



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

Wednesday 2 November 2011

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RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE
9th Meeting 2011, Session 4

CONVENER

*Rob Gibson (Caithness, Sutherland and Ross) (SNP)

DEPUTY CONVENER

*Annabelle Ewing (Mid Scotland and Fife) (SNP)

COMMITTEE MEMBERS

*Graeme Dey (Angus South) (SNP)
*Alex Fergusson (Galloway and West Dumfries) (Con)
*Jim Hume (South Scotland) (LD)
*Richard Lyle (Central Scotland) (SNP)
*Jenny Marra (North East Scotland) (Lab)
*Aileen McLeod (South Scotland) (SNP)
*Elaine Murray (Dumfriesshire) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Bertie Armstrong (Scottish Fishermen's Federation)
Professor Ian Boyd (University of St Andrews)
Kara Brydson (RSPB Scotland)
Will Clark (Seafood Scotland)
Ian Gatt (Scottish Pelagic Fishermen's Association)
Mireille Thom (WWF Scotland)
Niels Wichmann (North Sea Regional Advisory Council)

CLERK TO THE COMMITTEE

Lynn Tullis
Simon Watkins

LOCATION

Committee Room 2

Scottish Parliament

Rural Affairs, Climate Change and Environment Committee

Wednesday 2 November 2011

[The Convener *opened the meeting at 10:00*]

Decision on Taking Business in Private

The Convener (Rob Gibson): I welcome everyone to the ninth meeting in 2011 of the Rural Affairs, Climate Change and Environment Committee. Members and the public should turn off mobile phones and BlackBerrys, as leaving them in flight mode or silent mode will affect the broadcasting system. We have received no apologies from members.

Agenda item 1 is for members to make a decision on taking business in private. I seek the committee's agreement to take agenda item 5 in private. Are we agreed?

Members *indicated agreement.*

Common Fisheries Policy

10:01

The Convener: Agenda item 2 is the common fisheries policy. I welcome all our guests. We will hear from a number of witnesses as part of a round-table discussion on the revised common fisheries policy, which was released in July. Following today's session, we will hear from the United Kingdom minister with responsibility for fisheries—that has been confirmed—and the Cabinet Secretary for Rural Affairs and the Environment, when we can feed in what is discussed today. I welcome our colleague Jean Urquhart, who is sitting in on the meeting.

I invite our witnesses each in turn to say who they are and what they represent. The sound system works automatically.

Bertie Armstrong (Scottish Fishermen's Federation): No button pressing required. I am the chief executive of the Scottish Fishermen's Federation. That is my day job but, since my invitation, I have been elected as chairman of the north-western waters regional advisory council; so, the committee has two regional advisory council senior officials here. I am here in a dual capacity.

Professor Ian Boyd (University of St Andrews): I am director of the Scottish oceans institute at the University of St Andrews. I am a marine scientist and I am here as an independent academic.

Kara Brydson (RSPB Scotland): I am the senior marine policy officer for RSPB Scotland. I also represent BirdLife International on the north-western waters regional advisory council.

Mireille Thom (WWF Scotland): Good morning. I am the senior marine policy officer with WWF Scotland.

Will Clark (Seafood Scotland): Good morning. I am the vice-chairman of Seafood Scotland and the chairman of the Scottish Seafood Association. I am also a fish processor in Peterhead.

The Convener: John Cox has decided to sit in the public gallery, not at the table.

Niels Wichmann (North Sea Regional Advisory Council): Good morning. I am the chief executive of the Danish Fishermen's Association and the Danish Fishermen's Producer Organisation. I am also the elected chairman of the North Sea regional advisory council and I have previously held positions on international bodies. I was the chairman of the European Commission's Advisory Committee on Fisheries and Aquaculture from 1999 to 2004, and I was vice-president of the

European fishermen's association, *Europêche*, from 2004 to 2009.

Ian Gatt (Scottish Pelagic Fishermen's Association): I represent the Scottish Pelagic Fishermen's Association, which represents all the refrigerated seawater pelagic tank vessels in Scotland and Northern Ireland. There are only two other vessels in the pelagic fleet in the UK, which are freezer trawlers; apart from those, we represent them all.

I am also an executive committee member of the pelagic RAC. My background is as a fisherman; I was a skipper for about 30 years.

The Convener: I am the committee convener and my deputy convener is Annabelle Ewing. The other committee members are Alex Fergusson, Aileen McLeod, Jim Hume, Graeme Dey, Richard Lyle, Elaine Murray and Jenny Marra. Jean Urquhart is a visitor. I do not plan to deal with the whole history of the CFP. I want us to think about the half dozen things that are particularly important to us—relative stability, maximum sustainable yield, discard bans, multi-annual management plans, transferable fishing concessions and regionalisation—along with some general issues. I would like to concentrate on one issue at a time.

I would welcome a contribution on relative stability to start us off.

Bertie Armstrong: We were fearful of the current process in case relative stability was damaged. If you glance at a map of the northern continental shelf and draw 200 miles on the median line around Scotland, you can see that we have an awful lot of natural resources that other people would like.

There must be some way of splitting up a natural resource that is accessed by multiple member states, and relative stability is the way that was chosen. No scheme that we could dream up would be perfect and relative stability is no less imperfect than many other schemes. However, it is the scheme that we have, and it establishes for us, both in the United Kingdom and at the heavyweight end of fishing—up here in Scotland—what we would rather have regarded as a national heritage than as a technical formula about what we used to do, which would therefore be subject to change if we just measured what people fish and changed it. We have these waters around us, they contain fish stocks, and we want continued guaranteed access to those fish stocks for the good of the member state.

The Convener: If anyone wants to speak, they should just indicate.

Alex Fergusson (Galloway and West Dumfries) (Con): I think that we all share Bertie Armstrong's aspirations on relative stability. During

our earlier work on this issue, we held a videoconference with two members of the European Parliament, Struan Stevenson and Ian Hudghton. My understanding is that the concept is that transferable fishing concessions would be kept within member states, but there is a clause that would allow them to be transferred between member states. One of the issues that was put to us was that, if that came about, it could be very damaging to the principle of relative stability. I am interested to know stakeholders' views on that danger.

Niels Wichmann: It is true that there has been pressure from southern Europe—from Spain in particular—for international transferable quotas. There is a funny sentence in the revised CFP to the effect that such a thing might happen if Governments allow transfers from country to country. That should not have been in there. All countries except Spain back relative stability as we know it, be that good or bad; as Bertie Armstrong said, it is what we have.

Another consideration is that, if we were to think along the lines of international transferability, we need to think about who can buy whom. In an ideal world, it would be the guy who has access to the cheapest finance, but the world is not ideal. We do not have similar control systems. So, it is those who can fish most out of a limit of 100kg, maybe 150kg, who can buy the others and we have to take that into account. If we are to move to an international situation, we will need an international control system. However, we will never get that because we will not give up the national sovereignty for controls. I was interviewed in Spain by a Spanish newspaper and I said, yes, if we have international transferability we will come and buy you out; there will be no more fish in Galicia. They could not turn around and think like that, but we need to think in that way if we are to discuss this matter.

Alex Fergusson: Do I take it that you recognise that there is a danger to relative stability if trading concessions become internationally transferable?

Niels Wichmann: Certainly.

Alex Fergusson: Perhaps the easiest way to discuss this, given the number of people at the table, is to ask whether any of you disagrees with that.

Niels Wichmann: I can give you an example from your own backyard of fish sold from the English east coast to Scotland and the quotas being moved to Scotland.

Alex Fergusson: I think that we would all be quite happy with that, but that is intra-member state and that is the point that needs to be made.

Jim Hume (South Scotland) (LD): Some of the proposals seem to exclude the Shetland box. What are your views on that possible exclusion, regarding relative stability?

Niels Wichmann: The Shetland box was upheld in 1993 and it has not been touched since, so it will be there in the future. All the boxes, of which there are 47, I think, with different restrictions, should have been looked at in 2003-04, but that never happened.

Kara Brydson: Transferable fishing concessions pose a real danger to the kind of fisheries that we want to see in Scotland and what we want our fishing communities to look like, mainly because they do not allow us to decide what the right form of fisheries might be. We would have no choice in terms of qualitative or quantitative capacity, or on whether we have fisheries that are environmentally sustainable and support local communities. That is very important to all of us around this table.

I am very careful to say that we must get the capacity right across Europe, in both qualitative and quantitative terms, because the Commission's figures show that the fleet is two or three times over a sustainable capacity. We need to deal with that, and I do not think that this blanket approach will help Scotland get to where we all want to get, with sustainable local communities and environmentally friendly fisheries. So, environmental non-governmental organisations are very concerned as well.

Mireille Thom: In the Commission's proposals, TFCs are seen as a way to deal with reducing the fleet, which Kara Brydson spoke about. WWF is worried, because that is a very blunt instrument to get rid of overcapacity. There may be a role for TFCs, but we need to see them as just one of many rights-based tools that regulate access to a resource. The choice of those tools should be made, or would be more secure if it was dealt with, at the regional level and on a fishery-by-fishery basis, so that the member states concerned, along with all the relevant stakeholders, could look at what is necessary to catch the available resources. Therefore, again, it would be useful to place the TFCs within the sphere of the other tools that regulate access to the resource.

10:15

We need to remember that we are in a single market and that it is possible for someone from any member state to buy a vessel in another member state. That happens. For example, there are Dutch-owned vessels in the UK that fish on UK quotas, and there are similar Spanish vessels and others. That happens within the internal market, if you like, but we must remember that we are part

of global finance and a global market. From what we can gather from a number of lawyers, it would be difficult to keep tabs on where the concessions go. There may be a role to play there, but we need to be careful and keep in mind all the caveats.

Annabelle Ewing (Mid Scotland and Fife) (SNP): On fleet reductions and overcapacity, it is fair to say that Scotland has done its bit over the years in securing that element of the common fisheries policy. It would be interesting to hear whether anybody around the table feels that there is scope for further fleet reductions.

On possible trading of TFCs between member states, the UK fisheries minister and the cabinet secretary will give evidence at next week's meeting. Are there any particular issues that you feel it would be useful for the committee to raise with them? The view in the piece of paper from the Commission is that we are where we are, but where do we go from here to try to secure the objective that will presumably be in the final piece of paper that we will be presented with when the reformed policy is implemented? Does anybody have any comments on that?

Bertie Armstrong: It is worth pointing out something that everybody around the table probably already knows, but which is relevant to the question that you just asked—the difference between the Scottish industry and that of the rest of the UK and a number of other European industries. The Scottish industry is basically a large collection of small and medium-sized enterprises. There is good and bad in that. It gives great territorial connection, so there is a community support aspect. If a vessel is owned by a family or small consortium, it will have territorial connections. However, the difficulty is that that also makes the business vulnerable.

Mireille Thom mentioned the use of TFCs for other things, such as reducing overcapacity. I do not think that that is wholly true, but the Commission has latched on to it. There was coincidence between Denmark introducing a form of TFCs and a reduction in the Danish fleet. However, the Danish fleet needed to rationalise at that point anyway, so there is an interesting question around whether it would have rationalised by any means and whether its reduction just coincided with the TFCs. The proposal says that TFCs will reduce capacity, but that is not necessarily true. We should wait to see about that.

You asked about questions for the ministers next week. It would be worth couching the whole thing against the background of the difference between Scottish fishing and the industry elsewhere. For instance, it makes us less vulnerable to the globalised trade that the direction

and development of half the large, company-owned Spanish fleet is very different from ours.

Ian Gatt: There is a general perception that the present policy is not fit for purpose, but that view depends on the sector that someone is in. From the perspective of my sector, the present policy has worked quite well during the past 10 years. The pelagic industry not only in Scotland but in Europe, and certainly in Denmark, has done quite well out of it. However, that has been underpinned by relative stability. To be profitable and sustainable, fishing businesses need guaranteed access to resource or they cannot build for the future or implement sustainable fishing practices.

With regard to overcapacity, someone visiting Peterhead, the Shetland Islands or Fraserburgh might see my fleet and say, "Wow—look at the number of boats! Surely there must be huge overcapacity here." The fact is that those boats are doing quite well under the current 50 or 60 days at sea policy and are sustainable, well managed and certainly profitable. The reference to huge overcapacity is a generalisation; you have to go a bit deeper and see what lies beneath.

On the interesting issue of transferable fishing concessions, which has been debated by my board, our camp is very mixed. Some of our membership feel it to be a huge threat that companies in the global market can simply come in and buy up Scottish assets. Our friends to my left are getting very good at it and are very active on the pelagic front. Others, however, wonder why it should be a threat and suggest that it offers a huge opportunity for us in Scotland to go into the market and buy up some fishing assets for ourselves. Personally, I feel that it is more of a threat than an opportunity but we have to examine all sides of the argument.

Ian Boyd: On Annabelle Ewing's question about overcapacity, there will be a continuous need to reduce capacity, simply because fishermen get better and better at what they are doing all the time. That is driven partly by technology and partly by human ingenuity. Even if we accept that we are fully exploiting all our fish stocks, we are at the same time increasing our capability and efficiency in that respect, which means that we need continuously to reduce, say, the total number of vessels in the fleet.

There is a quite a lot of evidence that in certain parts of the industry, particularly the demersal fleet, individual skippers are having trouble making ends meet with their capacity and days at sea. Moreover, there is underlying evidence that there is overcapacity in certain areas of the Scottish fleet.

Niels Wichmann: Bertie Armstrong said that it might be just coincidence that after the Danish

fleet introduced individual tradeable quotas, trading concessions or whatever they might be called—they could be licences or other things—there was a massive reduction in the fleet. That is no coincidence. For 15 years, we had massive public investment in scrappage and decommissioning schemes. In any such move, you obviously buy out the least efficient tonnage first, because they are already up for sale.

However, in individualised schemes, you buy efficient tonnage—if not the most efficient—because that is what catches the fish; after that, you concentrate effort. Like Ian Gatt, we saw concentration in the pelagic sector, where the number of licences fell from 120 to something like 30 over four years, and the emergence of good, new, well-run and viable businesses. Who cares if those businesses fish for only three or four months a year? It is like harvesting in agriculture. Farmers do not calculate capacity from driving around on their harvesters the whole year. Four years later, there was a similar development in the demersal fleet, the backbone of which was reduced from 1,200 to 700 vessels. We now have quite a few happy people who either sold their quotas and boats or have good businesses.

People have already highlighted the issue of concentration and whether too few own too many fishing rights. We have a national law that says that fishing rights can be owned only by fishermen who can prove that at least two thirds of their income comes from fishing. They cannot be owned by companies and we have introduced a number of concentration limitations in the different fisheries. In a certain fishery, a person might own up to 10 per cent of the quota, but that is about the limit.

Mireille Thom: Just to continue on this topic, to answer Ms Ewing's question and to return to what we said earlier: we are where we are on this, but it would be useful for all of us to learn from our experience. Where are we? Who owns the quotas? Can we say? Do we know? Are they all held by national interests or have they gone beyond that? That would be a good base to inform our thoughts on not only where we are, but where we want to go. It would also be useful for other countries that do not have that type of system in place.

Graeme Dey (Angus South) (SNP): I declare an interest, as I have a brother-in-law who is a fisherman and a father-in-law who was a marine engineer in the fishing industry.

I want to consider the potential impact of transferable fishing concessions on the processing sector. If we accept that they pose a potential threat, what would their impact be on that sector and the many jobs that it supports on shore?

Will Clark: Speaking for the white-fish processing sector, I am pretty encouraged that everybody around the table thinks that there will be an industry come 2014. If the current legislation is imposed, as it will be, what will we do in the interim? The processing sector and the white-fish industry are in dire straits and I do not think it will take much to push them over the edge. We must achieve relative stability and to have relative stability, you need a healthy processing sector. If you do not have that, transferable quotas will happen because there will be nobody to process the fish in Scotland.

Graeme Dey: Can you expand on the problems that your sector faces?

Will Clark: I run a processing business. Eight years ago I employed 20 people and I now employ three people. For the past four weeks, we have had an average working week of 15 or 16 hours. It is coming to the stage where it is commercially unviable. We are under huge pressure from the banks and overdrafts are being cut because profit margins are being cut. Peterhead, for example, has seen a 26 per cent fall in volume in fish this year, with a 29 per cent increase in the raw material price, and that cannot be passed on to the consumer because of the economic crisis throughout the world. The pressures are huge. The bigger companies are now asking questions about whether they are viable. Honestly, I think we are at the tipping point and if the legislation is imposed next year, with the cut in days and the fact that the fleet are at sea less, there will be greater landings of fish in a small period of time, the infrastructure will be unable to absorb it, the quayside price will be less and, honestly, that will be the end game. I am sorry to say that, but that is where we are.

Richard Lyle (Central Scotland) (SNP): That is my very concern, particularly after listening to the experts. What is to stop one country or a consortium—Niels Wichmann commented on this earlier—buying up all the different quotas so that the fish would not be landed or brought into Scotland? Even if the boat were Scottish, everything would be landed in Spain and France—I mean no disrespect to our colleagues and EU partners.

What can we do? There are laws against one firm, company or person holding everything. Are there laws in Europe to prevent one country or consortium, or even one person, from silently buying up the quotas? Mireille Thom said that no one knows where the quotas are or who holds them. Is there a list? Is it like the stock exchange? Do people have to register with the European Union that they own quotas in boxes X, Y and Z?

10:30

Ian Gatt: I can give an example of one country that has been active on that front. The biggest demersal quota holder in England is probably a Dutch and Icelandic company, which bought up several companies, including Boyd's and Marr's. It has access to fish in north Norway and it has the biggest safe quota in the UK. That company has been active recently. It bought the whole German offshore demersal industry. Last year, it went on what we might call a pre-Christmas shopping spree and bought out the whole Boulogne offshore demersal fleet and a Spanish company that has access to Barents Sea cod.

Under the current policy, as Mireille Thom said, there are national rules, but they can be got round in a way. Whether we like it or not, the major part of the offshore demersal fisheries is owned by a Dutch and Icelandic company.

Will Clark: One more issue to throw into the ring is that we are faced with a situation in which there are 36 markets left in which fish can be sold until the end of the year. It is possible that the white-fish fleet will not be able to catch its current quota. That is not because the fishermen cannot catch the fish, but because they cannot find finance to pay the quota traders the exorbitant charges that they charge. The fishermen have taken a commercial decision not to go to sea because they cannot afford it. Not only does the onshore sector have a shrinking resource because we are being starved of quota, but we are not even utilising the resource that we have effectively because fishermen are making a commercial decision not to fish, as they cannot afford to pay those mystery people the exorbitant charges. Those people are setting those charges because they know that fishermen must come into the market to purchase the quota if they catch the fish. That is a serious problem, especially for the white-fish fleet, and it must be resolved.

The Convener: Thank you. This could be a useful point at which to consider regionalisation.

Richard Lyle: Sorry, convener, but could I ask a question first? I am not a fisherman, so could the witnesses tell me briefly what a quota trader is?

Will Clark: That is the \$64,000 question. Who are the quota traders? Is a quota trader a fisherman who has a quota and who decides to go on an oil job because the quayside price is not viable and so rents the fish out to a fisherman who has no quota? Who is a quota trader? You tell me, because everybody is confused.

Niels Wichmann: For the past 30 years, we have lacked an on-going update on how fisheries are managed in the EU member states. Germany might have a good idea about something, but we do not know about it. Somebody might be doing

something right in France, but we do not know about it and nor does the Commission.

We have formed pools of vessels. That was originally for social reasons, so that smaller ports could keep their fish in those ports. The idea has been taken up by bigger pools which have one guy legally responsible for a pool—he is the one who goes to jail if anything goes wrong with any of the vessels in the pool. When they are out fishing and they have exhausted their quota for one species they can just go to the pool online and say, “Is there fish available for this? Then I will not have to discard, I can fish on”. Such ideas are not dispersed to other countries; that is one of our big problems.

The Convener: I think that we are on to the subject of regionalisation and the possibility that objectives, targets, minimum common standards and results, and delivery timeframes can be decided more locally.

Aileen McLeod (South Scotland) (SNP): The Commission proposal states that regionalisation is a key aim. Struan Stevenson MEP told this committee that the European Fisheries Commissioner, Maria Damanaki, backs further regionalisation, but that the Commission’s legal service has told her that, as the guardian of the treaties, the Commission will not see powers devolved back to member states, as that is in breach of the treaties. Maria Damanaki now seems to qualify everything that she says on regionalisation with, “as far as the treaties allow”. Ian Hudghton MEP told us that, although the EU claims to support regionalisation, the Commission’s proposal for EU-wide policies, such as the discards ban, the transferable fishing concessions scheme and equal access to water and resources, goes against it. So while there seems to be general acceptance that a start has been made on regionalisation, certainly the Commission’s proposals in that regard do not go far enough. Even Bertie Armstrong, in evidence from the Scottish Fishermen’s Federation, said that:

“there is little substance within the proposals to translate this into practical reality”.

I want to ask our stakeholders how more power could be devolved to member states, and particularly the regional advisory councils.

Kara Brydson: You are right. This is the most striking aspect of the proposals. So much of the good work that many of us felt was in the green paper seems to have disappeared, perhaps as reality has struck home to Ms Damanaki and others, but we are very concerned about it. There is a lack of clarity as to who should do what and by when, and it is so open now that many of the Scottish stakeholders involved in the regional

advisory councils are working with them to consider what the possibilities might be. It is definitely concerning. I do not want to return to transferable concessions, but one of the issues is the 15 years that people could hold on to a concession, and another is that member states may be able to withdraw if there is a serious infringement. Would it be left to member states to decide what “a serious infringement” is? Would third parties be involved in deciding what those might be?

We are concerned by the lack of clarity. We hope that something will come through to help us, but it is yet to be decided how to ensure that all stakeholders are involved in making decisions and that regional advisory councils, or advisory councils as they will be called, will have the resources available to them to help make those decisions. We will keep working within the RACs in order to try to come up with some proposals, because the Commission, Ms Damanaki and her staff have said that we have to offer up ideas. I hope that we get in there first with some very good ideas that will help Scotland—the game is open to everyone at the minute.

Mireille Thom: Regionalisation is the main question in the reform of the common fisheries policy, because, as Kara Brydson said, governance was identified as being at the root of most of the failings of the common fisheries policy. That is not new. In the 2002 reform a decision was made to start consulting and involving regional stakeholders more, which led to the setting up of regional advisory committees, in which a number of us work. However, everybody accepts that that did not go far enough. Everybody embraced the concept of taking some of the decision-making and management responsibilities from the very top and bringing them down to a more decentralised, regional level, where there is expertise on the fisheries, the conditions, who is involved, the fleets and who works where and so on. That is essential. Contrast that with ministers meeting just before Christmas to decide the quotas for the whole of the EU waters on the basis of what the Commission proposes. Quick fixes have to be found, which is how we end up with hasty decisions being made by ministers who are under a lot of political pressure to deliver.

Great expectations were created. WWF believes that if anything is to change and if policy making and decision making are to be improved and tailored to the real needs of the fisheries and the stakeholders involved, there will have to be decentralisation.

The Lisbon treaty is one of the problems. Another one with which we have been confronted relates to the cod plan. We are told that it will take at least two or three years to change the rules.

The Commission has asked us all to work towards finding ways of decentralising within the legal constraints. There will soon be a wider problem in terms of what is possible under the current treaty. We will need to be inventive and proactive about offering solutions, so that we can ensure that regional stakeholders are involved.

Ian Gatt: I would say that at the outset the commissioner really did believe in regionalisation, but after legal services trawled through everything that could and could not be done under the Lisbon treaty, the idea has simply hit the buffers. Quite honestly, the commissioner is probably more disappointed than anybody. Of course, there is a lot of spin around regionalisation and the proposal. We are not lawyers, but we have been trawling through the document—excuse the pun—and we certainly cannot find it in there.

The member states have been tasked with a role. Like-minded ones will need to start to work together constructively. However the RACs fit into that, they have a huge role to play. For instance, in the North Sea—obviously the chairman of the North Sea RAC is here—you could see Denmark, England, Scotland and France sitting around the table and trying to come forward with sensible proposals. That will be the way forward, but somebody will need to kick it off and run with it. The RACs certainly have a role to play.

The model that has been used in Scotland for the past two years has had some successes, but it hit the buffers as well because there was no currency to deliver credits to the fleet. However, a model based on that might be the way forward. The solution lies in the like-minded member states trying to work together to make it work, as Mireille Thom says, using stakeholder knowledge and making sensible policies from the bottom up rather than following a top-down approach.

10:45

Bertie Armstrong: Aileen McLeod put her finger on the problem: everybody wants some of this, but the debate has reinforced the point that no one knows what it is. The first problem with the treaties is the subsidiarity principle. The Commission has sole right of protection of marine biological resources. That is regarded as a legal responsibility and will not be let go of easily. If the Scottish Parliament had such a right, it might be loth to let it go. The second problem is the European Commission civil service's sole right of initiative in law making. It regards itself as the guardian of that and would be loth to let that go either. Those are the problems that we must somehow get over—the vested interests of the current institutions to maintain the status quo.

The only really relevant or useful outcome will be some form of college of member states, depending on the region, the fishery or the problem that we are dealing with. The trick in the outcome of the common fisheries policy will be to endow the member states with some form of decision-making powers. At the moment, it is entirely possible for member states, groups of member states backed by RACs or RACs backed by member states to make sensible suggestions. However, because of the regulations that I have just described concerning subsidiarity and the sole right of initiative, those suggestions can be either accepted or rejected. The outcome will have to be some organisation—I suggest a college of member states advised by the RACs—endowed with actual powers; otherwise, we will stay exactly where we are. Member states will be able to offer advice until the cows come home, but it will be for the Commission to decide.

It is unfortunate that this giant, once-in-a-decade review has coincided with fisheries management passing into co-decision, meaning that there is a constitutional arm wrestle going on between the Commission and the Parliament about who does what to whom at the same time as they are trying to make the best of this. That is a fearsome thing for us. We may find that the argument is anything but simple, and people often argue not for the best outcome but for what is best for their institution.

I will say a final word on the North Sea. We have just detected that Germany—large, federal, European Germany—is frightened of regionalisation because it is a small fishing nation and it thinks that it will be bullied by big, old Scotland, England and Denmark in the North Sea.

The Convener: We will hear from Denmark first, then from Annabelle Ewing.

Niels Wichmann: I am here as a North Sea RAC representative.

We are getting new regional advisory councils for the Black Sea and for aquaculture. We are also asking for a new one for market issues, as we think that market issues are pan-European and should, in the future, be treated in that way. We will, of course, discuss the matter with Struan Stevenson, who is the rapporteur on the issue.

Regionalisation is the only answer for a future fisheries policy. The Lisbon treaty came into force two years ago, on 1 December 2009, but there is still a deadlock between the council, the European Parliament and the Commission about how to solve the problems. I normally refer to it as the Bermuda triangle of Europe. I will give you an example. We have a set of technical rules for different fisheries in different areas, which take the form of regulations. We have operated an experimental fishery in the Baltic Sea with a new

type of trawl that saves something like 40 per cent in fuel and has 60 per cent better selectivity. It is a very good new trawl. However, we have been allowed to try it out but not introduce it, because it has to go through the co-decision between the Council of Ministers and the European Parliament, and nobody wants to propose it; it might be introduced four years down the road. That is another illustration of the fact that, if we want simplification, we need regionalisation. There is no doubt about that.

Annabelle Ewing: On the Commission's legal opinion, in my previous life I was a lawyer and one can get a legal opinion to suit many different sides of an argument, should one seek that. However, we are talking about the delegation of management responsibility and I would have thought that you could find precedent elsewhere in the activities of the EU to identify precisely where management responsibility has been delegated. I am thinking, in particular, of the agriculture sector, although it might not be the only sector where a common policy is in place.

I do not see the two things as being in opposition to each other in EC law. I wonder why the Commission has not been taken on on the issue, because I do not even accept its position as a matter of legal principle. I thought that its apparent position was nonsensical when I read it. The Commission lawyers have come up with an opinion that is blatantly to suit the interests of the Commission as an institution. The matter should be pursued urgently.

On the practicalities, it seems that we all agree that regionalisation would be a good thing. The detail remains to be seen and it might differ from one stakeholder to the next, but the key principle is there. Kara Brydson made the point well that it is up to the member states and, therefore, the stakeholders, to come up as a matter of urgency with something that can be discussed: if not, there will be just a statement in principle with no substance to it and there will be all the further problems that have been identified, in particular by Bertie Armstrong. Now is the time to come up with something such as closer collaboration between the member states without the belt-and-braces approach, which would at least establish a principle that could be discussed. If we miss this boat, we will wait for some years for another to come along.

The Convener: I am fascinated by the idea of Germany feeling that it is on the rack because of the power of RACs.

That leads us on to the question of the science and the potential discards ban by 2016. Does anyone want to kick off on that high-profile issue? Particular Scottish issues are related to it, which we wished to discuss with, for example, Mr

Fearnley-Whittingstall, who was invited but could not manage to join us today.

Bertie Armstrong: It goes without saying that fisheries management decisions should be taken on the basis of sound science. We have been doing fisheries science in a serious way for a couple of hundred years, but we are in a state of inadequacy. That is not because scientists are bad people, but because there is a systemic problem with the science, which was recognised at a grand conference of extremely important people on Monday in Fishmongers' Hall in London. Was Ian Boyd there?

Professor Boyd: Yes.

Bertie Armstrong: It was decided at that conference that there is, indeed, a systemic problem with fisheries assessments and that maybe the modelling is wrong. That is an interesting conclusion and we are glad to hear it.

The only place that further reliable data will come from is the industry itself. The data have to be in a usable form for science, because there is no more public money with which to beef up member states' science. We will be lucky to protect, in cash terms, what we have, which I think is what Scotland has decided to do. The science is seriously important.

The discards ban has, regrettably, been hijacked. No one, particularly in the fishing industry, is in the least bit interested in chucking marketable fish over the side, having gone to the trouble of bringing it on board. That is plain daft, but every time we try to make sense of the argument for the public, we tend to be on the back foot because it always looks as though we are defending discards. I will happily say on record that I take my hat off to Hugh Fearnley-Whittingstall—he did a beautiful job. If you look in the window of Waterstones, you will see that he has three or four books out—none of which, I add, has anything to do with fish.

However, Hugh Fearnley-Whittingstall saw discarding in the same way that Jamie Oliver saw school dinners; it allowed him to send out a simple message with which everyone could align themselves. He was able to get some fabulous publicity out of it; for example, he has great footage of Maria Damanaki shaking his hand and calling him a wonderful person. So, that is "Job done" for him. However, what Mrs Damanaki should have said—and what we have told her she should have said—was that discarding is a disgraceful practice and that, in the mixed fisheries, where it mostly happens, half the underlying problem is the regulatory regime. How do you square that circle in catching mixed fish?

Mrs Damanaki should also have pointed out that the industry—particularly in Scotland—is making

enormous strides and is doing its best to overcome the situation, but that that will take some time. Instead, she allowed the political point to be made and we are now in a pickle with discarding. The provision under current regulation is largely unworkable and must be adjusted in time and scope. That is not to say that we do not wish to end the practice of discarding this very minute: we do.

Graeme Dey: Like Dick Lyle, I am not a fisherman and have had to research the subject in order to talk about it. In the course of that research, I noted that Commissioner Damanaki told us that if nothing were done, only eight out of 136 stocks would be sustainable by 2020. However, I have also read that sufficient scientific evidence is available for only 93 of those stocks. I might be putting Professor Boyd on the spot, but I seek guidance on the real baseline for this. Do we have any reliable scientific evidence that should be taken as a given?

Professor Boyd: First, I agree with Bertie Armstrong that we have been doing the science for a very long time now—and we should hang our heads in shame because we cannot answer your question. There are good reasons for that. For a start, we are dealing with what is generally called a complex problem; indeed, we have realised how complex the problem actually is only in the past couple of decades.

One of the problems that the scientific community has had—and is now putting right—is overemphasis on the certainty about the kinds of predictions that it can make about populations. Some sections of the community are putting that right, but some are not and there is a big divergence between the two camps. To put not too fine a point on it, I think that the academic community that I represent—and which, because it is responsible for nothing, can say things easily—has maintained that this is a big problem and that we cannot do what you have asked us to do, while other scientists who are responsible for providing the annual advice on total allowable catches, quotas and so on have a mechanism for giving that information that is generally thought to be completely inadequate.

I might be slightly getting off the subject of discards but, nevertheless, discards are part of the bigger picture. I know that the committee will want to discuss maximum sustainable yield; I should perhaps bring it up now, because I believe that it provides a very good illustration of how wrong the science has been in the past. One objective is to achieve maximum sustainable yield for our commercially exploited fish stocks by 2015, but my view—which is shared by a very large part of the scientific community—is that such a theoretical concept is probably unattainable for any fish stock.

Perhaps I should explain what maximum sustainable yield is. In order to sustain itself annually, every fish population has to reproduce the number of individuals that have been lost from the population in that year. Every population has the capacity to do a little bit better than that and, through maximum sustainable yield, we are seeking the population size that produces the maximum amount of excess production in the population.

11:00

We know that that exists up to a point, but in empirical terms—that is, in evidential terms—we have never been able to show that it exists. We are left with a situation in which we have such high uncertainty in the measurements that we make on the number of fish that exist and their capacity to reproduce, that maximum sustainable yield could lie across a broad range of values. It worries me and many of my scientific colleagues that maximum sustainable yield is set up as a management objective, not only in Europe but globally; we, as a scientific community, cannot deliver that objective.

The other thing that people need to understand is that we cannot get the maximum sustainable yield of all fish stocks simultaneously. There is a trade-off to be made, and in Scotland we probably see it emerging between pelagic fisheries and demersal fisheries. Only so much energy goes into the marine system and it can be delivered to fishermen and the commercial industry through a number of different routes. For a long time we saw healthy demersal stocks, and at the moment we are seeing healthy pelagic stocks. A large part of the energy is going through the pelagic system. If we bring all the demersal stocks to maximum sustainable yield, it will probably bring down the pelagic stocks. Those large trade-offs are going on within the system.

As scientists, we can only give advice at that level. As soon as we start getting down to the nitty-gritty of exactly how many fish can be taken out of the sea in a particular period, there are real problems. What I and many others advocate—it is already being used in other parts of the world—is a risk-based management approach whereby we set a level of fishing, give it a go, find out what happens, and adjust the level in an adaptive way for the future. In Europe, we already have a long track record of collecting enough data to be able to manage our fisheries in that way, and in reality that is the way in which we manage our fisheries. We do not do it with tax. We have set up a system whereby we set up a target and try to hit it, but most of the time we miss it. Sometimes we are over the target and sometimes we are under it, so we have another go. It is an adaptive process that

goes on and on. In many cases we are probably at about the right level, but I would not call it maximum sustainable yield. It is a practical yield that we have learned through practical management and experience.

I could go on, but others might want to comment on that.

The Convener: It would be helpful if they did.

Kara Brydson: I will go back to discards, if that is okay.

The Convener: Yes. We will take the two subjects together, as time is getting on.

Kara Brydson: Bertie Armstrong and other industry colleagues know that the RSPB has also been concerned about the simplified messages that the fish fight campaign has put out, because it has taken people's focus away from the real objective of reducing bycatch in the first place. In some fleets in some countries, the bycatch is not just commercial fish species but other species, including birds.

However, the fish fight campaign has given us an interesting new context for fisheries management, in that it can no longer be thought of or worked within a vacuum. There is much more public awareness of what is happening at sea and in the industry. The reformed common fisheries policy must help to deliver on the marine strategy framework directive, which will mean that Scotland's seas and others around Europe need to reach good environmental status by 2020. We have to think of the issue in the context of achieving the deadline for Europe to have a complete network of marine protected areas, and we have to think about the network that we now have in Scotland thanks to the Marine (Scotland) Act 2010, and link it to European environmental policy.

We have been given a new context in that we can no longer offer the knee-jerk reaction—the environmental NGOs have been guilty of this in the past—that fisheries are always the cause of the problems in the sea. Fisheries must now be thought of as being part of the solution in ensuring sustainable seas. Although the fish fight campaign has been a thorn in some people's sides, it has been useful in highlighting the fact that the public are watching and that we have an opportunity to get the CFP reformed in a positive way.

The maximum sustainable yield argument is always there, but it is important to remember that it is 20 years since we first pledged to meet the 2015 deadline for reaching MSY. That highlights how important it is that we continue to provide money for fisheries science and that any money that we spend helps with things such as achieving the MSY objective as far as we can. Keeping the

funding for marine science is more important than ever.

Will Clark: I have a point on the MSY. I was interested to hear Professor Boyd say that it was unachievable in most species, when the west coast haddock fisheries have achieved it two years before the given date and are now looking at an increase in the stocks of anywhere between 25 and 420 per cent. I do not want to say that that will cause a dilemma, but as I highlighted earlier, the onshore processing industry has shrunk just as the fleet has shrunk and so it cannot absorb such increases in stocks in one go; we cannot just turn things on and off like a tap. We need to give things time to grow, and an integrated approach has to be adopted. I am not saying that we do not want the increasing quota, but we have to be careful about how it is managed. We do not want to undermine other fisheries in the process of turning on the tap. What has happened with the west coast haddock fisheries is a good news story. The MSY has been achieved there, so I was a bit confused to hear it said that it was not achievable.

Professor Boyd: I will provide clarification. What has been achieved on the west coast of Scotland is a target, the setting of which was based on a particular dataset, but it is not necessarily the maximum sustainable yield. We call it the maximum sustainable yield, but it is almost certainly not the maximum sustainable yield.

Jim Hume: I have a question on the discards ban. As MSPs, we are often told that part of the solution could lie in altering net types and using different net sizes or nets with trap doors and so on. It would be interesting to hear whether the industry representatives in particular agree. Where are we in that regard? Is 90 per cent of the industry at that stage, or is the figure only 2 per cent? Are such changes achievable? How difficult would it be to adapt net sizes and types?

The Convener: I know that Niels Wichmann wanted to come in on this, so I will take him first.

Niels Wichmann: I would like to point out that I have worked in fruitful co-operation with Kara Brydson's colleague Euan Dunn for the past 15 or 16 years, so I do not know what vacuum she is talking about. We might not have come across well enough to the public, but everyone who has wanted to has had access to what has been going on. I view this fish fight thing as being more of a private stunt, because Hugh Fearnley-Whittingstall does not know what he is talking about.

On MSY, it is very important to point out that we have two conflicting things going on. Now the EU is committed to MSY, when previously it was committed to MSY where possible. The fact that it has removed the "where possible" puts a lot of

pressure on everyone. On the other hand, we are working in various areas with long-term management plans for different stocks. To give you an example, we could increase the quota for herring in the North Sea by 60 per cent, which would correspond to what we think is maximum sustainable yield. However, we are limited from using MSY in that stock by the long-term management plan. We have conflicting policies, and we cannot change the long-term management plan because that has to go through the co-decision procedure, so we are back into the vicious circle.

Discards are another area in which the campaign is a bit off. We have a policy in which we are obliged to discard—we have an obligation to discard if we do not have quota for a certain species, or if, for one reason or another, we catch undersized fish. We have an obligation to discard for the simple reason that there is no market for a number of the species that we catch. I have just shown Ian Gatt a photo of a heap of fish, which was taken on board a fishing vessel. Those fish will be thrown out because there is no outlet for them and we cannot keep them on board. That is the present situation. If we move to an obligation to land those fish, we must discuss what is included in that obligation. We have not discussed that.

I have a further word on MSY. On 1 April 2012, a multimillion-euro or, if the euro does not exist, multimillion-pound project called MYFISH—maximising yield of fisheries while balancing ecosystem, economic and social concerns—will start. It will run for four years, ending in 2016. The MYFISH project will consider how MSY should be defined. Should it be the current definition—or the one that we tend to use—which is mortality of fish stocks? Should it be defined in economic terms, as MSY out of the fishery? That is another way of thinking about it. A third way of thinking about it is in social terms. Do we prioritise areas for employment and so on? We will get the answers in 2016, but we are committed to MSY in 2015. There you have it.

The Convener: Thank you for that. We still have to deal with a couple of issues, including multi-annual management plans, but two people want to contribute before we finish up.

Mireille Thom: The photo here is what we must avoid, Niels. We must not go from one extreme to another. Yes, there are discards due to the fact that the rules on sizes and so on mean that you cannot land some fish. However, as has been said before, what can be done is to make the fishing gear as selective as possible so that you start making a selection while your net is still in the water.

Nets were mentioned earlier and, as we all know, the industry has been working on selective gear for quite a long time. It is not as if the industry is saying, “We don’t care. We’ll just throw the stuff overboard.” It makes commercial as well as ecological sense not to have everything crushed together. The best way to get to a ban on discards—or at least to minimise discards as much as possible—is to operate selection before the net comes back on to the deck.

Good work has been done under the Scottish conservation credits scheme and the measures that have been used to avoid catches of cod. We will not get a perfect catch, but it can be improved through a number of devices.

11:15

Annabelle Ewing: Dr Thom referred to cod, which takes me on to the cod recovery plan, which in turn takes us to multi-annual management plans or alternatives thereto. On the science, I think that Bertie Armstrong made a fair point. The fishermen are out there and they are collecting data—why do their data not have a wider currency in 2011? I do not know what assumption is being made, but I would have thought it would be useful to make more use of the data collected by fishermen.

Let me move on to the cod recovery plan. It seems to me that, when you have a system that has the best of intentions but takes no account of the measures being taken on the ground to try to secure the objective, that leads to systemic unfairness. That is not helpful for anybody and certainly not for the future of the Scottish fishing fleet. Are there better ways than the approach that the cod recovery plan has taken to secure the same objectives?

Professor Boyd: I will reply just to the point about information from fishermen. I agree completely that we in the scientific community have not engaged sufficiently with the fishing industry to collect data. However, there are certain caveats and some barriers to progress that we need to understand, which relate to data quality and how data are collected. There are strict statistical controls over how data are collected and delivered. Nevertheless, a lot more could be done to work with fishermen so that they understand what those strict controls are and can perhaps work around them and ensure that data can be delivered. If anything comes out of all this, we ought to increase the amount of data that we collect through engagement with the fishing industry. I would strongly support that.

The Convener: I am particularly interested in thinking about multi-annual management plans, because they need to be multi-species plans. The question of how we achieve those plans as well as

our questions in that context to the UK minister for fisheries and the Scottish cabinet secretary are something that the committee will have to address next week. Does anyone have any final comments on that point just now?

Niels Wichmann: The possibility of multi-annual quotas and multi-species quotas was written into the framework regulation for the common fisheries policy. It took effect on 1 January 1993—nearly 20 years ago—but it has been left there. We have tried to introduce the multi-annual perspective for years. One proposal is to have a possible plus or minus 20 per cent in the national quotas, which we could then transform into plus or minus 25 per cent for individual vessels. The fish do not care whether it is 1 January, and such an approach might reduce discards and make things more flexible in the fishery and for the countries.

We also need to try to identify families of fish in the mixed fisheries that we have talked about. We have done a lot of work on that but have never been able to go further with it. If we overfish or do not catch a particularly large amount of haddock, we might be able to write that off against our national cod quota. In the flat-fish scene, we catch sole and plaice together. We have tried to promote such thoughts to make the system more flexible. Nobody wants certain fish on board, but it can happen. The question is: will those fish be landed?

Professor Boyd: Let me make a point about multi-annual quotas. From a purely practical scientific perspective, it would be good to move in that direction. At the moment, science is very resource limited and if we can move to multi-annual quotas we might be able to move away, to some extent, from the annual round of setting quotas and some of the annual rounds of data collection. That might free up a certain amount of resource for new science.

One of the big problems with fisheries science at the moment is that there is no headroom to create initiatives in science, such as work with fishermen. We need to find that headroom. Quite apart from their practicality in relation to managing fisheries, multi-annual quotas have potential practicality in relation to making the science work better.

Bertie Armstrong: Multi-annual plans, which in the present plan are called long-term management plans, have generally been successful for single species. The one that has failed is the one that you put your finger on, convener: the plan for cod, which was overly prescriptive and overly detailed. We welcomed it cautiously in 2008 as we thought, “Well, this is a change. Instead of automatically just looking at quota and effort as means of control, we should look at mortality.” In fact, it

turned out to be about effort and quota and it is causing us enormous difficulties.

Not everybody understands this, but the committee has just demonstrated that it does. Multi-species plans are the essence of what is required for the future if we are to reduce discards. If we just concentrate on single species, we are doomed to carry on in the way that we are going already.

The Convener: I invite Ian Gatt and Will Clark to make final comments.

Ian Gatt: One of the successes of the pelagic industry has been that most of our key stocks are under long-term management plans. Although we have an international dispute about quota sharing, the North Sea herring, Atlantic-Scando herring and mackerel fisheries are still underpinned by a long-term management plan. Plans for single species are more simplistic than plans across a range of species, but given the success of single-species plans, we should certainly work towards multi-species plans as part of any review.

As with anything, we will not get such plans—which you could call first generation plans—right first time, so there must be a period when they are reviewed and re-evaluated so that corrections can be made. I wholly support long-term management plans, which have made the pelagic industry successful over the past 10 years.

Will Clark: I am sorry to backtrack, but I want to make a point about discards. In the CFP reform that Damanaki is supporting, there is no discarding and money is being made available for building cold stores and financing the buying of unsold fish. As Niels Wichmann said, if the fish is to be landed, will it be classed as overquota fish or will it be incorporated in what little quota we have? Where are we coming from with this? Obviously if you start to land a smaller profile of fish you have to change the public’s perception of what they eat. There will be a lot more smaller fish on the shop shelves. That will present a problem in the processing industry, because if you reduce the profile of the fish that you process, you need a lot more people to process it and we do not have the finance to get people in place quickly. There is a big issue around discards.

The Convener: Thank you. I invite Mireille Thom to make a final point on the science.

Mireille Thom: We subscribe to what has been said on the merits of the multi-annual plans. We should view them as the link between the EU institutions. The EU Council and Parliament would keep their power, rather than losing any of it; and they would set objectives and targets for the multi-annual plans based on multi-species fisheries, which would be designed, implemented and reviewed at the regional level. The Commission

would not lose any of its competence or duties, in that it would monitor the whole process and if things did not work out at the regional level it would have the power to take competence back from the member states.

The Convener: You have left us plenty to contemplate. I thank all our witnesses and members of the committee for the interaction that we have had, much of which has been very helpful indeed. It has certainly been fascinating for us. I am sorry that nobody got on to my favourite subject of nephrops. On the other hand, I can always go and eat some later tonight—I hope.

Niels Wichmann: I just have a quick final comment. The North Sea RAC is drafting a paper setting out our comments on the same main points that have been made here today. We would be happy to send you the paper, although it is still a draft.

The Convener: We would be very happy to receive that and any other thoughts—on one side of A4 if possible—from our colleagues around the table.

Thank you very much for your participation. We will take a short break for five minutes and restart at 11:30.

11:25

Meeting suspended.

11:32

On resuming—

Subordinate Legislation

Crofting Reform (Scotland) Act 2010 (Commencement No 2, Transitory, Transitional and Saving Provisions) Order 2011 (SSI 2011/334)

The Convener: We move to agenda item 3, which is subordinate legislation. The committee is asked to consider a commencement order under the Crofting Reform (Scotland) Act 2010. The order is not subject to any parliamentary procedure. Do I have the committee's agreement to note the instrument, or does anyone want to make any comment about it?

Annabelle Ewing: Did we get a copy of it?

The Convener: It was circulated electronically. It is not subject to parliamentary procedure. Do we agree to note the instrument?

Members *indicated agreement.*

Land Reform (Scotland) Act 2003 (Post-legislative Scrutiny)

11:33

The Convener: Agenda item 4 is post-legislative scrutiny of the Land Reform (Scotland) Act 2003. Members will recall that we agreed to consider how the committee wishes to proceed with the issue of land reform. We have heard from the researchers who produced the report that was commissioned by the previous Rural Affairs and Environment Committee, and we have received an update from the cabinet secretary on the Scottish Government's plans. I invite members' comments.

Elaine Murray (Dumfriesshire) (Lab): I do not have a copy of what the cabinet secretary said. I have some background papers and some correspondence from the convener of the previous committee to the minister but not the letter from the cabinet secretary.

The Convener: That is a good point.

Elaine Murray: It is not just me who did not get a copy.

The Convener: A paper copy of the correspondence from the cabinet secretary to the committee was circulated to members at the time, but I will read it out as it is very short.

"Thank you for your letter of 8 September ... We are currently undertaking an overview of the evidence on land reform in Scotland which will contribute to that review. I hope that this will be concluded soon, and I am happy to share this with you. You will be aware of our commitment to establish a Land Reform Review Group to advise on the review of the land reform legislation. I intend that this will be appointed during the course of 2012. I am happy to keep you updated on this. I note that you have agreed to monitor Scottish Government activity in this area. I shall be pleased to keep you updated on progress. I note that you will decide how to move forward on land reform issues at your meeting on 21 September. I will be interested to hear of your plans."

We took evidence on the post-legislative scrutiny element and decided to think about how we wanted to proceed with it. The committee paper on the item, which has been circulated, contains a series of points about that. I pointed out to the committee that the report presented a series of proposals on guidance, education and so on. Certain legislative changes were suggested regarding the issues of access, the community right to buy and the crofting community right to buy. Those are the areas that we considered at the time, and they are what we took evidence on at the committee's meeting on 21 September. I proposed at the time—and I propose it again—that we should forward those points to the cabinet secretary. Are there any comments?

Graeme Dey: Are we going to go into specifics under each of those headings?

The Convener: The third bullet point in paragraph 1 of the committee paper, under the heading "Background", says that the committee may want to

"consider how it wishes to proceed on the issue"—

that is, the issue of land reform—

"following conclusion of the above steps."

There are other aspects of land reform that we may wish to discuss. I suggest that, given the discussions that we had and the details that are laid out in the executive summary of the post-legislative scrutiny work, which stretch over several pages through to page 8 of the committee paper, we should use those as the basis for our communication with the cabinet secretary. That will make clear to him what we think should be looked at by his group in due course.

Alex Fergusson: You are referring to work that our predecessor committee did, convener.

The Convener: Indeed. I am also referring to the work that we did when we interviewed Dr Macleod and others, who commented on the report that they produced.

Alex Fergusson: I think that I was absent from that meeting.

The Convener: Their report included recommendations on education and guidance for the public, on proposed legislative change at a statutory instrument level and on proposals for primary legislation if needed. Those were contained in the papers that we discussed on 21 September, and I am suggesting that we convey them to the cabinet secretary for his review group to look at. We can bring the letter back to the committee before we send it to the cabinet secretary.

Alex Fergusson: I would appreciate that.

Elaine Murray: I was a little bit confused by the papers. Are you talking about the executive summary that was provided before those witnesses gave evidence to us, or does it include the evidence that was given to us at the committee meeting?

The Convener: I am talking about the executive summary of the report that they produced.

Elaine Murray: We have further evidence that we took at that meeting, which I presume that we want to incorporate.

The Convener: I certainly want to do that, as it elucidated issues that we have had concerns about even in the past year. We need to draw all those things together into a proposal that the

committee can see before we send it on. We have dealt with it in that way so far, and we need to create a structure that allows us to deal with other matters in a similar fashion so that we have definite proposals to make. I have said several times that that model is a good one.

Graeme Dey: On the issue of the community right to buy, a lot of detailed stuff came out in the evidence that we took on 21 September on problems with the mechanics of the process. I am keen to see those brought to the minister's attention. A lot of them can be dealt with fairly easily, but they are considerable barriers to progressing the community right to buy.

The Convener: Yes. It is up to the Government to come forward with proposals for legislation and, if possible, ways of tackling matters without legislation. It would help considerably if we had in front of us a programme of education, guidance, primary legislation and secondary legislation. I take Graeme Dey's point, and we will include what he suggested in our letter to the minister.

Alex Fergusson: Just to clarify, nothing in the papers is about what has been put to this committee—it is all from the previous committee.

The Convener: That is correct.

Alex Fergusson: Given that, can we take you up on your offer to circulate the letter before it is sent off?

The Convener: We will bring it back for a detailed look before it is sent off.

Alex Fergusson: That is fine. I am perfectly happy with that—thank you.

The Convener: I will not take it upon myself to interpret the views of committee members without their agreement—in this case. [*Laughter.*]

We will assess the Government's response to the evidence that we present to it. We must also consider how we wish to proceed on the issue after we have taken the agreed steps. That takes me back to the paper that members had earlier this session explaining how Donald Dewar laid out matters in the John McEwen lecture in 1998. We have moved on since then, so aspects of what he talked about need further work.

Do members have any points on what we have discussed or on other aspects of land reform that they think we should explore further, so that we can decide how to do that?

Annabelle Ewing: I have seen the Donald Dewar paper, but for some reason the land reform paper was not among the papers that were sent to me—but that is fine.

The Convener: I am sorry about that. We will ensure that you get all the relevant papers in future.

Annabelle Ewing: That is okay. It was less homework for me to do, so it was fine.

I am interested in whether we can explore as far as possible how we identify landowners who receive public money, which would bring us on to the thorny question of the beneficial owner. It would at least be worth looking at the issue.

The Convener: We have the land register, which does not specify beneficial owners at the present time, to add to members' thoughts. Companies that get agricultural subsidies are identified, but individuals are not. There is a whole grey area that is of interest in that regard. We can ask the Scottish Parliament information centre to do some work on that.

Annabelle Ewing: That would be helpful.

The Convener: We ought to know how much of our land is registered and how the land register is developed. Most land does not change hands, so there is no reason to register it in the map-based modern system. It will be somewhere in the Register of Sasines from 1600 and whatever. A large amount of land in Scotland has not changed hands, so it is not easy to access information about ownership of land, far less to find out who the actual owners are.

Alex Fergusson: It is quite accessible if you approach the correct office, is it not, convener?

The Convener: I do not know that that is necessarily the case, but we will get an explanation of the issue from SPICe to inform our discussion.

Graeme Dey: Would it be helpful to examine the issue of common good land and buildings on such land? We all know of examples across Scotland of bits of land and buildings having been gifted to communities, council set-ups changing and, 50 or 100 years down the line, big local bust-ups breaking out about who owns the land, the buildings on the land or whatever.

11:45

The Convener: It would certainly be helpful. I can assure members that I am dealing with a live issue in relation to land that was given to a community and then sold by a council under a compulsory purchase order for road development. Despite the fact that the land's original owners were the members of the community, the land that was deemed surplus to requirements was also sold.

In some part of the Borders, there are common good-owned farms and, indeed, tenant farms.

Common good interests are maintained in many different ways. Of course, we have also heard of examples in which common good has been misplaced by councils selling off particular assets without any redress.

Jim Hume: Convener, you are right to point out that there are common good-owned farms in the Borders and perhaps, when we retire, I will take you to see them.

Having been a trustee of common good funds for a few years now, I can tell the committee that they are very complex and are not without their own—many—issues. I feel that, if we were to start examining them, we might be straying from our remit in scrutinising the 2003 act.

The Convener: The subject of land reform itself has not been narrowly defined in the land reform acts that have been passed. I find it interesting that, when the whole process began in the 1990s, Donald Dewar himself pointed out in his John McEwen lecture:

“we need to put in place arrangements so that further changes can be worked through and worked up. So that we can ensure that such legislation is not a one-off, but a down-payment.”

I would have thought that there are wider land reform issues to deal with now than were dealt with in Parliament 10 years ago.

Alex Fergusson: As I understand it, the cabinet secretary has said in his response that he intends to set up a land reform review group in 2012. Given that, presumably, it will deliberate and report publicly, would we as Government policy scrutineers not be better advised to await that group's report before we decide whether to make further input to suggested land reform measures? I have no problem in suggesting issues that have been raised either by our predecessor committee or with us in this session but, in light of the cabinet secretary's proposal to establish a land reform review group—which I assume will come forward with its own suggestions—do we need to be particularly proactive in making other suggestions?

Elaine Murray: I probably agree that we do not have the evidence to say a lot, but we might wish to suggest to the Government that the review group examine certain issues to see whether any other legislative changes might be appropriate.

The Convener: That was the impression that I got from the cabinet secretary. When I asked him about the issue, he said that he would be interested to hear from the committee about aspects of land reform before his group began its own scrutiny. He might have a lot of ideas of his own, but I think that Elaine Murray has summed up my own view about feeding our own ideas into the process. If there are issues to raise, we should do so.

Aileen McLeod: I concur with Elaine Murray's comments. It would be interesting to examine the issue of allotments, because quite a lot of people are finding it difficult to access land on which to grow their own food. Indeed, given that demand for allotments is increasing in communities, it might be useful to ask SPICe to find out what kind of people are experiencing such difficulties in different parts of Scotland.

The Convener: That is the sort of interesting issue that people were not thinking about 10 years ago. The problem of getting hands on land is very much of the time both in the towns and in the countryside and is probably very much tied up with land planning and zoning. We should certainly ask SPICe to investigate the issue further.

Do members have any other points?

Jenny Marra (North East Scotland) (Lab): When we discussed the subject before, we discovered that there were still problems with right of access. Although the issue has not been bullet-pointed in the paper, I would like it to be brought to the cabinet secretary's attention.

The Convener: Indeed. The report that was prepared by Calum Macleod and others contained recommendations on access and, before we send anything to the cabinet secretary, we will have to summarise all the points in our letter, which will be discussed by the committee. The issue that the member has raised will be taken on board. I think that we have discussed quite a number of the issues but, if we have missed any, members should bring them up when we discuss the letter.

I should also highlight the issue of compulsory purchase powers, which are often used in connection with roads and so on. Another committee might be dealing with that, but we should still get information about it. After all, the issue of how compulsory purchase could be used in relation to allotment land and housing might be of interest to us. If people find themselves unable to access land, various routes are open to them.

I wonder whether the clerk can provide any more information in that respect.

Lynn Tullis (Clerk): We can find out under whose remit the issue correctly falls.

The Convener: That is fine.

This need not be the end of the show, but at least we have some things to be getting on with. When we have been informed by SPICe about the provenance of certain matters, we can discuss all the issues at a subsequent meeting.

We have agreed that the next steps for the committee are to get more evidence and to discuss at a subsequent meeting land reform issues that have been previously discussed such

as access, community right to buy and crofting community right to buy and any other such issues that might arise. They will then be set out in a letter to the cabinet secretary.

Before I move into private session, I thank members of the public for attending. The committee's next meeting will be on 9 November.

11:53

Meeting continued in private until 12:08.

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