

# **ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE**

Wednesday 10 September 2003  
*(Morning)*

Session 2

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## ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

### 4<sup>th</sup> Meeting 2003, Session 2

#### CONVENER

\*Sarah Boyack (Edinburgh Central) (Lab)

#### DEPUTY CONVENER

\*Eleanor Scott (Highlands and Islands) (Green)

#### COMMITTEE MEMBERS

\*Roseanna Cunningham (Perth) (SNP)

\*Mr Rob Gibson (Highlands and Islands) (SNP)

\*Karen Gillon (Clydesdale) (Lab)

\*Alex Johnstone (North East Scotland) (Con)

\*Maureen Macmillan (Highlands and Islands) (Lab)

\*Mr Alasdair Morrison (Western Isles) (Lab)

\*Nora Radcliffe (Gordon) (LD)

\*attended

#### COMMITTEE SUBSTITUTES

Alex Fergusson (Galloway and Upper Nithsdale) (Con)

Mr Jim Mather (Highlands and Islands) (SNP)

Mr Mark Ruskell (Mid Scotland and Fife) (Green)

#### THE FOLLOWING ALSO ATTENDED:

Mr Ted Brocklebank (Mid Scotland and Fife) (Con)

Susan Deacon (Edinburgh East and Musselburgh) (Lab)

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

Mrs Margaret Ewing (Moray) (SNP)

Alex Fergusson (Galloway and Upper Nithsdale) (Con)

Iain Holt (Scottish Executive Environment and Rural Affairs Department)

Gabby Pieraccini (Scottish Executive Environment and Rural Affairs Department)

Stewart Stevenson (Banff and Buchan) (SNP)

Allan Wilson (Deputy Minister for Environment and Rural Development)

**CLERK TO THE COMMITTEE**

Tracey Haw e

**SENIOR ASSISTANT CLERK**

Mark Brough

**ASSISTANT CLERK**

Catherine Johnstone

Roz Wheeler

**LOCATION**

Committee Room 1

## Scottish Parliament

### Environment and Rural Development Committee

*Wednesday 10 September 2003*

*(Morning)*

[THE CONVENER *opened the meeting at 09:37*]

### Subordinate Legislation

#### Prohibition of Fishing for Scallops (Scotland) Order 2003 (SSI 2003/371)

**The Convener (Sarah Boyack):** I welcome committee members, other visiting members, witnesses, the press and members of the public to the meeting. I remind everybody to switch off their mobile phones. We have received no apologies this morning.

The first item is consideration of a Scottish statutory instrument under the negative procedure. I welcome Allan Wilson, the Deputy Minister for the Environment and Rural Development, and his officials. Paper ERD/S2/03/4/1b provides background on the instrument and the procedure for considering motions to annul. The Subordinate Legislation Committee had no points to raise on the order.

Before we come to the motion to annul the instrument, I would like to make a point about the regulatory impact assessment for the instrument. It has come to my attention that the RIA was not laid before the Parliament, passed to the committee or made widely available to interested parties for their information and comment. That oversight was highlighted and rectified yesterday, so all members should have received the RIA and had the opportunity to read it—we have in front of us a copy of the RIA and the letter of explanation and apology from the deputy minister.

I am well aware that, because the RIA was laid at such a late stage, the industry—and, indeed, other members of the Parliament—may not have had the chance to examine it. I say to the minister that, from the perspective of our scrutiny of statutory instruments, I consider that to be utterly unacceptable. I propose to committee members that I write in the strongest possible terms—as a separate issue to our consideration of the merits of the instrument—to express our extreme concern and displeasure that it has happened and to request that steps be taken to ensure that it does not happen again. The fact that the RIA was laid so late makes things difficult for us today.

There are other things that I wish to say, but I have had notice from Fergus Ewing that he wanted to say something about the issue before we discuss the motion for annulment.

**Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP):** Thank you for giving me the opportunity to address the matter, convener. I endorse the description of what has happened as “utterly unacceptable”, but it goes beyond that. The regulatory impact assessment was laid only today. The purpose of the assessment is to give the Scottish Executive’s view on the impact of the order on the industry.

The Parliament was founded on the basis that everybody has the right to be heard and that anyone who is affected by a measure will have the opportunity to give evidence, to respond and to give their views. In the committee room today are a number of people whose livelihoods are at stake—I think that we all recognise that. We have with us a variety of fishermen and processors from throughout Scotland, who tell me that their livelihoods are at stake. Those of them who have boats with more than eight dredges will be unable to use their boats; some of the men here have invested millions of pounds, but they will be unable to use their boats for the purpose for which they were intended.

The fishermen and processors here received the assessment from me only yesterday and they have not had a chance to give their views. Their preliminary response, however, is that the instrument will have disastrous financial consequences. They dispute every paragraph of the assessment. In particular, they do not accept that paragraph 1 is a correct statement of the position. Their views about conservation have not been heard and they do not believe that the measures in the instrument will succeed. They have put it to me that one or two of the boats that will be affected might be sold off to French, Irish or Dutch competitors, all of whom, I believe, fish with large boats. It is not clear to me that the instrument would prevent the use of such boats outwith the 12-mile limit. If that is the case, effort will not be reduced; it will be increased.

I want specifically to address the procedural point because, as the convener correctly pointed out, the RIA should have been laid at the same time as the order. The order was laid on 25 July, but the RIA was not laid until today.

**Mr Alasdair Morrison (Western Isles) (Lab):** On a point of order, convener. I appreciate everything that Mr Ewing is saying, but he is not a committee member and he has had ample time to put on the table his concerns about the procedural issues—

**The Convener:** When I think that Fergus Ewing is going over his time, I will ask him to wrap up. I

ask you to keep your contribution focused, Fergus. I know that the issue is big, but if you can come to a conclusion—

**Fergus Ewing:** I am sure that Mr Morrison will agree that we are here to represent our constituents. Mine tell me that their livelihoods are at risk and that they face bankruptcy, so I hope that some latitude will be allowed. This is not in any way a party-political issue.

The Executive's guidance notes, "Regulatory Impact Assessments—Guidance for Scottish Executive", say that RIAs should be introduced as early as possible and that they should encourage informed public debate. However, there cannot be any debate in this case because there has not been the chance to have one. Most important—this is the key issue—the paragraph headed "Ministerial sign-off" states:

"The full Regulatory Impact Assessment is signed by the accountable Minister and 20 copies placed in the Scottish Parliament Information Centre when the regulation ... is presented to Parliament."

The order was laid before the Parliament on 25 July. The Executive guidance says that the RIA should have been presented to the Parliament on that day. It was not. Whether an apology is made is an irrelevance; the key point is the impact on those affected.

I say to the minister that, if we agree to pass the regulation today, that will mark the first time that there has been a total lack of consultation in the Scottish Parliament, yet consultation was supposed to be one of the guiding principles of how we conduct our business. I urge the minister, even at this late stage, to withdraw the instrument, consult the industry and find a successful solution that will serve the interests of conservation and the livelihoods of everyone involved.

09:45

**The Convener:** Thank you. I advise members that I sought legal advice on the matter, as I wanted to ensure that we were clear about the rules. The preparation and laying of an RIA is a requirement of the Scottish Executive's internal guidance. However, that is only guidance; nothing in legislation or standing orders imposes such a requirement. The SSI is not made technically defective by the fact that the RIA was not submitted to the Parliament at the same time as it was. The need for an RIA is a self-imposed administrative duty. The Scottish Executive fulfilled its duty to carry out a RIA, even if it did not supply the details of that to us until yesterday.

I entirely agree with the sentiment of Fergus Ewing's comments. It is deeply regrettable that the Executive did not follow its internal guidelines, but that does not affect the competence of the

instrument, especially as the Executive had carried out the RIA and produced the missing document when prompted.

The Executive's action has not put us in an ideal position. I can see that Karen Gillon wants to come in at this point, but I simply want to say that we do not have any other option but to move on and discuss the instrument today. However, having looked into the legal position, I am very unhappy that we have been put in this position.

I suggest that we ask the Subordinate Legislation Committee to consider the procedures of the Scottish Parliament, which I believe should be tightened up so that our standing orders place a formal requirement for a RIA to be presented to the Parliament when a SSI is to be considered. That would prevent a similar administrative oversight from happening again. Are members happy with that suggestion? I am trying to find a way forward so that we are not placed in this position again. I am aware that Karen Gillon wants to comment.

**Karen Gillon (Clydesdale) (Lab):** Yes. I am happy with the way forward that you have suggested, convener. I would have been more sympathetic to Fergus Ewing's point if, over the past 10 days, I had not been inundated with letters and submissions from people on both sides of the argument about the impact of the SSI on them and their industry. The industry has made its views known to the committee. I have received lots of papers outlining people's different views on the impact that the SSI will have on the industry. Committee members have to weigh up those views, along with those set out in the RIA. Given that our standing orders have not been breached, I suggest that we move ahead.

**The Convener:** I see two members who want to come in at this point. I will take the briefest of comments to allow them to make their points. After that, I would like to move on.

**Mrs Margaret Ewing (Moray) (SNP):** As a visiting member to the committee, I appreciate being given the opportunity to speak on the matter. During the recess, I had an extensive meeting with producers and processors in the scallop industry. I have listened carefully—

**The Convener:** I am sorry, Margaret, but, rather than hearing those broad comments, I need your views on the RIA.

**Mrs Ewing:** On the legal aspect of the debate, I have to say that it seems to me to be a gross dereliction of duty for the Scottish Parliament not to impose a legal requirement for RIAs to be laid at the same time as SSIs. It will hardly calm the feelings and anger of the scallop producers and catchers at this stage if, because of an administrative oversight, we refer the matter to the

Subordinate Legislation Committee. A requirement is placed on us, as elected representatives, to come forward with something much more positive than that.

**The Convener:** The issue that I was raising is that a point of principle is involved and the Parliament needs to address that point. I do not want us to regard what has happened as a one-off problem. I would rather that we moved to prevent the situation from happening again.

**Mr Rob Gibson (Highlands and Islands) (SNP):** It is possible for us to weigh the material that is sent to us from various sides in this dispute only if we are able to examine what the Executive has decided to do. We cannot weigh the evidence unless we have seen the RIA. That has been very difficult to do in the past 12 hours. In the circumstances that we face today, this matter of principle may determine the stance that we adopt in the debate. We ask you to take the strongest action, convener.

**The Convener:** I give the commitment that the committee will be taking the strongest action open to it if it writes to the Subordinate Legislation Committee. We have few options other than to ensure that we have a full debate on the issue today. We have gone around the houses on the matter and there is no alternative to that, so I would like to move on. I want to ensure that we deal with the substantive issue, as there are many points that members want to make.

**Fergus Ewing:** On a point of order, convener. Before we move forward, I would like to clarify one point. In my closing remarks, I urged the minister to withdraw the statutory instrument. Can I ask him to do that, to start again and to consult the industry?

**The Convener:** I do not want to deal with lots of points of order. The minister has not indicated that he wants to withdraw the instrument, so let us move on.

We will now consider the motion that Maureen Macmillan has lodged, which invites the committee to recommend that nothing further be done under the order. I propose that we have a question-and-answer session while the officials are at the table with the minister to clarify any purely technical matters and to seek explanations of detail. The officials cannot participate in the debate on the substance of the motion. When we have addressed all the technical issues that members want to raise, we will debate the motion with the minister. I invite the minister to make some opening remarks and to explain why he has laid the instrument.

**The Deputy Minister for Environment and Rural Development (Allan Wilson):** I take this additional opportunity to apologise unreservedly to

the committee for the failure of the Environment and Rural Affairs Department timeously to lay the RIA with the instrument. I have already written to the committee on the matter and respect the committee's decision to refer it to the Subordinate Legislation Committee for consideration. I do not want to say anything to prejudice that, except to point out that the explanatory note that accompanied the statutory instrument last July encompassed most, if not all, of what was said subsequently in the RIA.

However, it is a non sequitur to conclude from the failure to lay the RIA timeously that there has been a failure to consult and that the proposals are flawed. In fact, there has been on-going consultation on the measures, both with the industry and with other interested parties, since April 2001. Officials were engaged in dialogue with industry representatives on the propositions that are before members as recently as May this year.

I respect entirely the point of view that Fergus Ewing expresses when he says that livelihoods are at risk and that bankruptcies could ensue. Our position is that the order is a conservation measure. If we do not take measures to conserve stocks, there will be no sustainable fishery and even more bankruptcies will prospectively ensue. I ask the committee to consider the bigger picture.

The scallop industry is worth up to £20 million to Scotland and plays an important part in Scotland's coastal communities. With documented difficulties in other sectors, we are keen to preserve that important fishery for the future and to minimise the impact that this method of fishing has on our marine environment.

We have been working on technical conservation measures for scallops for a number of years. To consolidate the introduction of a restrictive licensing scheme for scallops in 1999, the scallop sub-group of the UK fisheries conservation group proposed a range of technical conservation measures for scallops. The main consultation exercise took place in 2001 and showed general support for those measures. We subsequently undertook to implement that package, which is why we are here today.

Since then, algae toxins have had a significant effect on scallop fishing—a number of grounds can be closed at any one time. We are extremely concerned that that is resulting in vessels with large numbers of dredges fishing open grounds over and again. That places scallop stocks at severe risk of being overfished and impacts negatively on the sea bed.

We undertook to consider the Ecodredge report. We have since done so and will be including a number of measures that are highlighted in the report in our second SSI on this matter later in the

year. The Executive wants to take a precautionary approach to the management of scallop fisheries in the future. Recent Fisheries Research Services stock assessments do not indicate a crisis, but they suggest that biomass is declining in most management areas and that recruitment is at best uncertain and at worst declining. I do not want to wait—I am sure that members do not want to wait, either—until we have a crisis before we take action in our scallop fisheries. I commend the SSI to the committee for that reason.

**The Convener:** I see hands beginning to pop up already. Members wish to raise many technical issues.

**Eleanor Scott (Highlands and Islands) (Green):** I thank the minister for his explanation. I strongly support the principle of conservation and agree on the need for a sustainable basis for the scallop-fishing industry.

I have a few technical questions. Why were the measures proposed and what will their effect be? In particular, to what extent are blinders used now and what effect will their prohibition have? Similarly, to what extent are French dredges used now and what effect will their prohibition have? What effect will the restriction of the number of dredges have across the fleet? Will it impact on certain parts of the fleet and leave others unaffected? If so, what effect will that have on conservation as a whole? Why was ring size not addressed, as that issue seems to someone from outside the industry to have been a fairly obvious one to deal with?

**Allan Wilson:** Let me take the last question first. As I said, we are looking at ring size and will produce measures in an SSI in the near future.

You raised a number of questions on the measures, which I am happy to answer—indeed, what I say should go a long way towards answering some of the questions that Mr Ewing and others posed. The rationale behind the dredge limits is conservation and the promotion of a sustainable industry. Obviously, it takes longer to catch the same quantity of scallops with fewer dredges, so the limits reduce the intensity of fishing efforts. Only 200 licensed boats are capable of fishing for scallops in Scottish waters. We are concerned that, at any one time, a little over half of them might be in operation. The reason for reducing the dredge limits is that it will take longer to catch the same quantity of scallops with fewer dredges, which will reduce the intensity of fishing efforts. With a limit on the number of vessels and on the amount of time available for fishing, the dredge limits have an obvious conservation consequence.

French dredges are bigger and heavier; they dig into the sea bed much more than normal dredges.

French dredges are not used in Scotland and nearly all fishing with French dredges in United Kingdom waters takes place outwith the 6-mile limit. A ban within 6 miles, and restrictive use outwith that area, would enshrine present good practice and help to conserve stocks.

On blinders, there are ways of obstructing small scallops that escape from dredges. A ban on blinders will avoid undersized scallops being captured by that practice. That is a solid, sound, tried-and-tested method of conserving stocks in what has to date been an unregulated fishery.

10:00

**Eleanor Scott:** I am still not quite clear about this. We are assuming that the SSI is supposed to make a difference. If it merely reaffirms something that is already the case, it will not make a difference. With respect, the minister did not—

**The Convener:** You are getting into the argument; please stick to questions at the moment.

**Eleanor Scott:** Sorry. The minister made it clear that blinders and French dredges are not being used at the moment, so I am not sure how the measure will make a difference.

**Karen Gillon:** On a point of order, convener. Is it in order for members of the committee to pass notes to and have them passed from the public gallery? My understanding is that that is not supposed to happen.

**The Convener:** I do not want the committee's work to be disrupted, so I believe that we should limit that kind of activity. However, there is nothing to prevent it, as far as I understand. I ask people to limit that sort of interruption to the committee's work. I think that we all have sufficient paperwork in front of us to get on with the discussion.

**Eleanor Scott:** I thank the minister for his earlier answer, but I seek further clarification. His comment on the limit on the number of dredges did not answer the point about the contribution to conservation being spread evenly throughout the sector. My understanding is that the limit on dredges does not give rise to an even spread. Instead, the limit affects some parts of the scallop-fishing sector more than it does others.

**Allan Wilson:** The limits will apply equally across the sector. In response to Fergus Ewing's point—which I am surprised to hear Eleanor Scott echo—I should point out that vessels are not banned from fishing. The industry proposed the measures and I have no reason to believe that the measures would make the fishery less viable than before. The measures will preserve and conserve the stock to make the industry more viable and sustainable in future, which I would have expected Eleanor Scott, given her perspective, to support.



**Maureen Macmillan (Highlands and Islands)**

**(Lab):** My questions follow on from the points that Eleanor Scott was making and relate to the soundness of the conservation measures that have been proposed, in particular the limit on the number of dredges. As has been said, the gap might be filled by more boats fishing, possibly including foreign vessels. I would like the minister to go into more detail about the efficacy of the proposals as a conservation measure.

I would also like to know how the limit on the number of dredges was decided. Why was the line drawn where it was, given that that decision affects perhaps 12 to 18 boats? The question arises why something similar is not being imposed on other boats in the scallop-fishing fleet.

Thirdly, I would like the minister to tell me whether increasing the ring size or the tooth spacing will in itself deliver the desired conservation effect. In other words, is it really necessary to take the measures dealing with dredges as well as the proposed technical measures?

**Allan Wilson:** That question is not dissimilar to the one that I have just been asked and I repeat what I said in response to Eleanor Scott. We will be introducing minimum belly-ring sizes this year. However, the Ecodredge report notes that increased selectivity and efficiency results in higher yields for fishermen and hence notes that the need for increased selectivity has to be accompanied by restrictions in effort. We do not think that the belly-ring size by itself will alleviate the intense fishing effort that occurs in areas exploited as a result of amnesic shellfish poisoning closures.

As to how many boats will be affected, we understand that up to 17 vessels currently use more than the stipulated number of dredges in the relevant areas. I repeat that the rules apply to everyone; they will also apply to vessels whose owners are thinking about coming into the fishery. We have been asked to take into account the prospective transfer of effort. I referred to the danger of displaced effort from the white-fish fishery in other parts of the country—some people might be thinking of increasing their vessels' gear over the piece.

As to whether the number of boats will increase as a consequence, there is no doubt that reducing the number of dredges will reduce effort, as I said to Eleanor Scott. As I also mentioned, there is a restrictive licensing scheme in place, which prevents additional vessels from coming into the fishery. We are therefore taking a precautionary approach to avoid an unfettered expansion of the capacity of the existing fleet. That will help to preserve and conserve stocks for future generations of fishermen and will provide for a more sustainable fishery.

**Maureen Macmillan:** Why did the minister decide on that particular stipulated number of dredges—why not fewer or more? Why was the number not spread more evenly over the whole fleet?

**Allan Wilson:** I shall let Gabby Pieraccini, who has been involved in the detail of the negotiation with the industry, say a little more about that in a moment.

I think that Maureen Macmillan is suggesting that the measure is somehow discriminatory, but I dispute that. The idea of zonal dredge limits was developed so that no one sector of the scallop industry would be targeted unfairly. Smaller boats that fish within the 6-mile limit can fish with no more than eight dredges per side. The larger number of dredges that we permit as a consequence of that measure, outwith the 6-mile and 12-mile limits, reflects the fact that those areas are fished by larger vessels. In fact, many of the representations that we received in support of the measure have been from people with smaller vessels who fish in those areas.

**Gabby Pieraccini (Scottish Executive Environment and Rural Affairs Department):** I shall add to that to provide a little more information. The specific dredge limits of six, 10 and 14 were proposed by the industry. Dredge limits are already used in Northern Ireland and Isle of Man waters and in the Shetland regulating order area. Orkney interests are also thinking about applying for a regulating order that would introduce dredge limits for scallops, and there is an application from the Highland area to introduce dredge limits for scallops. A number of sea fisheries committees in England and Wales also use dredge limits, which are sometimes lower than eight a side; they can go down to as few as five or six a side.

**Maureen Macmillan:** What I want to find out is whether you might in future consider reducing the dredge limit to five a side.

**Allan Wilson:** As I said, some of the representations from owners of smaller vessels indicated that they would be happy to consider that development. They are concerned about the prospect of larger vessels with large dredges encroaching on their traditional fisheries and making their fishery unsustainable as a consequence.

**Stewart Stevenson (Banff and Buchan) (SNP):** Thank you for your courtesy, convener—I apologise to any members who feel that I am disrupting the meeting. However, ensuring that the right questions are asked helps the minister and me to progress towards the shared goal of a sustainable scallop fishery.

The minister suggested that 200 licences currently operate in the Scottish zone. Some 105 vessels currently operate full time, 45 operate part time and there are suggestions in the industry that the 17 large vessels might be sold to foreign interests and replaced by multiple smaller vessels. Given that information, how does the order that we are considering today ensure that there would be a reduction in catch? Without a reduction in catch, it is hard to understand how there would be a contribution to conservation.

**Allan Wilson:** If we limit the number of vessels that operate and reduce the amount of time that they can spend at sea, we would reduce their capacity to catch and thereby conserve stocks.

**Stewart Stevenson:** I would like to ensure that we have pinned down that point. I do not know where it is stated in the order that there is a reduction in the time at sea. Neither am I clear about where in the order the 50 inactive boats are prevented from commencing fishing operations, which would fill the gap that will be created by reducing the effort of the large vessels.

**Allan Wilson:** There is a God-given limit on the time in which fisherman can fish—they cannot fish seven days a week, 24 hours a day. There is a limit on the number of vessels that can ply the waters so, if we restrict their capacity and effort, we will conserve the stocks—

**Stewart Stevenson:** So are you saying that—

**The Convener:** Let the minister finish his point.

**Allan Wilson:** As I said to Miss Scott, that is not to say that we cannot take further conservation measures, either through technical measures or by reducing effort through further restrictions on time at sea, which Mr Stevenson might propose. Were we to conclude that the current conservation measures are inadequate, we could consider such a proposal for future measures, if that is what Mr Stevenson suggests.

**Mrs Ewing:** The order applies specifically to Scotland. Given previous experience, will the minister tell me about any uniformity on the measure that might exist throughout the European Union? What role has the Department for Environment, Food and Rural Affairs played? Will other orders be laid before the Westminster and European Parliaments? What consultation has taken place of the processors in the scallop industry? The onshore industry is as important as the vessels.

**Allan Wilson:** The processors have been included in consultation. An order will be laid before Westminster, but not before the European Parliament. Does the SNP suggest that we should approach the Commission to regulate the fishery beyond the area for which we are responsible? I

understood that the nationalists were opposed to that proposition.

We are taking measures to conserve stocks so that future generations of scallop fishermen have a sustainable industry. That is an important measure that I thought Margaret Ewing, with her experience of such matters, would have supported.

**Mrs Ewing:** When and where did the discussions with the processors take place?

**Gabby Pieraccini:** In 2001 we published a consultation, which is in the Scottish Executive library. A number of processors responded to that. I do not have all those responses in front of me, but a number were in favour of the proposals. In my travels around Scotland, I have heard from processors in the Western Isles that they support the dredge limits.

10:15

**Mrs Ewing:** The Western Isles is only one area of Scotland. I do not denigrate the views of processors there, but there are many processors in the coastal areas of Scotland. We should take account of the views of people not just in one area, but in many areas.

**Gabby Pieraccini:** As I said, the processors were included in the previous consultation that we conducted. Some responded to it but others did not.

**Mr Ted Brocklebank (Mid Scotland and Fife) (Con):** I thank the convener for allowing me to contribute although I am not a member of the committee. The minister claims that he is in regular dialogue with scallop fishermen. Why does he believe that the instrument will result in conservation, when more than 75 per cent of scallop fishermen believe that it will achieve the opposite?

As the minister knows, in recent times the scallop fishery has undergone fairly dramatic change. He referred to the EU-sponsored Ecodredge report, which has devised a number of new conservation approaches. I understand that Ross Finnie pledged that full account would be taken of the findings of the Ecodredge report and the minister has said that they may be taken into account at a later stage. Why have they not been taken into account now? It appears that the report's findings support what the majority of scallop fishermen are saying.

**Allan Wilson:** As I have said, the proposals originate from the industry and we have at all stages advanced them in close consultation with the industry. It is no secret that the industry is split. In May, officials met the Mallaig and North West Fishermen's Association and the Scottish Scallop Fishermen's Association. As a direct result of

discussions at that meeting, we have agreed to examine further those organisations' marketing concerns about a weekend ban. We have also made a commitment to consider fully their proposals on days at sea, as part of a long-term strategy for the fishery. Our minds are not closed to those measures. However, the scientific advice that we have received indicates that there is a need to act now. The option that we have adopted is one of five that were considered.

We have not ignored the views of the Scottish Scallop Fishermen's Association. I am not sure whether Mr Brocklebank was suggesting that. However, we have balanced the association's views with those of fishermen who use small inshore vessels and who have pleaded with us to protect them from the larger vessels that fish repeatedly in inshore waters with large numbers of dredges. Areas such as Orkney that have suffered disproportionately from ASP closures argue that they experience an invasion of vessels when the fisheries are reopened. The scientific evidence of the Fisheries Research Services supports the contention that increasing effort accompanies the reopening of fisheries after ASP closures.

The instrument is a conservation measure that has been introduced in the interest of conserving stocks to ensure a sustainable future for the industry, which was unregulated in the past.

**Mr Brocklebank:** What about the Ecodredge report?

**Allan Wilson:** That is a very important question. As I said to Eleanor Scott and Maureen Macmillan, we have examined that report. In subsequent SSIs we want to advance some of the technical measures that it proposes. We are happy to develop more sophisticated methods of conservation, stock control and building a sustainable fishery for future reference. However, we are intent on introducing conservation measures now to protect stocks because of the current very real threat that they face.

**Mr Gibson:** I have two points to make, which the minister could perhaps elucidate. We must take it on trust that the Executive does its research on stock levels in the management areas. There are questions around the FRS reports with regard to the reality of the market, this year in particular. Therefore, there is a question about where the studies are carried out and whether they are undertaken in the areas where production has been better this year than in several recent years.

The regulatory impact assessment suggests that the Executive wants to reduce the incidence of fishing over and over again of particular grounds. Surely it is just as possible to apply that to small boats as it is to apply it to larger ones. The thrust of the RIA does not make the order fair, reasonable and equitable.

Secondly, the minister spoke about the need for good practice in the industry, and about the fact that fishermen

"will not be required to purchase any new fishing gear to comply with the Order."

Is the minister able to tell us something about how scallop boats are constructed for the particular job that they do? What does he think the cost would be of converting larger boats in order to meet the regulations that he wishes to apply?

**Allan Wilson:** Vessels do not have to remove dredges: they can continue to use 10 dredges per side outwith the 6-mile limit and 14 dredges per side outwith 12 miles. If they wish to fish within 6 miles, they can do so, but with eight dredges. The difference is one of capacity. It would be a strange conservation measure that had no impact on fishing activity, would it not? I repeat that, in the long term, we propose to conserve stocks. That means that the amount of scallops that can be caught must be limited. There might be a short-term reduction in income, to which I think Mr Gibson is referring, but the longer-term viability of the fleet will be protected.

As part of good practice, we undertake regular reviews of the relevant measures and, after two years, if concerns increase over exploitation of stocks by fishermen from other European Union member states, we will consider pursuing restrictions at EU level, if that is what Mr Gibson is proposing.

**Mr Gibson:** I am not proposing that—the minister is putting words in my mouth. I am asking about the Executive's methods of measuring the management areas. The minister has not answered me on that.

**The Convener:** Alasdair Morrison is next on my list.

**Mr Morrison:** The minister has answered the question that I was going to ask.

**The Convener:** In that case, Fergus Ewing is next.

**Fergus Ewing:** I understand from the Mallaig and North West Fishermen's Association that the deep water has never been surveyed for stock purposes. Is that right?

**Allan Wilson** *indicated agreement.*

**Fergus Ewing:** Given that boats of 10 dredges or more fish mostly in deep water, and given the fact that the deep-water stock has not been surveyed, all that will happen is that the scallops will die of old age. There will be no contribution to conservation.

**Allan Wilson:** No. There will be a contribution to scallop conservation if we take measures to

restrict effort, as I have explained to the committee. That said, as anybody with any basic knowledge of the industry knows, there is always scope to improve the scientific data. We will work with all stakeholders, including the association to which Fergus Ewing referred, to improve those data and to improve the measures that we take to preserve and conserve scallops. In so doing, we preserve and conserve the fishermen's livelihood.

**Fergus Ewing:** I see the shaking heads of the scallop fishermen sitting behind you, minister.

**Allan Wilson:** I cannot see them because I am looking at you.

**Fergus Ewing:** I can assure you that the fishermen were not persuaded by that evidence. They have put it to me that the FRS science is at best uncertain. One fisherman had an FRS employee on his boat when he was fishing in the Minch. The FRS employee, whose job it is to assess the data, said there were no scallops where they were, but they had caught 15 baskets within 30 minutes. From that anecdote, it does not seem that the FRS scientists are on top of the job.

However, the conclusions to the FRS 2001 report of scallop stock assessments state:

"The state of scallop stocks varies to some extent around the Scottish coast."

You have said that you have no idea about the scallop stocks in deep water. The conclusions go on to say:

"The west coast grounds and Shetland look reasonably healthy"

and that there was basically no cause for concern in 2001.

I understand that the minister is relying on the 2002 conclusions, despite the fact that there is no evidence on deep-water stocks at all, and that those conclusions are vague and ambiguous. The first paragraph states:

"Most of the main management areas show declining biomass and uncertain or declining recruitment".

The words that are used are "most of" but areas are not specified, and the word "uncertain" speaks for itself. The evidence that we have from the industry is quite the converse of that. In any event, the industry argues that one should not and cannot draw conclusions on recruitment over a period of one year.

Without the conclusions to the 2002 FRS report, I suggest that the minister's case has no substance. Do you accept that there has been a strong element of spin and that the 2002 conclusions have been sexed up to justify measures that you are determined to push through against the wishes of 80 per cent of the industry, many of whom are shaking their heads in the

gallery this morning? Are you persuaded that the 2002 data are robust when the conclusions are "uncertain" and incomplete?

**Allan Wilson:** It is possible for any one of us to quote selectively from a document of 160 pages. I was particularly struck by the data relating to

"the effects of ASP closures on effort and landings in the four closure zones within statistical rectangle 42E3",

which demonstrate a substantial increase in effort at the opening of those zones and the consequent effect on stocks.

I have added nothing to the conclusions of the report, from which you quote selectively. I refer you to the first and principal conclusion, which states:

"Most of the main management areas show declining biomass and uncertain or declining recruitment indicating that the overall health of Scottish scallop stocks has not improved since the 2001 report."

As a responsible minister of the Executive, I intend to take a precautionary approach to the management of those "uncertain" stocks to which you refer, and to take effective conservation measures to protect them for future generations of fishermen.

**Fergus Ewing:** The 2001 conclusion was that there was no cause for concern. The 2002 conclusion was that there was no improvement. That seems to say that the situation is similar to that in 2001. If there has been a decline—although you have admitted that the information is incomplete—what percentage is that decline?

**Allan Wilson:** I suspect that Fergus Ewing is now indulging in semantics. I quote again from the conclusions of the report:

"Short term benefits to the stocks resulting from enforced closure are unproven. They are likely to be outweighed by the unpredictable, potentially damaging effects of effort transfer and the increased fishing intensity on preferred grounds when they are reopened."

I adopt a sensible and precautionary approach to such matters so that we can preserve and conserve stocks for future generations of fishermen.

**Fergus Ewing:** I move on to another issue of extreme concern to the industry. The large vessels that will be affected by the prohibitions in the regulations spend most of their time working outside the 12-mile limit in waters where access is shared with other European states. As the regulations would apply to vessels under Scottish ownership wherever they work in the world, they could not be sold within the UK. I am advised that, in practice, the boats would have to be sold in Ireland, France or Holland and, under foreign ownership, could return to work in precisely the same waters where they currently operate but free

of restriction, as those countries do not apply the regulations.

If fishermen here have to sell their boats, the boats might end up in French, Irish or Dutch ownership, but fishing in exactly the same waters. What is more, the fishermen, having sold off their boats, might choose to buy two smaller boats and to buy up the sum of the unused licences, which would mean that effort would be increased. That is the situation as it has been put to me by people in the industry. Are they wrong?

10:30

**Allan Wilson:** The industry has a history of seeking to circumvent conservation measures through some of the practices to which Fergus Ewing refers.

**Mrs Ewing:** That is a shameful remark.

**Fergus Ewing:** Is the minister accusing somebody of committing a crime?

**The Convener:** Stop there, everybody. Only one person should speak at a time and everybody should speak through the chair. The minister was answering Fergus Ewing's questions.

**Allan Wilson:** I cannot comment on what individual owners might or might not choose to do in relation to their boats. However, I note that a number of boats that are owned by members of associations that are opposed to the measures currently go beyond Scottish waters to fish. As I said to Fergus Ewing's colleague, as part of good practice, we have undertaken to review the measures regularly. After two years, if the concerns about the exploitation of the stocks by fishermen from other member states are increasing—which is what Fergus Ewing suggests will happen—we will consider whether restrictions need to be pursued at EU level.

The Commission has had little interest in scallop management in recent years, which is why there is considerable scope for Scottish fishermen to play a key part in managing their fishery through our commitment to developing a strategy for scallop management with the industry: that means the whole industry, not part of it. We will develop sophisticated conservation measures with the industry, if it wants to be involved, in order to protect and conserve stocks.

**Fergus Ewing:** To be clear—

**The Convener:** Please wind up and make this your last question, because two committee members have not yet asked their questions.

**Fergus Ewing:** To be clear, my question was whether fishermen whose boats will become illegal by virtue of having in excess of eight dredges will be legally prohibited from selling their boats to

owners in France, Ireland or Holland, who are their main competitors. I understand that the French, Irish and Dutch fleets use big boats, so it is likely that there will be buyers. Equally, will a Scottish boat owner, having sold off a large boat, be legally prohibited from buying up two small boats and using the licences that are not used at the moment? That would increase effort substantially. Does the minister agree that, if that happens, far from achieving conservation, he would achieve the opposite because there would be greater effort?

**Allan Wilson:** No. I have said that part of the thinking is about preventing that prospective increase in fishing effort and catches. Our conservation measures are intended to be preventive. Left unregulated, the situation could lead to unsustainable exploitation of stocks by the owners of larger boats at the expense, in part, of smaller boats because there would be no legal restriction on their so doing.

We are trying to develop a strategy to conserve and protect stocks in consultation with the industry as a whole. We want to ensure that the views of everyone in the industry are accommodated and that stocks are conserved.

**Nora Radcliffe (Gordon) (LD):** I want to get to the instrument's underlying purpose. It is the first element of a phased approach to conservation and, presumably, a reduction in fishing effort. However, is it designed to prevent expansion, maintain current fishing levels or reduce fishing effort?

Moreover, if we seek to reduce fishing effort by reducing the number of dredges, but specify the number of dredges that reflects current practice for most people, are we discriminating by asking one element of the industry to pick up all the reduction in effort instead of reducing the number of dredges across the whole spectrum and, if you like, spreading the pain?

**Allan Wilson:** As I said to Fergus Ewing, the rules will apply to everyone. In that sense, they are not discriminatory. Moreover, in response to Fergus's point, I should make it clear that they will also apply to vessels that are considering coming into the fishery or increasing their gear.

There is no doubt that reducing the number of dredges will reduce effort. Furthermore, as I and other members have pointed out, the current restrictive licensing regime already prevents additional vessels from coming into the fishery. That said, we are taking a precautionary approach to avoid a prospective unfettered expansion of capacity if we do not take measures to reduce the number of dredges in the existing fleet. If there is no limit on the number of dredges, additional vessels could come into the fishery, not only to take up, but to extend capacity.

**Nora Radcliffe:** You have partially answered my question. However, if you stipulate that boats must have eight, 10 or 14 dredges per side and most people are already fishing with eight or 10 dredges, the legislation discriminates in that it applies only to people who do not have to reduce the number of dredges that they already have. As a result, only certain boats will have to pick up the reduction.

**Gabby Pieraccini:** I can help with that question. When we consulted on the measures, we asked industry representatives to estimate the number of boats that would be affected. The responses showed a bit of a variation. For example, one estimate that we received in 2001, which was accompanied by an acceptance of the measures, said that only four or six vessels would be limited. At the other end of things, it was estimated that up to 26 vessels would be restricted within 6 miles of shore, up to about 18 within 6 and 12 miles and up to about 17 outwith 12 miles. That seems to indicate that some vessels that fish inshore, some that fish in the middle area and some that fish in the outer areas will have to reduce dredges. Moreover, it was noted at the time that many of those vessels were nomadic around the UK coast, which implied that they spent some time outwith Scottish waters.

**Alex Johnstone (North East Scotland) (Con):** Although members have already asked many of the questions that I wanted to ask, I seek clarification on a couple of points. Indeed, I want to pick up on a point that has already been mentioned. The order repeatedly refers to a "Scottish fishing boat" and

"any relevant British fishing boat".

I would like to think that I know what a "Scottish fishing boat" is, but I want to know what a "relevant British fishing boat" is.

Secondly, members have referred several times to the likelihood that foreign boats could fish unfettered in the area of sea that the order describes as "the Scottish zone", outside UK waters adjacent to Scotland. I presume that that zone is beyond the 12-mile limit. Will the minister indicate the number of boats that are neither "Scottish fishing boats" nor "relevant British fishing boats" or, in general, the amount of fishing effort that those boats are carrying out in those waters?

My final point has been explored in some detail by Stewart Stevenson and Fergus Ewing. This discussion has highlighted one of the order's effects, particularly if it is considered in conjunction with other measures that the minister might be considering and to which in some cases he has already alluded. There is a general impression that, as far as scallop fishing is concerned, the overall programme of changes might concentrate

efforts nearer to shore. I believe that any measure that we choose to pursue to preserve scallops ought to be tested to see whether it actually disperses effort more evenly across all the available fishing grounds. Does the minister have a conclusive argument to show that this measure, and others that may be introduced, will not have the effect of moving fishing effort closer to shore and concentrating it in specific areas where more damage can ultimately be done?

**Allan Wilson:** The non-homogeneous nature of the scallop fishery obviously poses a problem when it comes to imposing total allowable catches, which might be seen as an alternative, as there could be a disproportionate impact on different parts of the fishery. What we have done with this measure, which we are happy to supplement with future technical and other measures, is to seek to reduce prospectively the total capacity of the fleet and the take of the available fishery. We will do that by reducing the capacity of the larger boats to fish with bigger dredges and by restricting the number of licences available to the current maximum of 250. We will also consider further restrictions in time at sea in consultation with the industry.

I am acutely conscious of the fact that measures could be taken by foreign fishermen and others to circumvent conservation measures by other means. In consultation with the industry, we will consider how we can develop future technical conservation measures that may be necessary to protect the areas that Alex Johnstone is concerned about. As a matter of good practice, we have undertaken to review the measures on a regular basis. After two years, if there are increasing concerns about exploitation of the stocks by other member states—and I would share Alex Johnstone's concerns about that—we will consider whether restrictions need to be pursued at the level of the EU, where those matters would have to be controlled. That may or may not sit fairly with the Conservative view of how stocks should be controlled outwith our immediate territory.

**Alex Johnstone:** The Conservative view might be that we should have a 200-mile limit.

**Allan Wilson:** In which case, you would no doubt wish to have an input into that consultative process. I share your genuinely expressed view that stocks should be conserved in Scottish inshore waters, and indeed in the area outwith UK territorial waters, to ensure that Scottish fishermen are not disadvantaged by foreign exploitation of those stocks.

**Gabby Pieraccini:** Perhaps I could answer the specific questions about the relevant fishing boats. Under the devolution settlement, the Executive and the Parliament can regulate Scottish vessels

wherever they fish and other vessels within the Scottish zone. Outwith 12 miles, we cannot regulate other member states' vessels. We can regulate other UK fishing boats within 12 miles and, following the common fisheries policy review at the end of last year, we can regulate all vessels within 12 miles, even other member states' vessels that come within that zone.

With regard to what we know about other vessels' activities in the Scottish zone, we have looked at the landings data and, as far as we can see, there has been little or no landing into Scotland from EU vessels fishing for scallops. That is not to say that there cannot be landings elsewhere in other countries, but at the moment we are not aware of a lot of activity by other member states.

**Nora Radcliffe:** You say that you are not aware of activity by foreign boats. Is the only way of measuring that by landings in Scottish ports, or are you surveying vessel activity in general?

**Gabby Pieraccini:** We would certainly be able to find out from other sources where any stocks fished in the Scottish zone were being landed. From our own statistics, those fish certainly are not being landed in Scotland and are not being counted against our own register. However, there are ways of finding that out.

**Nora Radcliffe:** Do you take those ways and do you have that information?

**Gabby Pieraccini:** We will be doing that over the next couple of years.

**Nora Radcliffe:** But you do not have that information now.

**Gabby Pieraccini:** Not at this precise moment in time.

**Karen Gillon:** Fergus Ewing and Stewart Stevenson spoke about licences that are not being fished at present. If it became clear that such licences were being exploited in order to prevent conservation measures being taken in future, would you give serious consideration to a reduction in the number of licences?

10:45

**Allan Wilson:** At present, that is a difficult prospect in legal terms. However, we are prepared to consider the situation. As I said, the measures are designed to ensure that there is no increase in capacity from within the 200 licence limit that is proposed at present. If the situation were to be left unregulated, it could have the impact that Karen Gillon described.

**The Convener:** If Rob Gibson has one question, I will let him in.

**Mr Gibson:** All that I require is a yes or no answer. Some of the fishermen argue that the measures discriminate against them because the dredge limitations apply only to their boats. They say that that could breach their human rights under article 1 of the first protocol to the European convention on human rights. The minister has been keen to introduce the European dimension into the debate today. Has he taken any legal advice on this matter?

**Allan Wilson:** We would not propose to introduce a measure that infringed anyone's legal rights in any way, whether those be by virtue of rights conferred by Europe or otherwise.

**The Convener:** Okay. We have raised a pretty extensive set of questions. We move to the next stage of the debate, which is the debate on the motion. I ask Maureen Macmillan to speak to and move motion S2M-295.

**Maureen Macmillan:** The argument is finely balanced. It needs to be thrashed out and considered carefully by all members. We want conservation measures, but we also want to ensure that they are the right measures. Given that the scallop-fishing industry is divided on the issue, it is important that we consider carefully what other members say and what the minister says before we come to a conclusion.

One of the key issues is whether the measures penalise unfairly one section of the industry. We need to consider whether the measure can be made fairer. Another of the key issues stems from the contention that the measures proposed for limiting the number of dredges would not help to conserve scallops, but might have the opposite effect.

Certain sections of the industry are worried about the financial effects of the measures. I am not sure whether the minister can tell us whether support will be given to people who find themselves in difficulty. I will listen carefully to everything that is said in the debate before I make up my mind on whether to press the motion.

I move,

That the Environment and Rural Development Committee recommends that nothing further be done under the Prohibition of Fishing for Scallops (Scotland) Order 2003 (SSI 2003/371).

**The Convener:** Thank you. After the minister has responded, I will invite members to make their contributions.

**Allan Wilson:** At the risk of repeating myself, I will go over the arguments that have been made today. We recognise the need for a longer-term strategy for scallop management. That is not in dispute. Indeed, we have invited the Scottish industry to develop the strategy with us.

However, as we speak, over 25 fishing grounds are closed as a result of algal toxins in Scottish waters. I fear for the conditions in the grounds that remain open. If I did not think that the measures in the SSI would help to prevent over-exploitation of scallop stocks and help the industry in the future, I would not have proposed them.

Maureen Macmillan and others have argued that dredge restrictions will mean that a larger boat will be sold and that two smaller boats will be bought to replace it, increasing the overall number of dredges at work and having the opposite effect to conservation. That is an oversimplification. A restrictive licensing scheme is in place for scallops, so the overall number of vessels that can prosecute the fishery is ring fenced.

The aim of these measures is to conserve stocks by preventing an unfettered expansion of effort in the industry. That would be possible, if not likely, without the measures. There is a limit to the number of vessels in the fishery, but nothing to limit the effort that they exert. We are concerned that vessels will use more and more dredges to fish. We are also concerned that those vessels—to which Maureen Macmillan and Fergus Ewing referred—that do not at the moment use their scallop licence regularly because they are fishing for other stocks may choose to use that licence. If that happens, they will gear up with large numbers of dredges.

We are taking a more strategic and precautionary view than is suggested by the accusation that the instrument will adversely affect conservation. Overall dredge numbers at work may vary a little in the short term, rising as well as falling. However, the global benefit is that we will prevent a significant increase of effort in the fishery. That is why I proposed the measure.

**Mr Brocklebank:** As we have heard, because of the many problems affecting the industry, including closures for algal toxins, the scallop sector has undergone dramatic change in recent times. However, the fleet did not expand and develop to the extent that was feared when the original measures were agreed. Offshore scallop fisheries are perhaps more important than inshore fisheries. Many scallop fishermen believe that the measures that were originally agreed and that appeared in the SSI are either no longer appropriate or are obsolete.

We spoke about the EU-sponsored Ecodredge report, which sets out further, more sophisticated ideas. The minister responded to a question that I put to him on that report. However, I understand that the industry asked him to conduct a full consultation on the Ecodredge report, which has not yet happened. The minister's claim to have taken the industry fully into his confidence does not appear to be justified.

Most of the industry objects mainly to the restriction in the SSI on the number of dredges that a vessel may tow in relation to the distance from the shore that it fishes. Out of a Scottish fleet of 105 vessels, only 17 will be affected by that aspect of the legislation. In other words, 17 operators will be asked to assume the full burden of conservation on behalf of the rest. The reduction of two dredges a side on a 10-a-side vessel could cost each operator up to £180,000 a year, making those larger vessels totally unviable.

There is no legal reason for an operator not to replace his 10-a-side dredger with two eight-a-side dredgers, increasing his total number of dredges from 20 to 32. The measure would increase the global number of dredges in inshore waters and do absolutely nothing for conservation. Indeed, it would achieve the opposite.

The introduction of the SSI would place Scottish-owned vessels at a severe disadvantage compared with member-state vessels. It would also mean that hundreds of jobs could be lost in the processing and ancillary sectors. The SSI has also been laid before a scallop management strategy has been agreed between the Scottish Executive Environment and Rural Affairs Department and the industry. For those reasons, and the reasons that we heard earlier in reply to questions, I support Maureen Macmillan's motion to annul the SSI.

**Fergus Ewing:** As I understand the situation, the views of those in the industry are not unanimous. However, I hope that the minister will accept and address in his concluding remarks the fact that between three quarters and four fifths of fishermen oppose the measures.

Those fishermen who support the measures include the Clyde Fishermen's Association. However, even though a relatively small number of boats are in the Clyde Fishermen's Association, I believe that two members of that association do not support the views of its representative, Mr Stewart, but share the concerns of those who oppose the measures. The clerk has confirmed that letters have been received from those fishermen, who are, I believe, Mr Paul Gallagher and Mr MacLean. The representative of the Clyde Fishermen's Association, which has a small number of members, does not represent two of the fishermen in that association, which is a substantial proportion of the members.

The minister said that scallop fishermen in Orkney are concerned about the encroachment of large boats into their waters. When he said that, I saw one scallop fisherman who is here shaking his head—that evidence is plainly disputed. People in the industry are overwhelmingly against the order for a variety of reasons, of which we have heard. I will not repeat the arguments that Ted Brocklebank laid out, although I endorse them.



I understand that neither the minister nor Mr Finnie has met representatives of the Scallop Association, although there have been discussions with civil servants. However, in light of the huge concerns expressed, it is surely reasonable that there should be a meeting between the minister and those who will be affected.

The minister's only real argument is that the measures will achieve conservation, but he has admitted that the data are far from complete and that there are no data for the areas in which the boats that will be affected fish. If there are no data on deep-sea waters, which is where boats with more than eight dredges fish, by definition, the minister's measures are completely illogical.

Furthermore, if the measures go ahead, the boats that will become illegal to operate will perhaps go into the inshore waters—assuming that they can be adapted at the huge cost of around £180,000—which will increase, not reduce effort. The data are uncertain. When I asked the minister to say by what percentage it is alleged that stocks have declined, he did not answer. We should have had a clear statement of the science; instead, we have a document that is as clear as mud.

As has been said, the measures will affect only around 17 boats out of 105—none of the small, artisanal boats will be affected. Blinders and French dredges have not been used for 15 years, so goodness only knows what the point of banning them is. Mr Gibson asked if the minister has received advice about whether the legal rights of those 17 boat owners under article 1 of the first protocol to the European Convention for the Protection of Fundamental Rights and Freedoms will be infringed. The convention states that nobody should be deprived of their property, except for reasons that are in the public interest. I am no expert in the subject, but I understand from previous study of the matter that measures must not be discriminatory and must be proportionate. As Nora Radcliffe elicited from the minister, the measures will most patently be discriminatory because they will affect only 17 fishermen—those with boats that have more than eight dredges.

It was unfortunate that the minister did not answer the question whether he had taken legal advice on that matter and I hope that he will do so in his concluding remarks. The rights of a large number of people are at stake. As I said in my opening remarks, those people face the loss of their livelihoods and bankruptcy. Hundreds of jobs might also be lost in the processing sector.

If the order goes through, foreign vessels will have an enhanced capacity to take over Scottish vessels. Some in the industry believe that French vessels want to build up a track record in case a TAC is introduced and they would want the

standing level to be as high as possible so that the TAC is set at as high a level as possible.

11:00

A point that has not been made before is that many of the owners of the boats that will be affected by the order have invested heavily in other aspects of the scallop industry, including processing and gear manufacture. They will have to continue to meet their contractual commitments to supply a certain quantity of scallops.

When I was talking about the risk of large boats being sold off to foreign ownership, the minister argued that I was guilty of "oversimplification". First, the argument that I was making was not my argument, but that of the Mallaig and North West Fishermen's Association. If anyone is guilty of oversimplification, the minister must be saying that it is the MNWFA. I do not think that that is so because it is the association's job to represent its members and they do a pretty good job of it.

However, the minister conceded that there is no legal prohibition on the sale of such boats to foreign owners. He admitted that that can happen. Because some fishermen are also processors and because they have contractual commitments to supply quantities of scallops, if they are forced to sell off a large boat they might have to buy smaller boats in order to fulfil their contractual obligations. Whether that is something that will definitely happen—or is likely to happen—I do not know. However, I would have thought that it is so serious a criticism of the instrument that, at the very least, there should have been a meeting between the minister, or Ross Finnie, and the industry. Of course, there has been no such meeting.

There has been no reference to the impact that the instrument might have on safety. If we want to apply the precautionary principle, I would have thought that we should first apply it to the lives of the fishermen involved. I quote from the MNWFA briefing on safety. Under the heading

"Further consequences of the Legislation"

it says

"Vessel owners are obliged to conduct a Risk Assessment for all aspects of the operation of their vessel. Even if an owner were to opt for an attempt to operate his vessel with a reduced number of dredges, his Risk Assessment would be nullified because his crew numbers would be reduced, with obvious implications for the compromise of safety."

That speaks for itself. In the view of industry experts, the measures in the instrument might compromise safety. If that were the only argument in the debate, it would surely justify taking away the instrument and thinking again.

Paragraph 5 of the RIA—and the minister—argues that white-fish boats might be diverted into

scallop fishing. Minister, I have to tell you that the advice that I have from the industry is that that is complete nonsense. First, white-fish boats have been mostly scrapped following decommissioning. Secondly, no bank manager is going to give a loan to a fisherman to move from one type of fishing to another, and I know that for a fact. Thirdly, and most important, white-fish boats cannot be used for scallop fishing. Scallop fishing is a highly technical type of fishing and the idea that white-fish boats can fish for scallops is just absolutely absurd. Paragraph 5 of the RIA is therefore nonsense.

I am coming to a conclusion, and I appreciate the convener's indulgence in allowing me to speak for slightly longer than normal. The case for conservation has not been made. The measure might increase effort, even though it intends to do the opposite. The industry has not been properly consulted by the minister; they received the RIA yesterday afternoon when they should have had it six weeks ago. Their livelihoods are at stake. This is the most serious contribution that I have made during this Parliament or the previous one. I entreat you to withdraw the instrument.

**The Convener:** The next member to speak is Stewart Stevenson. I am keeping an eye on the clock and not being overly indulgent. If someone speaks for more than five minutes, I will rein them in.

**Stewart Stevenson:** I was so taken with the minister's insight that there are seven days in the week that I sat down and did a little calculation. Given that the proposed measure seems to be based on restricting 17 boats from outer waters, 26 from inshore waters and 18 from in between, a maximum of 46,000 "dredge days"—which is a term that I have coined for this occasion—could be withdrawn from the fleet's capacity.

However, as Karen Gillon has pointed out, 46 licences are operating part-time and 50 licences are not operating at all. If those 50 licences were to begin to operate at the minimum level permitted under the order, they could add 150,000 dredge days to the industry's fishing capacity. Therefore, even on the slimmest assumptions, the net result that could be permitted under the order would be an increase of up to 100,000 dredge days. In other words, the number of dredge days could rise by more than twice the amount that is being withdrawn. If the minister has any figures in that respect, I would be happy to hear them in his summing-up. However, I will be astonished if their substance differs from my calculations on this little back-of-the-fag-packet piece of paper.

The minister also referred to ASP and the 25 areas around Scotland that are currently closed. He will recall our many happy jousts over the level of domoic acid in scallops that is appropriate

before areas are closed and I expect that we will continue to disagree on the issue. However, in closing those areas—unnecessarily, as many committee members and others would suggest—he is partly creating the problem.

Of course, this is not just a fishing issue. One of my constituents, Mr Foster Gault, who is the managing director of a scallop processor in Peterhead, is sitting in the committee room today and watching us with keen interest. Other processors employ hundreds of people at least in my constituency alone, and I am far from alone in having onshore as well as offshore interests in this matter. The value of the catching sector is about £20 million a year. I suspect that, when one considers the added value of processing, the industry will turn out to be very significant indeed.

It ill behoves an Executive that put the economy at the very forefront of its partnership agreement for the coming parliamentary session to caw the feet from under some of the most entrepreneurial people in Scotland, either onshore or offshore. I hope that the minister will examine either my figures or his own, see that even on its own terms—with which I do not necessarily agree—the measure is ineffective, withdraw it and instead introduce a measure that looks wider and deeper at and addresses issues such as foreign intervention in our stocks. He says that he will return to such issues later, but for the moment he is content to restrict Scottish fishermen.

The minister should consider deeply whether the measure might give rise to legal challenges that not only could bring his Executive into disrepute but, through the failure to introduce the regulatory assessment, risk calling the Parliament's processes into question, however unjustifiable that might be. Minister, I urge you to take this chance to withdraw the proposal and present it again in a more considered form.

**Eleanor Scott:** I fully support the minister's intention in the order to apply the precautionary principle, conserve stocks and ensure that we have a sustainable scallop industry. However, I am not convinced that the order will achieve that.

The minister said that it would be a strange conservation measure that had no impact on fishing activity. Unfortunately, it would also be a strange conservation measure that had no impact on the stocks that it was supposed to be conserving. I am not convinced that the instrument will have any impact on stocks, because some of the measures that it introduces will not change current practice and its effect on stocks. Those measures that will change current practice will impact disproportionately on a relatively small number of boats in the scallop fleet and will leave the rest unaffected.

Reference has been made to the Ecodredge report, which is to inform further legislation. I suggest that there is no emergency in scallop stocks, although there may be cause for concern. For that reason, we do not need urgently to introduce bits of legislation now. Perhaps we could wait and incorporate the parts of this instrument that are felt to be of value into subsequent instruments that will be informed by the Ecodredge report. There is too much in the instrument that will not deliver on the minister's praiseworthy intentions of stock conservation.

**Nora Radcliffe:** Increasingly, I see this as a holding instrument that keeps fishing effort at roughly the current level and does not allow expansion. I would be grateful if the minister would clarify his answer to my question about the differential impact of the instrument across the different sectors of the industry, so that I can establish whether my understanding of what I heard was correct.

I would be interested to learn how many vacant licences exist and whether there is the potential for expansion that has been mentioned. I am concerned about the lack of data about foreign activity outwith the territorial waters. We must be aware that that information will be needed as soon as possible if we are to take this matter to Europe.

I gather that the number of dredges that fishermen use is dependent on the depth of the water in which and the type of sea bed over which they are fishing. Is dredge limitation that is based on miles off shore the most sensible way of proceeding, or would dredge limitation that is related to known factors such as depth of water and type of sea bed be better targeted? I look forward to hearing what the minister has to say on those points.

**Mr Gibson:** From this debate it is obvious that it has taken a long time to reach the point at which the instrument could be laid. That means that some of the consultees were spoken to three years ago, although others were spoken to more recently. Because the RIA was not published in July, there could have been further discussions with a number of people. The RIA would have prompted people to try to find out why this particular route was being taken. We have been presented with an approach that was adopted in order to make progress. That is like trying to legislate on a moving platform.

Earlier we argued about the issue of stocks. Information about stocks and questions about the FRS must be considered carefully. That information does not necessarily indicate that it is urgent for us to agree to the order in its current form.

Account must also be taken of the changed powers of the Scottish Parliament to regulate this

kind of fishery, as those powers are of relatively recent date. In my view, we have approached this issue the wrong way round. If we want to keep the whole industry on board, we should seek its views within the same period of months, instead of taking some views three years ago and some six months ago. Before laying an important instrument that will affect people's livelihoods, we must try to get a snapshot of the current situation.

It strikes me that the approach that you have adopted has not been to develop the kind of strategy that we require to give us a clear idea of the parameters, but to pick some so-called core measures, which you think will make a difference but which some of our probing has suggested are less than sound. That core is not as secure as it might be. For those reasons, we would like the instrument to be withdrawn. Frankly, it does not address the situation, as we see it, in this year. It does not take into account a fair distribution of effort in order to conserve stocks, but merely targets a small number of boats. That is not the way forward for us, and we therefore believe that the instrument is flawed and should be withdrawn.

11:15

**Alex Johnstone:** No one could have guessed when the Parliament first came into existence that it would spend so much time on fishing matters or have so many critical moments that were related in one way or another to the fishing industry. Yet right from the very start, fishing issues have been at the top of the list of priorities, not only for the committee and its predecessor but for the Parliament as a whole.

Approximately four years ago, I was in the chair of the Rural Affairs Committee when we conducted a one-day inquiry into the impact of ASP on the scallop industry. The industry had already experienced a great deal of difficulty at that time, and it has experienced much more since. The scallop dredgers, the scallop growers and the scallop processors deserve a great deal of credit for their integrity and fortitude and for the way in which they have accepted the difficulties that that disease has placed their industry under.

We are here today to discuss an order that is designed to preserve the scallops so that the industry and all those involved with it can continue to be successful in their businesses in the long term. However, it has become clear, from the correspondence that we have had and the discussion that has taken place round the table, that there is a significant lack of agreement on how the conservation of scallops should be achieved. Although one of the pieces of information that we have been given is that the industry itself believes that the scallop is not under threat, I am perfectly happy to accept that its

preservation over the long term should be a high priority for the industry and for the committee. Consequently, I look forward to seeing orders being laid that will give us the opportunity to approve technical conservation measures that will guarantee the long-term future of the industry.

However, the evidence that we have heard today indicates that there is no enormous effort to catch scallops in Scottish waters. There are a number of licences that are not taken up and it would appear that there is no crisis in the number of scallops that are available to catch. I have heard nothing today that changes my view that the order should not have been introduced, and that it contains proposals that will not be effective in achieving the measures that it sets out to achieve. I shall therefore cast my vote in favour of the motion that nothing further be done under the order.

**Mr Morrison:** I want to deal first with the points about consultation and the industry's engagement with the issue over many years. Last Friday, along with my colleague Calum MacDonald and Duncan MacInnes of the Western Isles Fishermen's Association, I dredged—for want of a better word—through the events of the past few years.

In January 1998, the Clyde Fishermen's Association and the Mallaig and North West Fishermen's Association agreed to promote technical conservation measures limiting the number of dredges that can be towed by scallop fishing vessels. In April 1998, the Scottish Fishermen's Federation adopted the proposals and recommended them to the Government. In July 1998, all sections of the industry agreed that the proposals that are now replicated in the draft SSI should be considered. In March 1999, the scallop sub-group of the UK fisheries conservation group endorsed the proposals.

Once this Parliament was in being, the draft instructions to the Scottish Executive's solicitors containing the proposals were published to the industry. It is my understanding that no objection to the technical conservations was received. The chain of events goes on right up to 2001, which is the date of one of the letters that I have on file. I assume that it was sent to Gabby Pieraccini's predecessor, Siân Ledger. Again, the Western Isles Fishermen's Association made it patently clear that it fully supported the banning of French dredge from all UK inshore waters. The WFA also wanted to limit the number and size of scallop dredge. Any member who contends that the industry has not been consulted over the years about the issue is simply not aware of the facts.

Several members talked about the spectre of unemployment. Undoubtedly, livelihoods are at stake. If the Environment and Rural Development Committee does not take the grown-up,

responsible, tough decision of approving the measure we will indeed endanger the livelihoods of people whom we claim to represent, whether they are in the processing sector or are the men who go to sea.

We should learn lessons from other fisheries. Members will recall that certain sectors in the white-fish industry called for a ban on pair trawling, which is a type of fishing that is prosecuted by larger vessels. However, nothing was done. The Government of the day listened to the owners of the larger vessels and, as a result of that, they continued to prosecute pair trawling. Those larger vessels, of course, did nothing for conservation. We should learn the relevant lessons for our inshore fishery and ensure that we do not end up in the situation that the white-fish industry is in. We must take conservation measures and protect communities and livelihoods.

On the different positions that the various parties outlined, I respect what Fergus Ewing and other members said. However, I cannot begin to reconcile the Green party's position on the measure with its philosophy. The Green party's sole reason for existence is to protect the environment. I have friends who, I believe, are members of the Green party—I would have to check whether they are paid-up members—and when they hear that the leader of the Green party does not support the conservation measure, they will be birlin in their sandals. Until they see the *Official Report* of the meeting, they will not believe that the Green party's position is now not to support conservation measures.

The minister used expressions such as “unfettered expansion of capacity.” He is right that we must ensure that such expansion does not happen. Fergus Ewing quoted from experts. I think that a particular letter was circulated to all members. That letter was signed by Alan Coghill of the Orkney Fisheries Association; Hansen Black, who is secretary to the Shetland Fishermens Association; Duncan MacInnes of the Western Isles Fishermen's Association; and Patrick Stewart of the Clyde Fishermen's Association. I say to Fergus Ewing, with all due respect, that collectively and individually the men whom I have just listed and the people whom they represent will probably forget more about scallop fishing than he will ever know.

The last paragraph of the letter that they sent to us states:

“The Associations therefore urge the Minister to disregard the opposition to the measures which appears to be stimulated more by mercantile than conservation motives and to proceed swiftly to achieve their introduction.”

I say amen to what those gentlemen said, because they genuinely represent the fishermen

and the processors. They are concerned not only about the short term, but the medium-term and long-term viability of the industry.

I welcome the opportunity to debate the matter and respect the action that has been taken by my colleagues Nora Radcliffe and Maureen Macmillan. Maureen said that the debate is finely balanced. Having heard the minister's and the official's detailed explanations, I have no doubt that agreeing to the measure is the right thing to do. I urge Maureen and Nora not to press the motion and to allow the measure to be introduced.

**Karen Gillon:** I come to the debate with no constituency employment interest, but I am sure that many of my constituents enjoy the fruits of others' labours in the scallop industry. I have read in detail what was sent to me and I have listened closely to the debate. I acknowledge the genuine concerns that Stewart Stevenson and Fergus Ewing expressed on behalf of their constituents' interests. However, I became slightly confused after listening to the two members because they seem to be facing both ways in one respect.

On the one hand, they say that the measure will not work as a conservation measure because owners will sell their one big boat and replace it with two small boats, which will cause an increase in the number of scallops that are caught. On the other hand, they are saying that it will devastate the processing industry, because it will not have enough scallops. I cannot reconcile those two arguments. Either we are fishing more scallops and are not conserving stock, or we are affecting the processing industry because it is not getting enough scallops, but we cannot make both arguments stand up. I imagine that if more scallops are caught, that will benefit the processing industry rather than harm it, but I am sure that I will be corrected if I am wrong.

We have had an interesting debate today. I am glad that Alasdair Morrison has been able to represent the views of his constituents, because there are two different perspectives. There are those who have small boats and who fish closer to the shore, and there are those who fish further afield and have larger boats. We have a finely balanced debate. I am interested to hear from the minister, because I am still concerned that the licences that are not currently being used will be taken up, which will lead to overcapacity in the industry. If that happens, serious consideration should be given in the medium and long term to reducing the number of licences that are available in Scotland.

**The Convener:** We will move to brief comments from the minister. You were asked a number of questions by members all round the table. Could you try to answer them, before I move back to Maureen Macmillan?

**Allan Wilson:** I will try to be as brief as I can but, as you said, I was asked a number of questions. I hope to answer them all in the time that is available to me.

I was interested in Alasdair Morrison's detailed examination of the consultation process that preceded the laying of the order before you. As he correctly pointed out, we have been consulting since the late 1990s. The scientists are now signalling to us the need for a precautionary approach. I admit that I, too, was surprised at the Green party's attitude to the scientists' clear message to us that action has to be taken now. I quote the fifth conclusion of the scientific study:

"Further delay to the introduction of technical conservation measures to support the existing licensing scheme and minimum landing size restriction should be avoided."

That is clear guidance to ministers if, like me, you support the precautionary principle. We want to act now, because we can see the social and economic disaster that can follow ineffective conservation. We do not need to look any further than the white-fish sector.

Alex Johnstone and Karen Gillon asked questions about the licences. The aim of the measures is to conserve stocks by preventing an unfettered expansion of effort in the industry. There is a limit on the number of vessels in the fishery. The number of licences varies from year to year, but at the start of 2003 there were 196 licences and only 85 had been used. We are concerned that there is nothing to limit the effort that those vessels exert on the fishery. There is concern that vessels will use more and more dredges to fish and that those vessels that do not use their scallop licences regularly at present, because they are fishing other stocks, may choose to use them and gear up the number of their dredges.

We listened to the industry and removed some of the more contentious elements, such as the proposed weekend ban, in consultation with the industry.

The answer to Nora Radcliffe's question is that the idea of zonal dredge limits was developed so that no one sector of the scallop industry was targeted unfairly. Smaller boats that fish within 6 miles can fish with no more than eight dredges per side. The larger number of dredges that is permitted outwith 6 miles and 12 miles reflects the fact that those areas are fished by larger vessels. We have also promised to develop a long-term package with the industry.

11:30

With regard to the point that Ted Brocklebank made, we have considered the Ecodredge report

carefully. There are a number of interesting ideas for the future in the report, and we will adopt some specific measures such as those on belly-ring size and tooth spacing. Other concepts in the report will have to be considered as part of the overall strategy for scallop management that we are committed to developing with the industry. Industry members of the Scottish Scallop Advisory Committee were also asked to consider the Ecodredge report, and I am not aware that the conclusions that they reached were any different from ours, but perhaps Ted Brocklebank has other information.

The SSI is only a modest measure. Nevertheless, it is an important step in the right direction. Karen Gillon is right to accuse Stewart Stevenson and Fergus Ewing of trying to look two ways at once. The person who demonstrated most ably the modesty of the measure was Stewart Stevenson. I thought that his concept of dredge days was quite interesting. However, how many more dredge days could be introduced if there was no proposed limitation on dredges? That is the equation that we have to consider in terms of the application of the precautionary principle to which I refer. As a consequence of its being only a modest measure, the SSI is not going to close the industry down—far from it. It will remain a lightly regulated industry, with no quotas or limits on days at sea. I hope that the SSI can be supported on that basis.

A couple of important supplementary points were raised by Fergus Ewing. One concerned safety and was raised at the conclusion of the debate rather than initially. As a former trade union officer, I am acutely aware of safety considerations and would not wish anyone to be put in jeopardy as a consequence of our actions. We contacted the Maritime and Coastguard Agency about some of the concerns that Fergus Ewing has expressed, and it indicated that there may be stability issues if vessels need to carry an extra tow bar on deck. Therefore, we have agreed to consider alternatives to different tow bar lengths ahead of the introduction of a second SSI later in the year. We received further advice that vessels may become unstable and less efficient when they work in deep water. However, on balance, we would prefer grounds to be protected from overfishing by a reduction in the number of dredges. We will do nothing to jeopardise safety.

On the final point about human rights and the ECHR, my answer is that—as I thought that I had said—our lawyers are satisfied with the SSI. They have to give their approval to all legislative proposals, ensuring compliance with the ECHR and the Scotland Act 1998, before those proposals can go to Parliament. Of course, we would take legal advice if any challenge was made to the proposed measures, but no challenge has been made. Were the Scottish Scallop Fishermen's

Association or any other affected organisation to request a meeting with me, I would be more than happy to meet it to discuss the proposals and any related matters. These are modest measures that are designed to protect and conserve stocks, and I ask for Parliament's support for them.

**The Convener:** I ask Maureen Macmillan to wind up and to press or withdraw her motion.

**Maureen Macmillan:** This has been a useful and informative debate. We have teased out all the questions that needed to be asked and they have been well answered. I take Karen Gillon's point about some of the members present facing both ways. We cannot say, on the one hand, that the measures will not ensure conservation and, on the other hand, that they are going to devastate the industry.

I am persuaded that the proposed measures will ensure conservation. I was keen to ask the minister whether it was necessary to cut the number of dredges alongside introducing the larger belly-ring size and the wider gaps in teeth, and I am persuaded that the cut in the number of dredges is necessary. I was surprised that Eleanor Scott said that we should wait for an emergency or crisis before putting in place conservation measures, because not putting measures in place early enough has devastated our fishing industry previously.

What the minister said to Nora Radcliffe persuaded me that the measure is not discriminatory, because it is zonal, and because it prevents boats that do not reach the prescribed dredge numbers at present from increasing their dredge numbers. The questions of conservation and discrimination were at the heart of my reasons for lodging the motion, so I do not wish to press my motion, although another committee member is free to press it to a vote.

**The Convener:** You may ask to withdraw the motion, but it is up to the committee to decide on that.

**Maureen Macmillan:** Okay. I ask for permission to withdraw the motion.

**The Convener:** Does any member object to Maureen Macmillan's request for consent to withdraw the motion?

**Alex Johnstone:** I object.

**Mr Gibson:** I object, too.

**The Convener:** In that case, we will vote on the motion to annul.

The question is, that motion S2M-295, in the name of Maureen Macmillan, be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Cunningham, Roseanna (Perth) (SNP)  
Gibson, Mr Rob (Highlands and Islands) (SNP)  
Johnstone, Alex (North East Scotland) (Con)  
Scott, Eleanor (Highlands and Islands) (Green)

**AGAINST**

Boyack, Sarah (Edinburgh Central) (Lab)  
Gillon, Karen (Clydesdale) (Lab)  
Macmillan, Maureen (Highlands and Islands) (Lab)  
Morrison, Mr Alasdair (Western Isles) (Lab)  
Radcliffe, Nora (Gordon) (LD)

**The Convener:** The result of the division is: For 4, Against 5, Abstentions 0.

*Motion disagreed to.*

**The Convener:** As the motion was disagreed to, the committee is content with the instrument and will make no recommendation to the Parliament. The results of our discussion and of our division will be recorded in the committee's report to the Parliament on the instrument.

I thank everybody for their forbearance. People wanted to tease out many difficult issues and there was a lot of passion behind the debate. Before we deal with our second set of statutory instruments, I suggest that we have a five-minute break.

11:37

*Meeting suspended.*

11:47

*On resuming—*

**Draft Code of Recommendations for the Welfare of Livestock: Pigs (SE/2003/173)**

**Draft Code of Recommendations for the Welfare of Livestock: Cattle (SE/2003/175)**

**Welfare of Farmed Animals (Scotland) Amendment Regulations 2003 (Draft)**

**The Convener:** We will move on, as we have important business to deal with. We have three statutory instruments on animal welfare to consider under the affirmative procedure. I welcome the Deputy Minister for Environment and Rural Development again and his new set of officials.

Copies of the instruments have been circulated to members. The Subordinate Legislation Committee reported on the instruments in its third report of 2003 and made points only about the draft Welfare of Farmed Animals (Scotland) Amendment Regulations 2003. The relevant extract of the report was circulated to members as paper ERD/S2/03/4/2D for this meeting.

As the instruments are subject to the affirmative procedure, the Parliament must approve them before they come into force. Three motions in the name of Ross Finnie invite the committee to recommend to Parliament that the instruments be approved. Before we debate the motions, it is our usual practice to clarify purely technical matters or to ask for explanations of detail from officials, who cannot participate in the debate on the motions.

I invite the deputy minister to make an opening statement on all three instruments, after which we will move on to clarification and explanation for members and to the debate.

**Allan Wilson:** The draft Welfare of Farmed Animals (Scotland) Amendment Regulations 2003 and their related RIAs—whose availability coincided with the launching of the regulations, I am pleased to say—apply to pig welfare. They implement Council directive 2001/88/EC and Commission directive 2001/93/EC by amending the Welfare of Farmed Animals (Scotland) Regulations 2000 as they apply to pigs. The regulations have been the subject of full public consultation. Separate legislation applies in England, Wales and Northern Ireland.

Some time ago, directive 98/58/EC set minimum standards for all farmed animals throughout the European Union and provided a framework for species-specific standards that was implemented in Scotland by the 2000 regulations. Directives 2001/88/EC and 2001/93/EC lay down minimum

standards for the protection of pigs and they will be implemented through amendment to the 2000 regulations. Directives that will apply throughout Europe must be implemented in full, but the Scottish regulations do not go further than is required—that is, the directives have not been gold plated by us. The key provision of the directives is that an EU-wide ban on close-confinement sow stalls be fully in place by 1 January 2013.

The regulations involve transitional provisions; in particular, they will replace schedule 6 of the existing 2000 regulations. Part I of the regulations contains interpretation; part II covers general additional conditions, including permanent access to manipulable materials; and part III deals with boars—it includes an additional minimum floor area requirement for pens that will need to be met by 1 January 2005 for existing buildings. Part IV deals with sows and gilts. It contains requirements to group house sows and gilts, minimum space requirements and a minimum continuous solid lying area—existing buildings have until 1 January 2013 to comply with those specifications. Part V deals with piglets and changes the minimum weaning age, with the exception of all-in, all-out systems. Part VI deals with weaners and rearing pigs.

The directives will be subject to review in 2005. That review will cover castration, space allowances and floor types for weaners and rearing pigs. A more major review will take place in 2008, which, I understand, will consider farrowing systems, among other matters.

On the new welfare codes, pigs and cattle were previously covered by codes of recommendation that date back to 1983 and which are consequently in need of updating. The new codes have been prepared to be user friendly and to highlight the legal requirements of welfare advice. The codes have been made under section 3 of the Agriculture (Miscellaneous Provisions) Act 1968 and may be used as evidence in prosecutions for unnecessary pain, distress, suffering or injury to livestock, for example.

Stock keepers must have access to the codes, have knowledge of them and focus on animal welfare. The codes will apply in Scotland—there will be separate codes for England, Wales and Northern Ireland. There has been full public consultation and full consideration has been given to comments that have been received. As a consequence, the draft codes have been adapted.

The pig welfare code provides guidance on the new regulations for farmers and the cattle welfare code has been issued in the absence of specific EU welfare proposals. The cattle welfare code takes account of recommendations in the Farm Animal Welfare Council's dairy cattle report and

the Council of Europe's recommendations on cattle.

I am sure that members will agree that the regulations and welfare codes will play an important part in improving animal welfare standards, so I do not expect them to be as contentious as the orders that we recently debated. I hope that that will be the case and commend the regulations and the two welfare codes to the committee.

**The Convener:** I thank the minister. Although I do not wish to prejudge what members will say, I do not expect a lengthy debate. However, I reassure members that, technically, each affirmative instrument can be debated for up to 90 minutes, so there will be time for debate.

**Alex Johnstone:** I take it that we are talking about both codes and the regulations at this stage.

**The Convener:** There should be points of clarification on all three.

**Alex Johnstone:** I thank the minister for laying the codes of practice. My experience as a dairy farmer led me to read through the code that relates to that. In my view, it simply asks all farmers to do what good farmers have been doing for years.

My experience leads me to be concerned about an issue that relates largely to pigs, although it can be more general. The Executive has had a tendency to introduce measures ahead of our competitor countries within the European Union. Will the minister reassure me that the time scales that other countries, such as Holland and Denmark, follow for the introduction of the measures that we are considering will not be so far removed from the time scales that are being applied here that the beleaguered Scottish pig industry will suffer a further competitive disadvantage?

**Allan Wilson:** We, too, are extremely conscious of the fact that, on pig welfare, the pig industry in Scotland and in the UK as a whole is in advance of the pig industries in European and other competitor countries. As I said in my introduction, we have been at pains not to gold plate the directive beyond the requirements that are contained in the codes and regulations that are under consideration. That is because we are conscious of the competitive impact of this country's superior welfare provision.

The solution is not to dumb down welfare standards—I know that Alex Johnstone is not proposing that—but to secure greater international agreement among those who deal in pig flesh or, more generally, animal meat to ensure that welfare standards in other countries are brought up to match those in the UK and Europe. The time



scales that are envisaged might not be what the UK would have wanted—there might be longer lead-in periods—but, in our view, they are sufficient to protect the interests of the Scottish and UK pig industries.

**Iain Holt (Scottish Executive Environment and Rural Affairs Department):** All member states are required to implement the measures in the relevant directives by 1 January 2003. That should produce a level playing field but, as the minister said, the lead-in time stretches out until 2013. That is not unusual for European Commission directives on welfare.

**The Convener:** As members have no further questions, we can move straight to debate. I invite the minister to move motions S2M-190, S2M-232 and S2M-189, in the name of Ross Finnie, which invite the committee to recommend that the codes and regulations be approved. I ask the minister to address his opening remarks to all three motions.

**Allan Wilson:** We were somewhat late in laying the codes and regulations in that we have not complied with the deadline of 1 January 2003. That is because of the process of consultation to which I referred and the competing priorities that Alex Johnstone ably outlined. The consultation ended in November and the comments had to be analysed. After we had taken on board the views of the consultees, especially those of NFU Scotland, we finalised the regulations and prepared the pig and cattle codes. That is why we are a wee bit late with their implementation. I have nothing further to add.

I move,

That the Environment and Rural Development Committee, in consideration of the Draft Code of Recommendation for the Welfare of Livestock: Pigs (SE/2003/173), recommends that the code be approved.

That the Environment and Rural Development Committee recommends that the Draft Code of Recommendations for the Welfare of Livestock: Cattle (SE/2003/175) be approved.

That the Environment and Rural Development Committee, in consideration of the draft Welfare of Farmed Animals (Scotland) Amendment Regulations 2003, recommends that the regulations be approved.

**The Convener:** We move to members' speeches.

**Alex Johnstone:** I have a brief follow-up to the questions that I asked earlier. The process that we are going through on animal welfare on Scottish farms is desirable and I will continue to support it. However, as I mentioned, the pig industry has experienced economic disadvantages. As we move towards a review of the arrangements for farrowing in the pig industry, to which I think the minister referred, and the likelihood that the farrowing crate will in the not-too-distant future be

outlawed completely, is the Scottish Executive investing in research, education and training opportunities to develop alternative farrowing systems within the Scottish pig-farming industry, so that when that day comes, we are not faced with a crisis?

12:00

**The Convener:** I add my voice to Alex Johnstone's point about a phased transition to higher standards. Those of us whom consumers have lobbied about animal welfare will welcome the amendments and the progressive increase in standards that will take place over the years. The new labelling systems that we have will assist those who are keen to see better animal welfare. Alex Johnstone's point about giving farmers the chance to skill up and make the investment necessary to ensure that we adhere to the regulations is important. That advice and guidance will be helpful.

**Eleanor Scott:** What I wanted to say has largely been said. We have had concerns in the past about gold plating European Union legislation, but as far as animal welfare goes, I—and probably the vast majority of people in the country—would be happy for us to lead the way on standards. I would also be happy that the EU standards be considered a minimum on which we can improve and that we strive for further improvement within the EU.

**The Convener:** Does the minister want to pick up on any points that have been made in the debate?

**Allan Wilson:** In response to Eleanor Scott's point, in the UK, we do lead the way on animal welfare standards and are particularly proud of doing so. However, Alex Johnstone is entirely right that the 2008 review for the directive will consider, among other things, further developments of loose housing systems in the service areas and for farrowing sows—systems that meet the sows' needs without compromising piglet survival, which is the difficult part. We have, therefore, for a number of years funded research that is directly or indirectly related to the welfare of the sow and her piglets from farrowing through to weaning. A key issue that is emerging from that research is that changes in farrowing systems to improve sow welfare can frequently have an adverse effect on the piglets' welfare. Our research and that which is being conducted in other countries will continue. Our aim is to reach a position in which it is possible to avoid close confinement of all sows.

On Alex Johnstone's general point, which I appreciate, the concern is that the higher costs that are a consequence of improving welfare in the UK and other countries—such as others in the

European Union—that have relatively high welfare standards might create significant scope for the substitution of low-welfare and, ipso facto, low-cost alternative products. At the moment, World Trade Organisation rules do not provide for competition to be prevented on animal welfare grounds, although they do allow for that under the sanitary and phytosanitary agreement, which is basically about health considerations. However, efforts are being made on that at an international, global level. In fact, there is a conference today in Manila that seeks to reconcile those welfare issues. It will cover not only farm animals, but companion animals, animals in scientific research, draught animals and wild animals.

**Alex Johnstone:** Will the minister give way, although I know that it is irregular to do so? Will he join me in commending the farm-assured schemes that exist in Scotland, where they relate to animal welfare issues, for the fact that they have taken the lead in introducing higher voluntary standards of welfare and seeking to make some return from the marketplace for the higher standard of products produced by such systems? Will he commend them in future for continuing to do that job for us?

**Allan Wilson:** Absolutely. We have to compete on the basis of quality. However, we know that the consumer is predominantly influenced by price. That dichotomy must be addressed.

As Alex Johnstone will know from personal experience, the codes on animal and pig welfare are not statutory. As we consider decoupling and modulation in common agriculture policy reform, which mean that a significant element of the single payment would be attributable to the welfare standards of which we are so proud, we would expect farmers to adopt those minimum standards of welfare in order to secure the single payment. There are linkages. As Alex Johnstone says, the farm assurance schemes all help to preserve and conserve the welfare of animals on farms.

#### *Motions agreed to.*

That the Environment and Rural Development Committee, in consideration of the Draft Code of Recommendation for the Welfare of Livestock: Pigs (SE/2003/173), recommends that the code be approved.

That the Environment and Rural Development Committee recommends that the Draft Code of Recommendations for the Welfare of Livestock: Cattle (SE/2003/175) be approved.

That the Environment and Rural Development Committee, in consideration of the draft Welfare of Farmed Animals (Scotland) Amendment Regulations 2003, recommends that the regulations be approved.

**The Convener:** I thank the minister and his officials for attending. The committee will now make its formal report on the instruments to the Parliament.

### **Products of Animal Origin (Third Country Imports) (Scotland) Amendment (No 3) Regulations 2003 (SSI 2003/333)**

#### **Environmental Impact Assessment (Water Management) (Scotland) Regulations 2003 (SSI 2003/341)**

**The Convener:** We have in front of us, under agenda item 3, two further statutory instruments to be considered under negative procedure.

During the Subordinate Legislation Committee's consideration of the instruments, it noted one area of concern with the Products of Animal Origin (Third Country Imports) (Scotland) Amendment (No 3) Regulations 2003. The instrument was considered by the Subordinate Legislation Committee on Tuesday, so members will not have had the chance to see its report. I will briefly clarify the issue for members.

The Subordinate Legislation Committee queried a delay in bringing the regulations into force on 22 September, given that article 3 of Council directive 2002/33/EC obliges member states to incorporate it into law by 30 April 2003. However, the Subordinate Legislation Committee reports that it is content with the Scottish Executive's response. The delay arose as a result of a late decision about whether collagen should be included in the regulations.

We are a secondary committee on the Environmental Impact Assessment (Water Management) (Scotland) Regulations 2003. We must therefore pass any comments on the instrument to the lead committee, which is the Communities Committee. Do members want to comment on either instrument?

**Members indicated disagreement.**

**The Convener:** As no one wants to comment, are members content with the instruments and happy to make no recommendations to the Parliament or to the lead committee?

**Members indicated agreement.**

## Work Programme

12:08

**The Convener:** Item 4 on the agenda is the committee's work programme. Members have in front of them a paper that we have discussed, which covers several issues that we considered informally at our away day. Those issues are now being brought back formally to the committee for agreement.

I invite members to note the likely time frames for undertaking work on the draft Nature Conservation (Scotland) Bill, the national waste plan and scrutiny of the draft Scottish Executive budget. We must decide whether the committee should take up the invitation of Scottish Natural Heritage to visit sites of special scientific interest as part of its consideration of the draft Nature Conservation (Scotland) Bill. We must also decide whether we want to seek an informal briefing from Scottish Executive officials before we move to formal stage 1 scrutiny of the bill.

Do I have broad agreement on those matters?

**Members indicated agreement.**

**The Convener:** That means that we will seek an informal briefing on the bill and attempt to visit an SSSI.

We have also received an invitation from the Scottish Gamekeepers Association to visit a site to examine management of such sites. We will try to make arrangements that suit all of us. I ask members to e-mail their preference to the clerks by the end of tomorrow. I imagine that that will be difficult, but if members do that, we will try to agree something.

I ask members to note the time commitments that are likely to arise from the referral of other business, such as subordinate legislation and petitions. We need to agree how to handle petitions and ensure that we consider them properly. I invite members to agree to receive an update on petitions at regular intervals—I suggest every two months—rather than ad hoc; to incorporate consideration of petitions into other work items, such as legislation, where possible; and to appoint reporters to investigate and report to the committee on important matters that petitions raise. Do we agree to that?

**Members indicated agreement.**

**The Convener:** On European matters, I propose that we ask the Executive to send relevant pre-council and post-council reports direct to the committee and that we authorise me and the clerks to request further detailed briefings as required on any dossiers of particular interest. I

suggest that we ask the Minister for Environment and Rural Development to send the relevant chapter of his six-monthly briefing to the European and External Relations Committee direct to our committee and that we seek a standing agreement that the minister be invited to give oral evidence to the committee towards the start of each six-month presidency—I would like to start with the next presidency, which is with Ireland for the first half of 2004. That procedure will continue for as long as the EU operates in that way.

The committee is also invited to authorise the convener and clerks to receive at regular intervals spreadsheets setting out details of transposition arrangements, to allow us to track the progress of legislation and to update the committee as required.

**Nora Radcliffe:** If the minister gives a presentation at the start of each six-month presidency to the European and External Relations Committee, would it save his time to make a joint presentation to us and that committee, if he planned to say the same things to us?

**The Convener:** I understand from my membership of what was the European Committee that the minister with overall responsibility for European matters speaks to the committee and that that minister is asked many questions on specific subjects that members cannot answer. The aim is to avoid total overlap.

The committee is also asked to note that members will be issued with the sift paper of relevant documents that is compiled by the European and External Relations Committee and copied to each subject committee. The purpose of that is to avoid overlap and to ensure that we take our responsibilities seriously. Finally, I would be grateful if the committee authorised me to consider any relevant European issues and to produce a regular report to the committee—every three months or so—as part of the committee's work programme, to monitor the issues effectively. Is that agreed?

**Members indicated agreement.**

**Mr Gibson:** I ask you to review in your first report the effects of the decisions on agriculture and husbandry in Europe that are made in the World Trade Organisation's conference this week.

**The Convener:** We can ask the minister about the status of that in the European Union.

We must tie up the remaining legacy items from predecessor committees, which we discussed soon after we were appointed to the committee. I recommend that we bid for committee time in the chamber to debate the findings of the Rural Development Committee's report on integrated

rural development. I also suggest that we continue to explore issues relating to the Scottish fishing and forestry industries as they arise. This morning's debate has given us more matters to which we will want to return.

I recommend that we not pursue three issues—petition PE377, on polluting activities in built-up areas; planning procedures for telecommunications developments; and Highlands and Islands ferry contracts—as they now fall within the remit of other committees.

**Eleanor Scott:** What did petition PE377 relate to?

**The Convener:** It concerned the Camtyne incinerator.

## Public Petitions

12:14

**The Convener:** The Public Petitions Committee has referred again eight petitions that its predecessor dealt with, along with one new petition. Members have a paper that gives the background to each of the petitions and provides a set of options for dealing with them. I ask members to note that we have already agreed to consider petitions PE541 and PE543 as part of our national waste plan inquiry. The taking of evidence from those petitioners has been scheduled for 24 September. That is in line with our new attempt to ensure that petitions link into our inquiry or legislative work.

### South-east Islay Skerries (Special Area of Conservation) (PE246)

**The Convener:** The first petition for us to deal with is PE246, which is a new referral. The petition calls on the Scottish Parliament to request Scottish Natural Heritage, the Scottish Executive and the Scottish ministers, as appropriate, not to proceed with the designation of the south-east Islay skerries as a special area of conservation. Although the Environment and Rural Development Committee is required to consider the petition, members might wish to note that the area of south-east Islay skerries has already been designated as an SAC. I invite members to discuss the four options for action that are laid out in the covering note and to agree on how we can progress.

**Maureen Macmillan:** The issue that the petition deals with has been huge on Islay. I want to go for option D, which would involve more scrutiny of the general principles of local consultation and the need to take into account the wishes of local people. We could perhaps consider those issues as part of our stage 1 scrutiny of the Nature Conservation (Scotland) Bill and take evidence on those processes.

**Mr Morrison:** I support that view.

**Mr Gibson:** That is a sensible approach, but I would like some information. Is there any way in which we could recommend that Scottish Natural Heritage's order be rescinded?

**The Convener:** My understanding is that, once such an order has been laid, it is laid. We are talking about a European requirement. The key issue is the process that leads up to that point, which we need to cover when we consider the nature conservation bill.

**Mr Gibson:** Fine.

**The Convener:** I hope that I am right. That is my recollection.

**Mr Gibson:** We will see what the *Official Report* says.

**Alex Johnstone:** Although I do not wish to go against other members' proposals, I thought that option C might have been more appropriate.

**The Convener:** Personally, I would go for option C. I think that we should pick up the general issues that the petition raises as part of our consideration of the nature conservation bill. I can see that Alex Johnstone and I are being quietly outvoted by the rest of the committee. Are there any other views?

**Nora Radcliffe:** Option C and option D would involve considering the general principles. It is a question of whether we put the petition to one side and consider the general principles or whether we consider the general principles and the petition along with them.

**Mr Gibson:** I think that we want to keep the petition with this committee. That is why option D is important.

**The Convener:** Is there a broad consensus for option D? The key issue is that the petitioners' points are properly considered when the matter is debated. That is what we all want.

**Karen Gillon:** I seek clarification. We do not want to rehash the debate that the Public Petitions Committee has already had with the petitioners. I take it that, rather than having a huge evidence-taking session with the petitioners, we will take the evidence from the Public Petitions Committee and put that into our inquiry on the general principles of the nature conservation bill.

**The Convener:** Everyone would agree with that. We will take the key issues that have been raised, collect the written evidence that has been presented to, and considered by, the Public Petitions Committee and ensure that that is fed into our stage 1 consideration of the nature conservation bill. Is that agreed?

**Members indicated agreement.**

### **Fishing Industry (Fixed Quota Allocations) (PE365)**

**The Convener:** Our next petition is PE365, which was lodged by Mr Iain MacSween on behalf of the Scottish Fishermen's Organisation Ltd. The petition calls on the Scottish Parliament to review the status of fixed quota allocations for fishing vessels and to take appropriate action to ensure that fish stocks are not sold to owners whose main place of business is outwith the UK.

Members may wish to note that, although the petition has been around for some time, the issue seems particularly relevant, as the current decommissioning scheme does not require quota

allocations to be given up. That was touched on in the Rural Development Committee report. I am told that the Executive reply was not particularly detailed.

A suitable option might be to write to the minister asking for a detailed briefing on his current position on the operation of the quota system; how the approach to decommissioning fits into that; and information on any current or future developments on the issue. The petition would be kept open. If we felt in the future that, in response to the minister's comments, we wanted to do more detailed work, we could appoint a reporter.

**Mr Gibson:** Is that option B in the paper?

**The Convener:** Yes.

**Mr Morrison:** How long will the process take? Is it contingent on when the minister responds?

**The Convener:** We can expect an update within the next two months.

**Mr Morrison:** One of the flaws in the system is that it keeps petitions alive for months and months; in some instances, they run for years. There is a tendency—perhaps it is the right thing to do—to keep some petitions running for years when there is little that can be done about them. My favoured option is option A, which is to note the petition.

**Mr Gibson:** I am happy to support option B.

**Alex Johnstone:** I support option A.

**The Convener:** Right, two members support option A and three support option B.

**Nora Radcliffe:** If the Executive is doing a good job, I want to know that it is, so I favour writing to the minister and confirming that.

**The Convener:** We could note that we have dealt with the petition and ask the minister to come back to us with further information. That would meet Alasdair Morrison's point about not letting the petition bob on for ever, but would follow the key points that it raises, which are about how quota ownership works and what is happening under the current decommissioning proposals. That brings the issue back to the committee formally without keeping the petition going for years. Would members be happy with that? I do not want to lose the substantive points in the petition, but I note the point that we perhaps let petitions live for years without going back to the petitioners. Are we agreed?

**Members indicated agreement.**

**The Convener:** I ask the clerks to contact the petitioners to let them know what we intend to do on the points that they have raised. We will return to the issue within two months, I hope, with a response from the minister.

### Predatory Birds (PE449)

**The Convener:** The next petition is PE449 from Alex Hogg, on behalf of the Scottish Gamekeepers Association. The petition calls on the Scottish Parliament to initiate an independent investigation into the impact of predatory birds on waders, songbirds, fish stocks and game birds.

Members may wish to note that the issues raised in the petition are similar to those that were raised in PE187, which has now been concluded. Members might also wish to note that work on issues relating to the petition was done by the Transport and the Environment Committee and the Rural Development Committee during the previous parliamentary session.

It is over to members to tell me how they want to proceed. Three options are set out in front of us. I will take members' views.

**Nora Radcliffe:** The recommendation on PE187—that the SGA should go to the moorland forum—was right. However, the deficiency in the knowledge base of the impact of raptors was highlighted, but the minister's response to that was vague. I would like some way of pinning down the Executive on what stage it has reached in its consideration of what research needs to be commissioned and how close it is to commissioning that research.

**Alex Johnstone:** We are talking about conservation, which I believe in, in spite of what some people might sometimes say. As an ordinary individual, I am extremely concerned about the number of predatory birds in the Scottish environment. In my area, we used to have short-eared owls, kestrels and a number of other birds that moved through occasionally. Now, all we have are hundreds of common buzzards that have displaced a huge number of other predatory species, are consuming huge numbers of ground-nesting birds and are having a massive impact on the environment. Alex Fergusson made similar comments at a previous committee meeting.

I am concerned that well-meaning conservationists might have significantly impacted on such a change, which has happened over a relatively short number of years. We must be aware of exactly what is happening in the predatory bird population. Many investigations that have taken place do not provide me with the answers that I think I need.

**Karen Gillon:** I sympathise with the petitioners and am not confident that the minister's letter of 13 March answers concerns about our knowledge. We need to do more work on the matter.

**Maureen Macmillan:** Nora Radcliffe and Karen Gillon have made some crucial remarks. We must get scientific knowledge about the causes of the

effects that people are seeing on the ground. I was a reporter for the Transport and the Environment Committee in the previous investigation into the matter and the big concern was that we did not know what was happening. We received anecdotal evidence, but there was no scientific investigation to back up that evidence. In particular, there was no investigation in Scotland and the results of investigations in other areas possibly did not transfer. I would be interested to hear what stage the scientific investigations have reached and whether any progress is being made in the moorland forum.

**Mr Gibson:** The little booklet that the Executive provided us with has interesting key environmental statistics and shows the status of wintering waders between 1969 and 1999. The dunlin, bar-tailed godwit, turnstone, oystercatcher, ringed plover, curlew, black-tailed godwit and grey plover populations have all increased in a range between 2 per cent and 538 per cent. Such figures show that the number of waders is perhaps increasing. Some populations—such as those of the sanderling and redshank—are decreasing, but by small amounts. That suggests that we need more facts about what is happening and that the minister must make details available before we can set the petition to rest. The petitioners have made a point that has not been answered. We need detailed answers.

**Alex Johnstone:** The figures that Rob Gibson mentions are interesting. My experience is that populations of species such as the lapwing and the oystercatcher in particular have dramatically fallen off in my area, albeit that curlews have benefited, as they are big enough to fight off buzzards.

**Roseanna Cunningham (Perth) (SNP):** I suspect that much evidence is anecdotal, which is a big flaw if we want to progress the debate. We should agree to option C and defer consideration of the petition. First, we should ask the minister about the Executive's factual knowledge. If that knowledge is deficient, we should ask what the Executive intends to do to obtain further information before we decide what to do. It would be far more sensible if the Executive obtained further information, if it can. We should agree to option C, defer consideration of the petition and ask the minister what the current position is and what the Executive's intentions are in respect of obtaining further information.

**The Convener:** I think that there is consensus among members. All members seem to want more information and to be up to date. Therefore, I suggest that, as with the previous petition, we should ask the minister to answer our concerns. The committee can then reconsider the petition perhaps in the next two months and finally close it off or decide on further action, as required.

*Members indicated agreement.*

**Alex Fergusson (Galloway and Upper Nithsdale) (Con):** May I ask a procedural question?

**The Convener:** Yes.

**Alex Fergusson:** I came to the meeting specifically to speak to petition PE449—indeed, I caught your eye a few minutes ago, convener.

**The Convener:** I am sorry—I thought that there was total unanimity and that members did not want to close off the petition, but to return to it.

**Alex Fergusson:** So be it. Does that preclude a visiting member speaking in support of that position?

**The Convener:** No. If you want to—

**Alex Fergusson:** To be fair, members have agreed to the position that I was going to urge them to agree to, which is fair enough—I thank them for doing so. However, I would like to make one point, if I may.

**The Convener:** You may do so, if you are brief.

**Alex Fergusson:** I promise that I will be brief.

It was mentioned that the matter should be dealt with in the moorland forum. I live in a non-moorland area and believe that I have witnessed the imbalance that is beginning to occur between the raptor population and that of smaller bird species. I do not believe that the moorland forum is the proper place to undertake a review of the petition and hope that the committee will ask the minister questions on that matter.

12:30

**The Convener:** I think that that point was raised by a member, but I did not include that in my concluding remarks. I suggested merely that we would go to the minister first and get his comments, which we would bring back to the committee. We did not agree to refer the matter to the moorland forum, although that was one of the options that was open to us.

**Fergus Ewing:** I endorse Alex Fergusson's comments. I do not think that the moorland forum has any particular dealings with goshawks, sparrowhawks and buzzards. If that is the case, they should not be in charge of arranging the research into those species or into fish stocks.

I want to make a specific suggestion that I hope might be acceptable. The minister should be encouraged to consult directly with the SGA, which provided useful evidence on 25 February 2003 and whose members have a wealth of practical knowledge from their own everyday experience. The SGA could discuss with the

minister how the research could be organised and advise him of the details that we heard about in February. Would that be in order?

**The Convener:** I am expecting the minister to come back to us in a couple of months. Obviously, he will have to bring with him information that we think is robust or that we would wish to discuss. If members want to make specific recommendations as to who the minister should talk to, I am quite open to that.

**Eleanor Scott:** If we were to do that, we would have to recommend a range of bodies with particular perspectives on the matter and particular abilities to gather information that is more than just anecdotal. I do not think that we should recommend only one body.

**The Convener:** I sense that we are about to open out the discussion further. I suggest that we stick to the agreement that we seek information from the minister about research that is being done. It will go on to our agenda when we get that information. At that point, members who are not on the committee will be able to read that information and come back to the committee if there are issues with which they are not happy—Fergus Ewing's comments lead me to believe that that might happen.

Do members agree to take that course of action?

*Members indicated agreement.*

### **Sites of Special Scientific Interest and Special Protection Areas (Arran, Barra and Yell) (PE462, PE463 and PE464)**

**The Convener:** All these petitions are concerned with the designation of sites of special scientific interest. The Public Petitions Committee has suggested that, due to the similarities between them, they should be considered together.

At the end of the first session, the Transport and the Environment Committee recommended that its successor committee should take these petitions into account in its consideration of the nature conservation bill. Do members agree with that recommendation?

*Members indicated agreement.*

### **Water Treatment Plants (PE517)**

**The Convener:** Petition PE517 is specifically concerned with the waste water treatment plant in Seafield, claiming that noxious odours emanating from the plant are hazardous to the health of local residents. Following the circulation of the petition's cover note, there has been coverage in the press suggesting that the City of Edinburgh Council is considering legal action against Scottish Water in

relation to the plant. That is a result of independent research commissioned by Scottish Water into the odours emanating from the plant.

Members should note the recommended action that is set out in the petition's covering note.

Susan Deacon has joined us and would like to speak to the committee on this matter.

**Susan Deacon (Edinburgh East and Musselburgh) (Lab):** I would like to make a few brief points and also acknowledge the work done by the Transport and the Environment Committee in the previous session. That committee was influential in relation to the progress that has been made on this issue. However, it would be wrong to suggest that the issue is resolved either locally or nationally, in terms of statute and regulation.

The problem that the petition deals with has a long history. The Seafeld plant, which is the largest sewage treatment plant in Scotland, serves Edinburgh and much of the surrounding area. Odour has been a problem for decades, but it was hoped—and expected, on the basis of assurances from East of Scotland Water—that the odour issue would be addressed following a major investment in the plant a few years ago. That investment allowed huge strides forward in local bathing water quality, which was one of its main aims, but the odour problem has persisted. Despite persistent efforts by me, by Gavin Strang, who is the local MP, by the local residents association, by the local community council and by others, the problem remains to be resolved. There have been many meetings, liaison committees, action plans and penalties served against the contractor, but the problem has still not been resolved.

Most recently, Scottish Water stepped up its efforts and attitude, and acknowledged the scale of the problem more explicitly. It has also commissioned independent assessment, which local people have long asked for. As the convener noted, the investigating officer from the City of Edinburgh Council has reached the view that a nuisance exists, and consideration is being given to the serving of an abatement notice, on which counsel's opinion is being sought.

The committee has the opportunity to make a huge difference on the issue, not just as it affects people in Edinburgh, but as it affects people in other communities in other parts of Scotland with similar odour problems. We appreciate that waste water treatment plants—sewage works, in other words—are vital facilities that are needed throughout the country. However, communities should not have to suffer to the existing extent just because they live close to those facilities. The technology exists to address odour issues. With the will and the investment, those problems can be resolved.

The issue relates to quality of life. Smell might be hard to measure—I suspect that that is why it has not been given the attention that other environmental nuisances have had—but it is real to the people whom it affects. As representatives of the local community said when they presented the petition, 4,000 noses can't be wrong.

Most recently, as part of its independent assessment, Scottish Water commissioned a customer survey over a wider area than I expected. That covered an area with a radius of a number of miles from the plant. One quarter of residents said that they were affected by the smell. Many had to close windows, could not hang out washing and did not want their kids to play outside on hot days. That is unacceptable.

Odour has not been treated seriously enough in the past by service providers or policy makers. The statutory regulatory regime is, at best, overly complex and confusing, and at worst, inadequate. The matter raises planning law and environmental protection law issues. I welcome the Minister for Environment and Rural Development's acknowledgement of inadequacies on the issue, which he gave in response to the Transport and the Environment Committee's efforts in the previous session. He gave a commitment at least to introduce a voluntary code of conduct and to conduct a consultation. Now that we have a new Parliament, I hope that we will keep up the pressure on the Executive to progress the action that it has promised and to ensure that, once and for all, we give odour nuisances the attention that they deserve and that people expect us to give them.

I hope that that helped to give the committee a sense of the extent of the problem and the strength of feeling. I look forward to hearing the committee's comments.

**The Convener:** I thank the member for her presentation, which was just about kept under five minutes.

The committee has three suggested options in the briefing paper. Do members have any views on them? I have followed progress in the local press, and I used to have to visit sewage treatment works, so I know that odour is a sensitive issue. The situation depends partly on people's location downwind or upwind of a sewage treatment works.

I do not want to close out the petition, as option A suggests, but I am keen to await the outcome of the outstanding appeal that has been lodged with the House of Lords. Once we know the result, we could keep up the pressure on the Minister for Environment and Rural Development, as Susan Deacon suggested, and ask what measures the Executive will take. As Susan Deacon said, the



issue might involve not only Seafeld but other sewage treatment works. Relevant factors are scale and location in the built environment, but the matter will not go away. After we know the result of the appeal, the committee can decide how to proceed and whether we want a reporter. Am I right in thinking that until we have the House of Lords result, a legislative proposal from the minister is unlikely? That is guesswork.

**Maureen Macmillan:** I do not know how long we will have to wait for the result of the appeal, but other odour nuisances come not only from sewage works, but from landfill sites, knackeries and rendering plants. I would like to pursue with the minister odour control more widely and not just in relation to the Seafeld plant.

**The Convener:** We could write to ask the minister whether a voluntary framework or a tougher parliamentary regulatory framework is envisaged. We could do that on the back of the Seafeld issue, which is a major concern to people that has been running for some time.

**Susan Deacon:** I appreciate that the outstanding appeal has a bearing on the issue and I am sure that the Executive is monitoring it closely, but that does not preclude the Executive's making progress and the committee's putting pressure on the Executive in the meantime.

**The Convener:** We have broad agreement that we will write to the minister. If we can return to the petition in a couple of months' time, as we will to our other petitions, we will do that.

We have worked our way through our agenda and will now go into private, as we agreed at our meeting last week, to discuss our approach to the budget process. I invite the official report, broadcasting, the public and visiting members to leave the room.

12:41

*Meeting continued in private until 12:49.*



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