



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

Wednesday 19 December 2012

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RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE **30th Meeting 2012, Session 4**

CONVENER

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

DEPUTY CONVENER

*Graeme Dey (Angus South) (SNP)

COMMITTEE MEMBERS

*Jayne Baxter (Mid Scotland and Fife) (Lab)

*Claudia Beamish (South Scotland) (Lab)

*Nigel Don (Angus North and Mearns) (SNP)

*Alex Fergusson (Galloway and West Dumfries) (Con)

*Jim Hume (South Scotland) (LD)

*Richard Lyle (Central Scotland) (SNP)

*Angus MacDonald (Falkirk East) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Craig Burton (Seafish)

Stephen Cameron (Scottish Shellfish Marketing Group)

Jennifer Howie (Food Standards Agency Scotland)

David McCallum (Dumfries and Galloway Constabulary)

Peter Pollard (Scottish Environment Protection Agency)

Walter Speirs (Association of Scottish Shellfish Growers)

CLERK TO THE COMMITTEE

Lynn Tullis

LOCATION

Committee Room 2

Scottish Parliament

Rural Affairs, Climate Change and Environment Committee

Wednesday 19 December 2012

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

Interests

The Convener (Rob Gibson): Good morning, everybody, and welcome to the 30th and final meeting in 2012 of the Rural Affairs, Climate Change and Environment Committee. Members of the committee and members of the public should turn off their mobile phones and BlackBerrys because leaving them in flight mode or on silent will affect the broadcasting system.

Agenda item 1 is a declaration of interests. We welcome Jayne Baxter to the committee. Do you have any relevant interests to declare?

Jayne Baxter (Mid Scotland and Fife) (Lab): No. I have no relevant interests to declare.

The Convener: Thank you very much. We have had some personnel changes, and we hope that you, like the rest of us, will be a member of the committee for a long time. We keep having the committee's photograph taken; we have to change it almost monthly. Let us hope that that is at an end.

We formally thank Margaret McDougall for her work as a member of the committee prior to Jayne Baxter's arrival.

Subordinate Legislation

Welfare of Animals at the Time of Killing (Scotland) Regulations 2012 (SSI 2012/321)

Plant Health (Scotland) Amendment (No 2) Order 2012 (SSI 2012/326)

Crofting Register (Scotland) Amendment Rules 2012 (SSI 2012/327)

Crofting Register (Fees) (Scotland) Amendment Order 2012 (SSI 2012/328)

10:00

The Convener: Agenda item 2 is subordinate legislation. The committee must consider four instruments that are subject to negative procedure; they are listed on the agenda. No motions to annul have been received in relation to any of the instruments. I refer members to the paper that has been provided.

Do members want to comment? There are four instruments, two of which will make corrections. The first of the instruments requires some corrections. We note the complexity of particular areas of regulation. The rural affairs directorate has mentioned the Welfare of Animals at the Time of Killing (Scotland) Regulations 2012, and I understand that it intends to amend two paragraphs very soon after the new year. Thanks to the Subordinate Legislation Committee, the regulations are being brought to the Government's attention so that we will get better regulation.

Claudia Beamish (South Scotland) (Lab): As a member of the cross-party group on animal welfare, I highlight the fact that a number of concerns have been raised. It is important that there is on-going discussion about and awareness of the issue of animals at the time of killing. I would like it to be noted that there are on-going concerns. I will not go into them today, but they exist.

The Convener: Thank you very much for that.

Do members agree that we need make no recommendations on the instruments?

Members *indicated agreement.*

Aquaculture and Fisheries (Scotland) Bill: Stage 1

10:03

The Convener: Agenda item 3 is the Aquaculture and Fisheries (Scotland) Bill. This is our fourth evidence session on the bill. Today, we will have a round-table discussion about parts 3 and 4, which relate to sea fisheries and shellfish.

Our witnesses have joined us. We will introduce ourselves around the table.

Jayne Baxter is the first MSP there.

Craig Burton (Seafish): I am from the Seafish industry authority.

Claudia Beamish: I am Claudia Beamish MSP.

Stephen Cameron (Scottish Shellfish Marketing Group): I am the managing director of the Scottish Shellfish Marketing Group.

Richard Lyle (Central Scotland) (SNP): I am Richard Lyle MSP.

Jennifer Howie (Food Standards Agency Scotland): I am from the Food Standards Agency Scotland.

Nigel Don (Angus North and Mearns) (SNP): I am Nigel Don MSP.

Walter Speirs (Association of Scottish Shellfish Growers): I am currently chairman of the Association of Scottish Shellfish Growers and chair of the Scottish Government shellfish forum. I have a mussel farm in Loch Etive, which you have heard about previously with regard to *Mytilus trossulus*.

Alex Fergusson (Galloway and West Dumfries) (Con): I am Alex Fergusson MSP.

Peter Pollard (Scottish Environment Protection Agency): I am from the Scottish Environment Protection Agency.

Jim Hume (South Scotland) (LD): I am Jim Hume MSP.

David McCallum (Dumfries and Galloway Constabulary): I am from Dumfries and Galloway Constabulary.

Angus MacDonald (Falkirk East) (SNP): I am Angus MacDonald MSP.

Graeme Dey (Angus South) (SNP): I am Graeme Dey MSP.

The Convener: I am the convener of the committee.

In order that the discussion flows and everyone is able to contribute, witnesses and members

should indicate to me when they wish to speak, and everyone should make an effort to keep their contributions as concise as possible, please.

We will begin with questions about the consultation on the bill and the Scottish Government's response. A lot of issues were raised in the consultation document that some of the witnesses might have liked to see in the bill but which were not included. What are those issues? Will they be taken forward in other ways?

Walter Speirs: I very much welcome the provision in the bill to protect shellfish-growing waters, but we need to ensure that the detail in the bill follows through on the general spirit.

The Convener: Do you have any particular points to make?

Walter Speirs: I am thinking of the specifics of the biological standards or the microbiological standards for shellfish-growing waters. Our desire is to protect the waters, but we need to know exactly what the standards will be.

The Convener: Does anyone else want to comment? If not, that is okay. We have made a start on looking at issues that might be taken forward. After the committee has gathered information, we will make recommendations in our stage 1 report, which will be produced after we complete evidence taking and which will give our overall view.

Jim Hume: Section 34 will give enforcement officers powers to inspect and seize objects that are connected with commercial sea fisheries. Seafish has said that the conduct of research should provide an exemption. Has any panel member raised that with the Government? If so, what was the Government's response?

The Convener: My goodness, we are having a quiet session.

Craig Burton: We conduct real-time research on commercial vessels using gear that may or may not be legal under current requirements. We raised the issue because we are keen for the matter to be clarified before the bill proceeds further, so that there is no ambiguity for enforcement officers.

Jim Hume: Have you had a response from the Government?

Craig Burton: We have heard nothing from it.

Jim Hume: Does any other panel guest have comments on the proposed new powers on inspections and seizures in section 34? Perhaps the police might be interested in that.

David McCallum: I do not think that the police would exercise such powers in relation to boats. We do not have the capacity or capability to

examine boats, so it would be difficult for us to deal with that aspect of sea fishing.

The Convener: We move on to the modification of the Fisheries Act 1981 in relation to enforcement of European Union rules.

Graeme Dey: In accepting that the Scottish Government plans a minor amendment to the bill to take in shore-based trades, does any witness foresee practical problems in implementing the planned changes?

The Convener: Nobody seems to have a problem with that.

Right. Perhaps we will have more help with our questions on shellfish. We are always keen to hear from people if they have second thoughts later, although I am sure that the witnesses will have plenty to say about the next issue.

Richard Lyle: Good morning, ladies and gentlemen. Are there any practical difficulties integrating the designation and de-designation of shellfish areas with the river basin management plan process? Do you see any dangers in moving from a three-year to a six-year cycle?

Walter Speirs: The main thing is that we have the protection in place. The protection that we want is non-deterioration; therefore, as long as the waters are monitored and any deterioration dealt with, I do not see any problem in changing the cycle time.

The Convener: Does SEPA have a view?

Peter Pollard: Moving to a planning cycle that aligns with how we manage the water environment as a whole makes a lot of sense to us because we can co-ordinate our investment and planning processes to deliver the protection that the shellfish sector needs. The other part of that is that we assess risk of deterioration case by case, when applications are made—for example, when there is a discharge.

Stephen Cameron: I want to reiterate Walter Speirs's and Peter Pollard's point from a commercial angle. The continued striving to have grade-A waters for growing shellfish is very important for our industry and, although that classification is subject to interpretation of European Union legislation, we must ensure that we protect the commercial status of grade-A water.

Claudia Beamish: I want to take that line of discussion a little further. Are there circumstances under which SEPA might decide that protection of an area was not commercially justified? We have had evidence about that. My other question, which is to open the discussion up to other panel members, is to ask whether that could have a detrimental effect on smaller shellfish cultivators.

Peter Pollard: The main thrust of the proposal to replace the shellfish waters directive provisions is to give flexibility to decide when investment and improvement are proportionate. It is a risk-based approach to deciding which action is proportionate, taking account of costs and benefits. Safeguarding the areas from deterioration is fine, but ensuring that we have flexibility to consider costs and benefits—there are big costs in bringing polluted water up to class A—needs to be factored into decision making. That greater flexibility is important.

Walter Speirs: We are not clear about who will make the judgment on the cost benefit analysis. In the extreme case, we would accept that to spend millions of pounds upgrading a sewage plant for a small output shellfish farm would not make sense. However, we are certainly not clear about how that judgment would be made and who we would work with or negotiate that through; how that will be managed is a little vague.

There are areas that are currently suitable for shellfish cultivation but which are not being used. Protecting those areas from deterioration is one of our main drivers. Cleaning up of areas should all be part of the river basin management plan and the on-going drive. It is about non-deterioration and continuous improvement.

Jennifer Howie: From the data that we collect for our on-going monitoring of classified shellfish production areas, we see that the waters in Scotland are of a good standard, which is seen by the number of A-class waters that we have. The margins between A-class waters and B-class waters are small. We have lochs where there are no waste water treatment works, but which are not A-class waters all year round simply because of the nature of the loch and the usage around it, including declared and non-declared septic tanks and leisure uses. You cannot guarantee absolutely that you will get an A-class water just because investment has been made, whatever amount is spent. For example, there could be unusual weather events—they are becoming less unusual—and exceptionally high run-off from the land into the water. I doubt that one could categorically guarantee class-A water under any circumstances.

10:15

The Convener: We hoped to have Scottish Water here today, but that was not possible. We will alert it to that evidence and seek its views.

Walter Speirs: The shellfish sector has to adhere to the growing waters directive, which will be replaced by the new bill, and the shellfish harvesting waters directive, which is used by the Food Standards Agency. The main point is that a

shellfish farmer should be able to place the product on the market, so we must comply with the harvesting waters directive. The bringing into line of those two standards will be tremendously helpful for us, because we will base the quality of the shellfish on the quality of the environment from which it comes. That link has not been made before; there has been a disconnect between water quality and shellfish quality when they are actually one and the same thing.

Stephen Cameron: I also want to follow on from what Jennifer Howie said, and probably add a bit to what has been said. The industry would accept her point on grade-A classification for a number of non-pollutant events or controlled pollutant events. I do not know how relevant this is to the current discussion, but there is a lot to do with interpretation of EU legislation that impinges commercially on water classification grade-A status in Scotland. I am not sure how relevant that is to the bill, but it certainly has impacted on and is relevant to grade-A classification.

Jayne Baxter: Do the witnesses agree with Scottish Water's evidence that it has done much work to resolve water-quality problems that have originated from its network, and that diffuse agricultural pollution might be responsible? How will the bill help to resolve that?

Walter Speirs: I will go first on that. We obviously have many interesting debates with Scottish Water. One of the things that I have found to be strange in evidence on the bill is the amount of money that has been allocated against protection of shellfish growing waters. Shellfish growers are not the only people who want the waters to be free of pollutants. Just because money has been spent on an area that is adjacent to shellfish water, the effects of the bill should not be laid at our door exclusively. We have a few issues with that.

On diffuse pollution, Scottish Water has control over certain assets of its own, and it looks to SEPA on those things over which it does not have control. Septic tanks were mentioned; they are nothing to do with Scottish Water. There is, I think, another piece of legislation coming up to catch up with and pick up unregulated or unlicensed discharges.

We cannot be too hard on Scottish Water in some respects because, in the natural environment, our classifications are based on E coli measurements, and E coli which comes from any warm-blooded mammal. The whole sampling process is not really perfect. Something as simple as a seagull passing when a sample is being taken can have an impact. There is a balance to be struck.

We want to work more closely with Scottish Water. It would be helpful to get out of the defensive and argumentative situations in which we sometimes find ourselves and instead to work more pragmatically together for a practical solution.

Peter Pollard: There are two sides to thinking about what we do for shellfish waters. On the one side, we try to ensure that environmental conditions are suitable for shellfish growth, which protects the shellfish themselves. The second side—the one in which the industry is most interested—is about managing indicators of faecal contamination because of the marketing issues around that. Faecal contamination does not damage the shellfish but it is an issue for the marketing of shellfish. All our shellfish waters across Scotland are in a good state in relation to the growth of shellfish and the ecological quality of the water.

The problem is faecal coliforms, which, as Jennifer Howie has pointed out, can get into the water not just from sewage-related sources but from agricultural activities. For example, they might come from a river that drains into the sea after going through an intensively farmed bit of agricultural land or even an extensively farmed area with lots of sheep droppings. Seal haul-out areas and rafts of seagulls can also be sources and the first step in determining where and what action is needed is to establish where the problem is coming from and work out the sources that are contributing to it. It might not be Scottish Water assets but some other source, so if we want our management to be effective, we need to work out what that source is. That is how we should manage such areas as we move forward.

Craig Burton: It might assist the committee to know that Seafish is working with the water industry in England on a text-alert system. In the event of, say, a discharge from a water treatment works, a text message is sent to shellfish growers in the area to alert them to the possibility of having to step up their testing of the standard of their end products. Scottish growers are certainly interested in the system, and it might be helpful to have good dialogue with Scottish Water on how that might be developed. Of course, it is still early days, but where the system has been trialled it seems to have had a very good reception and things so far look positive.

Graeme Dey: On Walter Spiers's reference to the situation with Scottish Water, is the problem lack of engagement or the nature of the engagement?

Walter Speirs: It is the latter. To be perfectly frank, I think that Scottish Water does not want to be as open as it could be, just in case someone comes after it for compensation, and we really

have to move on from that position. I suppose that if Scottish Water were to alert a shellfish farmer that there had been a spill and if, as a result, the farm could not sell its produce, the door would be left open to the farmer making a claim against the loss of sales. If we can get that scenario out of the way and work together more productively, I think that Scottish Water can do a lot of positive things to help us to move forward jointly. It would be helpful to have a more open discussion without the fear of litigation.

Jennifer Howie: On a general point and leaving to one side the commercial marketing issue—which is of course of keen interest to the industry—I point out that there is absolutely nothing wrong with shellfish from class-B waters. In fact, from a public health perspective, whatever comes from class-B water has an additional public health control, which does not necessarily ensure anything but provides an additional public health safeguard that shellfish from class-A waters do not have to get. If anything, there is much more of an onus on producers from class-A shellfish waters to demonstrate that their product is compliant, given that shellfish from such areas do not have to undergo any absolute control before they can be marketed. In short, there is nothing wrong with class-B waters and shellfish from them.

Stephen Cameron: I agree about the process of depuration or cooking that Jenny Howie mentioned. Commercially, however, the perception is that class A is better than class B, and others in the EU work very hard to maintain class-A status.

Jenny Howie is correct to say that our class-B waters are probably cleaner and safer than class A, but the perception that I have mentioned exists and is not helpful to the industry. We can try to deal with the matter in another forum or area—indeed, I know that other forums are looking at it—but that is the view of science and the industry.

The Convener: Will the FSA and SEPA monitoring and inspection regimes be fully aligned under the new process?

Jennifer Howie: This is taking the discussion outwith the scope of the bill to an extent but, as the committee might be aware, the FSA in Scotland will become something else in a few years' time and the Scottish Government will launch a consultation on the exact roles and responsibilities of the new food body and what it will have within its remit. That will provide another avenue for looking at the overlaps between the FSA and other bits of Government.

Peter Pollard: We are working together closely already. In fact, a lot of SEPA's classifications of shellfish-growing areas rely on data provided by the FSA from their sampling and harvesting areas.

We supplement that where there are gaps, for example if there is no harvesting area at the time. We are already working that way and I see that continuing.

Jennifer Howie: I would like to echo those sentiments: we work well together. Forums such as the shellfish forum have benefited the regulators in our dealings with industry by providing a quarterly regimented meeting where we can catch up on relevant points.

The Convener: The need for a definition of "shellfish waters" has been discussed. How does that relate to the fish farm management areas that are talked about in other parts of the bill and, indeed, marine protected areas, which are not within the mischief of the bill but are something that will be overarching? Do any of the witnesses have views on that?

Walter Speirs: I am involved in the debate on marine protected areas. There are a lot of pressures on marine protected areas. There are pressures from the effects of aquaculture, but sewage also causes damage to those areas. Therefore, these things are aligned and I am quite glad to see that in there—it does help.

Our concerns, which have not been fully resolved, are about what activities will be permitted in marine protected areas. We hope that something such as shellfish farming, which is pretty benign, would be permitted in a marine protected area.

Part of the important thing about our shellfish-growing waters being designated with a capital D, if you like, is that it means that they will already be designated areas. If an area is to be considered for becoming a marine protected area, the fact that the area is already designated as a shellfish-growing water will have to be taken into account. We are keen to keep the designation of the shellfish-growing waters in the shape that it has been.

Craig Burton: We have been putting together a sort of toolkit for marine protected areas that will help the industry to gather its own data in support of its case for continuing activity or moving into new areas and new activities by doing environmental assessments and helping with appropriate assessments. We are keen to see a decision-making process that allows such assessments to be submitted in support of an application.

There is a general view that if data is industry data, it cannot be right and an external consultant should be employed for quite a lot of money to do the same thing in less time and with less thoroughness. The industry is there, day in and day out; it knows its environment; and it knows

what it is doing. It is a very good source of this sort of information.

On the farm management agreement, there is no requirement in the bill for shellfish farms to be part of an area management agreement or farm management agreement. The system is aimed solely at the fish farming industry. There is a slight concern that some of the minority fish species that we farm, such as halibut, cod—perhaps, if it returns to Scottish waters—and even turbot, which makes a guest appearance every now and then, goes to Spain and comes back again, could be caught up and that there could be unintended consequences if the agreements are not actually spelled out.

We can understand why farm management agreements are there. They make a lot of sense for the salmon industry and—to a certain extent—the sea trout farming industry. They might be of less importance for some of the other species, but it would be good to ensure that those are not caught because of an unintended consequence.

10:30

Peter Pollard: I have an additional point. One of the benefits of highlighting areas that are important for shellfish or marine conservation reasons is that that helps us to prioritise our efforts. We have to manage the whole of Scotland's water environment, but we must put more effort into the areas where more improvement is necessary. Identifying what is important to a country helps us to manage the water environment and to direct our efforts appropriately.

The Convener: In your case, that is out to 3 miles from the shore.

Peter Pollard: That is correct.

The Convener: As there could be much larger marine protected areas, there is an overlap there. I thought that it was worth exploring that.

I have a specific question for Walter Speirs that relates to chapter 3 of part 1 of the bill, which is on commercially damaging species. You said that your farm had been affected by *Mytilus trossulus*, Mr Speirs. Will you expand on that?

Walter Speirs: I am happy to do so. Loch Etive was Scotland's most productive shellfish loch. When the problem hit us, we were producing 800 to 1,000 tonnes. We noticed that something had changed—the mussels had a very thin shell and a very small meat content. At first, we thought that there was an environmental factor. The first line that we pursued was whether there were too many shellfish in the water and not enough nutrients. Completely by chance, we had some visitors from Canada, who quickly identified that the mussels in

question were another species. We now know that that species is *Mytilus trossulus*.

I read in the Scottish Parliament information centre briefing that *Mytilus trossulus* was decided to be a native species. That is probably not correct. It may have been a native species here during the ice age, but no evidence of it has been found since, other than on mussel farms, so I do not agree that it is a native species.

At one point, we tried to have *Mytilus trossulus* classed as an invasive non-native species—an INNS—but it cannot be classed as such, because it is not displacing a native species and it is not destroying a habitat. We are left with something that does not fit into any category, which there are no mechanisms to control. I would be happy if someone in the Scottish Government or SEPA had the ability to take action to deal with a problem that will continue to spread unless it is dealt with.

We have learned a lot from what has happened in Loch Etive. I hope that we are learning how to manage the species. I am glad that powers are to be introduced, which, if they had been in place sooner, would have assisted us in our attempts to eradicate it from Loch Etive.

The Convener: Would anyone else like to comment?

As no one has any further comments on that issue, we will move on to shellfish orders and cockle fishing in the Solway, et cetera. I invite Alex Fergusson, as the local member, to begin the questioning.

Alex Fergusson: As the member for Galloway and West Dumfries, this is a big issue for me. There are two South Scotland members on the committee, who I am sure will also be keen to ask questions.

Before we come to the specifics of the Solway, the bill intends to make changes to the way in which several and regulating orders are put in place—I think that it intends to simplify the process a bit. Do the witnesses think that that is a good idea? If so, are there further changes that they would like to see? The current process is a lengthy one. Would anyone like to comment on the changes that are proposed?

Craig Burton: Anything that simplifies the process, speeds it up and reduces the cost to an applicant must be a positive measure. I understand the reluctance of the catching sector, which is inherently reluctant to consider such fishery orders, because they see them as landlordism of the sea.

Granting a right of several fishery or regulated fishery to take a named species in a named area could be regarded as a bit of landlordism. However, on a practical basis, someone who is

looking to cultivate a species, use the natural environment and so on needs a level of protection, given what they are putting in. The approach works for oysters and mussels, and it can work for cockles and razorfish; for anything like that, there is a built-in mechanism to ensure that the stock is improved and not just pillaged and taken out. The mechanism is very good, and the legislation was extended to include crustaceans, such as lobsters and crabs. If someone is going to have a lobster hatchery and stock an area, they need a mechanism to control who can go in and take stock out, because they are making a considerable investment. Anything that helps to simplify and cheapen the process while speeding things up must be good.

Alex Fergusson: Does anyone else want to comment on that, before I move on?

The Convener: I do not think so. Please continue.

Alex Fergusson: I am sure that most people around this table are aware of the difficulties that the Solway cockle fishery has faced in the past few years. Whatever the differences of opinion have been about how the fishery has been run, no one wanted an unregulated fishery—that is for sure. The Government intends to lodge amendments to the bill to make provision for changes to the Inshore Fishing (Scotland) Act 1984 and the Sea Fisheries (Shellfish) Act 1967, to alter the circumstances that the court can take into account when considering a prosecution for illegal cockle gathering. That has been a huge issue locally since the Solway Shellfish Management Association ceased to function.

I am keen to know whether witnesses, in particular the enforcement agencies, think that the changes that the Government is proposing will be effective in stopping the illegal fishing that is going on. Although there was a big success recently in the west of the region, with the seizure of a great deal of gear, which I hope will lead to prosecutions, I have it on good authority that 4 tonnes of illegally poached cockles left Kirkcudbright harbour this week, under various documentation.

Some months ago in Dumfries, I attended a meeting of all the enforcement agencies, at which it became obvious that there is a lack of interagency working to tackle the problem. There is potentially a big food safety issue if illegally fished cockles are going into the food chain. Is there room for better interagency working to tackle the problem?

David McCallum: I support the Government's proposed approach. Indeed, I would probably take things a stage further and make provision in two parts, in the way that the Civic Government

(Scotland) Act 1982 does. Section 57 of the 1982 act deals with a person who is found in circumstances in which it is reasonable to suspect that they intended to commit theft, and section 58 covers known thieves who are found with tools, from the possession of which it can "reasonably be inferred" that they intended to commit a crime.

I would apply the section 57 approach to cockle beds in the bill, because we find that people discard the equipment that they use for cockling and simply come ashore in their clothing, maybe with a headlamp if they are working at night, so they do not have the nets, tamps—which are boards—and bags that would indicate what they were about. However, someone with expert knowledge would be able to infer that they were there for that purpose.

The section 58 approach speaks for itself, so if someone is found in possession of accoutrements and paraphernalia that suggest that they have been or are about to go cockling, an offence is committed. Such an approach would give a much more realistic opportunity of getting a conviction in the courts.

On interagency working, I agree that in the early stages of the process there was a lack of understanding of people's roles and responsibilities under the legislation. We have moved on since then. A number of meetings have taken place, and memorandums of understanding and information-sharing protocols are now in place between us—the police—and Marine Scotland, Environmental Health and the Food Standards Agency to ensure that any information that we receive is turned around quickly and shared with the other partners so that they can take enforcement action and respond to public concerns.

Alex Fergusson: At the meeting in Dumfries that I referred to, SEPA was quite open about the fact that there was perhaps more that it could do to track down and monitor movements of shellfish and identify what was not legally caught. Perhaps you would comment on that.

Jennifer Howie: The Food Standards Agency rather than SEPA?

Alex Fergusson: Sorry, I meant the Food Standards Agency.

Jennifer Howie: Interagency working is key. Since that meeting, I have had many discussions—discussions that I had not had previously—with various parties and other enforcement authorities on providing clarity under food law about what we require, and therefore what others should look for if they happen upon activity that they might suspect to be illegal. That has borne fruit.

On the requirements under food law, and tracking and confirmation, if what is on the registration document—which is a requirement—is accurately and honestly filled in, it provides all the necessary information about the shellfish in the back of someone's truck. It is down to trust whether the paperwork is enough and whether, in this modern digital age, we should move to other requirements. Other fishery sectors have global positioning systems tracking. It would not be beyond the wit of agencies and fishermen in cockle fisheries to keep track of where they have been. Using smart phones and GPS would help to fulfil the registration requirements, because it would identify the bed that the fishermen have taken the fish from.

However, as it falls a little outwith the Food Standards Agency's direct remit to monitor the movements of fishermen generally, we would probably fall on the side of more interagency work, more intelligence sharing—

Alex Fergusson: If you will forgive me, it is not so much about the movement of fishermen; it is more about the movement of the product once it has been landed.

Jennifer Howie: I apologise. It is not about the movement of the people but about where the product is from. If you are hand gathering somewhere, at a certain time, the easiest way to track exactly where you have been is probably to switch on your GPS. It would be quite easy to do that and then you would be able to demonstrate where the product came from—you would not have to do any other work. It would be easy nowadays to do that.

Alex Fergusson: But a paper trail has to follow any product—

Jennifer Howie: It is an old-fashioned paper trail under food hygiene regulations.

Alex Fergusson: And it is your agency's responsibility to monitor that.

Jennifer Howie: Yes, although other paper trails in other agencies must be followed for sustainability reasons and so on.

An original of that document must accompany the batch at all times. Local authorities have limited enforcement capacity. They have other priorities as well so it becomes an issue of striking while the iron is hot with the best intelligence gathered from all agencies.

Craig Burton: I have a quick comment on tracking folk on the ground and tracking where fisheries are being exploited. There are some good systems available that use mobile phone technologies, such as vessel monitoring systems, or VMS. We are conducting trials in Scotland on some small inshore vessels. In the current system,

though, there is no reason why you cannot bolt VMS to a quad bike, or even a pushbike. It is tamper-proof and tracks a vehicle or vessel's position and what it is doing, and uploads the information every two seconds. We can provide more information about it if members are interested.

The Convener: Are there any further points on that?

David McCallum: At a meeting on 18 October, which I think Alex Fergusson attended, there was a multi-agency discussion about how we can promote best practice on the cockle beds. There were boat fishermen from the Thames estuary at the meeting, who spoke about having equipment on their boats to track where the cockles were coming from. There are good examples out there that could be developed in Scotland if we wanted to go down that road.

10:45

Jim Hume: Jennifer Howie mentioned that there is a paper trail that can be policed but that local authorities do not have the resources to do that—I presume that it is a matter for trading standards. Who is policing the movement of shellfish, cockles or whatever at the moment? For example, there are 4 tonnes of illegal cockles from Kirkcudbright—

Alex Fergusson: Allegedly.

Jim Hume: Allegedly. Is there any intelligence on how those are being marketed?

Jennifer Howie: The registration documentation requirements come from enforcement of the food hygiene side of things, and local authorities are the competent authority. They have the resources to deal with all food issues; whether they can devote resources to a particular alleged crime under the hygiene regulations at any one point might just be a case of prioritisation.

Sorry—what was your second point?

Jim Hume: It was maybe not for you; it was about what intelligence there is on where the illegal cockles are going. We are talking about fairly large tonnages. Have there been any prosecutions in the past, or is it very difficult to prosecute? How could we help with that? That is maybe a question for somebody else.

Stephen Cameron: I suggest that the material will end up on the continent. There is not a tremendous United Kingdom market for those volumes of cockles.

Jennifer Howie: Under food hygiene law, the product must be placed on the market at an approved premises. Although it can be moved to

the continent, it would have to move to an approved premises—unless that is not happening or somebody in an approved premises is covering up the documentary trail.

We have had quite interesting discussions about the point at which enforcement agencies should follow up allegations. Approved premises are fixed, land-based organisations. If there is a suggestion that cockles are being lifted and moved via a premises, there are premises that might know where they are going. It is easier to go to the fixed, land-based premises than to fishermen at night, who are difficult to track.

Stephen Cameron: I agree with that. Land-based facilities such as those that we occupy are manageable. However, there are countless trucks that just go back and forth 24 hours a day, in this case under the cover of darkness. It would be extremely difficult for anybody to try to police or manage that.

Jim Hume: I would like to finish the point on what you said about traceability. In the agricultural world, that has been electronicified—is that a word? No, that is not a word. Never mind. You know what I mean—digitised. Jennifer Howie mentioned the paper trail. Would the industry prefer an electronic system in which it was all done electronically and people did not have to fill in paperwork for the supply chain?

Stephen Cameron: Yes. If we could get there, the holy grail for everybody would be for us to spend less time on paperwork. To be fair, I believe that the vast majority of businesses are law-abiding and upstanding. The paperwork trail and the systems that they have in place work pretty well to regulate our industry.

To make a slight digression, our industry is predominantly UK retail, so we are dealing with like-minded people. I assure the committee that the traceability requirements are extremely onerous and the system works for people who are not trying to work outside it.

David McCallum: I back up Mr Hume's concerns about traceability. As an example, only this week a significant quantity of cockles was stolen from a fisherman's shed in Stranraer. Those cockles must have gone into the market at some point and I do not know how they could be quality assured or how the risk can be reduced for the public who might buy them. There is a significant concern about where those cockles have gone and one can only assume that they have gone to the black market where nothing will allow them to be traced. We definitely have to have proper procedures in place to trace the movement of cockles in particular.

Mr Hume also asked about prosecutions. Last week, we worked with Marine Scotland on a case

at Powfoot near Annan, which is another of the cockle beds that have had problems in the past. In fact, the individual who allowed us to access the land is probably the gentleman who is referred to in annex 1 to the papers that the clerks gave us. We were able to secure the cockles and the evidence that will allow Marine Scotland to prosecute.

We are also working closely with the Gangmasters Licensing Authority on a problem with an individual from Dumfries and his involvement in the cockle beds, particularly around the Sandgreen area. My understanding is that the Gangmasters Licensing Authority is working with the dedicated wildlife prosecutor at the procurator fiscal's office in Dumfries to bring a case against that individual.

Good collaborative work is being done that will, I hope, lead to the prosecutions for illegal activity that we are looking for.

The Convener: Graeme Dey has a supplementary on that point.

Graeme Dey: The question that I was going to ask has been partially answered. A number of members around the table do not represent areas in which this is a particularly big issue so, for our benefit, it would be interesting to hear about the practical problems that you encounter in catching such people in the act. Presumably, that is quite a resource-intensive activity for the police and Marine Scotland. How much help do you get from other sources, such as the legal shellfish industry and members of the public? What are the practicalities?

David McCallum: We have excellent support from communities right around the Solway. People report what they suspect to be illegal activity. Members might not be aware of it, but the beds in the Solway are currently closed, yet handgathering continues. That is the predominant method of taking cockles, although they can also be extracted with boats, and that has happened in the past.

The Solway is an extremely dangerous estuary with fast-moving tides and unpredictable sands. To put officers out on to the cockle beds would be difficult in terms of health and safety. We do not have the skills and knowledge that would allow us to go out there. That makes it very difficult, especially when the beds are open and people need to be found taking the fish at source rather than being found with them on the land.

It would also be difficult for the police to do any enforcement from boats, because we do not have the equipment that would allow us to go out and do the checks. That is why enforcement principally lies with Marine Scotland, supported by the police,

because it has the equipment and the expertise to carry out enforcement.

The potential risks to personnel mean that it can be very difficult to catch people in illegal acts. We get support from the community that allows us to gather evidence on shore that we then supply to Marine Scotland to allow it to prosecute.

Craig Burton: I want to widen things out a little bit. Although I understand the emphasis on cockles in the Solway—it is a particularly intractable problem—the illegal gathering of other shellfish species such as native oysters and winkles is taking place elsewhere in Scotland. Such activities are unregulated, small and highly mobile and the population involved is quite often itinerant, so it is all very difficult to police. These shellfish make their way into the marketplace with a little bit of—shall we say—creative paperwork to legalise them. My point is that it is not only cockles but other species in other areas that are being gathered illegally.

David McCallum: I support those comments. We are seeing problems with razorfish. The issue is the point at which the fish are taken and where the offence is committed; again, the activity is boat based and, because of the lack of such skills and abilities in our organisation, we struggle to do anything about it.

Stephen Cameron: Coming back to David McCallum's very first point, I note that the regulated industry works extremely hard all year to avoid any potential food safety issues. It is a difficult enough marketplace to operate in and the risk of unregulated and perhaps toxic or contaminated shellfish getting to market is potentially damaging to the 99 per cent of the industry that works very hard to follow regulations and ensure that safe shellfish get to the marketplace.

Richard Lyle: I find this discussion very interesting. It all sounds like something from American prohibition.

I have a question for Jennifer Howie. If I want a driving licence, I cannot steal one; I could get a fake, but I am sure that the police would spot it. If there is regulation and paperwork—and I am sure that we could include digital or whatever—how can an established trader falsify paperwork?

Jennifer Howie: The first thing is to have the paperwork and then you have to take the bold step of falsifying it. In a great many cases—I am sorry, but I am going off your specific point for the moment—

Richard Lyle: In that case, can I draw you back to the point that I am trying to make? There are established traders in Scottish cockles—which I am sure are the best in the world—and there are

gangsters or others who are not established. How do they get or falsify the paperwork?

Jennifer Howie: Under the regulation, the food business is legally required to provide the registration document with the details that are outlined in legislation filled in. In practice, local authorities largely issue registration documents. They tend not to do so individually, just because of the amount of paperwork, the to-ing and fro-ing and the cost involved. Legitimate businessmen and fishermen will be issued with—

Richard Lyle: A pad.

Jennifer Howie: Yes, in certain cases.

As for falsifying information, I will use the razorfish example. When we classify an area for razorfish, we define an area of sea and award it a specific classification. If someone fished somewhere else and wished to falsify paperwork, they could fill in the document and claim that their catch came from the classified area. Unless we have people watching what is going on or there are other witnesses to the act of taking shellfish from other places, we will find this sort of thing exceptionally difficult to prove.

Richard Lyle: So we need some sort of regulation or some other way of solving what is certainly a problem.

The Convener: We will reflect on the matter for sure.

I believe that Alex Fergusson has a follow-up question.

Alex Fergusson: My very brief question is on a similar theme and stems from Jennifer Howie's earlier comment that it is much easier to police and monitor land-based operations than shore-based or sea-based ones. That might sound obvious, but I think that it is very relevant.

The fact is—David McCallum is quite right on this—that much of the onus falls on Marine Scotland, which it is worth noting is not based locally. We have a local police force, but we do not have a local Marine Scotland, which is based a long way away, although it is stepping up its local activities. It strikes me that, as we go through the bill, the committee might want to look at how we better police and monitor the land-based activities because the fact is that, as has become very obvious around the table today, illegal product is getting into the food chain. As Jim Hume pointed out, anyone who tried to do that in the agricultural world would face considerable difficulties, yet it seems to be quite possible in the world of shellfish. That cannot be right, and I simply say that we need to look at the issue a bit further.

11:00

Walter Speirs: We need to be careful that we do not have, as an unintended consequence, more regulation falling on the good guys. In tightening up, that is a clear danger. For example, our sector technically falls within the remit of the gangmasters legislation, and we are trying hard to get out of that because we do not think that we should fall within that remit. We have to work with Westminster on that—it is UK legislation—but an unintended consequence of people illegally gathering cockles brought the threat of more regulation on the marine sector.

Craig Burton: It may be easy to police home-based industries and land-based facilities, but most of those are operating legally. We know of instances where illegally gathered product has made it all the way to places as far away as Italy before someone has spotted that the product does not have the right paperwork. If people want to operate under the radar, they do not go anywhere near declaring paperwork in the UK but just send it out in a wagon. For the Italians to pick that up is actually pretty good, because they are not necessarily noted for their paperwork trails. However, illegal product can make it all that way.

The Convener: That is an interesting point.

David McCallum: To pick up on Craig Burton's point, I know that in the south of Scotland, for example, there is an Irish producer who leaves refrigerated lorries sitting at the side of the road, where the fishermen can deposit their catch for him to take to Ireland. If we look just at boat-based activities in the Solway, the boats there can land their catches in Scotland, England, Northern Ireland or the Republic of Ireland. To manage and control those activities, we need joined-up working to ensure the safety of product.

Claudia Beamish: On that point, what interagency working is there with Her Majesty's Revenue and Customs?

David McCallum: We have a strong relationship with HMRC, but the issue is what role it should play in the management of shellfish—to be honest, I do not know the answer to that. We have information-sharing protocols with HMRC, which was also a partner organisation in our efforts over recent weeks to tackle the ill-treatment of fishermen foreign nationals—it was part of the enforcement group that targeted that particular facet of the fishing industry—so there are working relationships. However, on where HMRC sits in terms of cockle fishing, I could not give an answer.

Claudia Beamish: Perhaps the point of interest is what paperwork needs to be shown if product is being sent out of the country. I am not necessarily asking for the answer from you, but it would be useful to have clarification on that.

David McCallum: I should probably refer you back to Jennifer Howie of the Food Standards Agency, which might deal with the paperwork—that would not be dealt with by the police. Marine Scotland, as the principal enforcement agency, might also be able to answer.

Jennifer Howie: In the past couple of weeks, HMRC has been in touch with us on that issue. We will be having a meeting in the new year on what paperwork it should look for from a food-hygiene perspective.

The Convener: Thank you. We have had a good round-table discussion on that, which we can reflect on in due course. We will now move on to fixed-penalty notices.

Angus MacDonald: In a way, this question ties into the previous discussion. Members of the panel will be aware that section 51 of the bill will amend section 25 of the Aquaculture and Fisheries (Scotland) Act 2007 to widen the cases in which Marine Scotland can issue fixed-penalty notices. Basically, the section extends the provisions to all marine and freshwater fisheries-related offences, which are the responsibility of Marine Scotland. Do members of the panel have concerns about the section on charging or the introduction of fixed-penalty notices as far as they could relate to shellfish farming and sea fisheries?

Craig Burton: Obviously, concerns were raised with us by the industry about the provision in section 50 to introduce charging for the provision of fisheries and aquaculture services—however you wish to put it. We appreciate that this is an enabling piece of legislation, but the problem from a business point of view is that you are almost asking for a blank cheque—no one is saying how much will be charged or what mechanism will be put in place for establishing what will be charged for. Will there just be cost recovery? Will there be cost-plus? What mechanisms will be used?

Admittedly, compared with the situation in other countries, the situation in Scotland and the UK is atypical, because we provide the services under the public remit whereas, elsewhere, if you want to land a box of fish, you are charged for landing that box of fish, and for getting it certified and so on.

From a business point of view, signing up to the provision brings uncertainty, as we do not know what it means.

Walter Speirs: The situation is a bit vague. Marine Scotland carries out certain duties in relation to EU legislation—things that are not of any benefit to us but which we have to do. I think that the Food Standards Agency is in a similar position. If those charges were passed back to industry, that could be disproportionate in terms of the profit margins of some small businesses. We have to be careful that we do not pass non-

specific charges back to small businesses from large organisations, as that could cripple them.

Angus MacDonald: Clearly, greater clarity is required. We can address that in our report.

Nigel Don: Is there a case for different regulations for different species of shellfish? Does anyone feel that we should not be taking a one-size-fits-all approach? Do we want to distinguish between oysters and cockles?

Walter Speirs: The difference that we have at the moment is cultivated versus wild. Cockles are a fishery, so they are not part of my remit. Most shellfish production in Scotland from aquaculture is quite tightly regulated. Most of the problems come from fisheries rather than aquaculture.

Sometimes, oysters and mussels are classed together in food standards terms, as they are both bivalve molluscs. That can be a bit challenging, but that is probably not part of this bill.

Nigel Don: But if it is close to this bill, it may be an issue that we can consider.

The lack of response suggests to me that there are no overwhelming concerns on the issue.

The Convener: Craig Gibson might have a response.

Craig Burton: There are times when the legislation—I am thinking more of EU legislation than Scottish legislation—causes problems. The scallop cultivators have a particular problem at the moment in so far as the premium for them lies in putting a live, in-shell product on to the market, which is extremely difficult to do under the current legislation around biotoxins. If you mince up the whole animal and test for biotoxin levels, the chances are that—for most of the year—you will find that it will be over the permitted levels for some biotoxins. However, if you break the animal down into the parts that people actually eat—particularly the white adductor muscle and/or the gonad—you will probably find that those parts are well under any permitted biotoxin levels, for virtually the whole year. That is certainly true of the white adductor muscle, although there might be periods when the gonad is above permitted levels—it is a simple matter to remove the gonad if it is above.

I make the analogy that, if you wanted to put a whole sheep on the market and had to mince up the whole sheep and test it to see whether it complied with food legislation, the chances are that it would fail.

The problem is an intractable one, and concerns EU regulations on biotoxins. However, it takes away the premium that scallop cultivators rely on. If you put the product on to the general shucking

market, that premium vanishes and the margin takes a nosedive.

Jennifer Howie: There are issues about different species and how things are monitored in that regard, but I do not have any comments about the bill's impact on that. I think that food hygiene legislation is more relevant to that. The FSA has made a commitment to undertake a policy review on the sale of whole scallops. That will take place in the new year.

The Convener: I thank our witnesses for what has been a thorough session. The area might be less contentious than others, but it raises many issues for us to report on. We will consider further the consequences, intended and otherwise, that we have heard about today.

As noted earlier, this is the committee's last meeting in 2012. The next meeting will take place on 9 January 2013, when the committee will take evidence on the bill from the minister.

I take this opportunity to thank everyone who has played a part in the committee's business during the year. On behalf of the members, I wish everyone all the best for Christmas and the new year. In particular, I thank Katrina Marsden from SPICe, who has provided us with many briefings but is going off to pastures new.

11:11

Meeting continued in private until 11:30.

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