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Official Report

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

Wednesday 25 February 2015

Session 4

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RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE
8th Meeting 2015, Session 4

CONVENER

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

DEPUTY CONVENER

*Graeme Dey (Angus South) (SNP)

COMMITTEE MEMBERS

Claudia Beamish (South Scotland) (Lab)
*Sarah Boyack (Lothian) (Lab)
*Alex Fergusson (Galloway and West Dumfries) (Con)
*Jim Hume (South Scotland) (LD)
*Angus MacDonald (Falkirk East) (SNP)
*Michael Russell (Argyll and Bute) (SNP)
*Dave Thompson (Skye, Lochaber and Badenoch) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Hughie Campbell-Adamson (Salmon and Trout Association Scotland)
Crispian Cook (Northern District Salmon Fishery Board)
Craig MacIntyre (Argyll Fisheries Trust)
James Mackay (Salmon Net Fishing Association of Scotland)
Jamie McGrigor (Highlands and Islands) (Con)
Aileen McLeod (Minister for Environment, Climate Change and Land Reform)
Stephen Pathirana (Scottish Government)
Jamie Ribbens (Galloway Fisheries Trust)
Dave Thomson (Scottish Government)
Dr Andy Walker (Scottish Anglers National Association)
Ron Woods (Scottish Federation for Coarse Angling)
Nick Yonge (River Tweed Commission)

CLERK TO THE COMMITTEE

Lynn Tullis

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Rural Affairs, Climate Change and Environment Committee

Wednesday 25 February 2015

[The Convener opened the meeting at 09:31]

Community Empowerment (Scotland) Bill: Stage 2

The Convener (Rob Gibson): Good morning, everybody, and welcome to the eighth meeting in 2015 of the Rural Affairs, Climate Change and Environment Committee. I remind everyone to switch off mobile phones as they interfere with the sound system. Committee members will, of course, be able to consult tablets, as will witnesses, in relation to the business of the meeting. We have apologies from Claudia Beamish.

Agenda item 1 is evidence on stage 2 amendments to the Community Empowerment (Scotland) Bill on the crofting community right to buy and the draft regulations on abandoned and neglected land. I welcome Dr Aileen McLeod, the Minister for Environment, Climate Change and Land Reform, and her supporting Scottish Government officials: Stephen Pathirana, deputy director, land and tenancy reform; and Dave Thomson from the land reform and tenancy unit.

Welcome, minister. Do you want to make a short introductory statement?

The Minister for Environment, Climate Change and Land Reform (Aileen McLeod): Yes, I do, convener, if that is okay. I was delighted to be invited to give evidence to the Rural Affairs, Climate Change and Environment Committee on my proposed stage 2 amendments to the Community Empowerment (Scotland) Bill, which seek to amend the crofting community right to buy.

I thank the convener and members of the RACCE Committee for agreeing to take on this not inconsiderable part of the bill on behalf of the Local Government and Regeneration Committee. I also thank all the stakeholders who responded to the call for evidence on the proposed amendments and attended the meetings that my officials held in Edinburgh, Inverness, the Isle of Harris and the Kyle of Lochalsh in December. The evidence from those who participated has been instrumental in shaping the amendments.

I strongly believe that the crofting community right to buy is a tool that can be of great benefit to crofting communities, and it is therefore vital that the amendments, which introduce much-needed flexibility and simplification, are introduced at the earliest opportunity.

Only two crofting community bodies have made use of the crofting community right to buy legislation in more than 10 years. However, we heard at last week's stakeholder evidence session that even the existence of the legislation has helped to change the culture by encouraging crofting communities to buy their croft land. The framework of the legislation acts as a useful backstop to encourage the parties to get round the table and open negotiations. Indeed, earlier this month, over 80 per cent of the community of Barvas on the Isle of Lewis voted in favour of a community buyout of the Barvas estate, which contains about 300 crofts.

That is why I strongly believe in the principles of the crofting community right to buy, which is designed to empower our crofting communities or to work as a backstop to allow them to negotiate a community acquisition outwith the framework of the Land Reform (Scotland) Act 2003.

However, I recognise that there are elements of the legislation that could cause great difficulties for communities wishing to exercise their right to buy, not least the mapping requirements that communities must fulfil, which stakeholders have highlighted as being particularly onerous. I therefore want to make the legislation more flexible when necessary and more straightforward for community use. I have listened to what stakeholders have told me, and I am introducing a number of measures to address the flaws that have discouraged the use of the crofting community right to buy, including the mapping requirements and how the legislation is used to define a crofting community.

I am happy to answer questions that the committee may wish to ask in response to the amendments.

The Convener: Thank you. I assure you that we have quite a number of questions. To start with, the explanatory notes on the amendments state that they would make the crofting community right to buy

"easier for crofting communities to use, while at the same time continuing to strike a fair balance between the rights of landowners and crofting communities."

Can you expand on that statement and indicate how many crofting communities you think might take advantage of the simplified process?

Aileen McLeod: The proposed changes will encourage more communities to access their right to buy by simplifying some parts of the 2003 act and opening up more options for communities and others. For example, we will simplify the mapping requirements, which have been a key area of

concern for stakeholders. We will also increase the options for communities by expanding the types of organisation that community bodies can use under the act, which will include Scottish charitable incorporated organisations and community benefit companies. In addition, we will remove some of the burdens on communities by, for example, no longer requiring auditing of accounts and allowing balloting expenses to be claimed under certain circumstances—at the moment, communities must fund their ballot themselves. I believe that the amendments as a whole will encourage communities to think about what they can do to take responsibility for their own futures.

As you will appreciate, it is difficult to estimate the number of communities that will take up the opportunity. However, as I said, even with the 2003 act as it stands, many communities use its existence to encourage dialogue with owners, which leads to purchases outwith the act. I hope that the amendments will encourage even more communities to follow that example.

The Convener: I understand the context, which is that the amendments will push out the envelope so that more people can consider the crofting community right to buy. However, we need to define what a crofting community is, so Alex Fergusson has a question about that.

Alex Fergusson (Galloway and West Dumfries) (Con): Good morning, minister. Amendment 1 would widen the definition of crofting community in section 71 of the 2003 act. However, as we learned last week in particular, amending the definition of crofting community in the way that is proposed would mean that owner-occupier crofters who are registered on Registers of Scotland's crofting register would be included but those on the Crofting Commission's register of crofts would not be.

To a complete outsider like me, that seems a very strange omission. Although we have been told that it is not easy to capture in legislative terms what a crofting community is, oral evidence that we took at last week's meeting suggested that the proposed provision would produce a distinction between the two registers' definitions of crofter. Why do you think that it is appropriate to go down that route?

Aileen McLeod: The proposed amendments would amend the definition of crofting community in section 71(5) of the 2003 act to address the issue of crofters being excluded by the existing legislation. Alex Fergusson is quite right to say that the proposed amendment would include in the definition of crofting community the owner-occupier crofters who are registered on Registers of Scotland's crofting register but not those on the Crofting Commission's register of crofts at this point in time.

The reason for that is that, although the Crofting Commission collects information on crofters, as Susan Walker from the Crofting Commission said at last week's committee meeting, the commission has no duty to keep owner-occupier details. The Crofters (Scotland) Act 1993 sets out the information that must be on the register of crofts. At the moment, that does not include owner-occupier details.

The Scottish Government intends to work with the Crofting Commission, and we will consider introducing legislative changes to include owner-occupiers within the information that must be included. However, until that process has been completed, it is not possible, under the bill, to rely on the register of crofts for the owner-occupier information. That is why it is proposed that the Scottish ministers take a regulation-making power to expand the definition of crofting community at a later date. Such an expansion could include owner-occupier crofters who are registered in the register of crofts. At the moment, that needs to be carried out in a two-stage process, using the ministerial power to add the owner-occupier crofters who are recorded in the register of crofts at a later date, when a legal matter is addressed by the Crofting Commission.

Alex Fergusson: Thank you for that. I think that you have answered the second part of my question.

Is the purpose of the further powers that you propose to take to expand the definition of crofting to include later data, when it is more guaranteed to be correct?

Aileen McLeod: Yes.

Alex Fergusson: Thank you for answering that point.

Another issue that was raised with us by Susan Walker of the Crofting Commission was that the proposals appear to have removed the residency requirement. She raised the possibility that absentee crofters could influence the outcome of a community ballot, for instance. What are your thoughts on that?

Aileen McLeod: On the issue of residency, we have indeed removed the requirement that tenants must be resident within 16km of the crofting community. We have replaced that with a requirement that they be either tenants registered in the crofting register or the register of crofts, or owner-occupiers registered in the crofting register. There have been some issues with the distance and just where it is measured from—from the middle of a crofting community or from the edge,

for instance. That is why we sought to simplify matters, in keeping with the rest of the changes.

As you rightly point out, Mr Fergusson, there are some concerns that the removal of the distance element could lead to an undue influence being exerted by absentee crofters, who would be defined as being part of the crofting community for the purposes of the eventual act.

Under the ballot rules, there are two elements to demonstrating that the community supports the proposals of the community body. First, the majority of those voting are in favour. They must be people of the crofting community. Secondly, the majority of tenants of crofts within the land that the crofting community has applied to buy are in favour. To the best of our knowledge, there are no crofting communities where the majority of the tenant crofters are absentees, which is the only situation where any undue influence could be asserted.

The Convener: I hope that I understand that.

There is a point that I wish to follow up. I suggested last week that, because we are moving to a map-based register, the Crofting Commission register as it is at the moment—that is, just a list—will eventually become redundant. We are in a transition period. Derek Flyn said that he looked forward to that, and there was a lot of laughter around the room.

The problem is about knowing how accurate the lists are that are in the Crofting Commission's register. Could you reassure us that you are happy that those lists are competent and up to date?

Aileen McLeod: I am happy to address that point, but I will hand over to Dave Thomson to cover some of the detail.

Dave Thomson (Scottish Government): As you have said, convener, we are in a transition period. The register of crofts is the existing one, for which the Crofting Commission collects information. The crofting register is the old one. The register of crofts is the new one. As we said last week, it could take up to 80 years to populate it fully.

We intend to include information from both the registers. We want to ensure that the Crofting Commission records the information on both the registers as a duty or obligation, rather than just to make the registers as complete as they would like. That is where the regulation-making power comes in. Once the Crofting Commission is collecting all the data that we would like, we can ensure that those people are all included in the definition of a community.

09:45

The Convener: There is nothing like having an 80-year legacy ahead of you.

Alex Fergusson: That is job security.

The Convener: Yes.

Alex Fergusson: I want to come back on that. Again, I stress that I am a total outsider to crofting law and it is a complete mystery to me—every time I look at it, I am more confused. However, what Mr Thomson has just said suggests that it makes all the more sense to use both registers. As far as I can see, where somebody is registered in the Crofting Commission's register of crofts in a way that is safe and secure and we know that it is the correct information, the amendment will not take that ownership into account, and it seems strange not to do so. Perhaps I am being too simplistic.

Dave Thomson: No, you are correct. The difference is to do with the duty that the Crofting Commission has to collect the details of owner-occupiers. At present, the commission collects those details, but it is not under a duty to do so. Therefore, in theory, it could at any point stop doing so. If the bill relies on that as a measure of who is in a crofting community, we could be left in a situation in which we are asking for information that is not being collected any more. We want to impose a duty on the Crofting Commission to collect that information and then use the regulation-making power to include that as part of the definition.

Alex Fergusson: That helps.

The Convener: I am glad that we have got that cleared up.

Aileen McLeod: That is the work that we are keen to take forward with the Crofting Commission.

The Convener: We will move on to croft land mapping.

Angus MacDonald (Falkirk East) (SNP): Good morning, minister. In your opening remarks you briefly acknowledged the issue of croft land mapping requirements. The amendment that has been lodged with regard to croft land mapping will repeal some existing mapping requirements, such as those relating to sewers, pipes, lines and watercourses. The oral evidence that we heard last week broadly supported the amendment. Derek Flyn stated:

"The transfer of ownership of a Highland crofting estate is a massive problem because it tends to be a jigsaw puzzle with lots of pieces removed."—[*Official Report*, *Rural Affairs, Climate Change and Environment Committee*, 18 February 2015; c 34.]

Peter Peacock of Community Land Scotland also warmly welcomed the proposed changes. However, as we might expect, Scottish Land & Estates said in written evidence that the change will affect

"inter alia valuations and details of ownership."

Are valuations and details of ownership likely to be affected by the amendment? Will you clarify how a fair balance between the rights of the landowner and those of crofting communities will be ensured?

Aileen McLeod: To start with your last question, we are maintaining the balance that is there. Obviously, we are improving the process and providing greater flexibility for community bodies. We are trying to streamline and simplify the crofting community right to buy process in line with feedback that we have received from stakeholders. Landowners will still have the opportunity to put their views across and they will still be entitled to compensation. The factors that protect landowners' interests will still be there.

Some feel that the current mapping requirements are not particularly onerous, as they refer to the fact that the information is that which is

"known to the applicant body or the existence of which it is, on reasonably diligent inquiry, capable of ascertaining".

Such information is easier to obtain for small areas of land, where there is less chance of making technical errors in producing maps, but that is certainly thought to be particularly difficult for large crofting estates. The complexity of the maps that are required when submitting a first application to Registers of Scotland is often cited as a reason for community bodies not engaging with the process in the first place. We are keen to remove the complexity of having to include the details of

"sewers, pipes, lines, watercourses or other conduits and fences, dykes, ditches or other boundaries".

However, the maps provided will still have to be sufficiently detailed to allow checks to be made against the ownership of the land in question and, later on, to allow the land to be valued, should the application be approved.

Angus MacDonald: I think that that covers my question. I should reiterate the point that the majority of those who have contributed evidence have broadly welcomed the amendments.

The Convener: We move on to questions about identification of owners, tenants and certain creditors.

Michael Russell (Argyll and Bute) (SNP): Although Scottish Land & Estates is broadly happy with these amendments, everyone else is somewhat unhappy with them, including in particular experts in crofting law.

At the beginning of the meeting, you correctly pointed out that the bill's purpose is not only to empower communities but to remove barriers to the transfer of assets that have beleaguered crofting for a long time now. However, I put it to you that the amendments contain quite a considerable barrier. The obvious change might have been to put the burden on the owner, but as Derek Flyn has rightly pointed out, crofting law essentially depends on the owner being expected to do virtually nothing and the tenant being expected to do virtually everything, and if you put the burden on owners, they might not respond to it.

Have you considered simplifying things further by, for example, requiring the crofting community body to use the best of its endeavours to find out the information, or ensuring that the provision relates only to material that is publicly available? Sometimes there are difficulties with estate ownership in that the beneficial owner of the estate resides a very long way away and they might not be accessible to a community body that is trying to find out about them.

Aileen McLeod: It is important to identify the owner and creditor. After all, we are talking about the purchase of land, and the community needs to purchase it from someone. As Mr Russell quite rightly pointed out, information is readily available from public sources, but in situations in which the owner cannot be identified, the community can refer the land to what is known as the Queen's and Lord Treasurer's Remembrancer for consideration and the community body can enter into discussions about purchasing the land from it. I also point out that the community body need only identify the owners of sporting interests and their tenants if they are purchasing the tenancies and sporting rights separately from the land.

Nevertheless, it is important to remember that, as this is a compulsory purchase of land, an owner must be identified, and that kind of information is readily available from public sources. As I said, though, where an owner cannot be identified, the community can refer the land to the QLTR.

Michael Russell: I want to press you on that point. The issue is not so much that an owner cannot be identified but that it can be pretty difficult to identify the actual ownership of, say, a Highland estate. The chain of ownership can be very complex, and it would help if you could insert some qualification—either into the bill or in guidance—to indicate that, as you have just indicated, best endeavour is expected to apply and that publicly available information is being sought. On the face of it, it seems a pretty tall order for a community body to find out about not only ownership but creditors of one sort or another if the chain of ownership happens to end up on an

obscure island somewhere in the Caribbean or, indeed, in a Swiss bank vault.

Aileen McLeod: Do you want to take that, Dave?

Dave Thomson: Finding an owner can sometimes be a tortuous process, but we need to keep in mind that, because we are talking about compulsory purchase, an owner must be found if the land is to be purchased. In some cases, that will not be easy, but the bottom line is that it still has to be done.

On the point about strengthening the guidance, I note that, as far as locating sources of such information is concerned, the right-to-buy team is always there to help the community through the process at any point. The land reform review group recommended the establishment of a community land agency that could assist with that sort of thing as well, and that might happen. That aspect is still up for discussion and out for consultation.

Michael Russell: The issue applies not only to ownership but to standard securities over the land. If I am reading this correctly, you are saying that guidance could be issued that could deal with the issue so that the burden of the situation was understood more accurately by the crofting community and that, therefore, concepts such as "publicly available" or "best endeavours" could be considered.

Dave Thomson: To be honest, I am not sure how far we can go in terms of defining reasonable endeavours.

Michael Russell: The term is "best endeavours". We were quite firmly warned off "reasonable endeavours" by Derek Flyn and, I think, the Law Society.

The Convener: To be clear, we were warned off "best endeavours" and it was suggested that we use "reasonable endeavours". Duncan Burd suggested that we might also want to include the words

"as may be disclosed in either the register of sasines or the land register of Scotland".—[*Official Report, Rural Affairs, Climate Change and Environment Committee*, 18 February 2015; c 37.]

That is okay, but the point is to lock down who should be within the public knowledge and to avoid the fraudsters. That means that "reasonable" would probably fit the bill. Is that going to be reflected in the bill or the regulations?

Aileen McLeod: We are happy to take that away and consider it.

Michael Russell: That would be helpful, because it would be an area for possible further amendment.

Aileen McLeod: The only other point that I would make is that Registers of Scotland has a commitment to get all the land on to the register within the next 10 years and we are looking at a full modernisation of the land register. That is not happening now, but it will happen in the long term.

We are happy to have a look at the point that has been raised and come back to the committee.

Michael Russell: Thank you—that would be helpful.

The Convener: Graeme Dey has a question about ballot procedures.

Graeme Dey (Angus South) (SNP): The proposed amendments would get us into a situation in which crofting community bodies could, in certain circumstances, seek reimbursement of the costs that are associated with conducting the ballot, but no such option is made available to a community body under part 2 of the 2003 act. Can you outline why we have that differential treatment?

Aileen McLeod: In a part 2 application, where the community body registers a pre-emption to buy, it has to demonstrate community support for the group's plans by other means, such as a petition. However, when it comes to purchasing the land, a ballot must be held to confirm that the community wishes to go ahead with the purchase. As the crofting community right to buy involves a compulsory purchase, it goes straight into the purchasing stage of the process. It is therefore important that community support for the purchase is demonstrated. The requirements are the same as far as the ballot is concerned; it is just that there is no pre-emptive element or associated petition to demonstrate support.

The main difference is around the funding for the ballot. As part of the changes to the community right to buy, we are proposing that the running of the ballot and the cost of that is met by the Scottish ministers. With regard to the crofting community right to buy, we are proposing that the community should run and fund the ballot in the first instance but that, in certain circumstances, the community should be able to apply to the Scottish ministers for the costs to be refunded. The main reason for that is timing. In the part 2 process, community support has already been demonstrated as part of the application process before the ballot stage is reached, which means that the Scottish Government has already assessed the suitability of the community body's application.

Graeme Dey: I think that that clears it up.

The Convener: Dave Thompson has a question about the Land Court.

10:00

Dave Thompson (Skye, Lochaber and Badenoch) (SNP): This is a relatively minor point that concerns an issue that was raised last week by the Law Commission. It is about the people who have a right to refer a question to the Land Court. The proposed amendment from the Scottish Government extends that. The Law Commission said—

The Convener: It was the Law Society of Scotland.

Dave Thompson: Sorry, convener. The Law Society said that creditors should also have the right to refer. In a submission, a member of Community Land Scotland made the following point:

"Creditors with a standard security and right to sell the land are irrelevant in a Part 3 situation, because land in crofting tenure is near valueless".

However, no other witness seemed to be particularly exercised by that. Creditors are included in section 73 of the 2003 act, but they are not included in section 81. Is there any particular reason for that? Is there any merit in what the Law Society suggests?

Aileen McLeod: Section 81(1)(c) of the 2003 act refers to

"any person who has any interest in the land … which is legally enforceable",

which would include creditors.

Dave Thompson: So that is the answer. They are included in that broader part of the legislation.

Aileen McLeod: Yes.

Dave Thompson: That is fine. Thank you.

The Convener: We move on to the outcome of an appeal to the Scottish Land Court.

Jim Hume (South Scotland) (LD): Good morning to you, minister, and your officials. The 2003 act allows the Land Court four weeks from a hearing date to give reasons regarding its decision on an evaluation appeal. The amendments to section 92 of the act would make that eight weeks and would allow the Land Court to report on why it was unable to achieve the eight-week target.

What is the rationale for saying that it is beneficial to double the time that the Land Court has and, therefore, the time that people have to wait? Surely, if the court is given double the time, it will take it.

Aileen McLeod: One of the amendments that we propose allows for cross-representations. At the moment, either party is entitled to submit representations to the valuer, and they must be taken into account. It is felt that, to ensure that all relevant information is taken into account, where one party has submitted representations, the other party should be entitled to submit cross-representations. We do not wish to extend the process unduly as a result, so we have imposed a short, two-week period—that is the extension from six to eight weeks—for the parties to consider the initial representations and then submit cross-representations should they wish to do so.

The Land Court requested that the four-week time limit be extended because it can often cause scheduling issues, particularly with complex cases, and it was felt that it was unlikely that a case that had been heard over a number of weeks could be written up in four. However, we also realise that community bodies and owners need clarity about when they might expect a decision. Therefore, although the time limit has been extended and the court has the ability to request that it be extended further, it must give a definite date by which a written decision will be provided.

Jim Hume: What sanctions are available if the Land Court does not achieve the eight-week target? How will you ensure that it reports within that time?

Aileen McLeod: Although there are no powers to impose sanctions should the court not adhere to the timescales, it is felt that it is still important to specify them to give all parties a degree of certainty about when they can reasonably expect a decision. It is not expected that the court will miss those deadlines except in extenuating circumstances.

Jim Hume: So there are no sanctions if the court does not meet the deadline.

Aileen McLeod: That is correct.

Graeme Dey: Do you have any figures for how many times you anticipate the Land Court would miss the target?

Aileen McLeod: I do not have that information with me, but I am happy to take that question away, ask officials to look into it and write to the committee with a response.

The Convener: Are there enough members of the bench of the Land Court to cope with the work in hand? The time that it takes the court to hear such cases might be tied up by, as has been suggested to us, a couple of members of the court being in South Uist to deal with a case there. Should we recommend that there be more members of the Land Court?

Dave Thomson: The change in the timescales was reached through discussion with the Land Court, which was happy with the extension from four to eight weeks and did not ask for a further extension. To be fair, we did not ask whether there was a need to increase the number of members

on the bench of the Land Court. We asked it about its schedule and timetables and what it would reasonably expect to be able to comply with.

The Land Court has given us no indication that it is going to miss the eight-week limit. Up to now, as far as we are aware—we will go and check—it has by and large met the four-week limit, although in some cases that has been difficult. The extension will give the court a bit more time, but it still includes a degree of certainty for communities and owners as to when they can expect a decision—it will not just be "mañana". There are no sanctions to enforce that, but at least it gives some sort of framework.

The Convener: Dave Thompson has a question on mediation.

Dave Thompson: I am sure that you are aware that Scotland is developing a strong reputation for mediation. There are many good mediation services out there and we should encourage them. I know that the Government has been involved in that.

Does the Government have the legal power to insist on mediation in relation to disputes under the legislation? We heard evidence from Community Land Scotland that a number of agencies that support community groups would like to be able to facilitate mediation but do not have the legal power to do so. That could speed up the resolution of disputes. I am not sure what the position of most lawyers would be—it might do them out of some work, but lawyers can get involved in mediation, too.

Mediation is something that we should be moving towards, generally, throughout all the legislation on everything that we do in Scotland. We should be encouraging mediation at every step. I would like a wee bit of clarification as to how you see mediation working in relation to the bill and whether you have the power to ensure that people can access mediation to resolve disputes much more quickly than they would through the Land Court.

Aileen McLeod: It is recognised that the majority of crofting community purchases have taken place outwith the 2003 act, using a negotiated settlement between the parties. As we know, those negotiations can often be difficult and it is recognised that there may be a need for support.

The Scottish Government is forming a short-life working group as part of the work on achieving the target of 1 million acres in community ownership. That work will inform the potential functions and role of a community land agency, which was one of the recommendations of the LRRG, and one of the agency's functions could be to assist with mediation. Mediation is voluntary and it is thought that investigating the options through that route would allow for much better consideration of the issues and the best solution.

On Mr Thompson's point about legal powers, I will be honest and say that I am not sure what the answer is. We will check and get back to the committee on that point.

Dave Thompson: That was very helpful, minister. Mediation is voluntary, but it would help for it to be made clear in the legislation that it is favoured and that the community bodies that are assisting community groups will have the power to suggest it and push people towards it, instead of just leaving it as an ephemeral thing.

I appreciate your response, minister, and I look forward to hearing from you once you have checked the situation.

The Convener: Thank you. We will move on from crofting community bodies to general community empowerment in relation to abandoned and neglected land.

Sarah Boyack (Lothian) (Lab): Thank you for sending us the draft regulations for this part of the bill, minister. That has been incredibly helpful. I am sure that I will not be the last member to ask questions on this part, because the committee spent quite a lot of time discussing the issue before our stage 1 report. That was partly because of the weight of the evidence that we received from key stakeholders, but it was also because of the policy intent of the bill.

The policy memorandum is clear about the Government's objective. It states:

"Land that is neglected or abandoned can be a barrier to the sustainable development of land"

and that the bill's objective is to enable communities to have the opportunity to buy that land when other routes to getting access to its better use have failed. We have concerns that the phrase "neglected and abandoned" is mentioned in the bill, but sustainable development is not.

I want to kick off on the definition of "neglected and abandoned". In her response to us, the minister said that "neglected" and "abandoned" take "their ordinary meaning" and are not to be defined in the bill. To paraphrase, she basically said that it is obvious to everybody what the terms "neglected" and "abandoned" mean.

My worry is that the matter is not that straightforward, whether the area is urban or rural. Everybody says that it is obvious in an urban area but not so obvious in a rural area. I have represented an urban area for quite a while. Even in that context, illustrating whether land has been neglected or abandoned is not necessarily straightforward.

You have said that circumstances will be set out in the regulations, but if a community wanted to establish that something is neglected, for example, what would happen if minor works had taken place on the land? What about works just to make a building safe and secure but not necessarily used? What about the question of whether planning applications are regularly submitted? There are questions about the issues of abandonment and neglect and how bad something has to be before ministers would consider it.

It is a concern that "neglected" and "abandoned" are not defined in the bill and that the policy ambition is to achieve sustainable development but that does not appear in the bill. What do you think about the representations that we made in our committee report? Why have you not felt able to date to take them on board and to agree to putting a statutory definition in the bill and using the words "sustainable development", as you did in the policy memorandum?

Aileen McLeod: Perhaps I can first make some general points on the draft regulations. At the moment, the draft regulations illustrate the sort of thing that could be put into the regulations. We are trying to bring clarity to neglected and abandoned land, and we have tried to take on board the committee's concerns. If the committee has any suggestions or ideas about what else could be put into the regulations, I will be very happy for you to feed them into the Government at this stage.

The introduction of proposed part 3A of the Land Reform (Scotland) Act 2003, which relates to the right of communities to buy land that is abandoned or neglected, even against the wishes of its current owner, is a very important step. It will allow land that is neglected or abandoned to be brought back into productive use while ensuring that it is developed in a sustainable way for the benefit of the community. I accept that that is not as big a step as some would hope for, but it is an important one, as it will allow communities with clear plans for neglected or abandoned land to make a case for community ownership.

There is the example of the Cuningar loop. That is not exactly the same thing, but it provides an example of the sort of opportunity there can be from the change that can be made to the land. The Forestry Commission has brought into use a derelict site at the heart of the Clyde gateway area, where it has created an inspiring and accessible riverside woodland park on the boundary between South Lanarkshire Council and Glasgow City Council.

As I said, that situation is not exactly the same, but it is an example of the kind of opportunity that communities could have to change land for the better by using the proposed power in relation to abandoned or neglected land. The proposal is not only a demonstration of the Government's ambition to further community empowerment; it is another step in Scotland's land reform agenda.

10:15

We have listened carefully to the committee's concerns and those that have been raised by stakeholders. We have taken legal advice on whether amendments could be made to the bill to address the concerns that the committee raised in its stage 1 report. There are several aspects that we must take into account in deciding what appears in the bill. We must ensure that the amendments to the bill are within the competence of the Scottish Parliament. That includes ensuring that they comply with the European convention on human rights, which provides a right to peaceful enjoyment of possessions. We must also ensure that the right to buy will be compatible and concordant with the law in pursuing a legitimate aim in a proportionate way.

I want to be as helpful as I can in helping the committee to understand the legal context. We will actively consider whether amendments can be made to the definition of eligible land to include land that is not neglected or abandoned but which is still causing problems.

Sarah Boyack: Thank you very much. That was very helpful.

Quite a few stakeholders have raised an issue about the term "sustainable development". I note what you said about legal force and legal understanding, but the term "sustainable development" regularly appears in Scottish Government bills. If the terms "neglected" and "abandoned" are used and the objective of ensuring sustainable development is seen in the use of the land, what could the legal objection be? "Sustainable development" is a term that is understood and is being used in the courts.

I very much welcome the fact that what is proposed is a step on the way to ensuring that land is used in a way that supports sustainable development and I support the Scottish Government's intentions, but the worry is that, if clear definitions are not provided and the term "sustainable development" is not included in the bill, that might cut across the ambition that you have in the policy memorandum to make a difference in many of our communities.

Aileen McLeod: I will ask Stephen Pathirana to come in on that.

Stephen Pathirana (Scottish Government): Thank you, minister.

A lot depends on exactly what is changed in the drafting. The present proposals relate to neglected and abandoned land. Depending on what the

committee recommends, if we were to remove the reference to neglected and abandoned land from the bill, that would represent a complete change in the scope of the proposal. It would mean that, rather than covering just neglected and abandoned land, it would cover all land. That is a completely different proposal.

When such a fundamental shift is made, it is necessary to think carefully about all the checks and balances that are in place that make legislation compliant. We would be dealing with a different and new proposal.

The proposal focuses on sustainable development in the context of what the community proposes to do with the land. When you talk about including the term "sustainable development" in the bill, if it is about what the community wants to do as opposed to the condition of the land, that is a fundamental shift in the scope of the proposal, and one that changes its meaning.

Sarah Boyack: If you were to be able to define the terms "neglected" and "abandoned" in the bill, would that not go some way to reassuring the communities that are worried that the test of whether land is neglected or abandoned might cut across what the Government hopes to do in giving land a use that supports sustainable development?

Stephen Pathirana: We have thought very hard—and we continue to do so—about the merits of defining "neglected" and "abandoned" in the legislation. Any attempt to define those terms would invariably narrow the definition. I think that the question that the committee is interested in is how broad the criteria for land that is eligible can be made.

As the minister said earlier, we are thinking about whether there is scope to go beyond abandoned and neglected land to other land with which there are problems. We need to look at whether we can introduce amendments that would take the scope further than it is at present but at the same time not extend it to all and any land in Scotland.

Although we are not including a definition in the bill, the idea is that we can introduce regulations that set out what issues ministers should consider. That will help to define what we mean by neglected and abandoned land. In a way, that has greater flexibility because, if it is found not to be working quite as well as Parliament wants, it can be amended. If we included a definition in the bill, it would be very hard to make changes to it.

Michael Russell: This is a very important discussion, and we are all trying to find the right solution. It might be helpful to step back for a moment and ask, "What is the right solution?"

The right solution is to enable communities to possess—to buy—land that they wish to use for purposes of sustainable development. If we get this wrong one way or the other, that will not happen. It will not happen because it will be frustrated by lawyers who want it not to happen and owners who do not want to sell. We need clarity in case the bill is challenged, because judicial review does happen and reference under ECHR could happen. If we do not get it right, this is the proposal that will prevent communities from participating in the right to buy.

The question is this: is it better to include a definition in the bill and have it challenged but at least be absolutely clear about the meaning, or is it better to leave the bill as giving the words what you have euphemistically called "their ordinary meaning"—though they are capable of many ordinary meanings—and another legal meaning?

That is really quite worrying, because there is a specific legal meaning to "abandoned and neglected land" that you are not applying here. In those circumstances, if you leave the bill as it is, will the challenges be successful because of the vagueness in the legislation? In the greater part—it was not unanimous—the committee believed that it was very important that we tied the definition down as clearly as possible so that communities could use the legislation effectively. That is what we are still struggling to do.

While I am pleased to see these fundamental and radical steps to change land ownership, there is an issue about whether they should be defined in secondary legislation or whether they should be defined clearly as a legislative intention of the Parliament in primary legislation. I do not think that we are there yet; although the regulations are helpful, it is important that we get a clearer definition in the bill.

What Sarah Boyack has been trying to do, quite correctly, is point to sustainable development as one possible area in which we could get a clearer definition. I think that amendments will be brought forward on the issue, and I would urge the Government to think about that, because we are all trying to help each other to get absolute clarity so that the intention for a radical step forward will be fulfilled in practice.

We know from the land reform legislation that many of the difficulties that existed, including some that I have been dealing with in recent weeks, are because the legislation is not as clear as it should be and there are difficulties in operating it. We have learned from that, so the question is: can we keep moving in this legal debate?

My contribution to that debate is that I think that we need a clear definition and we need the term

"sustainable development". Work that has been done by Community Land Scotland to suggest a way to frame the definition should be seriously considered by the Government's lawyers. I think that there will be an amendment at stage 2. If that amendment were to be seriously considered by the Government's lawyers, we might get ourselves to the stage at which we could all eventually agree.

Aileen McLeod: We appreciate the committee's support and its work in the area, and we are actively considering what is possible from the Government's side. The consultation on the draft land reform bill asks the question:

"Do you agree that there should be powers given to Scottish Ministers or another public body to direct private landowners to take action to overcome barriers to sustainable development in an area?"

The responses to the consultation are currently being analysed, but we are considering right now what other amendments could be lodged.

Michael Russell: That is helpful, minister. I am grateful for that. You are saying that the debate can continue and that you will look at possible amendments and keep thinking about how we can make the proposal effective so that it does not present a difficulty but fulfils your policy intention, which is warmly endorsed by the majority of the committee.

Aileen McLeod: Yes.

Dave Thompson: It strikes me that the broader the definition, as outlined by Stephen Pathirana, the more room there is for challenge, but that is counter to what you have said. The people who are happy with the current proposal are the ones who do not want change in relation to a community's right to buy land, and that is significant. We should look at the folk who support the change and look at the folk who are content with the current situation. That is just a comment to kick off with.

Minister, I would like a wee bit of clarity on what you said about the legal advice. You mentioned the competence of the Parliament and the ECHR. You said that, if the definition was on the face of the bill, there would be greater difficulties and problems for us. I do not understand—I am not a lawyer, so maybe Stephen Pathirana can help me with this—why you think that the definition would create problems if it were on the face of the bill but not if it appeared later in regulations. What is the difference between those two things? Why are you confident that you can put something in the regulations that you feel you cannot put in the bill?

Stephen Pathirana: First, I am not a lawyer either—let us get that clear.

Dave Thompson: My apologies.

Stephen Pathirana: Nevertheless, I will do my best to answer your question.

There is still some confusion about the different things that we are talking about in relation to the proposal. There is the issue of the type of land that we are talking about and how the words "neglected" and "abandoned" relate to the land. There is then the issue of whether the community has a proposal and a case for taking ownership of the land. Those are different things.

When we are talking about the type of land, the question is about what definition describes the land as it is now. My initial understanding is that the committee was suggesting that, if we removed the words "abandoned and neglected", the provision would then mean all land. However, all land is very different from a specific class of land. Even when we are talking about crofting communities, we mean a specific type of land with specific rights that already apply in relation to it—it is different from other land. We need to be clear about what land we are talking about, and we are using the words "neglected" and "abandoned" to describe the land that we mean.

Although I accept that we are talking about the normal definition of "neglected" and "abandoned", which ultimately—as with all groundbreaking legislation—will be defined by case law, we anticipate that that definition will probably be broader than any definition that we would articulate. Invariably, when you start trying to articulate things, you end up narrowing them down—that is the risk. We could define it down, but the definition would be narrower rather than wider.

It would be a substantive change in direction if the proposal were to make the sustainable development of communities the key factor in driving decisions about which land was eligible. That would be the communities deciding, which would be a huge change. In developing the current proposal, all the checks and balances in relation to "neglected or abandoned" land have been carefully thought through. Essentially, that would all have to be thought through again.

10:30

One could argue that, in the context of the consultation on land reform, the proposal for giving ministers the power to intervene where the actions of a landowner are detrimental to the sustainable development of communities—in which the committee is really interested—requires a lot of careful thought about how we design a mechanism that is compliant and that pays regard to landowners' and communities' interests. From a landowner's point of view, such an intervention must be adequately foreseeable. They would have

to understand what they must do to bring their land back into good use and make it sustainable. Making a shift like that would be a huge change at this stage in the process.

We can go away and look at the scope for bringing greater clarity to the provision on "neglected or abandoned" land and for extending it to other land with which there are problems. However, extending the provision to all land is a bigger step.

Dave Thompson: That is very helpful and useful. I apologise for calling Mr Pathirana a lawyer earlier.

Stephen Pathirana: I will take it.

Dave Thompson: As we have said, the committee has proposed that the provision be taken out altogether, but I can see that there might be arguments for leaving it in.

Let us assume that the provision—which keeps things tight and does not extend to all land; I fully understand that point—is kept in the bill. Does it not logically follow that, if the reference to "neglected or abandoned" land is on the face of the bill, having a definition in the bill would strengthen your hand even more, especially if that definition made it clear that the whole purpose of the provision was to do with sustainability and sustainable land?

Rather than just referring to "neglected or abandoned" land in the text of the bill—which in a sense clarifies that there is a tight definition—with the regulations following, it would strengthen the bill and make things very clear to everybody if we also included the sustainable development aspects in the text of the bill. That would mean that we were really defining the concept and being much more precise. Am I right about that?

Stephen Pathirana: Possibly. Putting a clear definition in the bill would certainly make the provision more precise, but it would invariably be narrower. It would have to relate to the sustainability and condition of the land as opposed to the sustainable aspirations of the community, and those are different things—there is a big difference.

There is scope in regulations to allow us greater flexibility to get the definition right over time in a way that putting a definition in the text of the bill would not. Including a definition might pin the concept down and offer less flexibility.

Dave Thompson: I take that point, but the whole purpose of the provision is to ensure that land is used to its best advantage, and that sustainable development of land is progressed so that land is not just lying there doing nothing and not benefiting anyone other than someone who has bought it as an investment.

I agree that the definition would have to relate to the sustainable development of the land, and that is fine, but that would be in the interests of the community. If there is a bit of land lying there doing nothing because someone has bought it as an investment to hedge against inflation or whatever, and the community would like more housing, business parks, hydro schemes or something like that, the community would be able to come in and argue that the land was not being used sustainably and that it had a way of ensuring that the land would be used in a sustainable way. The community could present a business plan and give all the detail—along the lines of the Pairc judgment, for instance.

I am quite comfortable with the definition being in the text of the bill to make it clear, because what I have described is what we are seeking to do. A lot of land in the Highlands is sterilised and is not being used to best effect, and we need to change that.

Stephen Pathirana: Can I come back on one small point, convener?

The Convener: Yes, briefly. It is a debate. Alex Fergusson and Mike Russell want to come in, and so do I.

Stephen Pathirana: The provisions that we are discussing do not apply to the crofting districts. In essence, the crofting community right to buy is a broader right than that which would apply in other areas. In all the situations in the Highlands that Dave Thompson mentioned, the crofting community right to buy is the vehicle that would be used.

Dave Thompson: Not all of the Highlands is under crofting tenure.

The Convener: Exactly—only some districts are.

Alex Fergusson can go next.

Alex Fergusson: First, I thank Mr Pathirana for confirming—I think—that the committee's recommendations in the area that we are discussing would, in effect, introduce an absolute right to buy for all land, which is what is creating the difficulty—

The Convener: No.

Alex Fergusson: Well, Mr Pathirana said that the recommendations would open up the possibility of the right to buy covering all land. Is that right?

The Convener: That was a mistake on his part.

Stephen Pathirana: If we do not provide a definition of the land, we will, in effect, be talking about all land.

Alex Fergusson: If you did as the committee recommended, that would be the case. Is that what you are saying?

Stephen Pathirana: If we removed the definition of "neglected or abandoned" land.

Alex Fergusson: I thank you for that clarification, because that is why I dissented from that section of the committee's report.

My question is to the minister. Can you confirm that it remains the Government's intention that the power should be used only as a last resort when all other processes have failed?

Aileen McLeod: Yes.

Alex Fergusson: Thank you. That is all that I need to know.

Michael Russell: Perhaps I should have come in before Alex Fergusson, because I wanted to say to Stephen Pathirana that I do not think that the committee intended that the recommendation to remove the words should open up all land to purchase. I can see that that might be the logical inference, but it was not the committee's intention. I think that I am right in saying that about the recommendation from the discussion that took place.

The committee's intention was to ensure that the opportunity would exist to purchase land that was "abandoned or neglected", but getting a definition of that land has proved to be very difficult. I do not think that there is any intention to open up all land for purchase. Some might argue that that would be the right thing to do, but that is another debate.

The committee's intention is to fulfil the Government's policy intention, and the debate is about whether further definition of those words is required in the bill in order to do so. That is what we should focus on. There is no intention to go wider and, if that was to become the debate, that would—as we have just seen—not help the Government to fulfil its intention. Criticising what the committee did is perhaps not the road to go down.

The Convener: I see that the minister takes that point.

I want to focus specifically on the fact that we are talking about "eligible land", as has been mentioned. "Eligible land" excludes agricultural land that has been kept in good condition, low-intensity-use land that has been agreed and so on. The term "abandoned or neglected" therefore applies to a limited amount of land: it does not apply to all land. Can you confirm that, please?

Aileen McLeod: That is set out in the draft regulations, which list the matters to which we must have regard in deciding whether land is eligible. They fall into three broad categories. The first is

"the physical condition of the land and its effect on the surrounding area, public safety and the environment".

The second is

"the use of the land, or lack of use as the case may be, including whether the land is a nature reserve, held for conservation purposes or used for public recreation".

The third refers to

"any designation or classification of the land, such as land which has been classed as contaminated land, or buildings which are listed buildings or scheduled monuments."

The Convener: Thank you for that confirmation. It is a good explanation of areas in which there should be some discretion so that assessment can be made.

Minister, you should be aware that, whatever arrangements are finally agreed by the Parliament, those who have a landowning interest will cite the ECHR. In an article in this month's *Scottish Field*—a 26-page assessment of land reform—the editor, Richard Bath, states that

"it is almost inconceivable that any reform will not be challenged legally."

We live in a world in which, whatever move is made, we can expect that some means will be found to challenge it in court—that is the reality. If that is true, we are moving into an area in which people will take entrenched positions because they are not prepared to accept the situation. Before the ECHR, the crofting right to buy was accepted, but it looks as though there will be a challenge to the community right to buy whatever happens.

When are you going to respond to our stage 1 report? We need to see that response. In the report, human rights and equalities are dealt with in the following way. The ECHR is set against article 11 of the International Covenant on Economic, Social and Cultural Rights. Malcolm Combe suggested that, when the two are put together, we are led to talk about matters that lead to thinking about property and the sustainable use of land. If we are going to fulfil the requirements for food, housing, sanitation and so on, we must see the land as being sustainable. We are trying to suggest that it would be a good idea to find a way in which to test the ECHR against the United Nations covenant. If a court is faced with a situation in which someone has challenged our decision on the basis that the ECHR has been breached, will you be prepared to push the covenant that the UK has been signed up to since the 1970s as overriding the ECHR?

The Scotland Act 1998 says that we are responsible for ECHR issues. Given that there will almost certainly be challenges in the courts, is it not time that we went back with something that overrides the ECHR?

Stephen Pathirana: We can get back to the committee with a further response to that question. In all cases, we have to find a way of articulating clearly the public interest and balancing it with the rights of individuals and communities in any process such as that involving the crofting community right to buy. The proposal on neglected land tries to do that.

The committee should reflect on the fact that those things are probably all possible, but we need to make sure that the checks and balances that are set out in a proposal achieve the outcome in a fair and balanced way. In what we have proposed so far on neglected land, we think that we have struck the right balance, subject to some further thinking about the definition of "neglected or abandoned" land. If we were to broaden the proposal out to other areas where we wanted to take action, we would need to think that through in a broader context. We are thinking about the issues in the context of the land reform consultation and where else the Government might choose to go.

Aileen McLeod: I reassure the committee that we are considering all of that right now to see how we can broaden the definition. The Government's response to the committee's stage 1 report was sent this morning, so the committee should have received it.

The Convener: Thank you for that. I am just suggesting that you should take seriously the context in which we are working. If we are to achieve something lasting, we will have to take into account the moving platform on which we work. The consultation document talks about land reform in Scotland being for the common good—it uses a phrase like that. That suggests that the common good overrides that of individual current landholders. It seems to me that, if that balance is to be reflected in the proposed amendments on the definition of "neglected or abandoned" land, you should take that on board.

Aileen McLeod: We are happy to do so.

The Convener: Do members have any further points to make? I hope not, because we have gone round the houses on the issue. I hope that this has been a constructive way of dealing with the matter.

Minister, I thank you and your colleagues for your evidence. I hope that the Government will be able to meet our wishes and that, when we read your response, some of it will become clearer.

We will have a short suspension because we have a big group of witnesses coming in and we need a wee break.

10:46

Meeting suspended.

10:53

On resuming—

Scottish Government Wild Fisheries Review

The Convener: I welcome everybody to the committee for agenda item 2, on the Scottish Government wild fisheries review. This morning we will take evidence from stakeholders.

The original agenda stated that Dr David Summers, who is fisheries director of the Tay District Salmon Fisheries Board, was going to join us, but unfortunately he is unable to do so.

We will go round the table saying who we are. The sound is controlled centrally. When you indicate that you wish to speak and I say that you can, you will be able to make your contribution. That does not mean that everybody has to answer every question, given that we all can hear the force of the arguments that are made by colleagues.

Please introduce yourselves.

Dr Andy Walker (Scottish Anglers National Association): Good morning. I am a retired Government fisheries biologist from Pitlochry. For my evil sins, I have been made the vice-chairman of one of the committees of the Scottish Anglers National Association. SANA is the recognised governing body for game angling.

Sarah Boyack: I am a Labour MSP for Lothian.

Craig MacIntyre (Argyll Fisheries Trust): I represent Argyll Fisheries Trust.

Dave Thompson: I am the MSP for Skye, Lochaber and Badenoch.

Jamie Ribbens (Galloway Fisheries Trust): I am from the Galloway Fisheries Trust.

Crispian Cook (Northern District Salmon Fishery Board): I represent the Northern District Salmon Fishery Board.

Ron Woods (Scottish Federation for Coarse Angling): I represent the Scottish Federation for Coarse Angling.

Jamie McGrigor (Highlands and Islands) (Con): I am MSP for Highlands and Islands. I declare an interest: I am also chairman of the Loch Awe Improvement Association, which runs the protection order on Loch Awe and Loch Avich. I also sit as a member of Awe District River Improvement Association.

The Convener: Jamie McGrigor joins us as a member of Parliament and not as a member of the committee.

Michael Russell: I am the MSP for Argyll and Bute, and therefore I am Jamie's constituency MSP.

Alex Fergusson: I am the MSP for Galloway and West Dumfries.

Hughie Campbell-Adamson (Salmon and Trout Association Scotland): I am chairman of the Salmon and Trout Association Scotland, which is a charity that campaigns for the conservation of salmon, sea trout and trout.

Jim Hume: I am a Liberal Democrat MSP for South Scotland.

Nick Yonge (River Tweed Commission): I am from the River Tweed Commission.

Angus MacDonald: I am the MSP for Falkirk East.

James Mackay (Salmon Net Fishing Association of Scotland): I represent the Salmon Net Fishing Association of Scotland.

Graeme Dey: Good morning. I am the MSP for Angus South.

The Convener: I am the convener of the committee and the MSP for Caithness, Sutherland and Ross.

We are going to kick off by thinking about the balance between national leadership and local delivery as the fisheries review has proposed. What does the panel think about the proposal to establish a national unit with responsibility for fisheries management, and who should head it up? Should the unit be part of Government or be separate from Government—for example, should it be a non-departmental public body?

James Mackay: The unit should be run by somebody in a neutral organisation—probably Government—and it should be made up of a committee of MSPs, a freshwater fisheries team, and stakeholders from the angling associations and other angling bodies. The Salmon Net Fishing Association could maybe have some part in the consultation team, and people from the environmental agencies would have to be taken in as well.

The Convener: We are talking about a national unit and trying to make it slim, I think, but that sounds quite big. Does anyone want to come back on that?

Jamie Ribbens: The key thing is that it is still to be defined; we are still unsure about exactly what the central unit would be. One thing that has been suggested is that the unit should be set in Government. I do not think that it is important at this stage to decide where it is; its role is more important.

We would expect it to look at a national strategy and at central resourcing—that is one of the key elements. The work plans are a strong element that some of the trusts have been involved in already, and we would hope to have guidance and support going down to the level of the fisheries management organisations from the central unit.

The Convener: Graeme Dey has a question that might be helpful at the moment.

Graeme Dey: How does the panel view the proposal for changes to the structures, set against the conflicts that we have seen arising on some rivers? Could the changes reduce conflicts, or is there the potential to make them more prevalent?

The Convener: That relates to the national body, in particular.

11:00

Hughie Campbell-Adamson: I think that Graeme Dey is referring to local conflicts in his area.

The Convener: I do not know whether he is.

Hughie Campbell-Adamson: I am inferring that.

There have certainly been problems in the past between the various exploiters of our fishing resource or salmon resource. A centralised system may get round that, to a degree. My only concern is that, in the end, we must not lose the local volunteers in the area, which we have talked about before.

The Convener: We will come on to that as a second question. The issue is two-sided. Does anyone else have comments about the national unit or do we agree to leave it at that just now? If so, we will talk about establishing local fisheries management organisations. Does the review establish the right balance between national accountability and the strategy and local empowerment and delivery? How do the powers of the FMOs compare to the powers that district salmon fishery boards currently hold?

Ron Woods: Coarse angling is not under the responsibilities that are currently held by salmon fishery boards, but the all-species concept brings coarse angling into that field. We have recognised for some years that all-species management is the way forward; it is very much something that we support. However, we have specific concerns that it must not simply be management of all species, but management for the benefit of all species.

Although we recognise that for various financial and other reasons salmon must have a big influence on management, that priority should not act to the detriment of coarse fish. For that reason, one of our particular concerns is that the

constitutional arrangements under which fisheries management organisations are set up make it very clear that there is a responsibility for the wellbeing of all species, rather than simply control of them.

Secondly, in the interplay between the central unit and the fisheries management organisations there should be checks and balances that ensure that any rogue activities, shall we say, can be prevented. Such activities are much less likely than they were 25, 30 or more years ago: thanks to the influence of the trusts, we have seen a much-reduced emphasis on coarse fish being regarded as vermin and culled and so on, but there are still instances of it. Our big concern is to nail that down.

The Convener: The strategy is about local empowerment and delivery, which is therefore, I presume, welcomed.

Ron Woods: Yes.

Craig MacIntyre: Absolutely. A local FMO is absolutely essential for keeping river owners and angling clubs involved in fisheries management. As a relatively small trust, Argyll Fisheries Trust has certainly had our largest successes working with local communities—not just fisheries interests, but other interests. It is something that we definitely favour.

The Convener: Did you want to say something, Andy?

Dr Walker: I was thinking that I was in agreement with everything that I am hearing. SANA certainly agrees with it all.

Jamie McGrigor: I have a small comment on protection orders.

The Convener: We will come to protection orders later.

Jamie McGrigor: I know, but from a local management point of view, protection orders cover only non-migratory species, not migratory species. There has always been a slight difficulty when it comes to management, because we are not looking at the whole picture.

The Convener: Okay. Thank you for that. We will move on to resourcing wild fisheries management. Jim Hume will kick off and Mike Russell will follow.

Jim Hume: There are two or three lines of questioning on this issue. We had some good input from the Galloway Fisheries Trust in a document that came to us a day or two ago. There is a proposal to replace the current system of levying contributions from owners of salmon fishings with a national levy. Andrew Thin said that that could allow ministers or the central body to spend money from one area in another area, if they thought that that was best. What is the panel's view on the change to the levying system and the possibility that funds could go to different parts of the country from an area that is doing better than other areas?

Jamie Ribbens: As I mentioned, we put in a submission.

The model that Galloway Fisheries Trust worked on has been to multiply up the locally collected levy. There is a similar model on the north-west coast. We would very much support a centrally collected levy, which could then be redistributed. The present system, which does not have a multiplier effect, focuses money on the healthiest fisheries. We would get the biggest bang for our buck if we could move the money around.

Alex Fergusson: I know that Galloway Fisheries Trust's financial structure relies a great deal on local fundraising, as well as on your efforts in attracting grants and all that sort of thing. Is there a danger that a national levy that goes to a central distribution point, if I can put it like that, could have an impact on the local fundraising capabilities that I suspect most trusts rely on to some degree?

Jamie Ribbens: That would not necessarily be the case. The main thing that is needed to get local support are FMOs that are set up with local accountability and have links to the local area. I do not think that if payments were to go from fisheries to a central organisation—to which people could make bids for the money, and which could see how Scotland can benefit most from the money that is collected—it would result in a loss of local support. The biggest concern would be if FMOs were not fit for purpose or were unable to get engaged at local level.

Graeme Dey: The levy that is being talked about would be a levy on rod and net fishing. If netting was taking place in a mixed-stock fishery, for example, would not it be appropriate for the compensatory element of the levy—the money that goes elsewhere—to reflect that by being directed towards the rivers that are impacted by fishing of mixed stock, rather than being transferred from, say, the east of Scotland to the west of Scotland?

The Convener: Some people on the panel have not said anything yet.

Jamie Ribbens: I would support what Graeme Dey has suggested. We are looking more at the principle of being able to look at where impacts are. I agree that the money should not automatically be moved from east to west; we need to look at where the maximum benefit would be gained. One might say that some of the areas on the west coast are so hard hit that the level of money that would be required to trigger their recovery suggests that moving the money there

would not be the best thing. We are looking more at the principle of having the ability to transfer money to where it would create greatest benefit.

James Mackay: Regarding mixed-stock fisheries and the levy, I do not see how you could make the split. The netting and the angling fraternities would have to go into a new organisation equally; mixed-stock fishing is another issue, which would be talked about at another stage. It is quite a complex issue and financing of it does not reflect the special area of conservation rivers that are being damaged and impacted by mixed-stock fisheries. My fishery is branded as a mixed-stock fishery. However, mixed stock is another subject and we will probably discuss it later, so I will not go on about it now.

Nick Yonge: There is a potential problem with reallocation of funds. The funding situation of wild fisheries management in Scotland is pretty diverse. It is different in different parts of the country and different rivers. Some are relatively well funded, some are badly funded and some have almost no money at all, so on the face of it there might be a case for collecting money centrally and redistributing it. However, if we were to do that, we would have to decide what we wanted not to do on the rivers that are already adequately, or more or less adequately, funded. We cannot get away from the fact that, in general, there is not enough money to sort out the problem. There is a problem, and the root of it is that not enough money is being spent on wild fisheries management.

The Convener: We will explore that a bit further, but we will go back to Jim Hume first, and then to Mike Russell.

Jim Hume: I will try to round this part off. The Galloway Fisheries Trust is a charity, so it can access funds in places where charities can access funds. I wonder whether other organisations would be affected if the FMOs were not charities. It looks as if they should be charities.

Going back to the point about levies, do any of the witnesses believe that there could be challenges from fishery owners regarding their levies being redirected?

The Convener: Are there any comments on that, especially from people who have not spoken yet?

Hughie Campbell-Adamson: Jim Hume makes a good point. People will be uncomfortable, given that traditionally the levies that they have paid have gone to the individual river. However, that does not alter the fact that, in the present system, a successful river that has plenty of salmon on it raises more money and, conversely, a river that is struggling, whether because of aquaculture or a change in climate, will have less money coming in. The idea of some sort of fertilisation by the richer for the poorer makes sense.

Ron Woods: I do not know whether you would feel that this is a diversion, but in relation to that recommendation, I would like to comment on the issues surrounding the extension of levy mechanisms to other species. Would you rather wait until that comes up in a different context?

The Convener: We will bear that in mind and you will get to raise it. We will stick with the levy situation just now. I call Mike Russell.

Michael Russell: The principal proposal in the report is that the Government at some stage introduces a rod licence and the moneys go to investment. As Andrew Thin has rightly pointed out, the public purse is unlikely to meet those costs, certainly in the foreseeable future. However, he indicated in evidence last week that that would have to be tied to an expansion of fishing through what he called an angling for all scheme. He pointed out that, in his view and that of his committee, Scotland is underfished, and the preponderance of those who take part are male and of a certain age—it a bit like politics, really. In those circumstances, I want to know people's views on rod licences and how an angling for all scheme might operate. I think that we all have constituents who have expressed considerable concern about rod licences.

The Convener: Do you want to come back in now, Ron?

Ron Woods: I can if you wish, yes. That issue is of considerable interest and importance to us.

I start from the premise that a rod licence is not only desirable but the only effective way of raising a significant amount of money for fisheries management for other species. There are all sorts of reasons why the current levy mechanism for salmon fisheries may or may not work, but it is feasible. A levy mechanism for freshwater fisheries is unlikely to yield a significant amount of money and would create a vast amount of bureaucracy.

We also need to look at the example of other countries. With the exception of Ireland, virtually every civilised country in the northern hemisphere has some sort of national licence, rod licence or state licence—call it what you will. Those licences confer different benefits and charge different rates, but they appear to be philosophically acceptable to anglers in most of those places.

11:15

We would not necessarily need to follow the English model precisely to have rod licences either. The differentiation of rates for migratory fish and for other species may or may not be

necessary, but I do not think that it is an essential component of the concept. Tying the licence completely to an angling for all programme gives us concern at this stage, although in the longer term that might be where the lion's share of the money raised would go. However, in our view, there are some fundamental issues that need to be addressed relating to the protection of coarse fish stocks, and the money raised from rod licences—or whatever other source of funding is used—needs to be used to tackle those issues first. We need much more robust bailiffing arrangements, which need to be underpinned by changes to statute, but we will no doubt come to that.

We also need a lot more scientific information before we have any idea of what a sustainable level of exploitation is. Sustainability for coarse fish is different in that, by and large, it should be a catch and release activity. However, sadly, we have had a sizeable increase in pot hunting in recent years and we simply do not know what the stocks are like or how robust they are in the great majority of waters. In one or two places—Loch Awe is a notable example—there has been good scientific work that gives us a reasonable indication of stock levels and dynamics. However, that is definitely the exception rather than the rule. Until we know what is sustainable and what levels of stock we have, we have reservations about saying that Scotland's waters are underfished for coarse fish.

We would like nothing more than to see more development of the sport to bring in young people and bring in more revenue from tourists. However, frankly, until we know that the resource is capable of sustaining that development, I would not want the money from our rod licences—which we think are a good thing—to be spent on it.

The Convener: Crispian Cook, as the clerk of a salmon fishery board, what is your attitude towards rod licences, levies and so on?

Crispian Cook: I read the *Official Report* of last week's meeting with some interest. On the notion that a rod licence could be used for a very discrete purpose such as encouraging the development of fisheries, we need to acknowledge that there may be some limitations in our knowledge of the fisheries that we have and their capacity for additional use. Nevertheless, from a salmon angler's point of view, if a rod licence is being used for a very particular purpose, which is generally positive and ultimately for the benefit of an angler who enjoys his sport, is serious about his sport and wants it to be encouraged and developed for the next generation—the increasing age of anglers has already been alluded to—I do not see anything other than positive potential from that. If the licence were to be used purely as an additional funding resource without a particular purpose, that would be more difficult to sell, if that is the right word.

The Convener: We are not talking about a tax; we are talking about something for reinvestment.

Crispian Cook: Of course.

Nick Yonge: There is no doubt about it; rod licences are highly contentious and people have very divided views about them. On the Tweed, we certainly do not need a rod licence and we would not welcome one. My angling clubs on the Tweed tell me that they would be very opposed to such a licence because they think that it would stop people going fishing rather than encourage them to do so. It would discourage them from going. We are fortunate, perhaps, in that we have a large enough run of salmon to enable us to collect our funds without having to resort to something like that.

The angling clubs are worried that there are a lot of retired people who might find it too much to buy a rod licence and their existing club permit and that young people might be discouraged at the thought of having to pay. At the moment, this is a relatively cheap occupation; a season ticket for fishing on the Tweed costs £20 or £30. You could argue that that could be increased but, by the same token, a lot of people think that that would simply put people off.

As for salmon fishing, which has not really been discussed, one can argue that, as it is a relatively more expensive activity, what is proposed might represent only a small increment on what people are already paying. As for whether collection would be efficient enough to raise the money, I do not know. That would have to be looked at.

Michael Russell: The response to this seems to be mixed. Nick Yonge has mentioned the need for investment twice, but if the angling for all programme is not the priority, what are the priorities for investment? Hypothetically, how can or will they be met if there is no rod licence?

Nick Yonge: The angling for all programme is perfectly laudable, and I am not in any way saying that we do not need it. It is true that for other freshwater fishing there is a certain age profile, and I do not think that anyone will dispute that we need to get more young people interested in fishing. A number of initiatives are going on throughout the country, and we could draw them together and let them feed on each other so that we can encourage young people to start fishing. After all, it will create in them an interest in fish and fisheries management.

There is no question but that there is a paucity of young people coming forward; we are all aware of that, and we definitely need to promote that side

of things. How that is funded is, of course, another matter, but the requirement quite definitely exists.

Craig MacIntyre: When we have spoken to the angling clubs in Argyll, we have found a definite lack of young people coming through. It is a recognised problem. As a result, the Argyll Fisheries Trust has been tinkering with introducing angling and fishing into schools—in fact, we have done it in Glendaruel school, which is Mr Russell's local school—and, where we have been able to find funding for the initiative, it has been highly successful. It is not very expensive, and the kids love getting out of the classroom to go fishing. If the only way of funding a national programme was through having a rod licence, I would be all in favour of the move, because I think that it would be fantastic.

The Convener: Looking at our all-male panel, I have to wonder about participation not just by young people but by women. Is there some psychological thing about the way in which women view angling that means that they will never be attracted to it in the way that it attracts men?

Sarah Boyack: I should say for the record, convener, that if my colleague Claudia Beamish were here, she would disagree with you, because she is quite keen on angling. I wonder whether it is important to bring this activity into schools and ensure that people can access it at an early stage before they think that it is only for men or for women. Is this partly about education and changing attitudes?

Ron Woods: Unfortunately, something that Andrew Thin did not quite pick up on in some of the meetings that we had with him is that good work is already being done under the auspices of the joint Angling Development Board of Scotland, in which we, SANA and the Scottish Federation for Sea Angling are involved.

For example—this is not my side of the business, so you will forgive me if I get this wrong—we have developed up to level 3 qualifications that can be taken in schools. We are also working with schools to set up coaching sessions; we have a proper licensed coaching scheme to deal with the child protection and other issues that can arise with a piecemeal approach; and we have received very welcome support from sportscotland and the Scottish Government through Marine Scotland. We are not starting with a blank canvas; co-ordinated activity is going on.

As a matter of interest, one of the leading lights in the coaching programmes who is doing outreach work with schools, young people and vulnerable adults is a lady called Heather Lauriston who fishes internationally for Scotland in coarse and sea angling. She is very much a role model and is working hard to bring girls into the sport.

The Convener: Thank you very much for that.

We need to have something to catch and to be the subject of sustainable harvesting.

Alex Fergusson: I have a supplementary question about rod licensing. I think that it was Mr Woods who mentioned tourists—people who come to Scotland to fish. I want to touch on the possible impact of rod licensing on that sector. I am amazed by the number of people from my constituency, in the deep south-west of Scotland, who have contacted me on the matter.

Whatever way we look at it, the various recommendations, if they are all put into place, will have an add-on cost for people who want to fish. I am quite sure that the big, well-known rivers such as the Tweed and the Tay will continue to attract people in the same number that they do now, but it has been put to me that, on some smaller rivers such as those in my constituency, in the south-west, the measures could have a very serious impact on people coming to fish, staying in the local bed and breakfasts and doing all the things that help the rural economy. Is that a genuine concern? I am totally neutral on this particular issue, but I wonder whether anybody has any thoughts on it and could expand on it.

The Convener: It would certainly be helpful if we had an international perspective on this. Are tourists put off going to other places? That would bring some balance to the debate.

Jamie Ribbens: This is not an international answer—this is from south-west Scotland.

The issue has been raised with us a lot, and it is a genuine concern. Fishing is relatively cheap. Some angling clubs are under £100 a year, and people can buy a day ticket for £10. The potential add-on for rod licences is quite high in some areas compared with others. In the south-west, there has always been a competitive advantage in selling fishing compared with the lake district, where there is a requirement for a rod licence.

It keeps going back to the finance issue. If the levy was at 45p, as was suggested before, that would not even raise £2 million, based on the set rateable values at the moment. We have raised that difficulty with members a number of times, and the financing of the new structure will be key to achieving a balance in where the money can come from in such a way that it is not counterproductive.

The whole thing gets undermined if we suddenly lose anglers. A previous question dealt with trying to get children and women into fishing. Most trusts are keen to push lots of little projects in that regard. People are finding it difficult. We can take

kids out fishing, and they love it. The schemes run very well. However, there does not seem to be a huge take-up afterwards. It seems that children nowadays get involved with a lot of sports, they do them, they tick the box and they move on. The issue is how to take the next step and to keep them in it.

We have been looking into trying to get women into fishing. One of the key things, which I think Andrew Thin brought up, is information. One of the key things that we get in feedback is that women want toilets and other facilities available at the fishing. That is not often highlighted when people discuss different types of fishing, extra resources and so on. It is a big thing. If we want to market fishing, there is a need for better information about it. That is key.

Dr Walker: SANA has a declared position against rod licences. I think that it is founded on a fairly flimsy amount of assessment of the membership, but that is the view that is portrayed all the time. I am firmly in favour of rod licences and I am a vice-chairman of a committee—but there you go.

We are trying hard to encourage women and children into the sport. As Ron Woods has said, we link together on that. In the Pitlochry area, we have given free membership to juniors for many years and it has had very little effect. There has been a big change in what youngsters want to do. In the past, we would go out and fish burns and so on, but as far as I can see, that has all gone. A lot of the burns have been denatured by what we have done to them and they need to be improved—money needs to be spent there.

11:30

There has been a big demographic change in the way in which anglers deal with fish. The review is supposed to be about the wild fisheries, but more trout anglers now fish for stocked rainbow trout than they do for wild fish. Obviously, such fish are sustainable, because they are sustained by fish farms. All they need is the water to put the fish into. The toilets can be provided, the information can go out so that the ladies can see that they will be okay, and the youngsters then have to pay to catch the fish. That is the sticking point. Youngsters have not got the money to spend on such fisheries, where it costs a lot to take the fish, even on a catch and release basis.

There are many different aspects to be taken into account, but we are singing from the same hymn book overall.

Hughie Campbell-Adamson: Just to answer your question, convener, about the attitude of foreigners, as you put it, or people coming to fish in Scotland from outwith—

The Convener: Well, people go to other countries to fish in the same way.

Hughie Campbell-Adamson: What I am saying is that those people who go abroad to fish all buy a licence. I am often asked where someone can buy a licence to fish in Scotland. Those people are used to fishing licences. That backs up what you said.

The other advantage of licences, and I do not have a view one way or the other, is that it gives a buy-in; people who buy a licence feel that they are part of the system, which is quite important. Instead of going somewhere, fishing and disappearing, having a licence is like being a member of club, and you tend to take much more interest in the running of the club.

Ron Woods: I am one of those guys who go abroad to fish. What attracts me to a certain place is the quality of the fishing. If I have to pay for a local licence, I accept that. If a fishing permit there costs me a bit more, it will certainly cost less than the journey to get there. People are buying the overall experience and they do not mind that.

I will quote an example from Mr Fergusson's constituency. We used to have an awful lot of tourist anglers to fish Loch Ken. There is no money to control the crayfish in Loch Ken and the fishery has declined, which means that the number of tourist anglers has declined. None of the tourist anglers, or the regulars, like me, who fish it, would quibble about paying a bit towards management if that money were going towards controlling the crayfish and making it a better fishery again.

Sarah Boyack: I have a question on the provision of information, for local people or for those who come from the rest of the United Kingdom or abroad. To what extent would well-maintained websites help? People could research in advance, or would be encouraged to go to certain areas. To what extent would the new system that has been suggested help with that and to what extent are local organisations already doing that? People do not just go abroad and then bowl along to somewhere; rather they tend to check it out in advance. Are we doing that properly? Can it be improved?

The Convener: I think that we can probably improve it.

Sarah Boyack: I was looking for the panel's views.

The Convener: The witnesses are nodding.

Dr Walker: Our local angling body in Pitlochry has its own website and permits are sold through the website. The site gives information to everyone about where fishing is available, where to go and what the rules are. We have gradually

got other members in the area to come on to our website; Loch Tummel and Loch Rannoch are moving in to join us in the same service. That is being done through the local protection order—I am moving into a different area of discussion—and is proving to be a major success.

I do not know whether that should be a model for other areas or whether they should all have their own sites that are slightly different, but it is certainly a big step forward in providing information.

The Convener: That is helpful.

Jim Hume: We have heard differing views on rod licensing, which is not surprising; some people consider licences a barrier and others are happy to pay "a bit", as Ron Woods said. What would you consider to be a reasonable fee for a licence so that cost is not a barrier to youngsters? Ron Woods is quite happy to pay per month, per year, per week or per day.

The Convener: We will not have an option for bidding for the lowest levy.

Jim Hume: It is a reasonable question, because nobody will blink at £1 a day, but they might blink at £100 a day, to use an extreme example.

The Convener: That is true, but you might compare it to going to a football match, playing a round of golf or whatever. I do not know whether it is a fair question—

Jim Hume: Probably not, but never mind; it is a question.

The Convener: Does anyone want to respond?

Ron Woods: It seems to me that it would be perfectly possible to structure the system so that young people got the licence either free or for only a nominal cost. I fish a bit in England and happily shell out around £25 a year for my rod licence there. I would not bat an eye about having to do the same in Scotland. I might bat an eye if the fee was a three-figure sum, but everybody will have their own attitude.

It would be possible to have a structured system so that, for instance, visiting anglers could buy a licence for a week for a comparatively small amount of money, and so that juniors, pensioners—I hesitate to mention pensioners because that might be seen as self-interest—or the disabled could access reduced fees. However, that is all in the detail rather than the principle.

The Convener: We turn to sustainable harvests, which is a key issue. Alex Fergusson will kick off.

Alex Fergusson: Before I do that, I just comment that, if we are going to use the licence to get rid of crayfish in Loch Ken, we are looking at a price of more than £25 a head. That is a mere aside. It is a huge problem.

The subject of sustainability is at the heart of the strategy. I have been trying to identify the evidence that suggests that rod-caught salmon are a threat to the sustainability of salmon stock, in particular, and that killing rod-caught salmon has a negative impact on the sustainability of the species. Twice last week, I asked Andrew Thin about that evidence. In essence, his answer was that it is a fact that, most years, rods kill more fishes than nets do. Given the spectacular decline in the number of nets in the past number of years, as they have been bought off, that is probably not a huge surprise. Do people recognise that rods kill more salmon than nets?

The Convener: I imagine that there will be a few answers to that question.

Hughie Campbell-Adamson: I have spoken to Andrew Thin on this. In the past five years, the number of fish that have been caught and killed by anglers has been less than the number that have been killed by nets. I should say immediately that that is not a comment against nets; it is a comment about the fact that nets can have a huge influence in certain areas. That is a different question. However, certainly, Mr Thin has accepted that it was erroneous to say that more fish are killed by anglers.

The Convener: Let us be quite clear about this. He said, "in most years". He was not talking about the past five years. He also said:

"A significant number of fish are killed on rivers by rods."—[*Official Report, Rural Affairs, Climate Change and Environment Committee*, 18 February 2015; c 14.]

Alex Fergusson: We are told that the strategy must depend on the best scientific evidence available; I have no argument with that whatsoever. What I am looking for—what I was looking for last week—is evidence that shows that angling has a detrimental impact on the sustainability of salmon stocks. Can anybody point me to that information?

James Mackay: Marine Scotland publishes figures every year, and we can look at your report, too. In 2012, we read that anglers killed 22,500 fish and netting killed just about half of that figure.

We used to talk about a mortality rate of 18 per cent for catch and release. The goalposts have changed, and we are hearing that that mortality rate is now 8 to 10 per cent. Anyone can do the sums. If 100,000 fish are caught and released by anglers, around 10,000 will die. We could say that, in 2012, it was actually 34,000 fish that died and not 22,000.

Furthermore, we could go on to angling in the latter part of the season. That does not happen on

rivers in the north, where angling stops on 30 September, but in some rivers in Scotland there is fishing into November. To me, anybody could know that if a heavily pregnant hen is pulled in over gravel beds in November, that will pre-induce spawn. The mortality of how many thousands of fish is being caused through angling in that case? Can Hughie tell me that, please?

The Convener: Since you have been addressed directly, Mr Campbell-Adamson, please go ahead.

Hughie Campbell-Adamson: There are various points. I do not know how you want to handle this, convener, but I have the figures here from Marine Scotland, and I can certainly read them out. I think that James Mackay mentioned 2002.

James Mackay: It was 2012.

Hughie Campbell-Adamson: You rightly said that, in that year, the nets killed 16,230 fish and the rods killed 22,000, which is greater. However, we have to be careful with statistics, because everything changes. In the following year, which was 2013, nets killed 24,370 and rods killed 13,532.

I do not want to get sidetracked on to who is killing more. All I want to say is that we are killing too many fish, which is something that we can talk about later. However, for now, I will respond to Alex Fergusson's question about whether there is any proof that angling makes a difference to stocks. This is perhaps what Nick Yonge was going to say but, if we take proportions, which is a dangerous thing and is very inexact, and we say that one in 10 fish going up a river are caught by an angler, of which 70 per cent are returned, that means that fewer than 3 per cent of the fish that go up a river are actually killed, which is a very small proportion. I still do not think that that is right. Personally, I would say that even 3 per cent is too high on some rivers. The point is that we are killing too many fish overall, whether that is by anglers or nets, and I do not want to differentiate between the two.

The Convener: Mike Russell can expand on that point, and then I will bring in Nick Yonge.

Michael Russell: This is important because, if catch and release is producing mortality, which I think is accepted, we need to know what the level of mortality is. If we are to understand the figures, it is vital that we know that. Mr Mackay has presented an argument that the figures indicate that the two methods are producing roughly the same results. I entirely agree that we have to reduce those results but, if both methods have to be reduced, we need to understand precisely what the numbers are. I think that Hughie Campbell-Adamson says that the mortality rate from catch and release is 3 per cent

Hughie Campbell-Adamson: The figures that I think I sent to the committee were from the mixed-stock salmon fisheries working group, which was a Government-funded body of which James Mackay and I were members. A paper was submitted to that group that said that the figure came out at about 3 per cent. I think that there is quite good evidence on that. However, I bow to Mr Yonge on the issue, as he can explain it better than I can. He is much cleverer on this.

Michael Russell: Mr Mackay said that the figure is 8 per cent. That is a big difference. Where do the figures come from?

James Mackay: Excuse me, but the original figure was 18 per cent—that was the known fact that everybody was kind of using. However, lately it has been changed by somebody to about 8 to 10 per cent.

Nick Yonge: I want to go back to first principles. We need to understand that the actual number of fish that are killed is not important, and that the important thing is that number in relation to the size of the stock. Salmon are not all one stock. On my river, the Tweed, we have at least six and maybe seven stocks of fish, which have different conservation statuses. The important thing is to apply the right level of management to each of those stocks. For example, we know that the early-running fish—the spring fish—are vulnerable and we now rightly have legislation to protect them, and we have our own voluntary measures, as do most other rivers. The absolute number of fish is relevant only when compared to the total amount of the run. That is variable between rivers and within rivers. Until we understand that, the actual number of fish that are killed is not relevant.

11:45

We have to start from the fact that angling is an incredibly inefficient way of catching fish. On my river, the Tweed, we think that the percentage of fish that are caught by angling is variable. The best information on that issue probably comes from the Welsh Dee. With the very early-running fish—the spring fish—which are rare and which we know should not be killed, anglers probably catch 40 per cent of them. However, with the very late-running fish on the Tweed, the catch is certainly less than 10 per cent and it might be as little as 5 per cent on average. In years when there is a really big run, such as in 2010, the catch is probably less than 1 per cent. The kill rate is very important if a large proportion of the fish are being killed, but if a small proportion are being killed, it does not really matter whether it is 5 or 10 per cent. We need to know the size of the run. We

should stop talking about absolute numbers of salmon, because not all stocks are the same.

Michael Russell: I am sorry, but there is a very strong purpose in talking about absolute numbers. Inevitably, the outcome at the end of this discussion will be pain for people, because the number of fish that they can catch will be reduced. That is an inevitability, and I do not think that anyone is in any doubt about that. We need to understand numbers and set two different things against each other. One is sporting activity and the other is a long-standing traditional method of catching fish, which is a commercial method. I am not taking sides, but it is absolutely important that we understand numbers, because there will be a reduction on both sides of the equation, and we need to set those two sides against each other. I am sorry, but I will not be deflected from talking about numbers. I am happy to think about sophistication in those numbers, but it is vital that we talk numbers.

Nick Yonge: I agree with Mr Russell entirely on that. I do not think that we should be deflected from numbers, and all that he says is absolutely right. All that I was saying was that we need to know the size of the total run for each stock of fish before we can determine what is a safe level to kill.

James Mackay: I return to the balance between net-killed and river-killed fish. We are very much reminded that nets were killing mixed-stock fishes in the ocean. In recent years, Marine Scotland did scientific work, the results of which were great, as they showed that what we were killing was spread over a massive area between the east and west coasts of Scotland, and there was only a small number of fish.

Killing on the rivers involves fish that are in the system and ready to spawn, unless we include mixed stock that come in and out of the river. We will say that they are in the river and are part of that river's component for spawning. The 16,000, 22,000 or 34,000 fish that are killed in our river systems have a greater impact than the 16,000 or whatever fish that are killed on the coasts, because the fish that are on the coasts are not part of the component of the rivers that we are talking about.

We have heard about the spring run. Conservation measures have gone through and we have adhered to those for 15 or 16 years, which is a different subject. Anglers are not allowed to kill fish until 1 April, so spring-run fish will go into the river system. In June or July, those spring-run fish will still be in the river system and they will be caught and possibly killed. I would suggest that, if we want conservation, we need 100 per cent catch and release on our river systems. A small window might have to be opened in the season, perhaps on a Saturday morning, for anglers and angling clubs that might need that, but I do not know how ministers or anybody else could work that out.

We feel that the damage has been done in the river systems more than in the sea. As Nick Yonge just said, there are six or seven different stocks in the Tweed system. That takes us back to the issue that mixed-stock fisheries are not only on the coast—the river systems have mixed stocks as well, and if the fish are being killed in the river system, those mixed stocks are also being killed.

Graeme Dey: Let us look at the matter in a slightly different way and assume that the salmon are a national asset. I looked at the figures that the committee was given in December, when we considered the secondary legislation on close times. It was acknowledged that, in 2013 on the South Esk, 7,159 fish were caught by the netsmen—I am not having a go at netting; I am just stating the figures—and 522 fish were caught by rod, of which 77 per cent were released. A quick calculation shows that, even if 18 per cent of the released fish died, we are still talking about 600 fish being killed by rod and 7,000-plus fish being killed by nets.

James Mackay: Just yesterday, I saw the count figures for one of the Esks and it was incredible to see the number of fish that went over the counter throughout the whole summer—from April, if I remember rightly. By all reports, the issue on the South Esk is a lack of participation in fishing, which is what produced those figures. If the effort is not there, you will not have the fish. It may be a catch-22 situation—I do not know. At the end of the day, a lot of the issues are to do with the catching powers.

The Convener: Let us see whether we can tie up this debate before we move on.

Hughie Campbell-Adamson: I will provide a quick update. Mr Dey mentioned the figures. Last year's figures show that about 5,200 fish were caught in the nets off the South Esk and, in the river itself, 500 fish were caught and 50 were killed. Even with a mortality rate of 10 per cent, only a very small number of fish were killed in the river. However, that is only part of it. The other part, which James Mackay rightly mentioned, involves the counter. The counter has given a five-year average of 14,000 until the past three years, when the figure has gone down to 9,000. That shows that there is a problem—you may come to that later, convener.

I am not attacking netsmen or netting; I am attacking all exploitation. I agree that, in a perfect world, we should have no killing of any fish.

James Mackay: It has been known, Hughie, that you want to see the end of netting. That is

common knowledge. You told somebody on the bank of the Esk that you want to see them go out of business in the next 15 years. Whether you like it or not, it could go to a court of law that you said that to a person. You want rid of netting and netsmen. You can go under any cover you want, but that is a fact.

The Convener: Okay. I recognise that we have a huge conflict here, which can ultimately be decided only by a wild fisheries review that is turned into law—one that looks at sustainability and the figures as the basis of any calculations about who kills what.

Alex Fergusson started this particular debate.

Alex Fergusson: I think that I should apologise for that after the past half an hour. My original question was about the lack of scientific evidence, and the debate has thrown up the desperate need for more scientific research into the whole issue.

Let me move the debate on. The proposal in the review is that the sustainability issue should be addressed by the introduction of a licence to kill fish—specifically, wild salmon. I pick up greatly diverging opinions on this, not least because of the practicalities of applying for the quota before the season has even begun. Mr Yonge referred to the difficulty of doing that when you do not even know what kind of run you will have.

Would the panellists like to comment on the proposal to introduce a licence to kill? Will it be effective in doing what it sets out to do? What about the practicalities? How is the quota set and how is it allocated along a certain river? I would be interested to hear your comments on that.

The Convener: Perhaps I can bring in some people who have not spoken recently.

Craig MacIntyre: In Argyll, we have very few salmon; our great asset is sea trout. A quota system is a good thing and by and large the catch-and-release rate is very high in Argyll. Our largest catchment, the Awe, which Sir Jamie has a beat on, is 98 per cent catch and release, because we have so few salmon. We have been advocating a catch-and-release policy.

We have a few rivers that refuse to engage in catch and release, which is a source of great frustration. The quota system would be a way to demonstrate to the proprietors of those rivers that scientific evidence shows that those fish need to be put back.

On how it would work, each proprietor would need to apply for a quota for their beat.

Alex Fergusson: That is the proposal.

Craig MacIntyre: Yes. To ask a central unit or the local FMOs to do it would take up an awful lot of time. If we were asked to distribute quotas, it would take a lot of our time. It might create an additional source of income if we were to auction off the quotas, but it might prove very difficult.

Nick Yonge: The problem with the system is how the level of quota would be determined. We have not got a mechanism for doing that, because we do not know what the run would be. The run on the Tweed can vary by as much as three times: we have had a run of about 7,500 rod-caught fish this year, whereas we have been up at well over 20,000 in the past. We would need to know that amount before the year began in order to calculate the quota. That is the problem with the system.

There is also the practical problem of distributing the tags between the fisheries and then between the fishermen, on the fisheries, because different people fish at different times of the year and on different days. It could be a logistical nightmare and a very expensive one.

I return to my previous point—you need to know what level of attrition you are prepared to accept on a stock, so you need to know the size of the run. I agree with Mr Russell again that you need to know the size of the stock so that you can determine what level of kill is acceptable. I do not think that we have the basis to do that.

The Convener: I think that that answers Alex Fergusson's questions on the difficulties but shows willingness to explore how it might be possible.

Alex Fergusson: I would like to explore that as we go forward.

The Convener: We move on to Graeme Dey.

Graeme Dey: I would like to correct a point that I made earlier. I said that around 600 fish were killed in the South Esk, but the figure would have been fewer than 190. It has been some time since I passed my arithmetic higher.

What are the panel's views on the proposal to create an offence of reckless or irresponsible management of fishing rights? What is your thinking on the sort of conduct that would appropriately be deemed to be an offence and on how the provision would be enforced? Perhaps we can expand that and consider a question that I posed to Andrew Thin last week. Should we apply a fit-and-proper-person test in granting licences?

12:00

Crispian Cook: I have thought about the prospect that one would have of bringing an action to a successful conclusion in court and I have worked back from there. My concern for those who support the idea is that such an action would be extremely difficult.

I have looked at the issue in other walks of life, such as certificates of bad husbandry in agriculture. Such measures are terribly easy to talk about but difficult to do, because of the burden of proof and the quality and level of information, among other things. A situation might be obvious but, equally, it could be much more complicated to come to a conclusion on.

I have doubts about the proposal not because I do not have basic sympathy with the ambitions of any angler, fisherman or legislator that a fishery should be run well but because the process of bringing an action to a successful conclusion would be fraught with complication. I am not sure that it would necessarily be easy for, for example, a bailiff to understand the full detail.

James Mackay: I would say that having a heritable title and the rights to catch and kill fish would be the qualifications for being granted a licence. I very much doubt that it would go down to individual angling clubs to apply for a licence; the owners or proprietors of rivers would need to apply, and they would then designate the angling groups and so on that had the right to fish there. That would be the only fair way to proceed. You could not approach Police Scotland and ask who is a good guy and who is a bad guy. I would say that, if someone had a heritable title, there would be a duty to grant them a licence.

Graeme Dey: Perhaps I should be clearer about the fit-and-proper-person test. It is the riparian owners who would have to get a licence, and I think that licences would be renewed annually. If an individual was deemed to be behaving irresponsibly on a river, should a fit-and-proper-person test be applied in relation to renewing their licence?

Hughie Campbell-Adamson: I have not given that a great deal of thought. The idea of licensing has been discussed before, in relation to estates.

The proposal is logical to a degree, but it is practically pretty difficult, as Crispian Cook pointed out. If a crime was committed by someone fishing on a river, I think that the proprietor would be caught under the vicarious liability obligation.

Before coming to a strong opinion, we would have to look at scenarios of what is being done badly in order to justify the proposal. I am not quite sure where we go with that.

The principle that Graeme Dey describes is absolutely right. If someone has a public resource—he was right to talk about salmon as a national resource; I am being parochial in mentioning salmon only—there is no doubt that they have a responsibility.

I will quickly go back to licensing. Licensing is a hugely good idea that the Salmon and Trout Association Scotland would certainly support.

Sarah Boyack: I will take us on to what we know about mixed-stock fisheries. The review recommended that

"any licence application should take full account of current knowledge regarding the conservation status of fish populations in all destination rivers ... and where appropriate a precautionary approach should be adopted. The review recommended that where such an approach would result in catches being significantly below current levels, reductions should be phased in, to allow those affected to adjust."

I am interested in the lack of scientific knowledge and in how we would address it. Has the review come up with suggestions on how we might fill the gaps in our knowledge? Is it right to take a precautionary approach in the meantime? I am particularly thinking about enabling us in Scotland to comply with our international obligations.

Dr Walker: SANA's strong view is that we should take a precautionary approach to salmon and sea trout throughout the country and not just in places that are close to areas that have particular conservation status, because conservation should cover everything.

We are well aware of the international connection in that, for example, Greenland and the Faroes are easily aware of what we are doing day to day in deciding which fisheries should go ahead and which should not. We have to be aware of that in taking account of sustainability and everything else; that is part of the discussion about whether something is allowable.

If we wind down somebody's fishery for conservation reasons, that should not necessarily be done suddenly. It is a good idea to bring down netting slowly, for example, because it might want to come up again if stocks start to recover. We are basically in favour of most of that.

The Convener: Are there any other comments on the issue?

James Mackay: I could go on all day.

The Convener: In that case, we will have a short contribution from James Mackay, and then we will hear from Hughie Campbell-Adamson.

James Mackay: I totally feel that scientific evidence is needed. The term "precautionary approach" is easily used, but that approach could greatly affect people's living, including mine, through the closing down, slowing or easing down of what we can catch. We need to catch X number of fish a year to survive. We employ locals and we export out of the country. Of all the salmon caught by nets by the major fisheries in Scotland—there are not many of us—95 per cent goes out of the

United Kingdom. I export small amounts weekly to France, Canada and all over. Our customers would be let down if we could not do that.

There would need to be burden sharing. Hughie Campbell-Adamson and I were part of the mixed-stock fisheries review, and recommendation 21 of that was that, if there was a problem with stock, there would have to be equal burden sharing. If the quantity of stock was unknown, catch and release would have to go out the door and angling would have to take part in the equal burden sharing. We are going over old ground, because everything is tied up together, of course. We need proper scientific evidence.

Hughie Campbell-Adamson: I agree with James Mackay that everyone has to accept the burden of conserving our valuable stock. I absolutely agree that we all have to stop killing so many fish. As far as I can see, the North Atlantic Salmon Conservation Organization question is absolutely right. I have been lucky enough to attend NASCO meetings for the past five or six years, and it is clear that Scotland is now behind the curve with its lack of a policy on mixed-stock fisheries.

Our problem is that Scotland cannot satisfy what NASCO clearly asks for in its guidelines, which is that no fishery should exploit a river when it cannot be proved that it has surplus stock. Unfortunately, as Nick Yonge pointed out, it is impossible to know what surpluses we have in Scotland, because we have too many classes of fish going up each river. We clearly have a lack of spring fish, but how do we know whether we have surpluses? The job is hugely difficult and Marine Scotland Science has fought for years to find a way to do it. I personally do not think that we will find a way that suits, even with genetics.

We will never really be able to satisfy NASCO's wish that mixed-stock fisheries do not take stock from a river that cannot sustain that. I will go further and say that a lot of rivers in Scotland probably cannot sustain that, and I heard that that is what the proposed licence to kill will come up with. Where there will be a problem with the licence to kill is defining for a mixed-stock fishery what river stock is coming from in order to put a quota on the river.

The whole thing is open to problems, so we should just go back to basics. I hope that we are all here for one reason: to protect our salmon runs, which have collapsed in the past 30 years. "Collapsed" is a very strong word, but the figures have gone from 30-odd per cent of smolts coming back in the 1960s and 70s down to less than 3 per cent doing so now.

We have a major problem. We should not worry too much about taking sides in all this, but we should realise what a big problem it is. We are killing too many fish—everyone is killing too many fish.

James Mackay: I disagree. Since 2010, we have been at about our yearly average. In 2010, we probably broke the record for Armadale; it has a 200-year history, but my figures do not go back as far as that. I have figures going back to the 1930s that I can produce for anyone who wants them.

There is an issue with spring stock, but there is certainly no issue with summer stock. I think that the problem is global climate change, droughts in rivers and so on. If there is plenty of water in the rivers, there will be plenty of fish for the end of someone's rod. The issue is not about what is happening with netting.

I will stick my head above the parapet and say that another issue is predation. No one seems to be going near that delicate subject, but we would not be here if we did not have that problem.

The Convener: We have heard various views, so let us leave the matter there for the moment.

The next set of questions, which is about scientific advice on wild fisheries, very much follows on from that.

Angus MacDonald: The debate has been fascinating, and it is clear from the previous discussion on sustainable harvesting that we need to reduce the gaps in the knowledge base. We know that the wild fisheries review considered the scientific evidence base to support wild fisheries management and that it recommended a number of areas where research is needed in the short to medium term. As you have all read the review, I will not detail all the areas suggested, but I will mention

"Salmon-related data for reporting to NASCO and the EU ... Habitat productivity, resilience and enhancement potential for all species ... Impacts on sea trout and salmon revival in the Scottish marine environment"

and

"Potential threats to wild fisheries populations."

The review also recommended that the national unit should develop fisheries management standards.

When we took evidence last week from the review panel, it identified the opportunity afforded by creating FMOs to rationalise the number of DSFBs and fisheries trusts and the opportunity to make more resources available for research. What are your views on the need for research to support wild fisheries management, and do you agree with the research priorities that have been identified in the review?

The Convener: So—research priorities.

Ron Woods: Just before we leave the issue of sustainable harvesting completely, convener—

The Convener: How could we possibly?

Ron Woods: I draw members' attention to the fact that, as far as I could hear, nothing was mentioned that did not concern salmon. I make no comment about brown trout or other salmonids, but our clear position on coarse fish is 100 per cent catch and release with no form of harvesting whatever. That has a bearing on the subject that we have moved on to, because we have come to that position as a result of a total absence of data about what would be sustainable.

As a matter of principle, we believe in catch and release but, even if we did not have such a belief, we think that, in the light of the precautionary principle that has been mentioned, it would be irresponsible to allow continued exploitation of the resource without good, sound data to show what exploitation is sustainable. At the moment, that data does not exist.

For that reason, the priority list that is set out in recommendation 37 of the review's report should include the need for research on the dynamics of coarse fish populations, especially pike, which probably has the most fragile population. On the other hand, I think that the

"Basic mapping of Scotland's wider all species ... resource"

might not be quite such a priority. The freshwater fisheries laboratory people did work on that about 10 or 12 years ago, and I might be wrong, but I do not think that the data that was collected then would be substantially different from the data that would be collected if the exercise was repeated today.

12:15

Nick Yonge: Undoubtedly, it is absolutely paramount to have the basic amount of information that is required to run a fishery. We in the Tweed have invested heavily in that over the past few years, and I think that all other rivers should do the same. Of course, the problem is that they are not able to.

One factor that influences that is that different types of information are required for different rivers and different areas. As a result, although a national strategy is needed, what is implemented locally will have to be decided locally, location by location. After all, there will be different effects on different stocks of fish in different areas.

Some of the issues that are included in the recommendation on research perhaps do not need to be included, but they should certainly include what I just suggested, and they should probably include other things for other areas and not include some things in some areas.

The Convener: What, for example, should not be included?

Nick Yonge: The recommendation refers to quantifying

"The effectiveness of catch and release".

That has been done, and we know about and can provide evidence on its effectiveness. That work does not need to be done on our river. It might need to be done on other rivers, or scientists might say that extrapolations can be made.

The Convener: I understand.

Angus MacDonald: To follow on from Nick Yonge's point about differences in different regions and localities, what scope will FMOs have to carry out research compared with what the existing boards and fisheries trusts do at the moment?

The Convener: Should FMOs as proposed be able to conduct research?

Jamie Ribbens: I hope so. If FMOs are to work, it is essential that they can carry out the research. Most fisheries trusts and boards already undertake local focused research, and being part of a wider overarching organisation would be an advantage when looking at issues such as sea survival. We would expect a common survival rate across the larger parts of Scotland, but the fact that we have 65 per cent acidification is a huge issue and the main limiting factor in our rivers. We keep pushing to ensure that FMOs will have what might be called a double ability and can look at and focus on such localised issues.

To go back to your initial question about the priorities set out in the report, I think that marine survival is a key issue. We need more understanding of whether the situation is getting worse or is starting to balance out, because it undermines a huge amount of work. Habitat potential, which I think that you highlighted, is also key. In looking at what the overall benefits of funding might be, we need to understand what habitat restoration should be put in place and where the main benefits would be likely to arise.

That is what the research needs to examine. In fact, we had a similar situation with the Scottish Environment Protection Agency's assessment of funding for barriers; instead of simply relying on different trusts to come up with barriers, it ranked the areas that would benefit most from such measures. These are the key things that need to come under that heading.

Another key issue is the

"Potential threats to wild fisheries populations."

We need to look at land use changes and other things that are likely to come through, such as the increased use of hydro and the potential increase in afforestation. The aim is to look at the potential of things that might go forward. Most of the issues can be addressed easily if we already understand them, but costs become high if we try to address them afterwards. Covering those key areas will give us the best bang for our buck.

Jamie McGrigor: I agree that far more research and development must be done on the subject of marine survival. Let us consider other species of fish—for example, mackerel. The vast number of mackerel that are now being caught in Icelandic waters, which were not there before, are all chasing the same food as the salmon.

There needs to be more research. For example, why have a great many rivers on the west coast lost their grilse runs, which make up the bulk of what people refer to as the salmon runs? It is all very well to say that we can do the work sitting on the bank, but what is happening at sea needs to be considered far more so that we get a true picture.

The Convener: We have to get that picture, I think—absolutely.

Craig MacIntyre: Fisheries trusts and boards currently undertake the work on habitat productivity and potential, and it is key that they carry on with that. In Argyll, we have surveyed more than 100 different catchments. It can be very difficult to collect all the data properly. It is all very well to identify what the areas are, but fisheries trusts and boards could do with help to access funds so as to make improvements and realise the potential. That help is currently lacking. A national unit would, I hope, be able to assist FMOs in making changes and reaching our potential.

The Convener: Thank you for that. We will move on to regulation, compliance and so on, which may help that to happen.

Graeme Dey: Do the witnesses feel that there is a need to extend the annual close time for salmon fisheries in the spring beyond those that were recently legislated for?

Jamie Ribbens: Definitely. The current legislation, which runs until 1 April, is very limited. In Galloway, where I work, where the spring fisheries are, most rivers have closed until at least 1 June. Sorry—the rivers have not closed; there is a policy of 100 per cent catch and release until 1 June. That is in recognition of the fact that, particularly in dry years, the spring fish are likely to be caught in the lower river. There does not seem to be any great opposition to that policy, and there never has been. I am disappointed about the lost opportunity: the present legislation could have been pulled forward to 1 June.

James Mackay: The netting industry could not sustain a start any later than 1 April. If there were to be restraints, they would have to be on the angling side. I am repeating myself, but the fish that go into the river systems—the spring fish that are being caught and released up to April—are still being harvested right through the summer. That is the spring stock.

As far as netting is concerned, we would certainly oppose the restrictions going any further than they do. Our season is very short in comparison with the angling season.

We considered the issues, and we hope to move to a system like that of days at sea. If the provisions could be altered, with a quota or licence system, we could probably still catch the same amount of fish but we would shift the season on. If someone caught their quota or licensed number of fish by the end of July, they would be finished for the season. If they did not catch their quota or licensed number of fish—whatever we wanted to call it—they would fish on until they caught it or until there was a harvestable surplus of fish.

That is for the future. I imagine that it will be possible to consider that proposal only once the next provisions come in.

Hughie Campbell-Adamson: You are probably aware that the Public Petitions Committee is considering a petition that the STAS submitted, which has gathered 8,000 signatures, calling for the measures to apply until 1 July.

The Convener: We will see how that petition progresses. Before I bring in Sarah Boyack, I want to ask about numbered carcass tagging, which is one of the proposals. The committee has visited salmon netsmen who have their own system of tags, but it is not a numbered carcass tagging system.

James Mackay: I have some tags here if anybody wants to see them. Some of you will have seen them umpteen times, I am sure.

The Convener: Those are the ones that you have used, but I would like the panel's views on the idea of having a numbered system, whether that is for a kill on a river or for net catching. Is that the way forward?

Nick Yonge: I speak with a little experience on the subject, because we did a trial on it on the Tweed several years ago. The only system that will work is a numbered system that is linked back to a record book containing the numbers of all the fish that are caught. Anything else simply will not work. That is what is used in the rest of Britain. It has to be a numbered system.

There is another reason for doing that, besides compliance with quotas. My history is in another part of the food sector, and I know that consumers

want assurances about what they are buying and where it comes from. I would have thought that it would be massively in the interests of the consumer, as well as the supplier, to be able to show that a fish came from a particular place on a particular day. That is a huge marketing opportunity, and I would have thought that it would be a win for everybody.

The Convener: That is a fair point.

Sarah Boyack: The review said that it is important to have protection orders but that the system needs an overhaul, and it has put together a package of reforms. Should we keep the protection order system? Do you support the recommendations and modifications that are recommended by the review? Additionally, do you agree that protection orders are necessary to protect fish populations, or might there be instances of their being used to prevent access to fishing?

The Convener: It is unfortunate that the gentleman from the Tay District Salmon Fisheries Board is not here, because there have historically been issues in that area. What about protection orders in other areas? Andy Walker is from the Tay area.

Dr Walker: Yes, I am from the Tay system, although the Tummel and Garry protection order is separate from the main Tay one, so we have not been under any threat of people saying that it has not been run properly.

The protection orders drift over time. New proprietors come in and they have to be made aware of the rules of the protection order if they do not know them already. Quite often, complacency creeps in. The orders need to be reviewed every year and there needs to be a decent review from the centre—from Government or the FMOs—to ensure that the orders are working. However, at the moment, there seems to be silence. We are not even being asked for our liaison committee reports just now, because of the wild fisheries review.

Underlying all that, my feeling and that of many others—probably the majority in SANA—is that the protection order system is too piecemeal. In all the years for which it has been in operation, we have covered only about half the country. We surely need something more national. If we have to stick with protection orders, they can be made to work but they will need a lot of attention.

The Convener: That is a good summary. I think that we all agree about that.

Craig MacIntyre: One of the big advantages of the protection order is that it criminalises illegal fishing. In Argyll, we have Loch Awe, which has a protection order that works well and that enables wardens to police it. However, Loch Eck, which is a site of special scientific interest, has no protection order and no protection, so it is overfished and the fish stocks are declining. The local anglers feel frustration at the fact that nothing can be done about that. If somebody is caught fishing illegally, they do not need to give their name. The protection that a protection order gives would be very welcome, if the system were simplified.

12:30

Jamie McGrigor: As I said earlier, I have been the chairman of the Loch Awe improvement association, which runs the protection order there, since 1992. I find it difficult to get anybody else to do it, which leads me to the point that these things rely to an enormous extent on voluntary management and volunteers. Whatever is done, that should be borne in mind because, if some things have to be paid for, who is going to pay for them?

The protection orders also deal only with non-migratory species. They deal with brown trout and coarse fish, but they do not deal with salmon and sea trout. That can lead to difficulties in management, especially when we are talking about environmental enhancement and that sort of thing. What is good for salmon and sea trout can also be extremely good for brown trout.

The protection orders are not perfect, but they are not a bad thing. Most people would agree that the whole environment of Loch Awe has improved dramatically since 1992 in many respects. However, there are lots of holes and anomalies in protection orders, which I will not go into now. They could easily be improved.

The Convener: That is very helpful indeed.

Ron Woods: We are absolutely on board with the underlying principle on which protection orders were founded. There is a bargain in that, in return for granting responsible access for angling in a sustainable fashion, proprietors and riparian owners should be able to expect the full protection of the criminal law.

Having said that, I totally agree with Andy Walker on the issue. We have had the legislation for 40 years or something of that order, but it does not cover the whole country and the practices vary enormously within protection order areas and between them. I am not saying this just because I am sitting next to Jamie McGrigor, but Loch Awe is in many senses an ideal example of how a protection order should work, as there is good liaison and wardening. However, that is not the norm by a long way. With some waters in protection order areas, riparian owners actively encourage the killing of coarse fish whereas, in

other areas, there are method restrictions. I will not go off tangentially to explain that in detail; suffice it to say that coarse fishing involves certain practices and methods that are not necessarily the same as those that are used by game anglers. The method restrictions actually reduce access for coarse anglers in a practical sense.

There is a philosophical point about whether, given the amount of change that is required to make the protection order system work, any new system could still be called a protection order system. In our view, we need a universal system that applies across the country and that is based on the fundamental principles of responsible access, the protection of the criminal law and the sustainable use of the resource. Personally, and from the SFCA perspective, I do think that we should call that a protection order system. A much larger and more fundamental change is required to Scottish angling legislation.

The Convener: The point of our taking evidence is to be able to produce a report that allows us to comment on those things, and that is valuable evidence.

Michael Russell: In evidence last week, concern was expressed about the review's recommendations on bailiffs. The police evidence was that bailiffs are not using the powers that they have and that, therefore, those powers are not required. There are two concerns. One has been raised by people who, like me and, I think, Mr Thompson, are concerned about some of the ways in which bailiffs exercise their rights; others believe that the bailiffs' role needs to be strengthened. Last week, I pointed to the experience in the Loch Lomond and the Trossachs national park, which has found a useful adjunct to some of the byelaws that allows rangers to be sworn in as special constables and have a legal function.

My concern about the system of bailiffs that we have at the moment is that, very often, bailiffs operate under regulation and law but not with the same rigour in observation of the law that you would get from a special constable. I am looking for ideas—there may be some around the table—for a better way of managing the system, so that it could fit within the existing legal structures and be understood in that way. There are other examples in the environment where there is at least a shade of grey in how regulations are enforced, imposed or monitored by those who do not have full statutory authority.

James Mackay: I feel that bailiffs should be trained by a central body. That might be in the proposals somewhere along the line. They should all be singing from the hymn sheet, if I might use that phrase. They should all be equally trained, like the police, and have the same legal powers within the system. There should also be accountability with that. If they breach the code of practice, there should be somebody to take them to task and sort it out—for instance, through a fair tribunal. If the police breach their code of practice, they are taken to task by somebody, maybe outside the Police Authority. Something similar should be in place, so that everybody knows where they are with bailiffs. There could be a written code of practice to ensure that everybody would know their legal rights. Every bailiff is pretty much on a par, but they have different training and come at things from different directions.

Hughie Campbell-Adamson: I presume that everyone knows that, to be a recognised bailiff, you have to pass the Institute of Fisheries Management exam. There is at least some central training.

The role of bailiffs has changed quite a lot in the past 10 or 15 years—at least, on the policing side. As long as a bailiff has a good relationship with the local police and the wildlife officer, that side has become less important. A bailiff now does much more of the scientific work as a servant of the board. I understand the misgivings that people have about bailiffs being a private army, as some people think they are, but that is an unfair criticism. Most bailiffs whom I know—I have to put my hand up and say that I am a qualified bailiff—are pretty responsible, although there may be one or two wrong ones and I accept that there may be a need for more central control.

The Convener: I am not trying to prolong the discussion, but can we focus on the sense of the question?

Jamie Ribbens: This is more a comment. People talk about armies of bailiffs, but particularly in the west there are mostly voluntary bailiffs. As Hughie Campbell-Adamson said, there is a training programme that the Association of District Salmon Fisheries Boards oversees, so the bailiffs receive a level of training. At the moment, the bailiffing resource costs next to nothing. I am unaware of any bailiff who earns more than about £500 a year, and only a few in the south-west of Scotland get that to cover the cost of wellies, mileage and stuff like that. At the moment, the bailiffing resource in many areas is run very cheaply. Some of the recommendations, such as the rod licence and quotas, may change the requirements for the number of bailiffs in different places. I wonder whether voluntary bailiffs will easily be able to keep up that level of work if they are expected to do it on top of everything else.

Dave Thompson: As I identified last week, one of the key issues is accountability. Police Scotland stated that bailiffs rarely use the powers that they have now, but I know from personal experience and knowledge that, in the past, those powers

have been overused in quite a draconian fashion at times. I accept that things have moved on, but if those powers are no longer needed and if a lot of the bailiffs are dealing with environmental issues and all the rest of it, it strikes me that we need to look fundamentally at the accountability, qualification and powers of bailiffs if we are to retain a bailiff system.

Last week, the committee agreed that it is somewhat bizarre that there is a separate police force for fishing. However, if we are going to retain a bailiff system, we need to consider all the issues. I would appreciate hearing the views of everyone around the table on that.

The Convener: It will have to be very few views, otherwise we will be here all day. Nevertheless, I take your point that we need some views on how it should be managed, which was the original question.

Jamie McGrigor: I will be brief. Protection order systems have wardens rather than bailiffs, although the wardens can become bailiffs if they have to work on migratory species. The committee should consider the difference between wardens and bailiffs.

Crispian Cook: On the issue that bailiffs may not use their powers to the full extent, in certain remote areas of Scotland bailiffs may find themselves in a position whereby an offence has been committed and they have a power of arrest but they could be on the wrong side of the law if they tried to present the alleged criminal to the police because they would have to put the offender in their own car and drive for an hour to reach the nearest police station.

The Convener: That is a helpful point for Mr Thompson.

That discussion has given us a lot of food for thought, such as the past experience of overpowerful bailiffs, with the qualification that in remote areas it is more difficult to handle such situations. We should be able to take all that on board along with the written and oral evidence that we have received in drawing up our report and framing further questions.

I thank everyone for their contribution to today's meeting, which has been conducted in a consensual fashion. That has not been easy, given that there are obvious spikes between some views and others. Nevertheless, you have all risen to the occasion and I thank you for that.

At our next meeting, on 4 March, the committee will consider subordinate legislation and take further evidence on the wild fisheries review from the Minister for Environment, Climate Change and Land Reform. We will also consider stage 2 amendments to the Community Empowerment (Scotland) Bill.

Meeting closed at 12:42.

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