in that regard, a moratorium would not be helpful.

**Bristow Muldoon (Livingston) (Lab):** There has recently been consultation on the transfer of planning powers to local authorities. I know that there has been a fairly broad welcome for such a move. What benefits would flow from that? What are the implications of further delays in the transfer? Would any changes need to be made to the planning regime to make it fully applicable to marine fish farming?

**Jamie Lindsay:** Many members whom I represent are still theoretically subject to Crown Estate planning and Bruce Mainland and David Sandison come from areas in which planning has already been transferred.

In principle, we welcome the transferral of planning powers. However, output is perhaps more important to us than process. The question relates not so much to who plans as to how they plan. Planning should be carried out consistently and it should be properly resourced so that it can be carried out efficiently and effectively. Equally, there should be sufficient flexibility for site-specific circumstances to be properly addressed and accommodated in the planning process. There should be consistency of principle but a sensitivity in decisions.

A single body has planned for a large part of Scotland and it is claimed that there has been consistency. The transfer to local authorities makes a lot of sense, but there should be sufficient resourcing to enable authorities to apply proper planning responses to circumstances at a site-specific level.

**David Sandison:** I am sure that members are aware of the different situation in the Shetland Islands where the local authority has had full licensing responsibility since salmon farming began.

The key issue is the resources that an authority can bring to bear, as Jamie Lindsay said. Even in a place where we have a strong commitment to the development of aquaculture, we struggle with resource implications. Local authorities need to be aware of the significant resource implications to ensure that aquaculture is developed and controlled in a strategically sustainable fashion. Currently, there are probably seven or eight local authority personnel in Shetland who are fully involved at some level in the policy side or the monitoring of licences. That is backed up by technical expertise in environmental impact assessment preparation—probably three or four people are involved in that. That gives some indication of the resource implications.

**Bristow Muldoon:** Once a new planning regime is established, what action should be taken in respect of sites that are subject to existing leases? Should they brought within the new framework? If so, how should that be done?

**Jamie Lindsay:** I am open to suggestions on that. Consistency is an underlying principle and everyone would welcome it. The most equitable method of rolling in new principles should be explored. I would hesitate to endorse specifically a single way of doing things without analysis of the available options.

**Bruce Mainland:** My views are broadly the same, if for no other reason than that the public should understand the whole regime. One problem in the industry is that few people understand what goes on in it. The simpler we can make it, the better.

**Jamie Lindsay:** I want to deal with the obvious issue of potential business dislocation, which should be addressed when the best options are weighed up. The weight of the regulation and the additional cost involved in the quality schemes that we impose produce a significant burden on businesses. There are qualms among smaller and medium-sized businesses because the management costs are not easily affordable, whereas in bigger companies there is sufficient management capacity to deal with institutional requirements.

If one were going to introduce new requirements on existing operations, some sensitivity would be necessary to the ways in which existing businesses, especially the small and medium-sized ones, could accommodate those requirements.

**Maureen Macmillan:** In the northern isles, the planning is done by the local authorities. Does that lead to a lot of inquiries? Planning for land-based projects often leads to lots of objections and then inquiries. Does that happen with your kind of projects?

**Bruce Mainland:** In Orkney, that is exactly what has happened. Over the past two or three years, almost every application for fish farm works licences that I can think of has ended up in an inquiry.

**Maureen Macmillan:** Is that a good or a bad thing?

**Bruce Mainland:** It is a double-edged sword. It is good that the process is transparent—as I believe it is—and that everyone has a right to object. However, from the industry's point of view, it is bad because it tends to delay the whole process. The average time to get a works licence in Orkney is probably three years, which is a long time to be at the planning stage.

**Maureen Macmillan:** It is a long time.

**David Sandison:** We must have a transparent system so that people know what is going on. That means that people can object to specific developments. In Shetland, plenty of applications have gone to some form of appeal. That does not happen in the majority of cases because, generally speaking, aquaculture is welcomed. Some site-specific issues will obviously, from time to time, create a conflict of interests. In such circumstances, the system has to be open to scrutiny.

**Maureen Macmillan:** If a robust environmental impact assessment was done before a potentially controversial application was made, might that allay public fears and prevent an appeal? I presume that objections are made on environmental grounds.

**David Sandison:** Objections are not necessarily always made on environmental grounds. There may be conflicts of resource use—for example, inshore fishermen may have an interest in preserving what they see as part of their resource.

A lot of environmental impact assessment is being done in Shetland—more than 20 full EIAs are being carried out and a further 22 are either in progress or awaited. That covers about a third of all the sites in Shetland. The assessments are extremely robust documents. They are carried out not by the farmers but by independent consultants, so they are open to scrutiny. However, I do not think that those documents cut it for people who have fundamental objections to aquaculture on what would be called point-of-principle grounds. We sometimes find that the whole objections process gets muddied and people use available systems to block progress.

12:00

**Jamie Lindsay:** David Mainland makes a good point about people who object on points of principle and seek to block proposals at ground

level, as it were, but Maureen Macmillan's question raises another important point. One must remember that a good EIA can be tailored specifically to a particular site and that there is no prescription for what an EIA should or should not contain. The statutory consultees to the process decide what the scope of the EIA should be. For some sites, the scope may be extremely comprehensive; for others, the focus may be on a few specific issues.

If the right EIA can be done before the later stages of the planning process, that will, I hope, remove unnecessary or frivolous appeals. Moreover, if the operator undertakes to run a measurable environmental management system that addresses the issues that the EIA flags up, that should bring additional comfort to potential objectors. I hope that we can be intelligent in Scotland and build a planning system that will not involve unnecessary inquiries.

I have a fundamental point about the industry for people who have experience of traditional rural industries in Scotland. Aquaculture is a young industry that is full of comparatively young operators. Unlike in some older industries, those operators do not try to do things as their fathers and grandfathers did; they do things at the forefront of the industry, such as adopting new techniques quickly and embracing new disciplines. I hope that the industry in Scotland adopts best practice—in the planning process and in its wider aspirations—sufficiently quickly to eliminate planning problems at a later stage.

**Nora Radcliffe (Gordon) (LD):** How can we achieve the correct balance between national guidance and local input in the planning process? There is concern that if planning is handed over to local authorities there might not be a uniform approach among them. Your comments on that would be welcome.

**David Sandison:** From our perspective in the far north, it is difficult to see how national guidance can be applied locally. I do not think that we should stand alone, but we must recognise that in some island communities there is a completely different view of how to fit into national frameworks. Although planning guidance for land-based development applies as much in Shetland as it does anywhere else, cognisance must be taken of the fact that our system is already well developed under an act of Parliament. We must consider carefully how national guidance impacts on the measures that are in place.

**Jamie Lindsay:** Some thought has been given to a co-ordinating committee of local authority representatives that could, as a central unit, provide consistency in the application of national principles. As I said, in addition to consistency at national level, we want decisions to be guided by the specifics of each site. The industry is becoming more site specific in the way in which it sets its threshold. The best thing that the regulatory and planning system can do is to be equally site specific in making final judgments within the context of the overall principles.

**Nora Radcliffe:** Should the balance be towards finding local solutions to local problems?

**Jamie Lindsay:** Absolutely.

**Nora Radcliffe:** You said a lot about environmental impact assessments. Is current implementation of those assessments appropriate and effective? If a full environmental impact assessment is not wanted, might a more limited environmental study be carried out? Who should be the competent authority for environmental impact assessments?

**David Sandison:** I will take the last question first. Our submissions to the Executive and to the committee are fairly clear that there must be an extension of the role of the EIA so that the Scottish Environment Protection Agency receives at least the same information as local authorities at the appropriate time in the licensing round. At the moment, local authorities have responsibility and SEPA is merely a consultee. Some joining up needs to be done and I do not care how it is achieved, but we can definitely improve in that area.

The EIA is in essence a business tool, which will be seen as the fundamental building block for a developer. Far from being a hindrance to development, it should be seen as a useful management tool. Therefore, the use of EIAs by the regulators should be streamlined to the point at which the EIA is, to a certain extent, the centrepiece. With a singular process of any kind, the relevant information that is required by all regulators can be encompassed better in one package.

**Des McNulty (Clydebank and Milngavie) (Lab):** What will be the role of locational guidelines in clarifying zoning issues and, perhaps, in designating exclusion zones, for instance round the mouth of salmon rivers? Should locational guidelines have national planning policy guideline status when the transfer of planning powers is complete?

**Jamie Lindsay:** We welcome the Scottish Executive environment and rural affairs department's review of locational guidelines and we welcome the concept of national principles. In light of the mantra that I have already intoned, we are concerned that the intelligence with which the national guidance has been interpreted at a local level is questionable. The guidance has sometimes been seen as a rather prescriptive blunt instrument and has therefore become, as it

were, an edict—regardless of local circumstances.

In other instances, we believe that category 3 proposals have been judged on category 2 criteria because category 3 areas can be adjacent to category 2 areas. It is also our belief that some extremely sustainable propositions in category 1 areas are unlikely to be accepted because they are in category 1, while other less sustainable propositions in category 3 areas are likely to be accepted. We welcome the basis on which the guidelines have been developed, but we have serious concerns about whether the site circumstances have been interpreted intelligently at local level.

The second part of the question, on whether the guidelines should have NPPG status, is encompassed in my previous answer. I do not have strong feelings, but I know that the guidelines need to be interpreted better than they have been.

**Robin Harper:** If new locational guidelines come out as a result of a survey of carrying capacity, there might be implications for existing farms. How should the Executive go about putting new locational guidelines into action in such cases, in which there would be serious repercussions for people whose licences were not going to be renewed in their present locations?

**Jamie Lindsay:** I think I speak for us all when I say that it would be sensible to explore further the concept of proactive relocation as a tool in the Scottish toolbox. I do not pretend to have a complete understanding of how the Norwegian system works, but I have been advised regularly—by the industry and officials in that country—that relocation can be practised readily and fairly easily. None of the lead players regards it as a terrifying option. I understand that, in Norway, when there is cause to revisit an existing permission—because of new assessments about a certain location, or because of science moving forward—the people involved on the public sector side and the industry side sit down around a table to find a solution. They want to keep the jobs and the socioeconomic benefits of the size of the operation, but would much rather that the operation took place in a slightly different place. There is a joined-up approach to relocation, which Scotland would be wise to consider properly.

**The Convener:** Those were interesting points.

**Des McNulty:** As you say, there is a continuing review of locational guidelines. How might those guidelines be made more transparent and user-friendly? Furthermore, should they differentiate between the requirements of shellfish farming, salmon farming and farming of other marine species, which is a proposal that is up for consideration?

**David Sandison:** This is where we get into coastal zone development plans and their appropriateness in the local context. The locational guidelines are not transparent; they are a mishmash of Scottish Natural Heritage demands and some advice from the Fisheries Research Services. We have no idea about the real criteria for the existing guidelines; because of that, they cause problems. However, we must move on from there. I welcome coastal zone management framework plans because they deal more appropriately with the conflicting interests of different users of the marine environment. We need to look to the future and embrace coastal zone management practice more fully. Such an approach supersedes locational guidelines.

**Des McNulty:** In other words, the issue is not purely for salmon farmers or other aquaculture providers; aquaculture must be considered alongside all other uses of coastal zones.

**David Sandison:** Yes.

**Jamie Lindsay:** I note that, in last week's meeting, a witness in the inquiry warned against "ghettoisation". That was a useful and intelligent warning. The danger with lines drawn on maps and arbitrary distinctions is that they give rise to separated instead of integrated management, which is something that I counsel against.

**John Scott:** In your view, what have area management agreements and the tripartite working group achieved since they were set up? Scottish Environment LINK has suggested that area management agreements should be replaced with regional management groups that have wider membership and can discuss wider environmental issues. Do you agree with that? If not, should AMAs take on a wider and more transparent role?

**Jamie Lindsay:** If, when AMAs were launched in June 2000, we had set ourselves a target of delivering 15 area management groups with five or six of them signing up to AMAs by this month, we would have been quite daunted by the challenge. Nonetheless, that number of AMGs is now in place and the AMAs have been signed up to. However, some people will say that any glass that is half full is half empty. It would be very nice to have more AMGs and AMAs, and we will get more. SQS, the wild fish interests, the Scottish Executive environment and rural affairs department and other public sector bodies have given a huge commitment to make the initiative work.

One can be fairly brutal in an assessment of such a scheme at an interim stage—halfway, as it were, between where it started and where it must reach. However, if we had no momentum or were stalled, that rather negative analysis would be more valid. We have certainly not stalled and all parties have expressed substantial good will to make the initiative work. What we have already

achieved is very significant.

John Scott's question touches on issues that were raised last week on the extent to which other stakeholders should or should not be involved. However, if I understand the tripartite working group's comments, there is no prohibition on such involvement. The idea is that the system should be flexible and that in each loch system it should be possible to co-ordinate an area management group that best suits the circumstances of that loch system. On the whole, the evolutionary process has been that the two key players—those who have farmed-fish interests and those who have wild-fish interests—have come together first. We all expect that grouping to expand and to take on board other interests that are relevant to that loch system. I would welcome that.

The second suggestion—that regional management agreements replace area management agreements—should be considered carefully and cautiously. There might be a case for having both. We want to be able to co-ordinate at regional level and bring in appropriate interests, but we do not want to lose the local mechanism. It would be foolish to throw away the ability to tailor a local solution to local circumstances and local owners.

12:15

**Maureen Macmillan:** I will press the issue of transparency of AMAs. We are hearing that the aquaculture industry is not terribly keen to have certain information divulged and that that is why everything must be conducted behind closed doors. However, there is a demand for more transparency, particularly in relation to the sea lice problem.

**Jamie Lindsay:** As the area management groups evolve to take on a few more interests, that will address partly some of the transparency issues.

I must put right the implication of what you have heard. I start by saying that it is mandatory for members of SQS to become involved in the local AMA or AMG. We cannot simply opt out because we do not like the disciplines or compromises that might be involved. Equally, sharing sufficient information to deliver objectives is also mandatory.

The one impediment—which is a temporary and short-term factor—is that until we have built up trust to a certain level, information flow is slightly restricted. It is my understanding that in each AMA the local fisheries trust biologists, for example, are being given full access to necessary information by the operators. With some AMAs, the feeling of partnership has come together quickly and has established itself well; suddenly, much more information is being shared. Although there is reluctance at present, it is my belief that that is a short-term issue. It simply reflects the fact that trust still needs to be established more deeply so that information that might otherwise be abused is shared more widely. I have every confidence that we will reach a position in which sufficient information is being shared among a sufficient number of parties so that transparency is not an issue and objectives are met properly.

**John Scott:** How is it possible to ensure that the industry complies with its own codes of practice? What carrots and sticks should be used to encourage compliance? Previous witnesses have suggested that the codes should be underpinned by regulation. Do you have a view on that?

**David Sandison:** There are a number of ways in which we can use codes of practice. I will turn the issue on its head: I do not think that codes of practice exist to be used as sticks with which to beat people. They exist as means of measuring performance. I would use codes of practice more to allow industry to set itself targets so that it can continuously improve its performance. I do not see codes of practice as substitutes for regulation—by their very nature, that is not what they are supposed to be.

Codes of practice exist in relation to quality standards. If we do not meet quality standards, we do not carry the quality marks or labels that flow from that. That in itself is an incentive to comply. I have no problem with codes of practice in some form being used to allow regulators to make judgments about the suitability of an operator to continue to operate. In other words, if a code of practice indicated clearly that an operator was not complying, I agree that we could use that as a guide. Codes of practice should be used primarily to encourage better practice from industry, but they are not a substitute for regulation.

**Bruce Mainland:** The industry in Orkney has many codes of practice, from Soil Association standards on organic salmon to our own Orkney Salmon Company standards. We work in a modern food industry, in which the consumer is the evaluator at the end of the day. Many wholesalers with whom we deal impose codes of practice and the good people in the industry should see codes of practice as the lowest common denominator. We should work to get beyond that, but I am not sure how standards could be imposed by regulation.

**Jamie Lindsay:** This might be the only topic that we approach from slightly different directions.

Scottish Quality Salmon believes that codes of practice should be mandatory, demanding and measurable and that they should be set and accredited independently. We decided that they should be accredited independently against

recognised international criteria. We have a product quality code of practice, or standard, which is measured against an international standard called EN45011. In the same way, we think that we should be able give assurances not just about how the product has been produced, but about the product itself, through a mandatory code of practice and standards. In that respect, we went for environmental management systems that are accredited to ISO 14001.

If one integrates an operation horizontally—that is, including product and management, rather than looking at one or the other—to ensure that best practice is delivered through the independent inspection of the thresholds, one must equally integrate that operation up and down the chain. Scottish Quality Salmon is implementing those disciplines in feed manufacture, in the freshwater and seawater phases, in smoking and in processing. We continually measure disciplines and best practice, irrespective of whether we look up and down or along each sector of activity.

Following my earlier description of an infraction that occurred last year, companies should not only measure best practice; they should take definite action when breaches occur, otherwise the value of everything that has been achieved, particularly for operators who are compliant, is undermined.

**John Scott:** Previous witnesses suggested that, instead of a discharge consent, SEPA should apply an environmental consent that would include conditions on site management, husbandry, best practice, food quotas, feeding practice and so on. What are your views on that? Alternatively, should those aspects be introduced into the planning regime?

**Bruce Mainland:** I do not think that it makes any difference whether a discharge consent or an environmental consent is applied, because they are the same thing in my eyes. A discharge consent contains many of the points that were touched on, such as location, description of equipment, number of cages, amounts of nitrogen and phosphorous that can be discharged and so on. I assume that a discharge consent would be the same for everybody. Those consents contain a specific tonnage that can be farmed on any site and are quite comprehensive in that respect. Individual farms must submit monthly returns to SEPA, and they must balance the feed that they use against the discharges of nitrogen and phosphorous that are allowed by the consent. I think that the provisions are quite comprehensive as they stand.

**Jamie Lindsay:** The more streamlined and coherent the process the better. That applies however the process is applied.

I will link the previous two questions. The more that consents and regulations recognise the best practices that the industry is seeking to impose the better, especially when different operations are being measured. That will not only produce co-ordinated and coherent regulation and consents, but strong signals will come from the public sector that encourage and incentivise good practice, rather than deal with everyone with the same blunt instrument regardless of their commitment to good practice.

**Fiona McLeod:** Regulation is a theme that has run through almost all your answers. I want you to summarise two points about regulation. How effective are current regulations and how effectively are they implemented? Is there a need for a single regulatory body or for better co-ordination, which Jamie Lindsay alluded to?

**Jamie Lindsay:** I will repeat what I said previously then hand over to David Sandison and Bruce Mainland.

There are 10 statutory bodies. I will not recite the statistics, but a hell of a lot of regulation is imposed on us. I do not believe that any other aquaculture industry has a similar burden. The quantity of regulation is not reflected in its quality. We all believe—almost everybody who has an interest in aquaculture in Scotland believes—that the regulatory system should be more quality led, rather than quantity led as it is now.

Apart from its being more burdensome than beneficial, the system does not reward or recognise good practice. An operator can be bumping along the legal bottom, or seeking to deliver the highest performance possible; the regulatory system does not recognise any distinction between the two. I am delighted that the committee is examining this large subject. We need a much more intelligent and effective regulatory system—which will, I hope, be keyed into the strategy when it emerges—so that there is a joined-up feel between the regulators and those who seek policy objectives.

**David Sandison:** I agree that we seek cohesion between the different regulatory processes, but I do not think that a single regulatory body is the answer; I think that cohesion cannot currently be achieved sensibly, although I might be wrong. Each of the regulators has a role to perform, but more cohesion is the answer.

It might take a developer, who is starting from fresh and wants to acquire a new site, the best part of two years to get through the regulatory process to achieve all that he needs to start his business. There is much to be said for the precautionary approach, but it often strangles sensible development to a degree. We should concentrate on more effective monitoring of businesses that impact on the environment.

**John Scott:** I still have not managed to pin you down on underpinning. Should the best practice situation to which you aspire be underpinned by regulation? You say that there is a bottom level of regulation, but that is not good enough. Should the aspirational level that you want to take the industry forward be underpinned by regulation?

**Jamie Lindsay:** Basic thresholds will be set by scientists, experts, policy makers and others, and will be enshrined in legislation as barriers that should never be breached.

**John Scott:** As a minimum standard.

**Jamie Lindsay:** Yes. On top of that, many of us have decided that a guaranteed, measurable level of best practice is in Scotland's long-term interest. It is a matter for argument whether legislation has to demand the very best. Some companies will find that extremely difficult. Although their activities may be totally sustainable and environmentally safe, they may opt not to adopt every best practice and every product attribute that might be construed as top quality.

12:30

Your question seeks to clarify the current position. There are underpinning regulations that set the framework—the core requirements—and there are groupings in the industry, such as Scottish Quality Salmon, or single companies that elect to gold-plate because, for whatever reason, they feel that it is in their best interests to do so.

We feel that the industry is most likely to be prospering by 2010 in terms of jobs, investment, communities and other operations if we position ourselves clearly at the top end of the quality market, rather than at the bottom end of the commodity market. One of your earlier witnesses, who clearly has not read anything that we have said over the past year or so, said that we lacked that vision. We have been specific about the fact that the future for Scotland lies in a differentiated top-quality product with top-quality production systems and not in an undifferentiated commodity product at the legal bottom.

**Robin Harper:** In answer to a previous question, you mentioned rewards for best practice. If SEPA moved from discharge consents to environmental consents, would you not have a better chance of being rewarded for best practice?

**Jamie Lindsay:** The current system that SEPA feels compelled to employ because of our legislation is probably not satisfactory. I would welcome any move to a format that allowed a more sophisticated and differentiated response to be made by SEPA. If the consequence of that move were a more proactive relationship between the regulator and the regulated, we would welcome that.

**The Convener:** As there are no more questions, I thank the witnesses for coming along this morning. It has been a useful session. The evidence that we have just received represents a different approach from some of the evidence that we have received to date and we will find it useful when we are writing our report.

I invite Michael Cunliffe and Ian Pritchard from the Crown Estate, Colin Wishart from the Highland Council and Councillor Bill Manson from Shetland Islands Council to join us. I welcome you and thank you for coming.

I remind members that we have a lot of business to get through and that questions should be kept tight. I ask the witnesses to indicate whether they want to follow up a question or to add to a previous answer. That allows me to ensure that you get your views across, which is why you are here.

**Maureen Macmillan:** The proposals to transfer planning powers have been on the table for some time. What are the implications of any further delays to that transfer? Are there any changes that need to be made to the planning regime to make it applicable to marine fish farming? Should locational guidelines have NPPG status? We hear that NPPG status can be inflexible and might not be applied intelligently. What is the alternative to NPPG status?

**Michael Cunliffe (Crown Estate):** It has been about four years since the move of planning control to local authorities was mooted. The Crown Estate believes that the present arrangements are unsatisfactory and have been cobbled together. The local authorities are in effect the decision makers, but as they lack the relevant statutory powers it falls to the Crown Estate to put decisions into action—except in Shetland and parts of Orkney, where the councils already have those powers.

It would be preferable if power and responsibility were aligned because that would make the allocation of functions much clearer. It is anomalous that the Crown Estate, which is in essence a property management body and does not have regulatory duties in any other sphere, should be charged with the responsibility as relevant authority under the environmental impact assessment regulations.

We would welcome a change at the earliest opportunity. The water environment bill is soon to be introduced and we hope that it will be used to put the regulation of fish farming on an integrated statutory basis, by strengthening SEPA's powers and by conferring planning powers on local authorities. SEPA and local authorities would then work in a closely integrated way and there would be a co-ordinated and fully statutory mechanism

for controlling the location and size of fish farms as well as water quality and other environmental impacts.

NPPGs would be an essential component of moving to a statutory system. There needs to be a national framework within which local plans for fish farming can evolve and local development control can be exercised. Consistent principles need to be applied. We would expect the Scottish Executive to provide broad locational indicators across Scotland.

**Councillor Bill Manson (Shetland Islands Council):** We would welcome an early extension of planning powers. I speak from the perspective of Shetland Islands Council, which already has powers under the Zetland County Council Act 1974. I caution against simply extending planning powers into the maritime environment. Maritime and terrestrial environments are quite different.

At the moment, planning permission applies to a location—it is that simple. In the current context of fish farming, permissions or licences apply to a person or a business entity as well as to a place. Guidelines to ensure a common standard across the country would be welcome. Having said that, it is not good enough simply to extend planning into the sea. We go back to the way in which planning is done: there are national guidelines, but structural or local plans are produced, which provide a local overlay. If we had something along those lines for fish farming, local management policy would be established and then sent back for central agreement to check the application of national standards. There must be good local input into any regime that is established.

**Colin Wishart (Highland Council):** Mr Manson is approaching the issue from a somewhat different perspective from that of the mainland authorities, because of the provisions of the Zetland County Council Act 1974. Most mainland authorities support the extension of planning control.

The main part of your question concerned the implications of the delay to the transfer of planning powers. That delay feeds the anti-fish-farming lobby groups, because of the perceived lack of accountability, and hinders the establishment of an effective, well-integrated forward planning system for aquaculture, which should have a local and regional, as well as a national, dimension. The delay also creates continuing uncertainty for the industry, as the key issues tend to fester. For example, there are no clear guidelines on how close to the mouth of a game fishing river a fish farm should be located. That impacts on both our forward planning performance and the development control side of planning.

**Maureen Macmillan:** Do you think that local authorities have the expertise, experience and resources to apply the new planning powers? I understand that Orkney Islands Council and Shetland Islands Council have been doing something like that for a while, but the Highland Council has not. What about environmental impact assessments and long-term monitoring? What about the long-term planning battles that might ensue? How would they be dealt with?

**Colin Wishart:** The level of expertise varies quite a bit throughout the country. In the Highland Council, I work on a team in which marine biologists work side by side with planners and fishery development people. I would like to think that the local authority that I work for is better tooled up than most to deal with the transfer. We have learned a lot in this field over the past 10 to 15 years. The Highland Council has been active in developing fish farming framework plans for selected sea loch systems and in dealing with Crown Estate consultations over a long period.

We are all learning as we go along about how to deal with environmental impact assessments. It is obvious that the industry is on a learning curve and the quality of information that is being supplied by applicants is getting better all the time. Procedures are also being speeded up as applicants know what to provide in advance. Because this is not a statutory function of local authorities, the resourcing will be somewhat patchy. However, once it becomes a statutory function, the onus will be on the local authorities to equip themselves accordingly.

That raises the issue of the sort of fee that should be charged for planning applications. We do not currently recover the cost of dealing with sea bed lease consultations, whereas the Crown Estate can rely on a substantial rental income to cover that cost.

**Councillor Manson:** I would not claim that we are necessarily adequately resourced, although we administer part of the function. We do not conceal the fact that the Zetland County Council Act 1974 is not a perfect instrument for the regulation of fish farming. It was drawn up when fish farming on today's scale was not a twinkle in anybody's eye and it has been used as fish farming has appeared over the past 20 years.

While the industry was carried out on a small scale by local people—although I would not call it a cottage industry—the 1974 act coped not too badly. However, as the industry has grown, as the size of the sites has grown and as applications have proliferated, the act has begun to creak. If there is significant delay in the introduction of legislation to deal with controls in the sea, some minor amendments to the act may be needed to make it more suitable and to bring it up to date. I understand that any legislation that is introduced

will probably not be implemented for a minimum of four years, although the process may take much longer, depending on parliamentary priorities.

We are here today beside the Crown Estate's commissioners. We are not necessarily easy bedfellows—they have the income and we have the administration—but we hope to ensure that there will be adequate resourcing. In our experience, dealing with salmon farm licence applications is far more onerous than dealing with the average planning permission—our people spend much more time on the former. Nowadays, any sizeable application, and just about any fin fish farm licence application, results in an EIA with all its attendant need for expertise.

12:45

**Maureen Macmillan:** How would you ensure co-ordination between planning authorities and regulatory authorities? Would a single regulatory body or a single application form streamline the process?

**Councillor Manson:** I am sure that that would streamline the process, but it is difficult to say whether such things are possible. I tend to believe that a one-stop shop is nearly impossible to achieve. However, to go back to the final issues raised with the previous witnesses, it would be highly desirable to reduce the number of bodies that an applicant has to approach. I find it difficult to believe that we will ever get down to a one-stop shop, but it would be highly desirable for everyone if we reduced the number of bodies with a direct input to three or four, rather than the current nine or 10.

**Michael Cunliffe:** There are two essential components to the licensing and regulation of fish farms. The first component is the development consent, which the Crown Estate issues, or the works licence, which the Shetland Islands Council issues. That will be replaced by planning permission once we have new legislation. The other component is the Scottish Environment Protection Agency licence, which at the moment is a discharge licence, although it may evolve into something slightly different.

We foresee a co-ordinated two-stop shop, if I might call it that. There is a substantial overlap in the information that is needed to underpin both processes. If that information could be gathered in a co-ordinated way, so that everything needed for both purposes was covered by a single application form, and if the two agencies could then consult with the other regulatory bodies, substantial streamlining could be achieved. That would make things easier for the industry and for the regulators.

**Robin Harper:** Rental income for leases was mentioned. I think that last week I may inadvertently have doubled the Crown Estate's income. Would Michael Cunliffe clarify what proportion of the industry's profits the Crown Estate takes in rent for leases?

**Michael Cunliffe:** The Crown Estate rental is a function of the tonnage produced at each site and of a market price that is assessed on an all-Scotland basis. For mainland fish farms, the Crown Estate rent is currently 0.925 per cent of the value of production. For the outer islands—Shetland, Orkney and the Western Isles—it is 10 per cent less than that, at slightly over 0.8 per cent.

**Robin Harper:** Thank you for that clarification.

This question is for all the witnesses. Once a planning regime is established, what action should be taken regarding sites that are subject to existing leases? Should they be brought within the new framework? If so, how?

**Michael Cunliffe:** Yes, such sites should be brought within the new framework. Leases for salmon farms are mostly for 15 years. However, we have to separate the development consent, which is the permission to have a fish farm in a particular location, from the lease, which is the instrument that governs the relationship between landlord and tenant.

In most locations, the leases run for the same period, which is 15 years for salmon and other fin fish and 10 years for shellfish. When leases reach their natural expiry date and development consents lapse with them, it would be appropriate to re-assess the sites for a fresh grant of development consent or planning permission. In the majority of cases that involve fin fish, that would require an environmental impact assessment.

**Councillor Manson:** It would be highly desirable to bring sites subject to existing leases into any framework that is introduced. It is not possible to legislate retrospectively, so, as has been said, that may take a long time. However, if adequate consultation is undertaken all round and the regime that everyone expects is introduced, I hope that the industry and individuals involved will move in that direction. There will always be local difficulties, but I hope that a combination of self-interest and peer pressure will bring people in as quickly as possible.

**Robin Harper:** It has been said that the planning process may not result in a uniform approach. Are you concerned about that? What can be done to ensure consistency in decision making? Do you have a view on how to achieve the correct balance between national guidance and local input?

**Colin Wishart:** It is inevitable that there will be some variation in approach in different parts of Scotland. The main differences will be between the mainland and island authorities and between the better-resourced and more poorly resourced local authority department dealing with this. In general terms, the mainland areas tend to have a bigger stake in tourism and a higher level of second-home ownership. Those factors tend to impinge more closely on the prospects for development in sea lochs.

The national strategy should allow for such differences and should not seek to impose an inflexible framework. In each area, the strategy should seek to facilitate a well-rounded approach and encourage best practice by the industry and the planning authorities.

**Councillor Manson:** It is right for there to be some differences between areas, as long as the standards are applied reasonably consistently. Further academic scientific research is needed to back up the basis on which any area forms its plans. We may need first to round up and co-ordinate the existing scientific information, as some bodies are working on their own and do not share information with everybody else. Once that is done, it will be possible to sponsor research to fill the gaps. On that basis, regional or area differences can be made fairer, even though different approaches are taken in different areas.

**Robin Harper:** Is the current implementation of the EIA regulations appropriate and effective? In instances where the implementation of a full EIA is not considered to be appropriate, should environmental studies of a more limited nature be carried out? If so, who should be the competent authority?

**Colin Wishart:** In practice, the Crown Estate and other organisations interpret and implement the environmental assessment regulations in different ways. That has become an issue because environmental assessment screening is sometimes used to determine an application rather than merely to ascertain information requirements before a decision is taken. Environmental assessment screening is being used as a de facto consents procedure.

At present, screening under the environmental assessment regulations is the only way that local authorities are consulted on the renewal of leases. Authorities may be given a limited time to respond—28 days in some cases—to what are often, as has been said, quite complex applications. Environmental assessment screening involves no public consultation.

The regulations have been effective in helping to marshal relevant information to support decision making and in putting the onus on the applicant to supply that information. However, if screening is being used as a de facto consent procedure, the regulations are not quite being used in the spirit in which they were intended.

**Robin Harper:** I want to press you a little on environmental assessment. We are seeking views on competent authorities and whether the implementation of EIAs is effective. Can you give us something concrete on those points?

**Colin Wishart:** It is difficult to respond to that, because local authorities are not the competent authority at present. We act within the role that has been allocated to us. Practice is improving gradually on all sides, but perhaps there is a gap in the spirit with which the regulations are implemented.

**Councillor Manson:** Thanks to the Zetland County Council Act 1974, we are a competent authority and we use EIAs. The EIA, which is generally site specific, assesses the impact on an individual site and takes little account of the wider implications of the total impact on an area. We need area and coastal-zone management agreements to assess all the wider interests that use an area. In addition, the screening tends to demand EIAs of bigger applications, which has led to the present situation whereby virtually every fin fish application will result in an EIA. A shellfish application will probably not result in an EIA, because of the different tonnages that are involved and so on.

The cumulative effect on a given body of water is not fully assessed. Local authorities also need back-up and resources to be able to assess the quality of EIAs and to give good guidance on the need for them. A considerable body of work needs to be done.

**Michael Cunliffe:** The Crown Estate has statutory responsibility as the relevant authority under the EIA regulations for the mainland and the Western Isles. We take that responsibility seriously. We rely on the other statutory authorities that we consult, such as SEPA, SNH and the local authorities, to give us views on what environmental information is required. A firm of environmental consultants advises us on the EIA process and on the quality of the environmental statements. The EIA process is applied rigorously and is thoroughly checked. All the participants in the process are learning more as we gain more experience.

The wider impacts beyond the immediate site have been referred to, which brings us to the question of carrying capacity and the assessment of the extent to which bodies of water can absorb further aquaculture developments. As other witnesses have said, research in that area is a priority for the industry and the regulatory bodies.

The Crown Estate recently announced a £600,000 three-year programme of sponsoring research. One of the priorities, for which we are inviting proposals from researchers, is scoping work into what is known about carrying capacity, what we mean by carrying capacity, and what further research will be required to provide the scientific information on which carrying-capacity decisions can be soundly based.

**Robin Harper:** The Crown Estate's contribution to that research will be thoroughly appreciated by everybody.

Do you agree that the reason that shellfish farming rarely requires an EIA is that it is considered to be relatively benign, environmentally?

**The Convener:** Everyone seems to agree with that, Robin.

**Des McNulty:** Do you believe that locational guidelines have a role in clarifying zoning issues and possibly even in designating exclusion zones—round the mouths of salmon rivers, for example? How would locational guidelines fit into a coastal zone development plan? How can they be made more transparent and user-friendly, given some of the problems that producers have identified? Should we have guidelines that separate the needs and impacts of shellfish farming, salmon farming and the farming of other marine species?

13:00

**Colin Wishart:** The aquaculture industry needs to come within the framework of a multi-tier planning system, just like every other industry or form of development. The industry needs the guidance of a national strategy that incorporates a vision; it also needs guidance at a more regional level and at the level of the individual sea loch. Up to now, we have not had a system in which those components are properly dovetailed.

The philosophy behind national locational guidance has never been especially clear to local authorities. Rather than being a fresh start, the current guidance embodies much political inertia from the earlier Crown Estate development strategy. We get the impression that this subject has been a political football that has been kicked between departments of the Scottish Office and the Scottish Executive for a long time. Perhaps the way to make progress would be to take more of a team approach, with a working party bringing together the national and local levels.

The methodology that has been used to derive guidelines is not very clear. The sensitivity assessment seems to be more related to biological factors—the ability of sea lochs to sustain nutrient loading, for example—than to anything else. Also somewhat vague are the policies—one could argue that the three-tier classification is quite simplistic for the Scottish coast.

Perhaps the answer would be to start again from scratch and to put together a multi-agency working party, which I suggest should include representatives from the industry, the local planning authorities and Scottish Natural Heritage. The process should be open and transparent. We should accept that the existing distribution of fish farms might not be the most appropriate and allow for relocation and compensation as necessary. We must certainly identify broad areas of opportunity and constraint for different types of aquaculture, for which detailed local guidance could be prepared. That in turn should be linked to the wider development of coastal zone management, to minimise conflicts of interest and maximise benign interactions with other industries such as the fishing industry.

**Councillor Manson:** There is room for locational guidelines. A coastal zone management policy must marry together all the interests. Mr McNulty mentioned the mouths of salmon rivers, which may not be a particular concern for us. However, if all the current sites in Shetland had appeared at once, there would be much more debate with the fishing industry; as it is, because the early sites were fairly scattered and because growth has been gradual, the issue has crept up on the fishing industry. Discussion must take place with the inshore fishing industry. Leisure interests must also be considered, so that they are not inhibited. A proper balance must be achieved among the various interests. There is clearly a need for locational guidelines.

**Michael Cunliffe:** I endorse that. There is much to be said for a national, multi-agency, working-party approach to developing guidelines that command widespread support and that take account of all the relevant factors. It is important that, in the local context, such guidelines are part of an integrated approach to coastal zone management and take account of other uses of the sea and the shore.

**John Scott:** If I understand correctly, you are saying that we should take a new multi-agency approach and disregard the work of the tripartite working group and the AMAs. I would have thought that we would want to build on that work, but Colin Wishart seemed to be saying that we should start afresh.

**Colin Wishart:** No, absolutely not. Good work has been done by those groups. However, the development of the national locational guidance over a long period has been characterised by a lack of transparency and openness and a lack of

public debate. There now seems to be general awareness that that must change, that things must be discussed more openly and that expertise from all relevant quarters must be brought in.

I am certainly not saying that we must throw away all the work that has been done up to now. I am saying that we must build on that work, bring together interests and establish good dialogue, instead of producing the sort of consultative draft that we had in 1991, which did nothing, went nowhere and disappeared without trace until something else popped up in 1997.

**The Convener:** I thank the witnesses for their evidence this afternoon.

We will now take a short break as we have been going since quite early this morning. Because of a pressing domestic matter that I have spoken about with some members, I now have to leave. Nora Radcliffe will take over in the chair when the meeting resumes. My absence is no slight to the witnesses who will follow; it is just one of those things. The committee does not normally meet on a Monday, and it has caught me out.

13:06

*Meeting adjourned.*

13:15

*On resuming—*

**The Deputy Convener (Nora Radcliffe):** I welcome Patricia Henton and Andy Rosie from the Scottish Environment Protection Agency and thank them for their comprehensive written submissions. We will move straight to questions, if the witnesses are happy with that.

**Robin Harper:** There seems to be a unanimous view that an assessment of the environmental carrying capacity of Scottish coastal waters is needed. What works do you think need to be undertaken?

**Andy Rosie (Scottish Environment Protection Agency):** Carrying capacity means different things to different people. SEPA is fundamentally interested in water and sea bed quality, but the term could be applied equally well to sea lice in a sea loch, to visual amenity or to the shellfish culture production that can be expected from a sea loch. Carrying capacity is an all-embracing term.

The first thing that we need to do is to break down the concept and to focus on what is important in each case. That probably needs to be done by expert groups that can examine what is known in each of the different sectors and identify what we need to know. In that way, we can plan a more objective approach to setting carrying capacity. We must be realistic about the fact that that will take some time. It can take several years for research to answer the important questions. In the meantime, we must have an approach that takes account of carrying capacity. That approach should be based on what we know now and should include an appropriate degree of precaution.

**Robin Harper:** Our previous witnesses suggested that, until questions about carrying capacity can be answered, there should be a moratorium on the issuing of new consents for salmon farming. That follows on from what you have just said about taking a precautionary approach. The witnesses said that any moratorium should not prevent relocation of farms for sound environmental reasons. Would you like to comment on that?

**Andy Rosie:** We must be careful about introducing a moratorium. I do not think that a complete moratorium on the issuing of new consents is at all justified, on either precautionary or scientific grounds. The modelling work that has been done indicates that there are hot spots where development is either at or above the level that we would like. If there is to be a moratorium, it should be focused on those areas. Instead of applying to the expansion of existing sites or to new sites, any moratorium should apply to the most developed, most at-risk areas, as part of a precautionary approach.

**Robin Harper:** Do you have sufficient powers at the moment effectively to operate a moratorium, or would the Executive need to use its powers to indicate that you should be given the discretion to operate a moratorium in certain areas?

**Andy Rosie:** SEPA would benefit from guidance on that. We have the locational guidelines, which are the first stab at applying a precautionary approach in areas that are considered to be at risk of nutrient enrichment, for example. SEPA would like the guidance to be extended, possibly as part of the proposed strategic framework. That would allow us to take account of such an approach when we are considering sites and discharge consent applications. That could be achieved by reviewing and extending the locational guidelines approach, but I would like that approach to be more transparent and to be improved.

**Maureen Macmillan:** How are hot spots defined? What proportion of the fish farming industry operates in hot spots?

**Andy Rosie:** Quite a bit of new work has been done on that, particularly in considering the requirements of the Convention for the Protection of the Marine Environment of the North-East Atlantic—the OSPAR convention—and eutrophication. A UK-wide study is being conducted on nutrient inputs all round our coasts

and the study has recently considered fish farming inputs of nutrients. We now understand better where the fish farm component of the nutrients is elevating levels to a point at which the environment could be under stress. Those levels are ranked from the most to the least severe.

Each sea loch is involved in that categorisation. I regret that I cannot tell the committee which sites are identified as most at risk—I do not have that information with me, but the information is becoming available. Information is still being gathered under that study. Once the material is ready to be published, it will help us greatly in identifying those sites.

**Maureen Macmillan:** It would be useful to have an idea of the size of the problem.

**Robin Harper:** Is it necessary to take a more holistic approach to the monitoring and control of coastal enrichment, instead of dealing with aquaculture in isolation? In other words, is the regulatory framework appropriate and adequate for a holistic approach, which must deal with diffuse pollution?

**Andy Rosie:** The water environment bill and the proposed changes to the Control of Pollution Act 1974 should address that issue in detail. That will give us powers to control diffuse pollution and will mean that we can take account of all the inputs, not just the point source discharges of which the present legislation allows us to take account. Those improvements will enhance greatly our ability to manage coastal waters, because we will have more control over all the inputs, not just the pipe discharges and the fish farms. That is on its way and SEPA welcomes that approach.

**Robin Harper:** Would you like any other changes to the Control of Pollution Act 1974?

**Andy Rosie:** A number of issues exist, particularly in relation to our control of fish farming activities. I am sure that witnesses have said that the 1974 act was drawn up to control discharges from pipes and was not intended to control emissions from a cage floating in water. As a result, we would like some fundamental changes to allow us to control better the process of growing fish in cages, instead of limiting the discharge alone. We cannot sample the discharge representatively, because effluent moves through the mesh of a net, and it could be argued that, inside the net, it is process effluent or process water, and immediately outside the net, effluent is mixed with controlled waters, so we cannot sample the effluent alone.

That is crucial to the application of the Control of Pollution Act 1974. The improvements that SEPA would like have been documented in our submissions on the water environment bill and the Scottish Executive's recent review of regulation.

**Bristow Muldoon:** I note that SEPA is favourably disposed to the transfer of planning powers to local authorities. What benefits do you expect will accrue from such a transfer? Are there any potential downsides to further delays in the transfer? What changes need to be made to the overall planning regime to make it appropriate to the marine fish farming industry?

**Andy Rosie:** The benefit will be a much more systematic, open and accountable approach to decision making, which everybody would welcome. However, along with that comes the risk of inconsistency creeping in as powers are distributed to local authorities. That risk must be dealt with and should be addressed by a set of guidance on standard procedures.

I listened to the previous witnesses, who were right to say that different authorities would apply different approaches. However, if the procedures were the same, that would bring a measure of consistency to dealing with applications. Each application would need to be considered on its merits. A balance needs to be struck, but benefits would accrue.

On the changes that are needed, experience of managing the marine environment is an issue. The representative from Highland Council spoke about that. Shetland Islands Council and Orkney Islands Council already have such experience because they have applied their own works licence systems for some time.

It must be clearly established who does what. SEPA is concerned that, if the interface between legislative regimes is not clear, different authorities that are considering the same issues could come to different conclusions. That would help nobody; it certainly would not help the industry. We would like guidance to be published, possibly in NPPG form, to identify clearly the interface between the other regulators and the planning authority.

**Bristow Muldoon:** Once we move to a new planning regime, what action should be taken on existing leases? Should they be brought within the new framework? If so, in what manner should that be done?

**Andy Rosie:** SEPA has had some experience of that. Before SEPA existed, the river purification boards had experience of the matter when new legislation was introduced. Existing leases can be brought into the new framework in various ways. We can offer deemed consents under the new regime so that anyone who had consent under the old regime automatically gets a deemed consent that can be reconsidered in due course. We can reconsider deemed consents when they come up for a substantial change or variation, or we can identify a time limit for review of such consents. If there is a time limit on leases, we can bring them

under the new regime when they expire. Various options are available. I would be in favour of dealing with any new changes when they crop up, but also of identifying a date when everything would be translated into the new regime.

**Bristow Muldoon:** The next area that I want to cover, with reference to the overall planning regime, is the implementation of environmental impact assessments. Is the current implementation appropriate and effective? In areas in which a full EIA is deemed unnecessary, should some more limited environmental study associated with development be conducted? Which authority should be the competent authority for EIAs?

**Andy Rosie:** In the past few years, there has been quite a learning process. We were not impressed by the first EIAs on fish farms, but they are getting better.

One of our problems is that SEPA is not a competent authority under the EIA regulations. To identify SEPA as a competent authority would be both helpful and productive. It would improve the quality and content of EIAs and would allow there to be more information available when we make decisions on discharge consent applications. Implementation of the regulations is becoming more effective, but it could be better.

The requirement for information and the decision on whether there should be more limited assessments should be based on the environmental risk of a particular proposal. There is also the issue of where a development is proposed. For example, in sensitive waters and special sites identified under the habitats directive, a different level of assessment might be required because particular conservation objectives must be met. It is not just the development proposal that is important in driving the information requirement, but where the development will go.

13:30

**Bristow Muldoon:** Your submissions recognise the importance of bringing processes closer together. You favour not a single application form, but moves towards greater co-ordination between the public authorities. How can greater co-ordination be achieved?

**Andy Rosie:** There are two issues. First, parallel submission of applications for planning approval and discharge consent is crucial. If applications are not submitted in parallel, the authority that gets the first application will ask the other authority what it thinks, but that authority will have no information and will not have done its assessments. SEPA carries out quite a lot of elaborate modelling assessment when it considers discharge applications. If processes were carried out in parallel, there would be much better co-ordination and liaison between the bodies.

Secondly, bringing together the two regulators' information requirements would help the industry. If a dossier of information that suited both authorities was provided, all the information would be available from the word go. There would not be any duplication of effort, with one authority asking slightly different questions from the other. Therefore, the process could be streamlined, although it would require applicants to submit applications in parallel and there would be a cost implication, because that would mean two fees at one time. Historically, applicants have decided to knock out each consent one by one and that has not helped harmonisation.

**Des McNulty:** Previous witnesses had doubts about the current categorisation system as a basis for locational guidelines and said that there are tensions between the national framework and local guidance. Will you comment on that? What kind of locational guidelines would work? How can national and local issues be interfaced? How do locational guidelines fit into coastal action management plans? How can they be made more transparent and user-friendly, so that they can be used more effectively? Are different locational guidelines needed for fin fish, shellfish and salmon?

**Andy Rosie:** It is fair to say that the first version of the locational guidelines was a quite superficial assessment. It pulled together a number of factors to create one categorisation. However, the main drivers in that categorisation are not clear at all, which gives us some concern.

We must have a fundamental rethink of the structure of the locational guidelines. I suggest that it would be better to set rules on categorisation, but to separate the actual categorisation of areas from those rules to create a living document. It has been suggested that a website might be used, so that anyone who has an interest could have a look at a particular geographic area. They would be able to identify quickly the categorisation and—this is crucial—the main driver that put the area into that category. SEPA is interested in the nutrient enhancement part of the categorisation; we are less interested in the visual impact, which does not fall within our remit. Separation of the factors is fundamental.

The locational guidelines provide a useful tool for driving aspects of a strategic framework. They could be expanded to give guidance on, for example, the possible relocation of farms that are considered to be located in unsuitable places, which might be driven by concerns about wild fisheries. Such sites could be subjected to revocation or relocation.

The guidelines have a good future and are a useful tool for bringing the strategic framework that we end up with down to the regulators who have to make decisions about individual sites. It is always difficult to apply the national picture to an individual site.

The appeals mechanism kicks in when the consent is proposed. The third-party right of appeal under the Control of Pollution Act 1974 allows people who object to ask Scottish ministers to call in the application. Once the consent is issued, the operator can appeal against the conditions that have been imposed. It is at that point that the decision will be tested. It is important that SEPA has a robust argument to be able to withstand appeals that challenge a national framework. The arguments must be well put, and they should perhaps in part be contained in the locational guidelines.

**John Scott:** What is the role of voluntary environmental management systems, codes of conduct, codes of best practice and quality schemes within the regulatory framework? How is it possible to ensure that industry complies with its own codes of conduct and practice? What carrots and sticks could be used? Would such a system require formal regulation?

**Patricia Henton (Scottish Environment Protection Agency):** My comments apply to any industry, not just to aquaculture—that is an important point in view of the potential for setting precedents.

As has been said, the codes of practice that an industrial sector sets are the base-line from which one moves forward. Codes of practice are important and are set in many sectors. Environmental management systems are in a higher league, whether they are in-house systems that are designed for a specific sector or plant or externally accredited systems, which are even better. All good environmental management systems, particularly the internationally recognised systems, such as ISO 14001 and its equivalents, have built-in cycles for continuous environmental improvement. From our point of view—as a regulator—people who have a good environmental management system demonstrate, first of all, that they take environmental matters seriously and, secondly, that they manage those matters properly and internalise them in the business.

When sectors look after their own compliance through an accredited system, that is the sector's business and not SEPA's because we are not the accreditor in that case. We continue to regulate such sectors and they are required to comply with the consents and authorisations that we issue, which are an integral part of environmental management systems.

The sticks and carrots question is tricky. We are often asked about it by industrial sectors, particularly those that have accredited systems, which have a cost basis. SEPA, the Environment Agency in England and Wales and the Environment and Heritage Service in Northern Ireland are examining how we might give benefits to sectors that demonstrate the willingness to take in hand environmental good practice. We have not yet reached a conclusion and the work is on-going, but we are aware of the issue and we would like in some way to accommodate proper risk-based regulation. That is one way to manage the risks that are connected with environmental compliance.

**John Scott:** Previous witnesses have suggested that instead of a discharge consent, SEPA should apply an environmental consent, which would include conditions for site management, husbandry, best practice, food quotas, feeding practice and the number of cages. What are your views on that proposal? Is it feasible to apply a best available technology regime to aquaculture or should such aspects be written into the planning process at the beginning?

**Andy Rosie:** Those are exactly the sorts of changes that we have identified and that we advocate should be made to the Control of Pollution Act 1974. We want to change our consents to include such things as assimilative capacity and best available techniques, which includes technology. We also want to bring to bear sector-wide rules and standard licence conditions, which we hope will make the regime that we impose more flexible. That will be part of changing from a discharge consent on the process to an environmental consent.

**John Scott:** Would you prefer that to writing in the aspects that I mentioned at the planning stage?

**Andy Rosie:** Those aspects are probably better dealt with by SEPA because of its experience with environmental impact. We are interested in the process, because it results in emissions to the environment and so falls clearly within our remit.

**John Scott:** That is helpful.

**Fiona McLeod:** I want to follow up some earlier points. Will you give a summary of the effectiveness of the current regulatory regime? Although you are the major regulator, I am not asking you to say, "Mea culpa." You mentioned the review of the Control of Pollution Act 1974 and the fact that we must amend the environmental impact assessment regulations to make SEPA a competent authority. Are there other areas of the current regulatory regime that we must examine to ensure that it is entirely adequate and effective?

**Andy Rosie:** We must examine the control of

sea lice. At present, sea lice fall through the net of regulatory procedures, if members will excuse the pun. SEPA has given a lot of thought to the matter and we consider that an amendment to the Diseases of Fish Act 1937 and its supporting regulations is by far the best way to deal with the problem. The tailor-made legislation could be amended through the driver of the water environment bill.

The Diseases of Fish Act 1937 was drawn up specifically to protect wild fish stocks and needs to be amended to address the present-day threats to those same stocks. It does not make sense to us to deal with one parasite under pollution control legislation when every other parasite is dealt with under a fish disease act. We need to make part of the 1937 act apply to sea lice.

That would provide a useful carrot-and-stick approach because the Diseases of Fish Act 1937 uses enabling powers when they are needed, which would fit in quite well with the development of the area management agreements. Where there is agreement and co-operation, we would not need to do anything because there would be effective sea lice control already. In areas in which that had broken down or had never been established, the amended 1937 act would provide us with powers to serve notices to bring to bear a proper treatment regime. That would be an adequate stick approach if people were not prepared to act voluntarily. We think that that is more appropriate than trying to deal with the sea lice problem by using an environmental licence, which inevitably would struggle, because all other parasites would be dealt with under the 1937 act.

13:45

**Maureen Macmillan:** One of the organisations from which we had evidence last week did not want to go down that road because it would separate out the sea lice problem from the chemical treatment problem. Will you address that? You would presumably still have powers over chemical treatment.

**Andy Rosie:** There is an inevitable conflict, whichever way we look at the matter. SEPA is there to prevent environmental damage from compounds, which are toxic if they are not used properly. The regime that we put in place limits their discharge so that the environment is protected and safe levels are not exceeded. SEPA would be in an impossible position if it also had to bring to bear instructions to fish farmers to treat and discharge compounds. We would find that difficult to manage. We think that it is better to deal with pollution and parasites separately, as they fall sensibly between the two legislative regimes that I described.

**Maureen Macmillan:** One regime would say, "Treat your sea lice." SEPA would say, "No, you cannot".

**Andy Rosie:** We would not say that; we would tell people to manage their facility so that they could treat their lice adequately within the discharge consent that we give them. That means that the fish farmer has responsibility to meet the obligations under the Diseases of Fish Act 1937 and the Control of Pollution Act 1974. They can do that by managing their site properly. If they were irresponsible enough to have stock on site that they could not treat legitimately, I would consider that to be bad management and not the best environmental practice.

**Fiona McLeod:** I want to explore that a wee bit further. Is it an example of the move towards the risk-based regulation that you were talking about? Under that type of regulation, the whole risk of the sea-cage fish farm is assessed and managed appropriately. If that is the case, are there other ways of amending the current regulations or legislation to allow you to ensure that management is much more risk-based?

**Andy Rosie:** SEPA already invokes a risk-based management approach. Consent for chemicals and medicines is based on risk assessment. We are already a long way down that road. The approach will be widened as the Control of Pollution Act 1974 is extended to pick up all the issues on the process rather than on the discharge. The scope for applying risk assessment will be greater for us as the legislation changes.

**Fiona McLeod:** You talked about the fact that we need better harmonisation and interface between the variety of bodies, which we hear a lot. You also talked about a joint application to the planning authorities and SEPA or applying to both at the same time. Are there other ways of dealing with that? I could ask, for example, whether you think that you should become the single regulatory authority, but you have made it clear that you do not consider that the appropriate route.

**Andy Rosie:** We certainly do not consider that route appropriate. There are two separate jobs here and expertise is required to do each one. It does not make sense to amalgamate them in one authority, because then there would have to be duplication. If you make local authorities the single authority, you would have to duplicate the pollution control expertise that SEPA has. That does not seem to me to be a good use of public funds. It is a question of making the two authorities work more closely together. I think that can be done by memorandums of understanding and by adopting a consistent approach. As a unitary authority, we deal with each individual local authority. That crucial liaison would be a lot easier with all those authorities, not just some of them, if there was a standard set of procedures.

**The Deputy Convener:** Thank you for contributing to our inquiry. We are much obliged.

Our final witnesses, Dominic Counsell and Matt Dalkin, are from Scottish Natural Heritage. Thank you for your written submission. In the interests of moving things along reasonably quickly, we would like to go straight to questions, if that is all right.

**Maureen Macmillan:** I shall begin with some general points. As you have heard, there seems to be a unanimous view that an assessment of the environmental carrying capacity of Scottish coastal waters is needed. Will you give us a clear indication of the work that you believe needs to be undertaken to assess carrying capacity?

**Dominic Counsell (Scottish Natural Heritage):** It is important to state that SNH understands carrying capacity quite broadly. Carrying capacity is a concept that is often used to describe the assimilative capacity of sea lochs for nutrients and therapeutants. SNH understands that carrying capacity is about the limits of acceptable change, but acceptable change has dimensions other than just water quality. For example, landscapes change as they are developed and their qualities can be eroded or diminished.

The impact of development on wild salmon is a capacity issue; there are limits to acceptable change there. There are impacts on wild predators and other nature conservation impacts. Incremental change builds up and there are limits to what is appropriate. We understand those limits to be informed by technical studies. Science can shed light on what the consequences of the changes will be, but there will always be matters of judgment. Part of getting the framework for aquaculture correct must involve ensuring that the right interests are involved in taking decisions in an accountable way.

**Maureen Macmillan:** Our previous witnesses suggested that, until questions of carrying capacity are answered, there should be a moratorium on issuing new consents for salmon farming, although they accepted that any moratorium should not prevent relocation of farms for sound environmental reasons. Do you have views on that?

**Dominic Counsell:** The SNH board considered whether a moratorium was appropriate and dismissed it. The board decided that, because of the broad-brush nature of such a step and the size of the area to which it might be expected to apply, a moratorium was not an appropriate or helpful way forward. There is some support for the view that a pause in further large-scale development would be justified until the committee reports on its inquiry and the Executive has completed preparation of its strategy.

**Maureen Macmillan:** Is the current implementation of the environmental impact assessment regulations appropriate and effective? In instances when the implementation of a full EIA is not considered to be appropriate, should more limited environmental studies be carried out? Which authority should be the competent authority with regard to EIAs?

**Matt Dalkin (Scottish Natural Heritage):** We welcome the EIA regulations as they stand. In the past few years, there has been a marked improvement in the information that is submitted with Crown Estate lease applications.

Our main difficulty with EIAs relates to how they mesh with COPA discharge consents and the locational guidelines. We are concerned about how joined-up governance is working within the consultation framework. We are consultees on the screening and scoping documents for the Crown Estate, which do not deal with issues that trigger an EIA. Those include landscape issues relating to feed barges and so on. We would like such issues to be brought on board. We would also like EIAs to be extended to cover other fin fish and shellfish species, so that they can work in a more holistic way.

There is a procedure for a lower level of impact assessment. When we are consulted, we have the option of asking not for a formal EIA, but for further supporting information, to help us to decide what comments to submit.

**Maureen Macmillan:** Other regulators do not often mention landscape. How important do you think that issue is?

**Matt Dalkin:** It is very important to culture development. Increasingly, large farms are developed with more intrusive equipment. I am thinking particularly of the feed barge technology that is coming on line. The number of representations that we receive from local communities on that suggests that it is an important subject.

**Dominic Counsell:** If we are interested in sustainable development of Scotland's rural areas and inshore waters, we need to think about the aquaculture industry in the context of the other development opportunities that are available to those areas. One important component of development opportunities in rural areas is employment based on the natural heritage. People often visit such areas to enjoy their scenic beauty or wild land. Development needs to be guided towards places where it is compatible with maintaining those qualities. The level and location of development needs to be appropriate. Aquaculture should be accommodated to the extent that it is not detrimental to other development opportunities. From our work, we

know that the majority of jobs in the natural heritage sector are located in remote and fragile areas, which are also the places where aquaculture developments occur.

**John Scott:** What are your views on the location of fish farm developments in marine sites of special scientific interest—the areas that are about to be designated?

**Dominic Counsell:** There are no marine SSSIs in quite the way that there are SSSIs on land, but there are sites that are designated as European sites of nature conservation interest. Those areas are sensitive by virtue of Government policy to safeguard the interests there, and we would assess the impacts against the special needs of the particular sites. The designation of such sites is an indication that there are sensitive features there, but that does not result in automatic prohibition; it just means that we have to assess the development in those terms and according to the Government policy obligations that pertain to that.

**The Deputy Convener:** Do you have any views on the appropriate competent authority for EIA?

**Matt Dalkin:** It should be the planning authority, as it will be. SEPA's not being a relevant authority has often led to problems, given the dual nature of the application process. For example, a discharge consent can be applied for that would otherwise trigger an EIA according to the criteria that are established by the regulations, but SEPA is not able to ask for one because it is not a relevant authority.

14:00

**The Deputy Convener:** Thank you. I wanted to clear up that point before we moved on.

**Des McNulty:** What role do you see for locational guidelines in clarifying zoning issues and designating exclusion zones? Do you think that locational guidelines should have NPPG status once the transfer of planning powers is complete? How do you see locational guidelines building on, or perhaps moving away from, the current classificatory system in terms of the designation of areas?

**Dominic Counsell:** In principle, SNH thinks that locational guidelines for developments of this kind are important. Some of the environmental interests that are relevant to this discussion are the cross-cutting water quality, fish health and sea lice issues, which are less location-specific, whereas many of the natural heritage interests have a spatial element, that is, they are more relevant in certain places than in others. Locational guidelines for that kind of development are important.

That kind of locational guidance needs to be given strategically at the national level and it needs to be given at a local level. The existing locational guidelines are an example of national-level guidance. They might not be perfect as they are, and they might need to be refined in a number of ways, but they need to be supplemented by the equivalent of a development plan at a local level. Both scales of locational guidance need to be able to guide the industry in relation to town and country planning, but also in relation to water quality, fish health and sea lice. That must all be accomplished together.

We would hope that as the planning framework moves into the town and country planning system, any kind of national guidance will have some sort of NPPG status. We are aware that in the recent review of strategic planning that was undertaken by the Executive there was reference to a national overview document. Although that was intended to have a light touch, we could see it containing some sort of indicative locational guidance for certain forms of development, of which fish farms might be one.

Did you have another question?

**Des McNulty:** I will build on that. Obviously, locational guidance would involve a number of different strands and perhaps a number of different agencies. How much work would it involve for Scottish Natural Heritage if it took a role in developing a system of locational guidance and beginning to apply it throughout Scotland?

**Dominic Counsell:** Although I hope that any guidance that appears will ultimately be produced by the Executive, I also hope that SNH will have a role in advising on locational sensitivities that relate to natural heritage interests. I hope that we would be able to contribute where natural heritage was valued to the extent that there were constraints on different kinds of development. There is a considerable body of work involved in that—difficult judgments have to be made—but I hope that SNH could offer such judgments.

**Des McNulty:** Could it offer judgments at the general level and on the application of the guidance to particular localities?

**Dominic Counsell:** Yes. It is often easier to speak about such matters at the local level—we often know more about where sensitivities are—than to speak about them strategically. I hope that we would be able to offer guidance on both.

**Des McNulty:** How could the guidelines be made a bit more consistent, transparent and user-friendly?

**Matt Dalkin:** I will bring up some technical issues to do with locational guidelines, which might answer some of your questions.

We would like the guidelines to become more

flexible in dealing with multispecies issues. At the moment they relate predominantly to the salmon farming industry, but there is the shellfish industry and new white fish developments are coming online. Would the moratorium on further salmon developments on the north and east coasts apply to white fish developments? We would like that question to be tested. The same applies for areas subject to reduced expansion, or areas on the west coast or in the Western Isles that we would like to be free from development.

The main thing is to apply criteria across the board in an open and transparent way, so that people can see how the categorisation has been arrived at. We agree with most of the people who have given evidence that the guidelines should be dynamic. Whether that is through web-based media is not for us to say, but they should be able to respond quickly to new developments and new technology. That would be an advantage, rather than having to wait five or 10 years for another review. We would like the guidelines to bring together some of the strengths of COPA, the EIA regulations and whatever the new planning system is, in a fairly comprehensive NPPG document.

**Fiona McLeod:** My question will provide a chance for you to summarise much of what you have said. Outwith the locational guidelines that we are examining, how effective is the current regulatory regime—both the regulations themselves and the way in which they are implemented by the various bodies—in ensuring that we protect the environment around sea cage fish farms? To put it another way, are there things missing from regulation or enforcement?

**Dominic Counsell:** I will start and then hand over to Matt Dalkin.

The bit that joins all the different processes together is missing. There needs to be a structure that links a national plan—which identifies preferred areas and gives guidance on the generic issues of planning, water quality and fish health—with the local plan. It should be embedded in some statutory framework, should incorporate accountable decision making and should integrate water quality issues with town and country planning issues. That structure, which could put the right development—correctly managed—in the right place, is missing.

**Matt Dalkin:** In my opinion, treating aquaculture in isolation has probably led to some of the current problems. We would like a more flexible approach to integrated coastal zone management, which looks at other users of the water bodies as a whole. The consultation on the transfer of planning powers to local authorities focused on aquaculture. We need to be more holistic and forward-looking in our approach to managing the coastal environment.

**Fiona McLeod:** In essence, you may have answered my next question, which concerns how we achieve harmonisation. Do we need a national aquaculture strategy to provide an overarching framework within which the different regulatory bodies must work together?

**Dominic Counsell:** That is right. The local framework needs to be formally brought within the national framework so that the two are linked. In effect, that would mean that we would have the equivalent of a development plan to cover the different sensitivities within which developers could work.

**Fiona McLeod:** What should SNH's role be within that?

**Dominic Counsell:** SNH should have a role in preparing guidance and as a consultee on development. In principle, the issue is no different from other forms of development. Although there is a difference by virtue of history and because maritime interests are concerned, natural heritage interests are affected. SNH interests are involved in the same sort of way.

**Maureen Macmillan:** You talked about overarching guidance with a local level underneath. How flexible would that be? We have heard some concerns that, if the guidance was not applied intelligently, it might prove to be too inflexible for local conditions.

**Dominic Counsell:** I suppose that the guidance would be like the structure that the town and country planning system already works with. Development has to be assessed by virtue of a local development plan, but a higher tier can be called on if there is a national interest at stake in a local decision. That principle should hold true for aquaculture as well. If local authorities have to deal with difficult issues around which a great deal of scientific uncertainty pertains, it is reasonable for them to expect some measure of guidance from the Executive. The local and the national need to come together in those sorts of ways. I think that that structure could be made to work.

**Maureen Macmillan:** So the guidance could be flexible enough.

**The Deputy Convener:** If there are no further questions, I thank both witnesses for their input to the committee's work today.

# Petition

## Scottish Water Authority (PE411)

**The Deputy Convener:** Agenda item 5 is consideration of petition PE411 from the Scottish Co-operative and Mutual Forum on the mutualisation of the Scottish water authority.

We have considered the issue extensively both in the report of our inquiry into water and the water industry and in our consideration of the Water Industry (Scotland) Bill. I suggest that we take the approach that we adopted with a previous petition and treat it as written evidence as part of our stage 1 consideration of the Water Industry (Scotland) Bill. Is the committee happy that we proceed on that basis?

**Fiona McLeod:** Yes, but I would like to make a few comments. The petition's proposal is that we should

"examine with care and diligence the case for the establishment of a mutually owned and managed Scottish Water Authority".

We gave that proposal some careful consideration in private with our water adviser, but perhaps that was not reflected adequately in our final report. Allied with that, the minister at the time referred to mutualisation in a dismissive way. It would be appropriate for us to say to the petitioners that the proposal was given due care and diligence.

The petition also asks that we make representations that the industry be given a derogation from the Competition Act 1998. Our inquiry was not unanimous on that point.

**The Deputy Convener:** I take those points on board.

If no other members want to comment, is the committee agreed that we proceed in the way that I have suggested?

**Members** *indicated agreement*.

**The Deputy Convener:** I thank everyone for their patience and persistence over a long but useful day.

*Meeting closed at 14:13.*

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