



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

Wednesday 6 October 2010

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**RURAL AFFAIRS AND ENVIRONMENT COMMITTEE**

**21<sup>st</sup> Meeting 2010, Session 3**

**CONVENER**

\*Maureen Watt (North East Scotland) (SNP)

**DEPUTY CONVENER**

\*John Scott (Ayr) (Con)

**COMMITTEE MEMBERS**

\*Aileen Campbell (South of Scotland) (SNP)

\*Karen Gillon (Clydesdale) (Lab)

\*Liam McArthur (Orkney) (LD)

\*Elaine Murray (Dumfries) (Lab)

\*Peter Peacock (Highlands and Islands) (Lab)

\*Bill Wilson (West of Scotland) (SNP)

**COMMITTEE SUBSTITUTES**

Rhona Brankin (Midlothian) (Lab)

Jim Hume (South of Scotland) (LD)

Jamie McGrigor (Highlands and Islands) (Con)

Sandra White (Glasgow) (SNP)

\*attended

**THE FOLLOWING GAVE EVIDENCE:**

Bertie Armstrong (Scottish Fishermen's Federation)

Ian Gatt (Scottish Pelagic Fishermen's Association)

Richard Lochhead (Cabinet Secretary for Rural Affairs and the Environment)

Helen McLachlan (WWF Scotland)

Professor Colin Reid (University of Dundee)

Patrick Stirling-Aird (Scottish Raptor Study Groups)

Dr Hal Thompson (British Veterinary Association)

**CLERK TO THE COMMITTEE**

Peter McGrath

**LOCATION**

Committee Room 6



## Scottish Parliament

### Rural Affairs and Environment Committee

*Wednesday 6 October 2010*

[The Convener *opened the meeting at 10:02*]

### Decision on Taking Business in Private

**The Convener (Maureen Watt):** I welcome everyone to the committee's 21<sup>st</sup> meeting of the year. Please turn off your mobile phones and brambles, as they impact on the broadcasting system.

Does the committee agree to take in private item 8, which is consideration of today's evidence on fisheries?

**Members** *indicated agreement.*

## Subordinate Legislation

### Welfare of Farmed Animals (Scotland) Regulations 2010 (Draft)

### Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Regulations 2010 (Draft)

10:03

**The Convener:** We will take evidence on two affirmative instruments. The Subordinate Legislation Committee has made no comments on the instruments. I welcome to the committee Richard Lochhead MSP, the Cabinet Secretary for Rural Affairs and the Environment; Ian Strachan, head of the veterinary and science team; Andrew Voas, veterinary adviser in the animal health and welfare division; and Kirsten Simonnet-Lefevre, legal adviser to the Scottish Government.

Members may ask questions about the content of the two instruments before we move to a formal debate on them. Officials can contribute at this stage but cannot participate in the debate. I invite the cabinet secretary to make a brief opening statement on both instruments.

**The Cabinet Secretary for Rural Affairs and the Environment (Richard Lochhead):** It is a pleasure to be back before the committee.

The draft Welfare of Farmed Animals (Scotland) Regulations 2010 implement European Union legislation and provide for general welfare requirements that apply in the case of farmed animals. In addition, the regulations provide for specific additional welfare requirements that apply in the case of laying hens, calves and pigs.

Meat chickens are the last major intensive sector not to have their own welfare rules governing the conditions under which they are kept. Schedule 2, which has been added to the regulations, fills that gap by transposing Council directive 2007/48/EC, which lays down minimum rules for the protection of conventionally reared meat chickens.

This package of measures for improving meat chicken welfare sets conditions from the time that chickens are brought to production sites until they leave for slaughter. In addition, all birds will be subject to post-mortem inspections in the slaughterhouse, and records will be kept of possible indications of poor on-farm welfare.

A 12-week public consultation was undertaken on the transposition of the directive; nine responses were received. The industry was content with the proposals.

The United Kingdom, including Scotland, is the largest meat chicken producer in the EU. Every year around 850 million meat chickens are produced in the UK; the figure for the EU is 4 billion. The transposition of the directive will ensure level standards for producers throughout the EU.

As well as implementing new conditions for the welfare of meat chickens, the draft regulations consolidate the Welfare of Farmed Animals (Scotland) Regulations 2000, as amended. That consolidation will aid the farming community by bringing together all the welfare requirements for farmed animals under the Animal Health and Welfare (Scotland) Act 2006.

My officials and I are happy to answer members' questions on the draft regulations. Do you wish me to move to the next set of regulations?

**The Convener:** Yes.

**Richard Lochhead:** Section 20 of the Animal Health and Welfare (Scotland) Act 2006 makes it an offence for any person to interfere with the bone structure or sensitive tissue of an animal. However, procedures that are carried out for medical reasons, such as the amputation of a diseased or badly damaged limb, an operation to remove a growth or to repair tissue, and animal dentistry, are exempted.

The 2006 act allows Scottish ministers to exempt other procedures by regulation to allow most existing farm animal husbandry practices to continue for the general health and welfare of the individual animal, flock or herd, for necessary animal identification purposes or to ensure handler safety. The schedules in the draft Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Regulations 2010 list the procedures that have been exempted from the general prohibition in the 2006 act. Amendments have been made to three of the schedules.

Schedule 3, relating to birds, has been amended to implement provisions in Council directive 2007/43/EC that lay down minimum rules on the beak trimming of meat chickens, for the protection of chickens that are kept for meat production. Schedule 3 has also been amended to remove the date that would, in effect, have implemented from the end of 2010 a complete ban on the beak trimming of laying hens to control feather pecking and cannibalism.

My decision not to implement a complete ban on the practice was taken on the advice of the Farm Animal Welfare Council which, following a review of the available research, concluded that a ban on beak trimming should be deferred until it can be reliably demonstrated under commercial conditions that laying hens can be managed by other means that will not pose a greater risk to

their welfare. The rest of the UK is adopting a similar policy.

I have also accepted the Farm Animal Welfare Council's recommendation that, for welfare reasons, routine beak trimming of laying hens should be performed only using the infrared method, which, research has shown, does not demonstrate evidence of chronic pain or result in chronic adverse consequences for nerve function.

Schedule 4, relating to sheep, has been amended—again on the advice of the Farm Animal Welfare Council—to improve the welfare of lambs by prohibiting surgical castration and surgical tail docking unless those are performed by a veterinary surgeon. The tail docking of sheep over three months of age is also prohibited unless that is performed by a veterinary surgeon.

Schedule 6, relating to equine animals, has been amended to remove the exemption, under authorisation, for hot branding, which was previously permitted for the purpose of identification. Welfare concerns were raised with me about the practice, with cross-party support from the committee and elsewhere. In addition, a recent change in the law that introduced a requirement for all equine animals to be microchipped made the continuation of the exemption difficult to justify. My decision to ban the practice entirely is in the best welfare interests of the animals concerned.

Finally, we have taken the opportunity to consolidate. The draft regulations revoke and replace the Prohibited Procedures on Protected Animals (Exemptions) Scotland Regulations 2007 and the Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Amendment Regulations 2009.

I will be happy, with all of my—hopefully—supportive officials, to answer members' questions about those issues.

**Peter Peacock (Highlands and Islands) (Lab):** Agreed. [*Laughter.*]

**The Convener:** Some members have indicated that they have questions.

**Bill Wilson (West of Scotland) (SNP):** Strictly speaking, this is not a question. It is only a few months since I first brought the issue of hot branding to the cabinet secretary's attention. I put on record my congratulations on such a quick response to my request that the issue be dealt with.

**John Scott (Ayr) (Con):** I am of course in favour of increasing the welfare standards for meat chickens, but I want to make certain that we are not introducing anything with differential timing from that in the rest of Europe. As I am sure the cabinet secretary is aware, there are question

marks about the same legislation for laying hens being introduced at different times in the rest of Europe and Britain. Can you give an assurance that all of Europe will come into line at the same time on the welfare standards and that our producers will not be put at a competitive disadvantage?

**Richard Lochhead:** John Scott makes an important point. As he says, it is important that we monitor the situation to ensure that we all move at the same pace. However, the purpose of the directive concerned is to raise standards throughout Europe. It is fairly safe to say that the vast majority, if not all, of the meat chicken producers in Scotland already meet the standards that are being laid down, so the directive should not be too onerous. It applies to those who keep more than 500 meat chickens. As the committee will be aware, chicken production is fairly large scale and is in the hands of one or two large companies, which already meet the standards and are content with the proposals.

**Liam McArthur (Orkney) (LD):** I had a similar question to John Scott's, but you have answered that. The poultry meat industry in Scotland is concentrated, in that about five companies control about 80 per cent of the meat chicken production. However, the regulatory impact assessment concedes that there is a high likelihood that the smaller non-company producers will not be able to cope with the added costs that come with the higher welfare standards and will therefore "leave the industry". Has an assessment been done of the impact that that will have? For example, has consideration been given to employment issues or to whether the effect will be focused in particular localities?

I also want to follow up on Bill Wilson's point about equine hot branding. The process has moved ahead with some pace and with cross-party support. The cabinet secretary will have received a letter from an individual in Ross-shire, Deborah Davy, who questions the timing of the measure given that a piece of research is being undertaken by the equine pain research unit at the University of Bristol school of veterinary science, which is due to report later this month and which might shed light on some of the pain aspects of hot branding. She says:

"At present there is no suitable method of distance readable identification except hot branding available for use"

with some ponies. The committee has a strong sense that the Government is pursuing the correct direction of travel, but it would be helpful if you or your officials would address the two points that Deborah Davy raises in her letter.

**Richard Lochhead:** On the impact of the meat chickens directive on smaller producers, it is clear

that the sector has a fast production cycle with a quick turnaround, with smaller producers moving in quickly and leaving quickly. It will be down to the individual judgment of each smaller producer whether it wants to continue to produce meat chickens, taking into account the potential additional costs that it will have to meet under the directive. I do not have a regional breakdown, but I am happy to look into that to find out whether we have more details. I will let the committee know about that.

On hot branding, I have not seen that letter personally, but I am aware that a letter has been sent to committee members from the Exmoor Pony Society indicating that it might be carrying out research into hot branding. We considered the issue in detail after members of Parliament, particularly committee members, brought it to our attention. We recognise that there will be microchipping of all horses in Scotland in any case. Hot branding is not an ideal method of identification, especially during winter, when the ponies have grown winter coats and it is difficult to read the branding. It is, therefore, not even the most effective way to mark the ponies, irrespective of the welfare concerns, which are also important. We will reflect on any research that is carried out by the Exmoor Pony Society and, if we are struck by the outcome of that research, we will be willing to look again at the matter. However, we do not want to hold up the regulations while we wait a long time for research to be carried out, published and peer reviewed. We feel that this is the appropriate time to make the regulations.

10:15

**Elaine Murray (Dumfries) (Lab):** Like other committee members, I am not convinced by the arguments in the letter that we have received from the Exmoor Pony Society. The horses will have to be caught and microchipped anyway, and if the owner wanted to do anything else to them, they would have to be caught again. I am happy with the cabinet secretary's explanation in response to the society's arguments.

**Bill Wilson:** The letter to which Elaine Murray refers claims that there is no peer-reviewed literature demonstrating that hot branding causes pain, but committee members may remember that I brought a paper on that to our private session last week. Unfortunately, I have left it in my office today, but I am happy to provide it to all members of the committee for reference, to show that there is peer-reviewed literature demonstrating the pain and suffering caused by hot branding.

I reinforce the cabinet secretary's message that there is clear evidence to show that hot branding is not a reliable method of long-distance identification, including research by a collection of

PhD students who tried to identify horses across the distance of a horse show arena and were unable to identify all the horses. Clearly, hot branding is not a reliable form of identification. There is also evidence from veterinary equine specialists stating that, in veterinary training schools, they are often taught to recognise up to 40 horses by coat colour. I believe that the herd in Scotland is nine. If vets can recognise up to 40 horses by coat colour, I suspect that the owner can manage to recognise nine by coat colour without any difficulty. To be fair, I do not think that the owner has suggested that hot branding should continue—I do not know about that and I am not casting aspersions on that individual.

**John Scott:** Many owners of livestock recognise individual sheep and cattle in commercial herds, so most horse owners will recognise their individual horses.

I want to address the issue of broiler chickens. I applaud the new regulations. Will the labelling on the chickens at point of sale reflect the higher welfare standard? We need to differentiate between products in the market. The cabinet secretary will be aware that chickens are still being imported from outwith the EU that are raised to a lower welfare standard. I am thinking particularly of chickens from the far east. Will the consumer be able to differentiate between chickens that have been raised to different welfare standards? Will the labelling in Scotland, at any rate, be able to reflect that?

**Richard Lochhead:** We do not yet know the outcome of the discussions on the EU labelling regulations, which are making their way through the process at the moment, although we have expressed Scotland's view that we want managed country of origin labelling on certain meat products. As part of that debate, which is taking place in Europe just now, we are discussing the issue of welfare labelling. I recall from one recent meeting of the agriculture and fisheries council that the debate is not as simple as we hoped it would be, given that some countries take the view that there are too many labels and ways of defining welfare. Also, as you say, some countries would claim to have better welfare standards than other countries. We are not sure where that European debate is going.

I urge the producers of Scottish meat produce, including poultry and meat chickens, to recognise that they have a good welfare story to tell once they reach the standards that are set out in the regulations and that they should tell the consumer. A large part of it is in the hands of the producers themselves, and I urge them to take advantage of that.

**The Convener:** Item 3 is the formal debate on the draft Welfare of Farmed Animals (Scotland)

Regulations 2010. I remind everyone that officials cannot participate in this debate or the debate on the other set of regulations that we are considering today. I invite the cabinet secretary to move the motion and to make any further remarks that he may want to make.

*Motion moved,*

That the Rural Affairs and Environment Committee recommends that the Welfare of Farmed Animals (Scotland) Regulations 2010 (SSI/2010 draft) be approved.—[*Richard Lochhead.*]

*Motion agreed to.*

**The Convener:** Item 4 is the formal debate on the draft Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Regulations 2010.

*Motion moved,*

That the Rural Affairs and Environment Committee recommends that the Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Regulations 2010 (SSI/2010 draft) be approved.—[*Richard Lochhead.*]

*Motion agreed to.*

**The Convener:** That concludes our consideration of subordinate legislation. There will be a brief suspension while we change witnesses. I thank the cabinet secretary and his colleagues.

**Richard Lochhead:** Thank you, convener. I am tempted to stay for the next session but, unfortunately, I cannot.

10:21

*Meeting suspended.*



10:23

*On resuming—*

## Fisheries

**The Convener:** The committee will now take evidence on fishing opportunities for the Scottish fleet in 2011, in advance of the conclusion of the coastal states discussions and discussions within the EU about quotas and fishing effort controls, which will be settled at the end of the year at the fisheries council.

I welcome Bertie Armstrong, chief executive of the Scottish Fishermen's Federation; Ian Gatt, chief executive of the Scottish Pelagic Fishermen's Association; and Helen McLachlan, senior fisheries policy officer for WWF Scotland. I apologise to Helen McLachlan for the fact that we do not have a name plate for her. We will get one quickly.

I thank Ian and Helen for their written submissions, which we considered with interest. To maximise the time that we have available, we will move straight to questions.

**Bill Wilson:** As you know, it is about 18 months since the European Commission published its green paper on common fisheries policy reform. How were your responses to the consultation received? Are you wildly ecstatic with the direction of travel? Are there any signs that the Commission is seriously contemplating radical decentralisation of decision making?

**Bertie Armstrong (Scottish Fishermen's Federation):** The answer is that we must be hopeful. As well as making our submissions, which have been received, Helen McLachlan and I went to see the relevant Commission official in July with a specific example from Scotland of a long-term management plan for west coast haddock.

We believe it is essential that we get reasonable decentralisation. Everyone from the Commission to the fishermen agrees that rigid overcentralisation of the roles is simply not working. No one disputes that. The question is what will be delegated and to whom. We have put our plans to the Commission, the Scottish Government and the UK Government. We hope that our plans will prevail, but that is a hope rather than a bet on what will happen.

I am sure that the others have comments to add.

**Ian Gatt (Scottish Pelagic Fishermen's Association):** In our view, the decentralisation of the CFP does not fit with how the pelagic fishery operates. The fishery is conducted and negotiated in an international forum. We could take decision

making closer to the stakeholders, but who are the stakeholders? In the pelagic fisheries, they could be Iceland, the Faroes, Norway and so on. The proposal would create another layer that we in the pelagic industry do not need. I wholly agree with Bertie Armstrong. In demersal fisheries, it is really important that we get decision making down to the sea basin level, but you should remember that the stocks that the pelagic industry fishes migrate through lots of waters, so we need to be careful about that.

**Bill Wilson:** Have recent events slightly changed your view on decentralisation in relation to pelagic fisheries?

**Ian Gatt:** Absolutely not, because if we are going to resolve the situation that we are in, we have to do it in an international context.

**Helen McLachlan (WWF Scotland):** The submissions have been well received, to a degree. It is clear from the commissioner that, as Bertie Armstrong said, there is an appetite for decentralisation. The issue is the details of how that will be executed. Of more concern is the feeling that member states are perhaps backing away from the idea that we need some progressive reform—that is very worrying.

Here in Scotland, we have established some good models of how regionalisation could work. As Bertie said, we have promoted those at a European level, and there has been a lot of interest from other member states, but I make the plea that the Commission needs all the support that it can get. It will help if you talk to your counterparts in the European Parliament, because European parliamentarians now play a significant role in the future of the CFP and strength in that forum would therefore be beneficial. We all know that we need progressive reform, but we will not get it unless there is a strong appetite for it.

**Liam McArthur:** Helen McLachlan addressed some of the issues that I was going to raise. A number of us were at the regional advisory council event in Edinburgh at the back end of last year, at which it was clear that there was an appetite for regionalisation and a move away from an overcentralised approach. However, it was equally clear that there was no consensus about what that regionalisation would look like. Almost 12 months on, given that you have had an opportunity to submit a response to the consultation, do you sense that support is crystallising around a particular vision, whether or not people are on board with it yet? As Helen said, it might be up to us and others to lend support to it, but is there now a growing sense that the key tenets and objectives of the regionalisation structure are understood?

**Bertie Armstrong:** I am sure that Helen McLachlan will wish to augment what I say, but the

answer is yes. I suppose it is obvious, but we recently became aware that philosophising about what the models and the legal constraints on them might be—we did a lot of that at the conference—could go on ad infinitum. That could be hazardous to us, given the outcome that it could lead to.

We decided to demonstrate how regionalisation could be done in practical terms—that was the subject of our visit to the relevant man in the Commission in July. There have been several examples in Scotland and from the regional advisory councils, but the ones in Scotland are obviously important for us. That is what we are depending on, and the form, in a nutshell, is regionalisation by fishery where that is relevant. The pelagic fishery is most assuredly a special case, and there would be non-regionalisation by fishery or a recognition that it is migratory. For a lot of the other quota species, regionalisation would be effective for Scotland.

10:30

**Liam McArthur:** Did you get the sense that the legal block in treaty law was starting to be addressed in those discussions?

**Bertie Armstrong:** The legal discussion centred on the larger-scale models that were explored at the conference. Helen McLachlan may have more on the point, but there did not seem to be any let or hindrance to the local management by fishery that we were thinking of.

**Helen McLachlan:** That is largely true, but it is clear that there is still some debate with lawyers in Brussels about exactly how the approach will be delivered. There is some wrangling over the degree to which Parliament will be involved in the decision making, particularly over quotas—that issue is still to be resolved.

As Bertie Armstrong said, the appetite for regionalisation by fishery and for looking at long-term management plans for operating fisheries seems to be a reasonably well-accepted way forward, but we were clear that it has to be mandatory. There is no point in the member states who want to manage their fisheries going ahead and operating long-term management plans while others fail to do so and may adversely impact on stocks that are of common interest. We have been looking at and trying to gain acceptance for a mandatory requirement for long-term management plans.

**Liam McArthur:** That is interesting. Earlier committee discussions threw up the view that we did not want the all-together-or-not-at-all approach, in that if we could reach agreement on the North Sea and the west coast we should not be prevented from progressing simply because, in the Mediterranean context or elsewhere,

agreement had not been reached on how the process would work. Are you saying that that is no longer the approach?

**Helen McLachlan:** No. Fisheries in the North Sea would identify which fisheries were appropriate management units, and they would develop their plans on that basis, and the same would happen in the Mediterranean. We are saying that they all need to work towards the goal of managing fisheries in the framework of a long-term management plan, because we are lacking that at the minute. Some plans are under development in the more progressive member states, but other member states are simply not coming forward with plans. We need that to start to happen Europe-wide. Some incentive to produce those plans—such as a mandatory requirement—is needed.

**John Scott:** My question was essentially the same—how you can make this work—and you have answered it. Do you have the support of members of the European Parliament and the Westminster Government for the proposal? I hope that you do.

**Bertie Armstrong:** The short answer is that we hope so, too—but yes, we think that we do.

I want one last word on the hurdle of what is legally possible under the treaties. We need to be terribly careful—and we will watch this—that the law is not used as a weapon. As Helen mentioned, we detect that one or two member states are now thinking that the status quo suits them best. If that is the case, we might find that the hurdles that exist in the treaty framework might be used as a weapon rather than as what we would hope—a tool to address the solution and find a way of making the approach fit legally, which we think is possible.

**John Scott:** Would there have to be a completely separate model for the pelagic sector? You appear to agree that the model would not work. Do you or Ian Gatt have a separate model in mind?

**Bertie Armstrong:** Ian is the best man to answer that.

**Ian Gatt:** What does the CFP do for the pelagic industry? It provides an instrument to divide up the fish once the Commission has secured what will happen through the coastal states, so the CFP fits the purpose, but we are under no illusion—it is single stock, and there is no discard or bycatch. It is a completely different model. However, in relation to the pelagic sector, it does what it says on the tin—the fish are divided between member states. There could be some tinkering at the edges, but, by and large, we would not like it to be undermined.

**Peter Peacock:** I turn to questions on fishing opportunities and the future of the Scottish fleet. Back in September, an £8.2 million scrappage scheme was announced. Skippers have until 5 o'clock tonight to decide whether to take up the offer under the scheme. I understand that skippers of 41 prawn and white-fish boats are eligible for the scheme, which is linked to a licence parking scheme. In due course, I understand that the scheme may lead to the building of bigger boats, but not before 2015 or 2016. Did such an intervention need to be made at this time?

**Bertie Armstrong:** Yes. The practical fact is that skippers of 50-odd boats applied for the scheme. Those applications are statements of fact by skippers, who are saying, "I really am having difficulty making this work commercially. I would like to leave." There is no other way of dressing it up. Of those who are offered scrappage, it will be interesting to see who accepts. In one or two cases, the offer may have stimulated sales, not scrappage. I regret to say that the answer to the question, "Was it needed?" is self-evident: the scheme was oversubscribed.

As the member knows well, the fleet is sectorised. The pelagic fleet has a comprehensive set of problems around international negotiations. The crab and lobster fleet has market and overcapacity problems, but is doing all right. The two other big sectors, which are prawns—Scottish langoustine—and white fish, are the most pressed. Of them, it is fair to say that the Scottish white-fish fleet—the demersal fleet—in the northern isles, the north-east and, to a lesser extent, the west coast is in real trouble; the 40-odd volunteers for the scrappage scheme came from the prawn and white-fish fleets.

The catching opportunity for next year is worse than this year. The Scottish Government—now on behalf of the UK Government and, indeed, on behalf of us all—is advancing one solution: so-called catch quotas. The solution will work for some but not for others. It will have to be managed terribly carefully, but it might produce an opportunity for a few. Our negotiating friend from the Scottish Government who is sitting behind us has a comprehensive job to do to try to make this work. It will require approval under international agreements—in particular those between the EU and Norway—and financing.

The adoption of catch quotas for one sector—the white-fish sector—is not fiddling around the edges or an adjustment; it is potentially a complete sea change in management—

**Peter Peacock:** I will come on to that in more detail. For the moment, I would like to stick to the scrappage scheme. Do you have anything to add, Helen?

**Helen McLachlan:** I do not have much to add. The issue is one of resilience. The scheme is much needed. It gives breathing space to skippers who require it at this time.

**Peter Peacock:** One thing that may arise from the scheme—it happened under previous decommissioning schemes—is that taking out boats today will result in fewer but larger boats in a few years' time. What effect will that have on catching effort? I guess that overheads will come down a bit for skippers who end up with larger vessels and that their ability to catch accurately—if that is the right phrase—will increase. However, what will that do to the sustainability of the catching effort and the stock over time? On the face of it, it could mean fewer boats, the same effort to make catches over time, and fewer people enjoying the wealth from the industry. I am interested to hear your views on that. Do you think that that is likely to happen?

**Bertie Armstrong:** It will happen. You have described it exactly. The whole point of the scrappage scheme or of the fleet resilience scheme, as it is called—which goes beyond scrapping, because there is some licence flexibility of the type that you described—is to recognise the fact that a large proportion of the fleet is having difficulty with making commercial sense of what it sees in front of it. That will mean that a redistribution of the opportunity among a smaller number will be a fact.

You alluded to the fact that that will affect community and infrastructure, and that the wealth will be shared by fewer people. No fewer fish will be caught, and no fewer kilowatt days will be used in the catching of those fish. It will be done by fewer boats and the hope is that those boats will be able to make a commercial success of that operation, which presently is a step too far for a significant proportion of the fleet.

**Peter Peacock:** So you think that we are caught up in an inevitable trend.

**Bertie Armstrong:** It is absolutely inevitable, I am afraid.

**Ian Gatt:** I do not see any new boats, bigger boats or people putting together those part licences. Scotland's fleet has a new sector because there has been a robust building programme during the past 10 years, although it has slowed down in the past 18 months. Those new vessels are pressed, as Bertie Armstrong said, because of the downward pressure on quotas and days. The scheme should deliver to those people somewhere to access more effort and more quota so that they can make their businesses viable. I do not think that there are going to be more and bigger boats. The scheme

will underpin the new vessels that we have already.

**Liam McArthur:** One of the other complications with the previous decommissioning schemes was that, because they were voluntary, they did not necessarily take out the boats that could most usefully be taken out of the fleet at the time.

There is also a question about whether the current resilience scheme does a great deal for slightly smaller vessels that are equally pressed by the financial state of affairs. I am interested to hear your observations on those points.

**Bertie Armstrong:** You are absolutely right in all that you say. The resilience scheme does not address everyone's needs. Not everyone who would like to make a graceful exit and whose community or fishery would benefit from a thinning of assets has been able to apply for the scheme. The numbers involved are small enough that the bigger and newer vessels are not in the bracket for acceptance because of the amount of money, but the older, lesser-value vessels are.

There is always a quandary in such situations. If someone has put their money where their mouth is and invested in a new vessel, they will be in a period in their business's history when capitalisation and debt are high, and they will be most vulnerable if they are constrained by having difficulty in finding raw material. Those are the people we do not want to destroy. However, the numbers this time are small enough to mean that the current scheme passes those boys by and they will have to survive on their own, although they might fall heir to the slightly increased opportunity as a result of the opportunity not being taken up by the older vessels.

**Peter Peacock:** My questions have been answered.

**John Scott:** I just want to note the depressing similarity between the smaller boats going out of the demersal sector and the dairy sector in Scotland. Just as much milk will be produced, but it will be produced by larger units. Just as much fish will be caught, but it will be caught by larger boats and the wealth will go into the hands of fewer people. That is the depressing reality of I am not sure what. Is it market circumstances? Is it pressure? I do not know what it is.

10:45

**Bertie Armstrong:** I agree with all of the above, I am afraid to say. The difficulty that surrounds the issue that you have identified is that communities reach a critical mass of the infrastructure that is necessary to support these vessels, therefore with fewer vessels they will find life difficult. Until we see how many actually accept this and who

exactly they are, we will not know the real answer to your question. However, the fears that you have expressed are real.

**John Scott:** I understand that there is particular pressure on the processing sector. How many jobs might be at risk there?

**Bertie Armstrong:** I honestly cannot speak for that sector. I hear every day about its distress, but I do not know exactly how many people are involved.

**Peter Peacock:** The arrangement also applies to boats that fish Scottish langoustine, which are feeling the—potentially short-term—economic effects of a downturn in the Spanish market and so on. Even though they are largely catching below their current quota and therefore might have more potential when the economy picks up, individual vessels will be under the same economic pressures even in what might be an enhanced market. Is that your view?

**Bertie Armstrong:** That is exactly the case. Using the word "critical" again, I think that a critical path runs through all this—the cod recovery plan, which on the back of the biology of one species is screwing down effort for everyone else, particularly the langoustine industry. Next year, that industry will feel the first real bite of the difficulties relating to effort and days at sea, which will start to constrain it falsely. That said, prices have got a bit better of late, and we hope that much more can be made of that market. It certainly seems ripe for such moves. Given that, world wide, our share of that fish is very significant, we surely must be able to make a better fist of the marketing; indeed, that work is happening on a daily basis.

**John Scott:** How is the maximum sustainable yield commitment being implemented by European fisheries managers and incorporated into scientific advice? I believe that that is supposed to happen in 2015, but I am sure that you know a great deal more about it than I do.

**Bertie Armstrong:** The international commitment to reach MSY in all stocks where possible by 2015 is an aspiration, and we could spend the rest of the day discussing whether it is possible. After all, if one stock eats another stock, the first might well burgeon and be declared to have reached MSY happily while the other declines.

Instead, we have settled on a vague ambition to have a proxy for fishing mortality that would lead to MSY by 2015. As it is already too late to meet the rigid commitment to MSY for all stocks by 2015, the Commission's proposals over the next five years will set out a step-by-step move towards achieving fishing mortality, stock by stock, by 2015. In practical terms, that will mean a downturn

in the proposed quota in the immediate future, which will add to our problems.

There is no point in challenging the underlying basis of all this, because we are talking about an international agreement. Whether the people who agreed to these things at a high strategic level knew what they were talking about, it does not matter now. It is history and we are now stuck with this commitment, which, as I say, will mean a downturn in fishing opportunity—with the aim, one hopes, of having an upturn at some stage in the future. At the moment, some stocks such as mackerel are already caught at or below MSY, but next year there will be a downturn in a lot of stocks that are important to Scotland.

**John Scott:** Are you in your delicate way saying that, notwithstanding the aspiration, the commitment is simply not achievable because of predation and historical fishing levels?

**Bertie Armstrong:** The entire scientific community—indeed, everyone—agrees that the concept is so vague that it is impossible to achieve for all stocks at all times. I know that Helen McLachlan is itching to get in on this discussion. MSY can be coloured and interpreted in other ways. You might, for example, colour and interpret it as an aspiration to achieve much lower fishing pressures in order to allow stocks to build up, which might, in future, allow you to take more from them for the same amount of limited effort. That would be nirvana, but let us move from here to there without wrecking the house on the way.

**John Scott:** Fair enough.

**The Convener:** Did you want to come in on that, Helen?

**Helen McLachlan:** As Bertie Armstrong said, the commitment to MSY has been agreed for quite some time now and we have perhaps been a bit slow in realising the practicalities of achieving it. However, when you look across the board at European stocks, you will see that we are making progress, and that is because we have set targets. WWF feels that targets nudge people in the right direction and let them know when they have achieved their goal and whether the aspiration is the right one. After all, MSY is about trying to get the maximum amount of a stock while it is healthy and giving the fishery the return that it should be achieving.

At the end of the day, we would like to have maximum economic yield, which is analogous, I think, to a capital and interest scenario. Instead of eating into your nice healthy capital—in this case, the fish biomass—you live off the interest on it. That is our aim, and indeed is what MSY is trying to deliver; the target is in place and we are moving in the right direction.

**Liam McArthur:** I note the concerns about MSY, which have been raised with the committee before. However, if one accepts that this is some nirvana or ultimate objective, the question then is the rate at which we get there. Is there any consensus about the pace at which all this should happen, or with some stocks will the pain have to be front-loaded simply because they are in such a precarious position?

**Bertie Armstrong:** In general, each stock that needs assistance is receiving it. Ian Gatt might have a view on this, but certain stocks that patently are at MSY—I know of one North Sea stock in particular—get a scientific upgrade. For example, the International Council for the Exploration of the Sea might suddenly say, “Actually, we’ve made a dire mistake. This stock is a third bigger,” which means that the stock goes from being fished at what could be regarded as the proxy for MSY to being fished very considerably under MSY. There is no great alacrity in putting such situations right and providing more fishing opportunities. As a result, we have now reached the weary conclusion that almost all fishing is overfishing and all capacity is overcapacity, and that we must turn things down and down. We wait for the day when we can turn things up and up, even though some stocks are actually at MSY. I realise that that is a slightly cynical statement, but you will understand our nervousness in that respect.

**Ian Gatt:** Bertie Armstrong is alluding to North Sea herring. The forecast of the biomass was less than 1 million tonnes, but this year the actual biomass was 1.3 million tonnes. The stocks are tied into a long-term management plan, which is the right thing to do. On MSY, the stock is being fished at a very low mortality rate. It is being said that the fishery should be fished at a 0.25 mortality rate, but it is actually much lower than that—it is at 0.125. The industry has been saying that if we are going to go to this MSY, unlike with other stocks where we have to reduce our fishing pressure, we will actually need to put it up a bit. The response that we get from the managers is that MSY is fine, but we should be sticking to the management plan.

**John Scott:** Perhaps somebody else was going to ask this question. The North Sea herring are not reproducing. What is happening there?

**Ian Gatt:** The story has turned around; it is quite a good story now. The biomass is increasing and juveniles are coming through. The picture is quite rosy. Next year there will be a fair bit more fish delivered not only to the Scottish fleet but to the European fleet. There were some fish being missed from somewhere.

**John Scott:** There is a biblical allusion there.

**Ian Gatt:** Fortunately, they found them.

**Helen McLachlan:** I do not want to take that example of long-term management plans, but instead to set the MSY in the context of the long-term management plans more generally. If, after 2012, we succeed in getting fisheries managed on the basis of fisheries rather than stocks, for every management decision there will have to be transparency and options on the table. We hope that that will be achieved. As Bertie Armstrong said, having all stocks within one fishery at MSY simultaneously is probably unachievable, but to try to meet management objectives, you have to know what the options are. The long-term management plans should allow that to happen.

**Bill Wilson:** The briefing that we have states:

"North Sea herring has recently produced eight poor year classes in a row".

Are you saying that that is not the case?

**Ian Gatt:** It is not the case. The 2006 year class is well above average and quite a good recruitment is coming into the fishery now. I do not know whether somebody has missed that.

**Aileen Campbell (South of Scotland) (SNP):** Can we get your figures?

**Ian Gatt:** The latest scientific advice outlines that. It is probably because of food availability that the individual fish at that age are heavier now than they have been in the past.

**Bill Wilson:** Have the fish been missed because they have been misclassified?

**Ian Gatt:** I do not know, but 30 per cent of the biomass has been missed somewhere. Anyway, as I said, I am really glad that the fish have been found again.

**Bill Wilson:** Maybe they were on a short holiday—a package tour somewhere.

**The Convener:** We will ensure that we get the updated figures before the minister comes along. Aileen, did you want to come in?

**Aileen Campbell:** I just wanted to get the figures to which Ian Gatt referred.

**Liam McArthur:** I have a question on mackerel, which is probably for Ian Gatt. There has clearly been a fair amount of media exposure of the concerns about the unilateral actions by Iceland and the Faroe Islands to take up a significant quota that they have not historically fished. In the case of the Faroes, a quota that was already sizeable has been tripled. Ian Gatt and Bertie Armstrong both said that the stock has been managed well in recent times, to the point that it finds itself in the right green box in terms of being harvested sustainably. What are the implications of the actions that have been taken by Iceland and

the Faroes? How do you see what appears to be a fairly intractable negotiation being resolved?

11:00

**Ian Gatt:** In relation to the stock, you are correct—it has been managed through a long-term management plan for in excess of 10 years. That plan has seen the stock develop to where it is now: it is well managed, there is a low mortality rate and we take an appropriate number of fish out of it annually. The most important thing, as I have outlined to the committee before, is the fact that there has been a long-standing international agreement for more than 20 years. In my office, I have 20 agreements that have Faroese, Norwegian and European Union signatures on them. That is what has ensured the health of the stock.

You are right to say that the stock is under threat. Iceland and the Faroes have both set their total allowable catches unilaterally on the basis of their saying that they have sustainable fisheries. However, we know that they have allocated themselves an amount of fish that they could catch when the fish are in their waters that is probably in excess of three times what we could catch. That is what our guys are telling me, and I am quite sure that it is the case. My chairman has finished his mackerel season in three weeks, although he could easily catch a million tonnes—we could all take that attitude, but where would the stock be?

Yesterday, we got the official scientific advice, which tells us that the stock is doing well and is still increasing, although that does not take account of what is going on this year. The scientific advice this year was for a global TAC of 570,000 tonnes; however, it is estimated that 930,000 will be taken out, which is 60 per cent in excess of what is proposed in the scientific advice. That is a huge excess, and it will have implications if we do not arrest it now. At the same time, the Scottish fleet—or the UK fleet—has 30 per cent of the global TAC. We are the biggest stakeholder and have more fish than Norway, traditionally; therefore, we have the most to lose.

It is important that we try to get the stock back into management. We must also be aware that Scotland will pick up the tab if the demands of Iceland and the Faroes are met. As far as we are concerned, that simply cannot happen at any cost. Yes, we want a deal, but we must very aware that, if we do not have a mackerel fishery in Scotland, we do not have a pelagic fleet. We have some herring opportunity, which is fairly small, but that is the stark reality.

There is a history lesson to be learned in relation to our fishing communities. We have the ships and the port infrastructure, the welders, the

ship manufacturing, the repair facilities, the painters and a processing industry. However, all that is underpinned by fishing opportunity. If we do not have a quota and a right to fish, we do not have anything. Three of our ports—Peterhead, Fraserburgh and Lerwick—are doing extremely well in relation to pelagic fishing, but that is all we have left in that industry. Back in the 1970s, at the height of the cod wars, Aberdeen and Granton, just down the road, were vibrant places; however, when that negotiation was lost, we were left with a fleet of ships, good crews, port infrastructure and a processing industry that all fell like a house of cards because we did not have fishing entitlement. We have a lot to lose.

The negotiation will start on Tuesday next week, and we suspect that it will last for a number of rounds. I am not of the view that the UK should rubber-stamp what Iceland and the Faroes have done this year, which has been nothing short of eco-terrorism.

**Liam McArthur:** That is very helpful. In discussions that we have had in the past, you have said that the motivations behind the actions of the Faroes and Iceland have been different in important respects, which may have a bearing on how the negotiations will be conducted, and that the bilateral approach may be the best way forward. Can you expand on that?

**Ian Gatt:** You are right. The Commission's first approach should be to try to encompass everybody in what we call a four-party agreement. However, it is aspirational to imagine that Iceland will come on board this year. We know from talking to the Icelandic industry that it is not interested in a settlement this year unless the deal is "very sweet". Those are the words that the Icelandic industry has used. It has said that it is quite happy to hang it out until 2012 before talking about any settlement.

We have an opportunity to get the Faroes back on board, however. The Faroes have been part of a long-standing agreement, and they are one of our closest neighbours. If the EU and Norway work together, we should manage to convince the Faroese that it is in their interest to come back on board under an agreement. That is where we should focus our efforts, in my opinion.

There is another aspect to the Faroese situation that I wish to outline, as I would like the committee's support in trying to do something about it because our hands are tied. When Faroese representatives met their counterparts from the European Commission about three weeks ago, they said that they had taken their autonomous quota of 85,000 tonnes. We thought, "That's fine"—or at least, "That's the end of the fishing." However, as part of their bilateral agreement with the EU, the Faroese have got

entitlement to catch 4,500 tonnes of fish in Community waters from 1 October. Rational thinking would say that the 4,500 tonnes should be deducted from the 85,000 tonnes, but that is not what is happening. I had a phone call from a member of the Tait family, who are big players in the pelagic industry, and he said that his vessels were fishing alongside the Faroese this morning.

I raised the matter at the European Parliament last week, and the Commission said that it could not suspend the bilateral agreement on that basis, because it was a signed deal. I would like as much pressure as possible to be put on the Faroes and for it to be stressed that the situation is totally unacceptable. They said that they have caught the 85,000-tonne quota, so it is unacceptable that they can carry on and catch another 4,500 tonnes, especially inside Community waters. It is ludicrous.

**Liam McArthur:** You probably have the acceptance of the committee on that. We can certainly discuss the matter, and I would take it forward.

Over and above the negotiations, where pressure can be brought to bear to ensure that sense ultimately prevails—one hopes that the actions this year are not seen as establishing a track record that becomes the gift that keeps on giving in subsequent years—would you like specific actions to be taken to force a rethink by the Faroe Islands and Iceland?

**Ian Gatt:** Importantly, there was a strong indication at the fisheries council last week that the Commission needs to negotiate on behalf of the Community to resolve the situation. There was not going to be a deal just at any cost, and the Commission was not going to be a soft touch. If there is no deal at the end of the year, however—and we hope that there will be—there will be repercussions for Iceland and the Faroes. The commissioner has said that she wants to keep all her options open. We think that there is an extremely strong card that can be played with the Faroes if we say that we do not want a bilateral negotiation with them next year. If Norway says the same, that will put a lot of economic pressure on the Faroes. If their fishermen are isolated in their own zone next year, they will find it a very lonely place. I know that that is an extreme action to take, but a bilateral negotiation can be reconvened a quarter of the way or half way through the year and there can be an exchange of fishing opportunities.

**Liam McArthur:** Do you get the impression that, with the unusually strong and robust rhetoric from the Commission over recent weeks, we are safe from any repeat of what happened with blue whiting a number of years ago, when assurances were given that turned out not to be fulfilled and,

essentially, the Scottish fleet was carved out of an important part of the catching opportunity?

**Ian Gatt:** I would love to say that that is the case, but I cannot give that assurance. The commissioner seems to be saying the right things. She is saying the right things to us, anyway, although I do not know what is going on behind the scenes. You are right that there is a lesson to be learned from what happened with blue whiting. We lost the shares, and we can also see what happened to the stock. It is a horror story.

We need to keep up the pressure. Be under no illusion: if we take mackerel out of the equation for the Scottish fleet, we will have a lot of problems.

I took a phone call yesterday from a man in Port Glasgow—Mr McLaren, from McLaren Packaging. He told me that his was a small family firm with 60 employees. He explained that part of his business is from the fishing industry: he supplies package cartons to Shetland Catch, which is the biggest pelagic processor in Europe. He said that he had invested a lot of money in a new inkjet machine that puts out a high-quality carton. He then said that he is frightened for his business. We have to protect the fishing community, but that man at the other end of Scotland said that if the mackerel industry goes wrong, he will lose his business. There are many implications.

**Aileen Campbell:** I return to what Ian Gatt said about the mackerel situation having an impact on Scotland and how Scotland will pay the price if it is not sorted out. How helpful has it been that the cabinet secretary has taken a lead in Europe as a Scottish voice representing a Scottish problem?

**Ian Gatt:** To be quite honest, the cabinet secretary has taken the problem to heart. He realises the importance of the situation, and he has been writing to and communicating with the Commission regularly. In fairness, however, so has the UK minister. They have moved above party politics. The UK minister has been working extremely hard as well, and it is important for the two ministers to work hand-in-hand. I do not think that the Commission will roll over the UK, including Scotland, and Ireland. We are the biggest stakeholders, so as long as we stand firm and say the right things, we can resolve the situation in our favour.

**Aileen Campbell:** You said that you have a bilateral agreement with the Faroes, but that the situation with Iceland is different. Can you explain a bit more about that?

**Ian Gatt:** Helen McLachlan will tell me that I am wrong, but there is also a bilateral arrangement with Iceland, although it is less important because Iceland is that bit further away. That situation is far more complex because accession talks are going on, and we do not know what is going on behind

the scenes. Are the talks being used as a lever to get Iceland to behave, or are they being used as a bargaining tool for when Iceland comes into the EU? I do not know, but it is a far more complex situation, and I do not think that we should hang our hat on resolving it this year.

If we can get the Faroes back on board, it will mean that we will have reduced the risk to the stock by 50 per cent, and it will also put more pressure on Iceland.

**Aileen Campbell:** Do you get the feeling that there has not been as much openness in the negotiations?

**Ian Gatt:** There has not been with Iceland, but I might have missed it—or it might just be my upbringing.

**Bertie Armstrong:** I want to add a little bit in answer to Liam McArthur's question. Iceland has declared its intention of hanging on until 2012 because it has very little to lose and everything to gain. The EU's approach is one of negotiation, which of course implies that we must give Iceland something to make it stop. The one weapon that is available is trade. If Iceland is made to look to the international community as if it is disregarding the biological health of the stock and the moral stance on that, that should be reflected in taking those fish from Iceland. Whatever is legal and possible under the World Trade Organization is our one means of making Iceland do that, because otherwise it will hang on in the negotiations and wait to be rewarded. That is the most important thing to know, and the Commission is making noises that it is willing to assist. Norway also banged in there immediately and did what it could, but it is limited in what it can do alone. We have one weapon with Iceland, and I believe that we must use it.

**John Scott:** Liam McArthur speaks for the committee when he says that we are all behind you, but I want to reassure myself and others that the Commission is behind you. Are other member states equally behind you or are different vested interests emerging? It has been suggested to me that there might be. Perhaps you might want to discuss that with a view to members informing their political colleagues in Brussels about the direction of travel that you want to take.

**Ian Gatt:** You are right. I would have loved to have been able to sit here and tell you that the whole of Europe is on board. I suppose that there is a clear north-south divide on what is happening. Some are looking at the situation in relation to Spain and thinking that it is an opportunity to renegotiate the whole mackerel situation because they are happy with what they have got. However, we cannot allow the tail to wag the dog. At the end of the day, those countries have to be kept in line.



All the major players—the UK, Ireland, Holland and Denmark—are saying the same things, which is important.

11:15

**Bill Wilson:** Did the Commission tell you that we cannot do anything about the Faroese boats that are presently fishing for 4,500 tonnes because of a bilateral agreement that cannot be torn up?

**Ian Gatt:** Yes. We were informed that the Commission cannot suspend one part of the agreement. We were told that, technically, it is not possible to suspend the agreement in-year.

**Bill Wilson:** Perhaps I am being a bit slow. I presume that the bilateral agreement includes an agreement with the Faroese on what they can catch. If the Faroese have broken that agreement by catching fish that, theoretically, they cannot catch, why does the agreement still exist?

**Ian Gatt:** I do not know the true legal position. Perhaps the legal position is that, because the Faroese have not signed a mackerel agreement, they can set themselves whatever target they like. However, the separate bilateral agreement that has been signed is still legally binding. Morally, what the Faroese are doing is totally wrong. At the end of the day, they are setting themselves an autonomous quota of 90,000 tonnes, not 85,000 tonnes.

**Bill Wilson:** If they have not signed an agreement—

**Ian Gatt:** They have signed a bilateral agreement, but they have not signed a mackerel agreement. The only mackerel agreement that has been signed this year is between the Community and Norway.

**Bill Wilson:** Is the bilateral agreement about where boats can fish?

**Ian Gatt:** Yes—and about the amount of fish that we can catch in each other's waters. Let me put the issue in context. You will remember that last year there was one mackerel negotiation after another; the process continued into the new year. There was no EU-Faroes bilateral in December, when such agreements are normally negotiated.

**Bill Wilson:** On mackerel?

**Ian Gatt:** No, I am talking about the bilateral with the Faroes. Things happened out of order. The EU agreed a bilateral deal with the Faroes, which told the Community in all good faith that it would enter the agreement on mackerel. However, it never did so. The bilateral agreement was signed, but the Faroes decided that it would not have a mackerel agreement. I do not think that that will happen two years in a row.

**Bill Wilson:** I would like to think not.

**Ian Gatt:** I would like a strong signal to be sent to the Faroese. It must be sent now, as they are fishing now. The committee should tell the cabinet secretary that that is unacceptable.

**Bill Wilson:** I understand that the Faroese have to land the mackerel in Norway or Scotland, as they cannot process it.

**Ian Gatt:** You are right to say that there is limited processing in the Faroe Islands.

**Bill Wilson:** If they cannot land it, they cannot process it.

**Ian Gatt:** They can reduce it to fish meal, which they have been doing.

**Bill Wilson:** So, they go for the low-quality end and waste a rather excellent product.

**Ian Gatt:** What is happening is a disgrace. We hope that the economic implications of actions that we have taken to try to ban them, as a gentleman's agreement, will convince them that it is far more sensible for them to be part of an agreement that gives them access to the key markets here and in Norway than it is for them to reduce all that beautiful fish to feed for pigs and the aquaculture industry.

**Bill Wilson:** Might other parts of the EU agree to process the Faroese's fish for them, if Norway and Scotland are successful in keeping them out?

**Ian Gatt:** They would not at the moment. Everyone is standing firm, but it is very much a gentleman's agreement. We wanted the Commission to take the same action as the Norwegian Government, which introduced a legal agreement to ban mackerel products from coming into Norway. We have been telling the Commission that it must do the same thing. In our view, the Faroese are fishing illegally. However, because the Commission is a big unwieldy beast, it has been discussing the issue for months on end. I am not saying that a legal instrument cannot be introduced next year, but that has not been done yet.

**John Scott:** We have talked a lot about mackerel and a little about North Sea herring. Can you give me a breakdown of how the other stocks in the pelagic sector are faring?

**Ian Gatt:** There are two other stocks that are worth mentioning. The first is Scando-Atlantic herring, which is the largest herring stock in the world. That has been at an all-time high for a couple of years, but it is now declining. It is still within safe biological limits, but it is coming down from the previous very high level. Next year there will be a fairly significant reduction in the stock's TAC, although that may balance out with what happens on North Sea herring. As I said, there are

no problems with the stock level, which is still above the fantasy MSY figure and doing quite well.

Blue whiting is an absolute horror story, to be honest with you. The stock is in deep decline and although the assessment is uncertain, if the management plan is followed this year, we will deliver 40,000 tonnes. To put it in context, five years ago 2 million tonnes of fish came out of that stock. Potentially, we could go down the same route in relation to mackerel; you can draw strict parallels. I do not have to write the story about it because you know what the implications are. That is what is happening to the blue whiting stock largely because Iceland and Faroe fished it as an Olympic fishery for many years, built up a track record and then, as Liam McArthur rightly said, when the negotiations came the Commission relinquished half its share to accommodate them. However, the downside is that the stocks absolutely crashed—there is no other way to describe it. I will not sit here and try to paint a nice picture because it is not a nice picture.

**Bill Wilson:** Is there no general concern that we are setting up a series of precedents of getting out there, grabbing as much as we can and forgetting what happens to the stock because we will get a bit more in the long run?

**Ian Gatt:** That has certainly been Iceland's and the Faroes' approach, particularly the Faroes. They built new ships because they secured that huge deal on blue whiting. They have the biggest tank ships in the world. We have large 60m to 70m ships, but Faroe has 80m boats with 3,000-tonne capacity. They have destroyed the blue whiting stock and now they are saying, "Look, Government, you need to deliver me more fish. I've got this beautiful boat; I've got to fish 300 days; what are you going to do for me? Oh yeah, the mackerel looks okay, we'll have a go at that." Our guys are doing 60 days at sea. Should we reward the bad behaviour of Faroe? I do not think that we should.

**Liam McArthur:** Is Iceland's approach to the demersal fishery any better?

**Bertie Armstrong:** The blue whiting situation is not replicated elsewhere in the stocks. Cod is recovering, but not at the rate at which anyone desires—it is heading in the right direction, but not at the right rate. The plan that governs it and contains automatic next steps in relation to quotas and days at sea is—

**Liam McArthur:** I am thinking more about the approach of Iceland and Faroe to the demersal stocks in their waters.

**Bertie Armstrong:** I am sorry. The EU-Faroes bilateral agreement contains seven demersal stocks that are important to some sectors that fish

there, particularly in the northern isles. Generally, we would like mackerel to be attended to without collapsing all the other opportunities. That will be as important to Faroe as it is to the small but significant numbers of fishermen from Scotland who fish the Faroese water. Iceland is a different matter.

**Ian Gatt:** In both demersal fisheries, if the fish are in their economic zone—which demersal fisheries generally are—then, by God, they look after them. If we are talking about pelagic species that are migrating through lots of people's waters, they take the Viking attitude that it is open war. It is as simple as that. Those countries do not seem to adhere to anything that involves other people, but if the fish are in their zone, they are highly protective of them.

**Aileen Campbell:** Can we go back to the fact that mackerel are not part of the negotiation? If mackerel are going through all those different waters, why was that fishery not given a position in any EU bilateral agreement if it had the potential to be fished by other countries? Perhaps I am getting it wrong, but I just wonder why—

**Ian Gatt:** Do you mean why was there a bilateral negotiation?

**Aileen Campbell:** Why did the agreement not include mackerel specifically? If mackerel are going through lots of different countries' waters, surely it is important to include them.

**Ian Gatt:** There are two things. There is a coastal states agreement on each of the pelagic stocks, whereby countries devise sharing arrangements. After that, there will be bilateral arrangements that say, "Look, I'll give you access to 4,500 tonnes of mackerel if I get something from you." That is normal across a range of stocks.

They indicated that they would come into a mackerel agreement in January, when they signed the bilateral deal, but they obviously had no intention of doing that.

**Bill Wilson:** I presume that that means that, in the future, all deals will have to be signed simultaneously.

**Ian Gatt:** I think that there should be a certain order to them.

**The Convener:** Liam McArthur wants to ask about west coast cod, haddock and whiting.

**Liam McArthur:** Let us move from the happy subject of blue whiting to the west coast. The west coast fishery has been the focus of much attention because of the emergency measures that some felt were unworkable because of how they were constructed. The Government, in consultation with the industry and others, has submitted alternative

proposals, but there seems to be a question about whether alternative alternative proposals are emerging from the RAC and whether the Commission is being asked to deal with two separate propositions representing Scottish interests. I would be interested to know whether that is the case and in your observations on that.

It would also be helpful to get a sense of how you see the current state of the key stocks for the Scottish fleet on the west coast. Is there the prospect of recovery? The prognosis a year to 18 months back was pretty bleak.

**Bertie Armstrong:** I will start with the stocks. There are glimmers of hope for the cod stock, in which there has been a small, detectable upturn, which we hope will continue. Historically, however, the west coast stocks are not in good condition and require to be cared for. The brightest stock on the west coast is haddock, which is not in such a state.

As we touched on earlier, the RAC proposed a long-term management plan, which has now been accepted. There are some technicalities around accepting it because one economic study has yet to be done, but that should not be a hindrance. In effect, the Commission has agreed to make it a virtual long-term management plan and to put that in the catch proposals for this year, as though the plan were already in place. That has been a success story.

**Liam McArthur:** What are the implications of that for the emergency measures that were introduced and then rolled over for 18 months?

**Bertie Armstrong:** Regrettably, none. The emergency measures remain, and there has been a proposal to roll them on further. Frankly, we are stuck with them. As a way out of the situation, we have proposed that we be allowed access to the haddock stock under the terms of a very precautionary, sensible, long-term management plan. It is thwarted by the emergency regulations, which produce an impossible catch composition. No matter how hard our fishermen try, they cannot get what ends up in their nets to comply with what is written on the page of the statute. That is unhelpful and creates all sorts of other difficulties. It looks as though the fishermen are undercatching the stock, but the reason why they are undercatching is that they cannot access it without discarding everything that they get apart from haddock.

So I am afraid that we are not much further forward on that. The salvation and solution to the situation will be local management, as proposed by us. That is where we are. The honest truth is that we are not holding out much hope, although we will fight as hard as we possibly can.

**Liam McArthur:** Given the lack of activity in the area for the reasons that you have suggested, is there still a feeling that the scientific data on what is happening to the key stocks are not being built up because the boats are not there?

**Bertie Armstrong:** Indeed. In the past, data gathering has very much depended on landings. If there is a low volume of landings by few boats, that has exactly the effect that you have described—the science is light. We have asked for more survey but there is, regrettably, a limit to the amount of scientific effort that can be put into it. Although an attempt has been made to provide the information, it has not been sufficient.

There are also other factors at play. There seems to be a very high level of natural predation by, for instance, the seal population, which has not been properly investigated because the science on the west coast is inadequate to base sensible decisions on. We are in an awful pickle, with elements of stock recovery but a regulatory framework, which governs access to the stocks, that is illogical and is stopping fishing. Particularly in your constituency, there is the utmost frustration about that among people who know what is happening on the ground and are unable properly to access the fish.

11:30

**John Scott:** I want to ask briefly about the nephrops stock on the west coast and in particular in the Clyde. That stock is not being fished to the full. Do you have something optimistic to say about it?

**Bertie Armstrong:** We have no particular fears about the stock in the Clyde. The management of the stock is under discussion and there is a push for it to be managed by small sub-units. We have been trying to resist that, not because we do not want to manage it effectively, but because we need to manage it practically. There has been quite a lot of pressure on the west coast because of miscellaneous ecological reports along the lines that the Clyde, specifically, is suffering badly, which have received quite a lot of coverage in the press. I found out literally a few days ago that there is to be some sort of study, the details of which we do not have.

To cut a long story short, there seems to be a push from a small band of people who would, frankly, like the Clyde to be shut down to mobile fishing. That has happened over the past few days, and we will have to address that in the context of the plans that already exist, all around the coast of Scotland, for proceeding with ecological protection under the Marine (Scotland) Act 2010. That little pop-up of something odd and rather extreme specifically for the Clyde will need

to be resisted, but we will have to see the details of it. Maybe you have heard about what is happening there.

**John Scott:** No, I have not. I was hoping that you might be able to tell me about it.

**Helen McLachlan:** The situation in the Clyde raises an interesting point about the management efforts of the Scottish Government to make progress with the inshore fisheries groups, which have been tasked with bringing stakeholders to the table and seeking resolution of some of the gear conflicts in the inshore area. There is a general view that the IFGs need to progress a little faster than they are currently progressing.

You will be aware that there are some good news stories in the Clyde, in that the creeling part of the nephrops fishery there is undergoing Marine Stewardship Council certification, with the towed gear fleet hopefully going to do that as well. Nevertheless, there are conflicts and there are cries for effort control in the area both from those who use towed gear and from the creelers, given the number of creel that are in the water and the fact that the returns for effort are decreasing. There seems to be an appetite for that, which needs to be looked into.

**Liam McArthur:** Rockall haddock has provided a bit of relief for those who are no longer able to fish as they did in the Minches. However, there seems to be some prospect of a cut in quota of 46 per cent, based on the scientific advice, although the Commission may be looking at a cut of around a quarter. What impact is that likely to have on the parts of the fleet that have come to rely on that stock? What is the basis for the proposed cut?

**Bertie Armstrong:** The fact of the matter is that the stock is regarded as particularly healthy and the reason for the adjustment is a move towards MSY. The stock has become more important over the past year. As effort connected with the cod recovery plan limits days at sea for vessels inside the cod recovery zone, the opportunity for demersal catching outside that zone—which is not subject to days-at-sea limitations—will be very important. Both the Rockall haddock and the bilateral agreement with the Faroes provide relief in that respect. In moving towards MSY in the Rockall fishery, account needs to be taken of the need for sensible access to the stock.

**Liam McArthur:** I can understand that changes in how the regime is managed and in the objectives to be achieved will have a bearing on the quotas, but there seems to be a fairly dramatic year-on-year cut for a stock that we are told at present is being harvested sustainably. Is that your observation?

**Bertie Armstrong:** Yes, that is exactly the observation, and it will be more troublesome

because of the additional requirement to have access to Rockall given what we know will happen to days at sea next year.

**John Scott:** I want to return to nephrops. Has the low uptake of the nephrop quota in the west of Scotland been caused by difficulties with technical measures or low prices or both? If it is to do with the market, what can be done to help, or is the market recovering?

**Bertie Armstrong:** The problem this year was the fish themselves. The science did not indicate that there was anything particularly wrong, but the fish did not come on, if you like. They did not present themselves in an accessible way at the times when they would normally do so, which led to undercatching. Plus the prices for some periods of the year, particularly for the smaller prawns from the Clyde, were low, which was a disincentive to catching. There was general gloom. The honest truth is that the fish were not available as normal, not because of a biological downturn but simply because of a cyclical change in behaviour, as sometimes happens. They were not appearing when they were expected.

**John Scott:** What do you think about managing nephrops stock by stock? What are your views on an MSY with regard to nephrops? Sometimes it seems to be splitting hairs.

**Bertie Armstrong:** Managing nephrops stock by stock or by functional unit in small penny packets sounds logical, but it is enormously difficult practically. The way in which people catch almost falls into functional unit management, anyway. Therefore, we urge caution on legislating for something that does not need to be legislated for.

**The Convener:** Aileen Campbell has a question on monkfish.

**Aileen Campbell:** Yes—just a brief question. I understand that the science treats the west of Scotland and North Sea monkfish as one stock, but that there are separate quotas. A cut of 15 per cent in 2011 is being advised for the North Sea stock, but the quota for west of Scotland monkfish is to be held over. What are your views on that advice?

**Bertie Armstrong:** It is indeed one stock, which is known as the northern shelf monkfish stock, but for reasons of history, there is a differential in the quotas. On my right is Ian Gatt, a recently experienced monkfish skipper. In case I get it wrong, I ask him to answer the question.

**Ian Gatt:** I will probably get it wrong, but the member is absolutely right that the different quotas do not make a lot of sense if it is all one stock. Recent work has been done on the issue through a fairly comprehensive annual survey by the

marine laboratory. It now has more information to hand on where different elements of the stock are and can judge better how they are doing. There are four areas—the North Sea stock, the west of Shetland stock, the west coast stock and the Rockall stock. The lab is getting a better handle on how the individual populations are doing. You are absolutely right that it is assessed as one stock but managed differently in different areas.

**Aileen Campbell:** Could that lead people to consider that, in future, it should not be treated as one stock and the different areas should be monitored separately? Perhaps I am getting the wrong end of the stick.

**Ian Gatt:** No, you are probably right that that is what will happen in the long run. Another aspect is that Norway fishes the stock, too, but the stock is not jointly managed with Norway. Norway has been pushing for a number of years to manage the North Sea aspect of the stock jointly. A lot of things are going on around there, but the scenario that you have painted will probably happen at some point, although we are a bit away from it.

**Bill Wilson:** You said that Norway is pushing for a jointly managed stock, which implies that there was not much enthusiasm for that in the EU. What is your view on that?

**Ian Gatt:** From the Scottish perspective, that is quite a difficult question. We have a large portion of the North Sea stock, and although you might imagine that we would have more on the west coast, the French have more there. The picture is pretty complicated. We have quite a small share on the west coast.

If all that is merged, there will be winners and losers, and we are acutely aware that we do not want to lose more than we have to.

**Bertie Armstrong:** The simplicity of the biology is often obvious, and when someone asks a completely logical question, they find that there is a complicated set of international reasons why the French and Spanish have some access in one place but do not have any in another—and we do not, in any circumstances, want them to have access there.

I want to make one observation about Norway, although it might sound cynical. Norway is shoulder to shoulder with us over mackerel, but in a lot of other fisheries, Norway is simply not our friend. It catches those fish in its own waters with greater ease than we do, and it does not wish to make our life any easier as competitors, especially given the fact that the EU is Norway's largest export market.

The situation is always more complicated than it looks when one looks at the biology.

**The Convener:** Oh dear.

**Elaine Murray:** I want to ask about cod and haddock in the North Sea. There was a bit of optimism about the haddock stock recovering, but it seems to have evaporated, certainly as far as ICES is concerned, because it is proposing a 20 per cent cut for next year. What are your views? Do you agree that mortality has increased again and that a larger decrease in quota is needed for this year?

**Bertie Armstrong:** It is fair to say that the science on the North Sea cod stock is less than complete and there is some doubt around it, particularly because of the great surprise that fish mortality appears to have risen despite smaller fleets. That is not to say that we dispute the direction of travel, and we are surprised and disappointed that cod is not heading in the right direction more quickly.

I am delighted to say that haddock is part of a long-term management plan. There will be a 15 per cent reduction next year, but that is in accordance with the normal cyclical behaviour of a stock that is being fished sustainably. There are times when we need to throttle back a bit, and now is one of those times.

It is different with cod. The science is not complete. The problem with the 20 per cent reduction in quota is the effect that it will have on the mixed fishery. If cod is one component of the mixed fishery, particularly if the fleet has cameras and the fishing has to stop, or there are haddock, saith or whiting to catch, getting the balance right and accessing the fish that it is perfectly reasonable to access without killing cod once the quota is reached is enormously difficult. That is the issue that catch quotas are trying to address. Cameras are fitted to the boats, and they are allowed to catch and land what they would have discarded, but once the boat has reached its catch quota, it is over. That is the general approach to solving an intractable problem. It is difficult; there are no two ways about it.

**Elaine Murray:** I was slightly surprised to see the 5 per cent reduction for haddock. The ICES assessment suggests that even a precautionary approach could mean that, EU-wide, twice as much North Sea haddock could be landed as is being landed now. That seems to be based on the management plan.

11:45

**Bertie Armstrong:** It is. We are now entering the interesting zone of the difference between long-term management plans, which are trusted and seem to have worked well—the North Sea haddock plan is a good example—and the MSY approach, which works in one way in some cases

and another way in other cases, if a radically different approach is taken.

The problem with an MSY approach is that it will tend to lead to radical and dramatic changes from year to year, which common sense indicates are probably not a good idea and which the market indicates are definitely not a good idea. Starve and flood of a market will not help the industry. That problem, which is one anomaly of MSY, has yet to be wrestled with.

**Helen McLachlan:** One issue that runs through all the discussion on the North Sea is trying to achieve stocks that have a mix of all age groups—healthy and buoyant stocks, which are the best scenario. One constriction is that recruitment has still been relatively poor in recent years. We are trying to work towards good recruitment, which provides a balance of year classes and means that the stock is buoyant and robust.

Bertie Armstrong talked about fishing for the market. We can all do something about that here and now. Focus, attention and effort are needed from all parts of the industry to ensure that we achieve a better return for the fish that come out of the water—fishing less and earning more, which is simple to say.

At the outset, a point was made about members' perspective. The public perspective on fishing seems to be relatively negative. There are not enough good news stories out there and the understanding of what we have is not good enough. We probably all have a job to do on that.

**Elaine Murray:** Is the conservation credits scheme delivering cod avoidance? If so, what is the evidence for that?

**Bertie Armstrong:** Common sense says that the scheme is certainly doing that, but we have yet to receive the complete scientific output, which is required. It is no good if something sounds right or if we tell everybody that it is right—it needs to be scientifically provable. That is being worked on continuously and we expect more results.

Conservation credits are part of a slightly broader picture. If the right thing is done, such a scheme gives a reward, because fish are saved—the management aim is achieved. The position of people who do the wrong thing is prejudiced and penalties are applied to them in comparison with their correctly behaving brother.

That system works well when enough capital, if you like, is available to support it. Conservation credits relate to days at sea. The reward for compliance is extra effort. When enough capital is in the system to give a reward, that scheme works well. However, it is regrettable that external factors—not the conservation credits machine itself—mean that no capital is left. We have gone

from using the asset to incentivise good behaviour and deter bad behaviour to sitting around trying desperately to allocate among ourselves a scarce and inadequate resource. I do not criticise the efforts of the scheme, but that is the reality that we need to break out of.

We need to continue the innovative management that the conservation credits scheme has started. The scheme was intended to be a means of allocating effort and doing good with that, but we have reached the point at which it is just a means of allocating effort—people sit round and decide whether they will be shot or hanged.

**Elaine Murray:** The lack of capital means that there has not been much opportunity to offset kilowatt days.

**Bertie Armstrong:** We have had dramatic activities to retain the days that we have and to stay within the scheme. No new, big and innovative things are left to do; we have had to do such things to preserve where we are. In the end, that becomes counterproductive. Having closed areas may allow for extra effort, but the difficulty is that a point is reached at which the closed areas are so big and frequent that all the extra effort that has been accorded is used in driving round those areas.

**Helen McLachlan:** Bertie Armstrong is right: we are now reaching a critical point for the conservation credits scheme. However, what we must always ask is: where would we have been without it? The Scottish Government took a bold and innovative step in bringing the stakeholders round the table and taking the approach that it did. We are certainly in a better place than we would have been if we had not gone down that road.

The approach now serves as a useful model. On a practical level, we can show other member states and the commissioner the way we could go, which is great. I hope that we are starting to build the capital back up so that we have a more buoyant fishery. The initiative to date has been good.

**Elaine Murray:** When will the scientific analysis be available?

**Bertie Armstrong:** It is being addressed by the relevant Commission body, the STECF. The E stands for economic—it is the scientific, technical and economic committee for fisheries—so broader aspects are being considered. In honest truth, that is a long waffle to say that I do not know when we will get the analysis. *[Laughter.]*

**Liam McArthur:** I suppose that 12 months is a long time in fisheries. You have set out some of the benefits of the conservation credits scheme. This may be due to the lack of capital that you talked about, but I am aware of some recent

misgivings about the conservation credits steering group, which is being seen as a means of telling and informing the industry rather than genuinely consulting it. I would be interested in your view. Perhaps the build-up of capital may see a return to a more consultative approach, as Helen McLachlan suggested.

Just under 12 months ago, we were receiving fairly dire warnings about the introduction of closed-circuit television cameras on vessels. Some of us shared the misgivings—Bertie, you described the idea as a perfect management tool for enforcing a system that is fundamentally flawed. However, Mike Park has commented recently that we should break out of the trial phase of CCTV and embrace the experiment more fully and widely. That may be a reflection of the economic imperative and of the idea being seen as the only game in town, but there seems to have been a shift in the industry's position over the course of the past year.

**Bertie Armstrong:** There has. This is a fair statement: not one fisherman took cameras on board because they recognised that doing so was the morally right way to go in changing the management scheme; they did it because there was a commercial benefit and, on balance, it would make life better, as they would get extra quota and days at sea for it. It is as simple as that.

The sea change that has yet to happen at the quayside is a complete acceptance by all that they will not be prejudiced by the move from accounting for what they land—which means there are discards—to accounting for what they catch. That is the fundamental difference. The unstated bit in Mike Park's statement is that when we get to the bottom of the fish that we are allowed to catch, we will have to stop fishing—end of story—and fishermen need to be able to cope with that. If we introduce something that will cause the white-fish fleet of Scotland to cease its activities in April, we will have lost.

That is a dramatic overstatement of what is likely to happen, but there is a danger in the change. It is a fundamental change of management and it makes perfect sense—why would we not account for what we take from the sea rather than what we land on the quayside, which is largely meaningless? We would like to move in that direction, but we need to do so carefully. Both sets of comments are relevant, because we need to get from A, where we are now, to B, which is a removals-based management system, in steps that do not take the industry down. We also have to cope with the terrible problem of mixed fisheries—how do we cope with stopping when we get to the lowest common denominator?

**Liam McArthur:** Do you recognise the concerns about the conservation credits steering group?

**Bertie Armstrong:** You have described exactly what is happening. Management has been faced with the problem that where it used to incentivise good and penalise bad it now has to divide a limited—indeed, inadequate—amount of effort among the players. That has been the recipe for the current situation in which people simply sit around and get told what to do. In fact, you end up with cabinet corporate responsibility. After all, we decided to engage in this process and, as a result, we sit round the table, deciding whether we will be electrocuted or hanged—and worse still we have to deal with corporate responsibility, which is where the quayside problems arise. The quayside turns on those at the table, saying, "Hang on a minute. I really dislike what's come out of this and you're responsible for it." That is the difficulty for the people like me sitting in front of you. However, we have to make the process work.

The birth of the conservation credits forum has been a very good thing and a big step forward, as Helen McLachlan said. It would be good if the same principle could be applied to making catch quotas work but, although that is the proper way forward, we have to be very cautious. We are missing quayside approval and recognition that we have a new method of management that will work once we get over the problems. We should not forget that we have not got over the problems yet.

**Ian Gatt:** This comment is not going to help, but I think that the committee should hear it anyway. There is another fundamental problem with the quayside. Despite the drive not only in the UK but in Europe towards introducing catch quotas, the harsh reality is that if the measure is to be delivered in any meaningful way, we need Norway's approval, because we are fishing the same stocks. The pilot scheme was introduced last year on the back of our having some currency against Norway, which at the time had no access to the EU zone for its mackerel. Norway now has that access, and the tank is running on empty. If it decides that it is not going to play ball, we will find it extremely difficult to deliver catch quotas in any meaningful way.

**The Convener:** As far as fisheries management is concerned, what upsets the public more than anything else is seeing good, consumable fish being thrown overboard. For the mixed fishery, the issue of discards is extremely difficult. I realise that there might not be any figures on this, but do you have any anecdotal evidence that there has been a reduction in the amount of discarded fish?

**Bertie Armstrong:** No, that is provable and yes, we do have such evidence. I forget the exact figure but the effect on reducing discards has been positive. You have quite correctly put your finger

on the central problem; indeed, we should all have made the point that discarding fish is the one thing that the public simply will not tolerate in future. Catch quotas move us in that direction but the question is how we get to where we need to be without wrecking the place.

**John Scott:** I cannot remember whether it was officially or in the margins but, last year, I asked you whether there could be more co-operative working in the pelagic sector. For example, catch quotas could be used in a joint way to catch less but land more, which could also deal with discards. I do not know, but it seems to me that, given that it has only 25 or 26 boats, the demersal sector works in a co-operative way already. I wonder whether you can comment on that and on whether the four-point plan that was mentioned last year is working or whether we are at least moving towards its development.

**Bertie Armstrong:** We need to move towards developing the plan. Although the industry from which you originally come has gone a long way down that road, we are not there yet by any stretch of the imagination and catching for the market in the demersal sector is by no means a reality. In the early part of the year, commercial pressures and uncertainty, particularly with regard to days at sea, triggered behaviour that resulted in the overall strategic objective of making the most of one's quota over the year—and knowing, for example, when prices might be up, down or otherwise—simply not being met. The market was piled with inappropriate fish at inappropriate times because people thought, "I need to catch the fish now." You get this awful nonsense whereby low fish prices result in higher volumes—

12:00

**John Scott:** I have been there and seen it all in the agricultural industry. That is why I am urging you to consider the possibility of co-operative working.

**Bertie Armstrong:** The subject is still very live. Everyone recognises that they need to catch some fish for the market to maximise profits, but the question is how we get there. WWF and some producers and processors are leading a very good Europe-wide initiative in that respect, and other things are happening in Scotland. In fact, the producer organisations are meeting next week to discuss the matter. Frankly, the short answer to your question on why we are not making any headway on this—which I realise you asked me last year—is that, instead of a more strategic view being taken, commercial desperation in the demersal sector at the start of the year caused certain distortions in behaviour.

**The Convener:** We have to finish now. I thank everyone for their attendance and very helpful evidence.

Because of timetabling arrangements, we will take evidence from Marine Scotland scientists and the Cabinet Secretary for Rural Affairs and Environment on 27 October. If the witnesses wish to comment on any issues that have arisen in the course of this meeting, I ask that they do so in writing. Any points that they might wish to make about the evidence session on 27 October should be submitted immediately after that meeting.

I suspend the meeting for five minutes for a comfort break and the changeover of witnesses.

12:01

*Meeting suspended.*



12:06

*On resuming—*

## **Wildlife and Natural Environment (Scotland) Bill: Stage 1**

**The Convener:** Item 6 is further consideration of the Wildlife and Natural Environment (Scotland) Bill. I welcome Dr Hal Thompson, who I understand has just recently retired from the school of veterinary medicine at the University of Glasgow and who is representing the British Veterinary Association today; Professor Colin Reid, professor of environmental law at the University of Dundee; and Patrick Stirling-Aird from the Scottish Raptor Study Groups.

To make best use of the time available, we will not ask for any opening statements but will move directly to questions. We have all seen your written submissions, which were very helpful.

**Liam McArthur:** We have heard previously that there appears to be a lack of narrative in relation to the bill. It is probably acknowledged that in many senses it will tidy up existing legislation. Professor Reid, in your evidence you talk about the lack of a “unifying vision” and you express disappointment not so much with what the bill does but with what it does not do. Will you elaborate on what you see as a potential unifying vision, if it is not too late to achieve that?

**Professor Colin Reid (University of Dundee):** There are probably two dimensions to that. One is the purely technical point that the state of the statute book in this area is atrocious; it is simply not fit for use. If anybody has tried to plough their way through the amendments that have been made, they will know that it is simply atrocious. Preparing a clean, consolidated text of part I of the Wildlife and Countryside Act 1981 would allow people to see and understand what the law states. Ideally, you would then consolidate the Conservation (Natural Habitats &c) Regulations 1994, which were amended four times in one year. There has been a recent consolidation south of the border, but we are still waiting for it in Scotland.

Once you had done that, you could then try to integrate the 1981 act and the elements of the 1994 regulations that protect wildlife here under domestic and European law. That was done successfully in the Nature Conservation (Scotland) Act 2004 for habitat protection, where sites of special scientific interest and sites designated under European law were largely brought together. You could do the same for the species protection measures. Then you could do the tidying up and harmonisation that you have heard

about in relation to powers of entry, single witness offences and so on. That is the more technical side of it.

The other dimension is the much harder issue of working out what we are trying to achieve in the countryside. That is essentially a political matter. Is there a vision? The bill that has emerged is much better than the initial consultation paper, which seemed to show that each individual chunk was being driven by quite different purposes. For example, at one time, particular elements of the deer legislation seemed to be about deer welfare; at other times, they seemed to concentrate on the control of hunting effort. The purposes were not clear.

If you tidy up the technical side, you then have a strong basis on which we can start debating what we really want to achieve.

**Liam McArthur:** From your experience of discussions with other stakeholders and possibly even Government officials, do you think that there was ever an intention to undertake the sort of tidying-up of the rather cluttered and messy landscape that you have described?

**Professor Reid:** When the 2004 act was being debated, there were some big suggestions that the Government thought that it would be a good idea to get round to consolidating it all sometime, but that has not materialised yet.

**Elaine Murray:** You make the interesting point in your submission that the bill will introduce a section 14ZC into the 1981 act, which indicates the amount of updating that has gone on over a period of time. Obviously, consolidation would be a fairly onerous piece of work. Can you suggest who might best be able to advise the Government if it was looking at bringing together all the legislation?

**Professor Reid:** I find myself slightly mystified as to why nowadays consolidation is always seen as being quite so difficult, given that there are commercially run electronic databases that give you at least a very good starting point for producing a more or less clean text of an act as amended. That leaves all the difficult issues of the knock-on effects, the investigation of all the side issues and so on. My experience is that that is largely a matter of resource. Consolidation is not sexy; it does not win you votes. It pleases a few lawyers and lots of students. There are large chunks of statutory material that I feel that I simply cannot teach students by using the primary sources, because they are in such a mess. Consolidation takes time and effort. The gains are not felt by lawyers, because many of the people who are working with the legislation day to day have their own electronic updates. Previously, they literally cut and pasted versions to work with.

However, having clearer legislation is so important to ensuring public access and understanding. It helps you to explain what the law is, which helps you ensure that it is understood and enforced.

**Elaine Murray:** Your submission also refers to the reliance on codes of guidance, general licence directions and so on. That approach is not confined to the bill; it has been a characteristic of most of the legislation that we have put through the Parliament. Do you think that the balance is right? Should more appear on the face of bills?

**Professor Reid:** There are two issues. One is that as far as possible you should have stuff on the face of the legislation itself if people are to be guided by it. However, I fully accept that, particularly in dealing with the natural environment, where there are so many different circumstances and contexts, it is impossible to have clear, simple, sensible rules for everything.

The second issue is how the further details are to be provided for and scrutinised. There is an issue with codes of practice. The more important they become to how people understand the law and how they apply it, the more you have to consider whether they are being scrutinised properly. There is a huge difference between what is in the law, on which legal rights and prosecutions are based, and simple guidance. However, when that boundary gets blurred because the law is expressed so vaguely that, in practice, the guidance becomes more important, you need to think about how that guidance is presented, whether there is accountability for it and whether it can be accessed appropriately.

**Elaine Murray:** Is there anything that you think ought to be on the face of the bill but is not?

**Professor Reid:** I worry about the breadth of the provisions on non-native species. There will inevitably be difficult, marginal decisions to take because of scientific uncertainty around a range of circumstances. However, I think that it would be possible to put in some guidance to provide a bit more information that at least helps to frame the discretion and considerations that will be applied at a later stage and which addresses the extent to which the Parliament should have an opportunity to scrutinise some of these measures. That would not necessarily happen every time a change was made, but there should be a more formal requirement to conduct a review every now and again or the first time that codes are produced to ensure that they are given the attention that they deserve.

12:15

**The Convener:** Let us focus on what you have said about invasive non-native species. What problems might arise from the use of terms such

as “native”, “native range” and “in the wild”? Could guidance provide a clear explanation of how they are to be construed?

**Professor Reid:** That is a difficult issue. There is huge scientific argument about what is meant by “native”, “indigenous” and so on. There are also problems with time periods concerning native species that are naturally reintroducing themselves or are being reintroduced by deliberate or unlawful human activity. The phrase “in the wild” tends to make people think about animals, but it is plants that particularly worry me. What on earth is “in the wild” for a plant? If a roads authority plants crocuses at a roadside, it is introducing a non-native species into the wild. Will you prosecute every roads authority that does that, or will there be an option for ministers to make orders excluding from prosecution planting by particular people within a certain distance of the roadside? You have received evidence from the falconry people, whose whole activity often involves the release of non-native species into the wild. It might be possible to have a ministerial order to deal with that specifically; however, you would end up with many exemptions and a complicated law.

Although the basis of the precautionary approach—you just do not do it—is good, it is difficult to strike the right balance. It might be useful to include some guidance in the bill, so that the Scottish ministers do not have carte blanche in deciding future control of what happens.

**Bill Wilson:** I presume that part of the definition is whether the species is within its natural range. Most falconry would involve the bird being within its natural range in Scotland; therefore, it would not be the introduction of a non-native species. I also presume that, if the plants that an authority planted by the roadside were native species within their own range, they would not fall foul of the legislation.

**Professor Reid:** They would not. However, I believe that some falconers use more exotic species, and lots of plants that we plant are not native. An awful lot of garden flowers are not native. The lodgepole pine and Sitka spruce are huge forest trees. Is a forestry plantation “in the wild” or not? If you dumped somebody there on a wet Saturday evening, I think that they would say that they were in the wild, but would the area be in the wild for the purposes of the bill?

**Bill Wilson:** You have probably read the submissions that we have received on single witness evidence. Your own proposal is to harmonise the law. It has been suggested to us that such evidence is never actually used. Do you know whether it is used?

**Professor Reid:** I have no practical experience of that at all. I just wonder why it is included in the bill. If it is in the bill but not in other legislation, why is that?

**Bill Wilson:** So, when you talk about harmonising it, do you mean getting rid of it entirely, or—

**Professor Reid:** A consistent approach could be that we need it for this and lots of other things because it is useful and helpful, or that it is not worth while and we should scrap it altogether. The inconsistency here and in other elements of the bill and other legislation makes life harder for everyone.

**Bill Wilson:** You say that you are not aware of single witness evidence being used, but do you envisage its ever being used?

**Professor Reid:** I never qualified as a practising lawyer; I am a pure ivory-tower academic. I am afraid that I do not know. I am unqualified to do anything, so I cannot answer that, I am afraid.

**The Convener:** Mr Stirling-Aird, do you have a view on single witness evidence?

**Patrick Stirling-Aird (Scottish Raptor Study Groups):** There is an illogical position at the moment, as such evidence will apply in egg-collecting cases but not in the case of someone who is seen shooting a golden eagle. The view of the Scottish Raptor Study Groups is that single witness evidence ought to be either taken away or expanded to cover more situations in which crimes happen in remote places and evidence is extremely difficult to get.

Colin Reid mentioned falconry. Although native species are used, many falconry birds are now hybrids and there is real worry that, if those hybrids escape, they will mate with native species and dilute their genetic purity, if I can put it like that.

**Bill Wilson:** I will give you a scenario that was put to us by RSPB Scotland. If a hill walker finds a poisoned golden eagle on a hillside, that can be evidence; however, if an RSPB officer goes on to an estate and looks for said golden eagle, that cannot be evidence. It has been suggested that the law might be changed to allow people to enter what are rather large estates to look for poisoned golden eagles, but Sheriff Drummond said that that would create great problems. To be fair to Sheriff Drummond, I am paraphrasing, but he seemed to suggest that there was a parallel between large estates and back gardens in terms of the rights of the police and other individuals to enter to collect evidence. Can you provide any comment on that?

**Patrick Stirling-Aird:** I have heard recently that there would be a lot of advantage in having a multi-agency group to investigate. I read the evidence from the Scottish Society for the Prevention of Cruelty to Animals. It seems sensible that the SSPCA should have an extended power to go on to land to investigate dead animals—poisoned birds, for example—as well as live animals. Was that RSPB Scotland's point?

**Bill Wilson:** It was about the need for a warrant. If someone finds a poisoned bird while they are walking across a mountainside, that is legally admissible evidence—I am sure that one of our witnesses will correct me if I am wrong. However, it would not be legal for someone to go looking for a poisoned bird that they had been told was there without a warrant. RSPB Scotland asked whether that situation should continue. I was also going to ask you about the SSPCA's evidence, though, so thanks for answering that question.

**Patrick Stirling-Aird:** As I understand it, there is a grey area around someone—say, an RSPB Scotland employee—going looking for evidence. There was one court case involving peregrine falcons down in Peeblesshire, in which that type of evidence—I think that it was video evidence—was thrown out as being inadmissible. However, I believe that there have been other sheriff court cases in which such evidence has been admissible.

There is a need for more evidence gathering, if I can put it as broadly as that, to deal with some of these crimes. Wildlife crime has rightly been described as a crime without witnesses.

**John Scott:** As I understand it, Sheriff Drummond's point was that to extend the powers of search and entry that only an impartial group—the police—currently has to people such as SSPCA officers would be to give those powers to people with a declared vested interest. What are your views on that?

**Patrick Stirling-Aird:** If asked, the SSPCA might say that it does not have a vested interest and that it is objective—that would be the obvious answer. Logically, it would make sense for the police to do all of that work if they could; the trouble is that they are underresourced for wildlife crime. It is up to the individual chief constable to decide how much attention he pays to wildlife crime and, in Glasgow, he may feel that there are too many murders and drug problems to devote much resource to it. I may be straying from the main point here, but I believe that wildlife crime is also not a recordable crime. If it was technically a recordable crime, there would be more incentive for the police—in fact, more pressure on them—to deal with it.

I have not been in this position myself, but if somebody finds a dead bird or an illegal trap it is often very difficult for them to get a police officer to come out. That is why there is a need to broaden the investigatory powers in some way.

**Bill Wilson:** I do not want to get tied down to just the SSPCA. The implication was that if an individual from any organisation was told that a dead bird that had been poisoned was on a site and they went and looked for it, that might not be admissible evidence. John Scott makes a good point, which I am curious about. If such evidence was admissible—if people could go on to the land to look for the bird without a search warrant—would that have major implications in relation to entering homes, or can we legally differentiate clearly between 80,000 acres and a house and its immediate environs?

**Patrick Stirling-Aird:** I think that there is a big distinction. The police need search warrants to enter houses and perhaps other buildings—I am not sure. There is a vast difference between entry on to 80,000 acres in the middle of the Cairngorms and, for example, intruding on the privacy of a gamekeeper in his house and garden. I could see a human rights issue perhaps coming up. If it does, I think that it should be less of a concern in relation to the 80,000 acres than it is in relation to someone's house and garden.

**Bill Wilson:** Perhaps Professor Reid, as a legal expert, has a view.

**Professor Reid:** I am a legal expert on some things but certainly not on the laws of evidence. I have some concerns about diverting from the standard rules, because somebody's property is somebody's property. Where do you start drawing the boundaries? The law has enough trouble with things such as premises. For example, in another context, issues have been raised about polytunnels. If you want to be able to walk around a field that is covered in polytunnels, are you actually going into buildings?

I do not think that the matter should be dealt with on the hoof. There is a bigger issue with powers of entry and inspection, which should be looked at a bit more thoroughly. There are appropriate parallels with the powers of wildlife inspectors and other people. There are even the utility companies' wide powers of entry for various purposes. The list goes on. The focus should not be too narrow.

**Bill Wilson:** But if—

**The Convener:** Dr Thompson has been waiting to come in for ages.

**Dr Hal Thompson (British Veterinary Association):** In my time at the University of Glasgow, I was a pathologist, so I have probably a

great deal of experience of wildlife crime and of the victims of wildlife crime being brought to my post mortem room. As has been suggested, there is a problem with evidence.

I had an open-door policy. If somebody brought me something that was dead, I would post mortem it. I did not work for a particular interest; I would post mortem what happened to arrive. The majority of wildlife crime was brought to me by the SSPCA rather than by police forces. One reason for that is public perception. The public has a right of access. Say a member of the public wandering across a piece of ground comes across a badger that is snared by the body. If they are offended by the presence of the dead badger, sometimes the first people they approach are the SSPCA, which they regard as being responsible for animal welfare. They may not necessarily go to the police force because they think that, if they do, there might be complications. That is the public's perception of welfare. The problem is that, if the SSPCA collects the badger's body, that evidence may not be admissible, because the SSPCA does not have the same rights as police officers have in such circumstances. That issue should be examined.

I support the SSPCA's proposal. I do not think that it is asking for the right to search premises, which is entirely different. I think that the SSPCA would wish to have the presence of police officers with its officers, because in those circumstances it would operate as a joint agency. The SSPCA is not asking to be allowed to burst into premises or anything like that. The issue is about the practicalities of finding dead bodies and dealing with evidence.

12:30

**Bill Wilson:** Can you clarify one thing for me? If someone calls the police and says that they have found a badger or a poisoned bird, do the police need to get a warrant to enter the land to collect the carcase or can they just collect it?

**Dr Thompson:** I do not think that the police need a warrant.

**Bill Wilson:** They can just go on to the land.

**Dr Thompson:** I think that they can do so by right but, theoretically, SSPCA officers would require a warrant. The practicalities are that the public will phone them up and they will go and assess the situation. If they find an animal that is close to death or one that they have to put down because it has been badly damaged by a snare, it will be problematic whether that evidence is admissible.

**Bill Wilson:** Yes, that is my understanding.

**Peter Peacock:** There is an issue that I want to clarify before I come on to my main point, because I think that there is a danger that John Scott said something that I do not think was correct. My understanding of the situation is that if an SSPCA officer arrives at the scene of an incident—let us say that a bird has been caught in a pole trap and is still alive when the officer arrives—they can deal with the matter almost in the same way as the police could deal with it. They have the right to caution people, to take statements and to seek evidence. I think that it is also the case that they are authorised by ministers to enter premises when there is an animal welfare issue.

It is my understanding that if they arrived three minutes later and the bird was dead, they would not have any of those powers. That is the issue. The SSPCA says that it attends most incidents for the reason that Dr Thompson has given. If it is an animal welfare case and the animal is still alive, its officers can deal with it, but if the animal is dead, they cannot. We need to clarify the position—perhaps we can come back to that. I just wanted to put it on record that we need to sort that out.

I want to widen the debate. You will have heard the arguments about people's concern that bird poisoning or the trapping and subsequent disposal of birds, which has caused great public outrage, is still continuing. The trend in the recent past seems to be that the number of such incidents is increasing rather than declining. People are fed up about that and want something to be done.

An issue that emerged at a previous meeting was that of vicarious liability. Sheriff Drummond rightly told us to be careful how we used the term "vicarious liability", as it has a specific meaning in law, and I am sure that he is right about that. Nonetheless, there is a sense that we must be able to put a greater responsibility on the owners or managers of estates to ensure that, ultimately, someone is accountable for what happens on those estates. That is the context in which the concept of vicarious liability has come up. I would be interested in the views of Professor Reid and Patrick Stirling-Aird on that, particularly in the light of Sheriff Drummond's evidence to us—if you have had a chance to look at it—and his subsequent supplementary submission.

**Patrick Stirling-Aird:** My feeling is that something, whether it is an additional form of licensing or vicarious liability, is needed, partly to deal with a moral question. I will try to explain what I mean by that. I know that reference has been made to a scorched earth policy with grouse management. In a situation in which an owner or manager feels the need to carry on breaking the criminal law, year after year, they will argue against personal responsibility. They will argue that the law does not need to be strengthened

while continuing to let their employee carry the can. If the employee is caught, he will be prosecuted and convicted, but they will be in the clear.

There are different shades. There are those employers—incidentally, I am a member of the Scottish Rural Property and Business Association, so I think that I can see that side of it—who do their best to make their employees stick within the law, there are people on the middle ground and there are those at the extreme grouse moor management end of things, for example, who may put in written contracts, "You will obey the law," but who do not mean it and who put pressure on the employee to break the law. I think that there is a strong moral fallback on an employer in that position.

**John Scott:** How could we prove that someone did not mean what they put in a contract?

**Patrick Stirling-Aird:** Some will mean it and some will not. There is not court-of-law proof; there is anecdotal information. It cannot be relied on totally, but we can draw something from it. I am not saying that it meets the standard of evidence—of course it does not—but I have heard stories about interviews with gamekeepers in which that sort of point has come up.

**Peter Peacock:** Sheriff Drummond, in his supplementary evidence, drew close parallels with the world of drugs supply. In relation to drugs, the law explicitly provides for what you have just described, but it does not do so in relation to bird poisoning. Just as you cannot produce absolute evidence, very few people could produce absolute evidence that somebody is behind a drugs cartel, but we have created a law to get those people nonetheless. I ask Professor Reid to comment on that point and on my earlier questions.

**Professor Reid:** Vicarious liability has been a long and complicated saga in the law, particularly in relation to corporate liability and the extent to which a company is liable. There is a useful discussion of many of the issues in the English Law Commission's paper "Criminal Liability in Regulatory Contexts", which is mainly about corporate liability. It might be a trust that owns an estate with an individual managing it. Among other things, the Law Commission points out that we can create specific offences to deal with the particular mischief that we are aiming at. It gives the example of the new Bribery Act 2010, under which a company commits an offence if somebody who is connected to it commits an act of bribery on its behalf. The company has a defence if it had adequate procedures in place to prevent the offence. In the context that we are discussing, that would require more than just having something in the contract; it would require being able to show

that the instructions that gamekeepers were given were appropriate.

If you try to apply a general concept such as vicarious liability in one area, the question is: why pick that area rather than others? It is better to have a particular offence. You would need to identify what you are trying to capture and what you can actually prove in the circumstances that are likely to arise and then try to target it that way.

**Peter Peacock:** From what you say, you believe that it is possible to have a specific offence in relation to the issues that we are describing and to construct the law in such a way that we increase the chances of prosecuting the right people, if that is the ultimate desired outcome.

**Professor Reid:** You could do that, but you would have to be clear about exactly what you were trying to get at and be aware of the need to be fair all round. You do not want to have neighbours feuding and lobbing dead birds over the fence on to each other's land and things like that. I hope that that does not happen, but we need to think about how the system could be abused.

**John Scott:** Anecdotal evidence suggests that it does happen.

**Patrick Stirling-Aird:** Well, you hear such stories.

I want to add a further point that has occurred to me on vicarious liability. An element of fairness and fair play should obviously come into the matter. I wonder whether it would be a more acceptable provision if there had to be a history of continuing criminal activity, as some places have. Some estates have been named publicly, although I will not name them now. In two or possibly three estates, there has been a run of several years in which poisoned birds, illegal traps of one form or another or shot birds have been found. If an estate has had eight, nine or 10 years of that, as in one case, would a vicarious liability provision be fairer than it would be in other cases?

**Professor Reid:** If we take the example of the Bribery Act 2010, under which a company is liable unless it shows that it has adequate procedures, if there had been eight years of the same thing happening, it is fairly obvious that any defence that was mounted that adequate procedures were in place would fail. That thinking might be a way forward.

**Peter Peacock:** I want to move us on slightly. I recognise that there are highly complex legal questions on the concept of vicarious liability that might ultimately make it difficult for it to stick.

In today's evidence from the raptor study groups, and in evidence from SNH and others, we have heard about the alternative notion of

licensing estates to carry out grouse shooting, for example. There seems to be an association between grouse moors and potentially illegal activity, although it is not everywhere.

The notion is that if we could find a way of licensing an estate, and there were breaches of the terms of that licence, which would have to be specified, and if there was evidence over time—as there has to be with pub licences if there is constant rowdiness or the police believe that drugs are being supplied from the pub—when the committee next considered the licence, it could decide whether to remove the licence to practise or to place constraints on it. Licensing might not be an alternative, but could it be a way of dealing with the problem?

**Patrick Stirling-Aird:** Licensing could be an alternative or an add-on, but there would be a lot of sensitivity about that and, in a way, it brings me back to the moral point: it might help to tackle what I see as the moral falling down of some owners and managers of land. I presume that removal of the licence would come in only when there was a conviction, not on suspicion, which would be quite right. I understand that in the European Union, for example, Germany, the Netherlands and Spain have procedures that one could follow. There is a lot to be said for the idea.

Incidentally, it is not just upland grouse moor estates that would come into the picture. For some species, particularly the goshawk, there is a good deal of evidence of lowland bad practice. It is a neglected species, in a sense. We hear about golden eagles, peregrines and hen harriers, but we do not hear so much about goshawks. Licensing would have implications for lowland estates as well as upland ones.

**Peter Peacock:** Have you thought about licensing as a mechanism, Professor Reid?

**Professor Reid:** I have thought about it as a technically possible solution, but I am not convinced because the costs and the burden would likely be disproportionate, especially when we try to define what is being licensed, how often it has to be reviewed, how transfers of licences will be dealt with when estates change hands, whether there should be an appeal procedure, how renewals will be done, whether there will be fees to pay and so on. I am not convinced that the mechanism would be in proportion to the size of the problem, serious though it is.

**Patrick Stirling-Aird:** I disagree with that, although I am coming from the specialist perspective of raptor monitoring and conservation.

We have had years and years of the voluntary approach. Leslie Brown wrote a book in the "New Naturalist" series that was published in 1976, and it dealt with the situation up to 1972. He was

convinced that the soft sell had failed and that what was needed was a good hard bang on the ear. That is equally true now.

It might be in the interests of estates as a whole for such a licensing scheme to happen. I know that they argue against it, but for those in the conservation community who have information about the issues, shooting management has had bad press. The bad apples spoil it for others.

In the long run, if we had a more stringent enforcement system using one of the proposed methods, the public perception of sporting and shooting would improve. It would benefit the estate-owning and sporting community rather than work against it, and it would help to finally get rid of what are still quite widespread bad practices.

**John Scott:** Dr Thompson, do you have a view on licensing?

**Dr Thompson:** I have a very general and personal view. We are several steps away from holding estates responsible for their employees. I think that estates would put up quite a striking defence, particularly having seen the defence of certain individuals by powerful advocates for what might otherwise be regarded as fairly minor offences.

You should concentrate on and enforce the current legislation, and things will follow from that. I would not recommend diverting your efforts away and going along a more vicarious route. I would concentrate on what I think is reasonable and effective legislation, and then enforce it.

12:45

**Patrick Stirling-Aird:** One of the problems is that although the existing legislation is good it is not enforced. With spending cutbacks, what will police forces do? They will perhaps spend less on enforcement than they do at the moment.

**Dr Thompson:** There are agencies that can investigate and enforce, and they should be encouraged to do so. Some areas are difficult places to go, but if convictions are brought things will eventually come to the surface.

**The Convener:** Thank you for that. We must now move on.

**Aileen Campbell:** We have heard a range of opinions from witnesses regarding snaring. We heard from the Scottish Gamekeepers Association that, when an animal is caught,

"its instinct is to lie like a dog or hide,"—[*Official Report, Rural Affairs and Environment Committee, 7 September 2010; c 2975.*]

especially at night. The SSPCA witnesses told us something different—that they have seen a lot of injuries caused by snares. We heard from the

Veterinary Association for Wildlife Management, which emphasised the fact that a snare is used as "a restraining device," and told us that the way to ensure that that happens effectively is good design. Do the witnesses—Dr Thompson in particular—think that it is possible to make a judgment about how humane snaring is compared with other methods of predator control?

**Dr Thompson:** Any form of control of vermin is not pleasant. Being trapped by a snare is not pleasant. The natural instinct of an animal that is trapped by a snare is to attempt to get away. In some cases, they will do the most remarkable things. I have seen otters spin on a snare; they will turn a legal snare into something that is illegal. I have fairly big hands, and I could not unwind it. The force that is required to turn a wire snare several times is unimaginable.

You have to accept that snaring is an unpleasant activity. However, if someone's birds or lambs are being eaten by foxes, for instance, or if their fields are being destroyed by rabbits, they need a reasonably effective means of disposal. What is in the bill is excellent. If the bill is adopted and its provisions put in place, that will provide for very effective use of snares. In other words, you would be telling people that snares must be checked within 24 hours, that they must have labels and so on. All those things are very sensible and reasonable controls, and they present a balance between the people who require snares and the people who are interested in the protection of animals and animal welfare. I do not have any problems with what the bill contains in that regard. It is a commendable piece of proposed legislation.

**Patrick Stirling-Aird:** I would not argue with that. However, the question of snaring is not within the ambit of Scottish raptor study groups. I have some views on the subject, and every individual member will have his or her views on whether or not snaring is justifiable.

There is one aspect that is definitely of concern to us, however, and we responded to the Scottish Government consultation on it a year or two ago: the snaring of mountain hares. They are an important prey species for raptors, particularly golden eagles. In some places there has been a policy of attempting to eradicate mountain hares in order to stop the louping ill disease and to benefit red grouse. A fairly recently published paper says that that is a waste of time. Leaving aside whether it is or is not, however, and acknowledging that it is legally a grey area, I think that steps should be taken, one way or another, to stop the widespread culling of mountain hares by snaring.

**Aileen Campbell:** Dr Thompson, from your career experience, could you give the committee a

bit of a steer regarding the effects on an animal that has been caught in a snare for 24 hours?

**Dr Thompson:** The animal will be damaged, but it depends on the type of animal. If someone catches a fox in a snare, they have caught the intended victim, and their job is then to dispose of the fox humanely, which is normally by shooting it. The problem comes when species that are not intended to be caught are caught, for example badgers or otters. The bill says that, because a snare is free-running, the badger or otter should be released. That is not as easy as you might imagine: the animal will be angry and they have large teeth, and a person without gloves who attempts to release them single-handed has practical difficulties in doing so.

In some cases, if an animal is in a snare for 24 hours the skin will probably break after it is released. I have sometimes wondered whether to release a badger in a snare or shoot it. Would it be more humane to shoot a badger that I have found in a snare? If I heard that someone had chosen to shoot a live badger caught in a snare, I would not necessarily criticise them. I have examined the skin from badgers under those circumstances, and I have found underlying pathology. In other words, I can imagine that after the animal is released the skin would break a week later, because of the pressure that is created.

Snares are a necessary evil—I speak as a veterinary surgeon. If you were to take a vote of all veterinary surgeons, I suspect that the majority would be opposed to snaring, but a different view would probably be taken among rural veterinary surgeons. It would be much the same as asking veterinary surgeons whether it is a good thing to eliminate badgers. The vote would probably be that it is not, but veterinary surgeons in the south-west of England who deal with tuberculosis would take a different view.

The use of the snare is something that we expect, sadly, but I return to the point that I have already made: I could not fault the proposed legislation—I think it is excellent. It has to be enforced, however.

**Aileen Campbell:** Thank you. It is right to express the balance that is required to ensure effective management.

**Peter Peacock:** Something occurred to me when you were speaking earlier. Do vets come across illegal or other snaring incidents often? Are they often called out for that?

**Dr Thompson:** There is a wide range of circumstances in which damaged or injured animals come to vets. On the point that Bill Wilson raised, if someone who is out climbing a hill or wandering through a wood comes across an injured animal, what is their first port of call? Who

do they take it to? In some cases, they will take it to a vet, who ends up looking at the injured animal. It is a matter of perception. If that vet thinks that there has been an offence, whom do they contact?

**Peter Peacock:** That was going to be my next question.

**Dr Thompson:** The point of contact would be the SSPCA, because vets regard it as a welfare organisation. The vet would not necessarily think that there had been a crime, although I applaud the wildlife officers who work under the partnership for action against wildlife crime for their efforts.

**Peter Peacock:** Let us go a stage further. When someone dumps on you the body of a poisoned bird or an animal that has been damaged in a snare, are you under a duty to report that to the police or to anyone else? Are vets under a duty to take such action?

**Dr Thompson:** Vets have two duties. If they found something that they thought was wrong, they would report it on moral grounds. If they thought that a crime was involved, they would have to take action.

**Peter Peacock:** Is that part of the professional ethic or code of a vet?

**Dr Thompson:** Yes. In the past year, I have seen about 20 dead buzzards of various sorts. You start by looking at them as dead animals with no history, as no one brings them in. The majority will have died from emaciation, simply through lack of food. Life is tough out there, even for a buzzard. However, you will find some with carbofuran, which consists of little blue pellets. I refer such cases to the person who brought the bird to me—sometimes that is a wildlife officer or someone from the SSPCA—so that they can take the matter on from there.

**John Scott:** We have received a submission from Grigor and Young about snaring. It refers to section 13 of the bill, which will insert in the Wildlife and Countryside Act 1981 a new section providing that

“The identification number which appears on a tag fitted on a snare is presumed in any proceedings to be the identification number of the person who set the snare in position.”

The submission suggests that the problem with the provision is that snares can be tampered with by others or moved by wild or domestic animals. Unless the person who set the snare had photographic proof that they had set it in a particular way, it would be difficult or impossible for them to prove that they had not set it incorrectly. Have you considered that?

**Professor Reid:** I have not considered it in detail. I know that vaguely similar provisions in



road traffic legislation—the presumption that the licensed keeper of a motor car is the person who parks it or who was driving—have given rise to human rights arguments, but I cannot remember the outcome of those cases. The provision is not unique, but it is of a sort that can cause difficulties. Given that so much can happen to a snare in the wild, I can see why there are concerns about the provision.

**John Scott:** The problem that the committee faces is that, although all of us are opposed unequivocally to wildlife crime, we are struggling to find the best way of delivering the proper proof that is necessary for a case to stand up in a court of law.

**Professor Reid:** The provision is a way of avoiding that. We must consider whether penalising the person who is authorised to set the snares is going too far or whether it is an appropriate way of ensuring that they devote proper care and attention to what they are doing.

**The Convener:** We will move on to species licensing. There seems to be an anomaly between protection of species under the natural habitats regulations and under the Wildlife and Countryside Act 1981. Do you agree with SNH that the tests of public interest that both pieces of legislation require are the same?

13:00

**Professor Reid:** A separate test applies to birds. In relation to animals, the 1981 act has a list of specific purposes for which licences can be granted with regard to species that are protected under domestic legislation. Under European regulations, however, as well as some specific items there is a more general provision about a licence being granted for social, economic or environmental purposes. It seems to be a bit odd that there is broader provision for the European species, which were supposed to be the more protected ones, than for the domestically protected species and that we had to fit within narrow gaps. Given that the provision in the bill talks about there being

“a significant social, economic or environmental benefit”

and

“that there is no other satisfactory solution”,

I think that it is just to make life easier rather than to force things into narrow categories or discourage people from seeking a licence because they think that they might have trouble fitting into its requirements even though it might be justified. I do not see any particular problems with that broader provision.

**The Convener:** If someone is refused a licence, should there be an appeal mechanism and, if so, to whom?

**Professor Reid:** Appeals are a big issue, given all that is happening in relation to the civil courts review and tribunal systems. With the licensing powers being transferred to the ministers, if the ministers were to refuse to issue a licence, any appeal would have to be to an outside court, tribunal or some such body—perhaps to the Scottish Lands Tribunal or Scottish Land Court, which has the SSSI powers. If SNH has such licensing powers, there could be an appeal to ministers.

Is an appeal mechanism necessary? If the expectation is that one will not get a licence, and so being allowed one is a bonus, it is arguable that there is less need for an appeal mechanism. If, however, your view is that the prohibition is deliberately broad and people expect that they will be allowed licences, an appeal provision is more appropriate. From a Human Rights Act 1998 point of view, would the decision to refuse a licence determine somebody's civil rights and liberties? I suspect that it would not, on the basis that if the general prohibition is acceptable, that is the starting point and any licence is an exception from it rather than an interference with rights. I could set an essay on the subject for my students and I would expect them to argue both ways, but on balance, I would say that an appeal provision is not necessary. Thank you for the suggestion for my course.

**The Convener:** Let us move on swiftly to raptors. Peter Peacock has some questions.

**Peter Peacock:** There appears to be evidence of an unexplained number of missing raptors in certain territories—there are up to 50 fewer golden eagles than might be expected annually in certain territories. Equally, the spread of red kite on the Black Isle seems to have come to a stop when one would expect numbers to be higher. There are other bits of similar evidence. What evidence is there for that situation from the raptors groups or others?

**Patrick Stirling-Aird:** There is a great deal of circumstantial evidence, although I think that it is also scientific. If, in a suitable habitat, you have the absence of a species that is adapted to that habitat and should be there and you know that it is in adjoining areas not too far away, that is an indicator of persecution. The corpses and instances that are discovered are the tip of the iceberg. The figure of more than 50 golden eagles killed annually in Scotland is an accurate estimate that comes from several different directions, including statistical analysis.

I touched on peregrines a moment ago. Just two days ago, I got hold of information from south-east Scotland, and as in quite a number of previous years there is a presence or absence issue there as well. A minority of the peregrine territories in that area are on grouse moors, but about half of them are unoccupied. It goes back to the extent to which the evidence is circumstantial or anecdotal, and in cases in which there is hard evidence, it goes back to persistent killing. The difficulty is that there is lots of circumstantial evidence—I gather that the national wildlife crime unit would like to know about such evidence so that it can build up a picture—but there is little evidence in the form of corpses.

If you do not mind my speaking for a minute or two longer, I will give an example that I heard not too long ago. Because more attention is being paid to poisoning, the people who carry it out are being more careful. I have heard of a technique that involves putting out clean and unpoisoned carcasses for a time—perhaps two weeks or so. Because of the risk of being caught, the person, at the end of the two weeks, will put out poisoned carcasses late in the day and go round fairly early the next morning to remove the evidence. The poison may have killed some foxes overnight, but it might also kill ravens, buzzards or golden eagles in the morning. You can see what I am getting at, which is the difficulty of uncovering evidence in that sort of scenario.

**Peter Peacock:** There is a scientific, statistical way of arriving at certain broad conclusions about the absence of species where we would expect to find them, but your members are out and about in the field all the time. Are they coming across traps or birds on their travels, or coming across carcasses that perhaps end up on Dr Thompson's slab in the lab?

**Patrick Stirling-Aird:** In a few cases, but I believe that most carcasses are discovered by walkers in the countryside rather than by amateur conservationists, if I can put it like that. Again, it boils down to the circumstantial side. There is another factor. We find that, if there is a change of gamekeeper, things can get better or they can get worse. Now that is strong circumstantial evidence. To put the matter in perspective, in many places where there is raptor persecution, it has always been bad. In recent years, some estates have got better and others have got worse. That takes us back to the scorched earth scenario. However, the direct, physical evidence is so difficult to recover.

**Peter Peacock:** Just moving on a bit further, but in a slightly different way, the argument is made that, if licences to take buzzards were readily available—part of the argument is around the release of hand-reared pheasant and red-legged partridge—the incidence of poisoning would

decline. What is your general view of licensing people to take buzzards?

**Patrick Stirling-Aird:** The argument that things would decline if there were licences is rather like somebody saying, "If you allow us to do a bit of shoplifting, we won't do any more housebreaking." That is my answer.

At present, the licensing issue is particularly focused on buzzards in relation to reared and released pheasants. Buzzards are to some extent predators of pheasants, obviously, but they are being hyped up as a great problem. We only have to drive along some country roads to see what the problem is for pheasants—we see them squashed on the road. I do not think that we have evidence that buzzards cause serious damage, so I do not think that licensing the control of buzzards is justified. There would be all sorts of practical problems.

Game bird management of that sort has some benefits, for example through the planting of game crops, but a grey area about which knowledge is lacking is the impact of large numbers of non-native game birds on natural wildlife. I understand that no studies have been undertaken on the competitive effect of pheasants and red-legged partridges vis-à-vis native wildlife. I could go on, but I do not want to. When I put together quite a lot of threads, I see no justification for the licensing that you mention.

Ravens are a slightly different kettle of fish, because a farming issue is involved. One might be able to attribute to ravens more solid evidence of damage, although that might be hyped up, too. For game bird management, I see no justification for licensed control of otherwise protected species.

**Peter Peacock:** It helps to have your position. Part of the argument rests on classing pheasant and red-legged partridge as livestock. I am interested in whether Professor Reid has a view on that.

**Professor Reid:** Not in detail, I am afraid.

**Peter Peacock:** That answer is splendid—thank you very much.

**John Scott:** In the same way as Mr Peacock just led Mr Stirling-Aird through his evidence, I will ask Dr Thompson and Professor Reid—or Mr Stirling-Aird—for a view. Mr Stirling-Aird said that the 50 missing golden eagles were an indicator of persecution and that golden eagles were killed annually. I suggest that they have died annually but that the figures do not necessarily indicate persecution. As Dr Thompson said, many buzzards that are delivered to him have died of natural causes—of hunger. Food is limited—otherwise, the animals would not take the baits that it is alleged that they are being given. They

would not touch something unless it was natural. Hungry animals out there are dying from natural causes. Do you accept that that causes the death of many eagles?

**Patrick Stirling-Aird:** Yes.

**Dr Thompson:** The agents that are used to poison animals need to be considered. The ideal poison operates such that the animal consumes it and goes 10 miles away to die or it causes the animal's body to explode after consumption, so that nobody realises that the poison is there. The poison that is commonly used is carbofuran, which tends to kill straight away. The animal dies where it ate the carbofuran. Just as the bill says that snares should be checked every 24 hours, I suspect that the problem is that people in some areas check for and remove poisoned animals, so the evidence is removed. When carbofuran is found, it must have been locally administered.

I take John Scott's point that some animals die of natural causes. Finding that out is the job of pathologists, who look at dead bodies that are brought in.

**John Scott:** Of the 20 or so buzzards that you are given annually, how many have died of natural causes?

**Dr Thompson:** I would say that probably 15 would have died of natural causes.

**John Scott:** Is it unreasonable to extrapolate that, of the 50 golden eagles that are missing, perhaps three quarters—37.5—might have died of natural causes, given weakness and our harsh winters?

**Dr Thompson:** Among the five buzzards out of the 20, three would have been shot and two would have been poisoned.

**Bill Wilson:** A mortality rate of 25 per cent is quite high.

**Dr Thompson:** It is quite high—it is significant. If that were the level among birds such as the eagle, which lives for a long time, that would be a concern.

**Patrick Stirling-Aird:** I must answer John Scott's point.

**John Scott:** I am interested in teasing out everybody's views.

13:15

**Patrick Stirling-Aird:** There will obviously be some mortality—some young golden eagles will die because they are incompetent birds. There may be a lower mortality if there is man-made killing, as natural mortality may be a bit lower in compensation. However, we know that some golden eagles have been poisoned. A key

question is why, in productive habitats in the eastern Highlands, the number of occupied golden eagle ranges has been going down when the conditions are ideal. If the number is going down, it is because birds have been killed.

**Bill Wilson:** John Scott said that there must be a lack of food if the raptors take the poisoned bait. I assume that I would be correct in thinking that, as predators, raptors are also scavengers and therefore likely to take a dead bit of bait, whether or not an ample supply of live bunnies is wandering the fields.

**Patrick Stirling-Aird:** Yes. That was the benefit of wolves in the countryside. I do not mean to be facetious but, for example, it was said that, when a wolf killed, 50 per cent of the carcass would not be eaten by the wolf—scavengers would be there. Golden eagles and others have likely adapted to depend on carrion, so as partial carrion feeders they, buzzards and red kites will be particularly vulnerable.

**The Convener:** I have a couple of quick final questions on the welfare issues that arise from shooting deer. Does the BVA believe that any welfare issues arise out of the practice of shooting deer? Secondly, why should somebody have to be competent to shoot deer rather than any other animal?

**Dr Thompson:** The deer is a large animal. People shoot it over a distance and with a very dangerous weapon. I would therefore expect the people who do that to be well trained. There is only a certain number of positions from which someone can get an effective kill. It is not something that I could necessarily do. I have killed lots of animals at close range, with captive bolts, a variety of pistols and so forth, but I would not like to walk out and be told to shoot a deer. The provision on training is reasonable.

I had the unfortunate experience of having to examine a cow that was shot on the Perth to Stirling railway line. The police had come out to do the job—they put four bullets in its head and managed to miss its brain because they were shooting it in the wrong place. A deer shot in the heart would have been killed straight away. That is a good example of the importance of training people to shoot things properly.

**Aileen Campbell:** I have a question of clarification on the issue of competence. Professor Reid, you said that a register should require greater parliamentary scrutiny than the negative resolution procedure. What procedure would you want it to go through?

**Professor Reid:** It is a big policy decision to move from the current situation to one in which everybody who hunts deer must have proof of competence, with all the issues of standards,

appeals, duration of licence and so on. The first time that the register is introduced, it should perhaps go through under affirmative resolution procedure rather than our running the risk of it going through on the nod when lots of other matters are coming before this committee and the Subordinate Legislation Committee. I do not think that affirmative resolution procedure would be justified every time that the register was adjusted, but it seems to be a big policy decision that the heart of the bill does not actually answer. Making the step should require more scrutiny than just a negative resolution process.

**The Convener:** Thank you. I think that we have exhausted our questions. I thank the witnesses for their attendance. If they have any further information that has arisen from what has been said today, we would be grateful if they could provide it to the clerks as soon as possible.

That concludes the public part of the meeting; I thank everyone for their attendance.

13:19

*Meeting continued in private until 13:20.*

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