OFFICIAL REPORT
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Rural Affairs and Islands Committee

Wednesday 14 May 2025

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

Wednesday 14 May 2025

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RURAL AFFAIRS AND ISLANDS COMMITTEE

16th Meeting 2025, Session 6

CONVENER

*Finlay Carson (Galloway and West Dumfries) (Con)

DEPUTY CONVENER

*Beatrice Wishart (Shetland Islands) (LD)

COMMITTEE MEMBERS

*Tim Eagle (Highlands and Islands) (Con)
*Rhoda Grant (Highlands and Islands) (Lab)
*Emma Harper (South Scotland) (SNP)
*Emma Roddick (Highlands and Islands) (SNP)
*Mark Ruskell (Mid Scotland and Fife) (Green)
*Evelyn Tweed (Stirling) (SNP)
*Elena Whitham (Carrick, Cumnock and Doon Valley) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Dr Iain Berrill (Salmon Scotland)
Sean Black (Royal Society for the Prevention of Cruelty to Animals)
Rea Cris (Open Seas)
Calum Duncan (Marine Conservation Society)
Dr Nick Hesford (Game and Wildlife Conservation Trust)
Elspeth Macdonald (Scottish Fishermen's Federation)
Dan Paris (Scottish Environment LINK)
Nikki Sinclair (Action to Protect Rural Scotland)
Mike Spain (Crown Estate Scotland)
Professor Paul Tett (Scottish Association for Marine Science)
Mercedes Villalba (North East Scotland) (Lab)
Ailis Watt (RSPB Scotland)
Bruce Wilson (Scottish Wildlife Trust)

CLERK TO THE COMMITTEE

Emma Johnston

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Rural Affairs and Islands Committee

Wednesday 14 May 2025

[The Convener opened the meeting at 09:11]

Natural Environment (Scotland) Bill: Stage 1

The Convener (Finlay Carson): Good morning, and welcome to the 16th meeting in 2025 of the Rural Affairs and Islands Committee. Before we begin, please ensure that all electronic devices are switched to silent.

I welcome back to the committee Mercedes Villalba, who will join us for agenda item 1.

The first item is consideration of the Natural Environment (Scotland) Bill at stage 1. At today's meeting, we will take evidence from a panel of representatives from environmental non-governmental organisations. I welcome to the meeting Rea Cris from Open Seas, Calum Duncan from the Marine Conservation Society, Dr Nick Hesford from the Game and Wildlife Conservation Trust, Dan Paris from Scottish Environmental LINK, Nikki Sinclair from Action to Protect Rural Scotland, Ailis Watt from RSPB Scotland, and Bruce Wilson from the Scottish Wildlife Trust.

We have allocated about two hours for the discussion. That seems like a long time, but we have an awful lot of questions and a lot of witnesses, so I ask everyone to be succinct in their questions and answers. There will be some questions that just warrant a yes or a no response. Please indicate to the clerk or to me if you wish to participate, but there is no expectation that everybody will participate in every question; if they did, two hours would not be adequate. Likewise, if you feel that part of the discussion does not relate to your area of expertise, do not feel that you need to answer.

You will not need to operate your microphones; we have a gentleman here who will do that for you.

We will kick off with a nice, easy question. Do you support the introduction of statutory biodiversity targets? If so, what impact do you expect those legal targets to have in practice, compared with the current approach? Are you satisfied that those targets should be set in secondary legislation?

Dan Paris (Scottish Environment LINK): Thank you for inviting us to the committee to discuss the proposed legislation. Scottish Environment LINK is strongly supportive of the introduction of statutory nature targets. We have been pushing for that as a network for a number of years, and we are delighted to see this bill introduced and to have the opportunity to discuss it today.

It is not targets themselves that will drive change, but the actions that follow and that are already under way. Targets can play a vital role in the restoration of nature and an important part in creating long-term policy certainty and a shared level of ambition across Government and wider society, including not only environmental non-governmental organisations but private landowners and other actors. They can also drive Government action across portfolios and public bodies. Importantly, they can create a cycle of monitoring, reporting and accountability, which will be important as time moves on and we get closer to the meeting of those targets. We want to ensure that Parliament is able to hold Government accountable on progress against the targets.

09:15

We can probably discuss the detail of the targets, but we are comfortable with their being set under secondary legislation. In advance of the bill's publication, we produced a report that recommended a similar structure to what is in the bill, with a compulsory target set in the bill and the metrics and detail set under secondary legislation. That is important, because biodiversity is inherently more complex than climate. With climate, it is easy to create one single metric and have a single target. With biodiversity, it is never going to be as easy to simplify and put something in primary legislation that would stand the test of time, progress and changes to scientific understanding. We are broadly happy with that structure, although I am sure that, later in the discussion, we will come to the detail of what those targets might include.

The Convener: Open Seas has been publicly critical of past attempts by the Government to stick to legal targets. What is your position on these natural environment targets?

Rea Cris (Open Seas): Good morning, committee. Convener, you have stolen my thunder a bit, but you are absolutely right. We agree with Dan Paris that targets are only as good as the actions that follow them.

If the Government had been meeting its marine environment policy commitments and legal obligations, we would not necessarily need targets. The Scottish Government claims that it has a world-leading record on marine protection and that 37 per cent of marine areas have been

designated. Those areas were designated 10 years ago, but they still have no fisheries management. Our concern is that less than 5 per cent of Scotland's coastal seas are protected. We are supportive of the targets, but, having seen the record on the marine environment, where the Scottish Government considers its job done when it really is not—we are rolling on to an 11-year delay—we really want to use the opportunity that the bill presents. As we were saying, targets need to have actions behind them, but we also want to know what the accountability will be if the targets are missed. As we can see from the marine environment, a delay of 10 years is way too long.

The Convener: In practice, how will there be a difference in the policy approach to legally binding targets?

Rea Cris: One of the good things about targets is that they galvanise people, and having legally binding targets—for biodiversity, climate change or marine—ensures that those areas will not be politically deprioritised. We can hold the Government to account on those targets. However, as I said, I would welcome further scrutiny and exploration, either by the Parliament or through the bill, into how that accountability will be rolled out if the targets are missed.

Ailis Watt (RSPB Scotland): RSPB Scotland takes the same position as Scottish Environment LINK. We are wholly supportive of the introduction of statutory targets. It is important to recognise that, in Scotland, one in nine species is at risk of extinction and that we are among the most nature-depleted countries on the planet. There have been some successes with conservation, but, on the whole, the voluntary approach to reversing biodiversity loss has not been working. You could take the position that the Scottish Government has missed some of its targets and commitments in the past, but that is why it is critical that we have statutory targets that can drive progress towards the ambition of the Scottish biodiversity strategy to halt and reverse nature loss by 2030. We will probably come on to the detail and governance later, but the bill is quite good at building in accountability and oversight, and Environmental Standards Scotland has a role in helping to ensure that targets deliver and that actions underpin them.

Dr Nick Hesford (Game and Wildlife Conservation Trust): I broadly agree with the RSPB and Scottish Environment LINK. GWCT supports the principle of statutory targets and a stronger framework for nature recovery, but we believe that their success will depend strongly on how they are implemented. Statutory targets need to be adaptive and evidence-based, because, as Dan Paris mentioned, unlike things such as carbon emissions, biodiversity is very complex and difficult to quantify. Poorly designed or inflexible targets risk failure or unintended consequences. GWCT believes that statutory targets should be supported by robust monitoring frameworks and adaptive management cycles. They cannot be overly rigid or overly simplified.

Bruce Wilson (Scottish Wildlife Trust): I am aware of the time, so I will be quick. The evidence summary in the first draft of the biodiversity strategy nicely identified that, so far, the big failure in biodiversity in Scotland has been a failure to mainstream it. Very simply, the Scottish Wildlife Trust wants to see that mainstreaming being driven, and we think that targets can help with that.

Calum Duncan (Marine Conservation Society): We would like clarity that the bill applies to Scotland's marine area, notwithstanding many of the concerns that Rea Cris has raised, which we share. About 200 of Scotland's 233 marine protected areas, which is most of Scotland's continental shelf, still have no fisheries protection measures in place. Something like 15 or 16 of the inshore sites implemented measures in 2016, and there is some de facto protection from the deep sea access regime beyond the continental shelf limit, which is deeper than 800m, but there is practically nothing in statute that covers the entire continental shelf. We think that targets would help to ensure that the broader ambitions, which are set out in the habitat and main strategy regulations, are met in relation to the condition—and, separately, the extent—of individual habitat types. There needs to be clarity that the bill extends to the purview of the Scottish Parliament, because, as the committee will know, conservation out to 200 nautical miles is an executively devolved matter.

The Convener: Are there any thoughts about the targets being set in secondary legislation?

Bruce Wilson: I am not a massive fan of framework bills, but secondary legislation will be necessary in this case, because of the massive variability in biodiversity and the complexities with the bill that have already been mentioned. We would choose that option on this occasion.

Rea Cris: There should be as much parliamentary scrutiny as possible. I take the point about the complexity of the bill and the fact that we would need secondary legislation, but there are ways of lodging secondary legislation that would still afford the Parliament the opportunity for more scrutiny. If there is not affirmative procedure, as a bare minimum, super-affirmative procedure should be considered in some shape or form.

Mark Ruskell (Mid Scotland and Fife) (Green): I will go into a bit more depth about the targets and, in particular, the topic areas that were

selected in the bill. Some topic areas, such as ecosystem health and integrity, have been parked, and the Government might come back to them. Other topic areas such as finance and citizen engagement were not explicitly included in the bill. I am interested in your thoughts on the topic areas that are in the bill, what was left out and what the Government might work on at a later date.

Dan Paris: Broadly, the bill sets out that the Government must set at least three targets across species, habitat and other environmental conditions, but it empowers the Government to set a much wider range of targets within those topic areas and beyond. We are reasonably comfortable with that, with some caveats. As Calum Duncan mentioned, the target for habitats refers to

"the condition or extent of any habitat".

I assume that officials will propose targets that will cover the condition of habitats and their extent separately, because both factors are very important and must be measured separately. It would be helpful for the bill to specify that there should be separate targets.

The bill also refers to

"the status of threatened species".

For many in the conservation sector, that term has a very specific meaning. It is very important that, when setting the targets, we do not draw them so narrowly as to measure only a selection of the natural environment rather than the natural environment as a whole. A cynical reading of the bill is that you could meet the requirement to have a target for the status of threatened species simply by setting a target that covers a small number of charismatic or well-known species that are at risk. It is important that the species targets cover not just those species that are most threatened but those that are widespread but in decline or that could go into decline in the future.

We would be comfortable with the policy memorandum's definition of "threatened species", but the policy memorandum is not the legislation, and the language of threatened species could be more encompassing of the wider species targets that we need to include.

Mark Ruskell: How does that relate to ecosystem health and integrity? What is the wider perspective on the target that goes beyond the individual iconic species?

Dan Paris: There are additional targets that we would ideally like to see included. We would like a target that covers the reversal of biodiversity loss against a historical baseline, so that we are measuring biodiversity not just against what is happening in 2025 but with a much longer ecological timescale built in.

In particular, we would like a target on ecological connectivity. We think about it in terms of having a national nature network. We do not want a situation in which we are restoring nature but it remains fragmented—we want to bring it across the landscape and into communities across Scotland.

We also think that there is a case for having a specific target on the condition of designated features and protected sites.

Bruce Wilson: There is a catch-all provision that states that the Scottish ministers may make targets for

"any other matter relating to the restoration or regeneration of biodiversity as they consider appropriate."

Some of the targets that Dan mentioned could be included under that provision. However, if it is not in the bill, there is a risk that we might miss some of the ecosystem health stuff that you were referring to. That is quite important. I listened with interest to the committee's previous meeting on the bill, when some excellent points were made about why ecosystem health is so important for the broad understanding of biodiversity.

The catch-all provision also gives scope to tie in some other measures that we have. I have had discussions about the possibility of including something like the natural capital asset index, which would give an idea of the relative benefits that ecosystem services are providing to people. That would help not only to add a diverse range of data sets but to make ecosystem services relevant across different Government departments.

Mark Ruskell: Do you then have thoughts on the omission of a finance target?

Bruce Wilson: Yes—

Mark Ruskell: Define good finance.

Bruce Wilson: I have previously noted some concerns about greenwashing, but, without the money to back up the work and a route for it, I would be concerned about our ability to meet some of the targets. On balance, I would probably like to see a target in there.

Calum Duncan: As members of Scottish Environment LINK, we support everything that Dan Paris said and we sign up to his response on that. I will bring a marine dimension to it. I think that an ecological connectivity target would apply at sea as well, given the way in which the Marine (Scotland) Act 2010 is drafted. We are pleased that there is a range of sites at sea, although we are still awaiting measures for those, as I have said. I am particularly concerned about the delays with the remaining inshore measures.

The 2010 act requires replication of sites and representation of sites, but it does not have a legal

connectivity target. That would be a useful element to include in the bill. I ask the committee to think about that connectivity, which is still an issue at sea.

I also underline the point about the historical baseline and bringing a marine dimension to that. We have submitted evidence before on the concern about declines. The health of most of the sea bed is in poor condition. There are declines in kittiwakes, harbour seals, salmon and so on. There is a lot of data out there. I emphasise that because the biodiversity intactness index, which is a useful metric, does not yet have marine data, but there is a lot of marine data available—including data that I have submitted to committees before—that underlines the concerning and poor status of the marine environment.

09:30

Beatrice Wishart (Shetland Islands) (LD): The bill would require the Scottish ministers to seek scientific input on the targets when developing regulations, but it does not require wider public consultation. What is your view on that, taking into account the role that your organisations might have in supporting the implementation of the targets?

Dr Hesford: As a scientific organisation, we very much support the idea that the targets are built on evidence, but the monitoring of that is equally important and it needs to be data led. It is ambitious to do that, and it is important to consider the ability of practitioner-led monitoring to deliver on the targets.

The GWCT has been engaged in that work across Scotland. We see the Natural Environment (Scotland) Bill as an opportunity to empower those who manage our land—70 per cent of Scotland is managed by landowners and farmers—not only to feed into the monitoring process through data gathering but to deliver biodiversity on the ground. If we do not engage with that 70 per cent, those ambitious targets will be unachievable.

We see the bill as an opportunity to introduce funding for facilitation to deliver landscape-scale approaches, including the farmer cluster model. We have seen that through our work in the south, where we have more than 1 million acres of farmland stewardship that delivers for biodiversity in England. That approach in Scotland would be welcome and a useful tool not just to deliver biodiversity at scale but to ensure that we monitor that biodiversity and our progress towards those targets.

Ailis Watt: It is absolutely right that there is a requirement

"to seek and have regard to scientific advice"

in the development of targets. The policy memorandum outlines that that is to be fulfilled, at least in part, by the biodiversity programme advisory group.

On public participation and transparency, there should be transparency in relation to the advice that comes out of that process, so that there can be public confidence and insight into how that advice is being given and how the targets are being developed.

The Convener: Should there be a requirement in the bill for the Government not just to seek scientific advice but to look to practitioners and the public to respond to some of that advice?

Dr Hesford: Broadly, I would say yes. Without engaging with practitioners—the people who are delivering for biodiversity on the ground—it would not be possible to meet those targets.

Rea Cris: The bill refers to

"such persons as the Scottish Ministers consider to be independent and to have relevant expertise."

That wording could be tightened up. I appreciate that you do not want to be too prescriptive, but if you look at the Climate Change (Scotland) Act 2009, you will see that it has tighter wording on who should and should not be involved in such work.

I fully support what everyone else on the panel has said about scientific advice and there being transparency on where that advice is coming from. The current wording leaves things in the gift of the Scottish ministers—it is up to them who they consider to be appropriate to consult with. The wording can definitely be tightened up to make things clearer.

Emma Roddick (Highlands and Islands) (SNP): I have a question for Rea Cris; I am sure that others will also want to jump in. There are quite a few parallels between biodiversity targets and current climate targets. Do you have any thoughts about what lessons should be learned straight off when building the framework for the biodiversity targets?

Rea Cris: Proposed new section 2C(2)(b) of the Nature Conservation (Scotland) Act 2004 says that the Scottish ministers must

"specify the manner in which, or indicators against which, progress toward and achievement of the target being set is to be measured."

That reads like someone marking their own homework. Again, we could learn from the Climate Change (Scotland) Act 2009. You could include in the bill something akin to section 2B of the 2009 act, which sets out target-setting criteria.

I hear what my colleagues are saying about not being too prescriptive in relation to the targets and

leaving some flexibility to secondary legislation, but I think that a bit more frame could be put into this framework bill. There could be more indicators of the direction that things should or should not be going in. That is one of the biggest things. It is also really important that climate change targets are not inevitably pitted against biodiversity targets; they need to work together and, when aligned, they will both achieve what they want to achieve.

Emma Roddick: How would you achieve that, given that, presumably, there will be times where there is conflict? How should the Government and other bodies react to that?

Rea Cris: One thing that I would like to see in the bill, and which Open Seas would like to see, is an equivalent of the citizens panels. It goes back to what everyone else was saying about scientific evidence and hearing from a broader range of people. Such panels allow for a wider range of voices and views to be heard transparently in public. I would like to see something akin to a citizens panel or a short-term task group that could bring in expertise and advice to bottom out an issue and advise the Government on how to move forward. I am keen to hear what others have to say.

Emma Roddick: In taking that forward, how could we better mainstream those common goals and get different Government departments to work together towards them, whether informed by a group or by someone else?

Rea Cris: One of Open Seas' concerns—this comment relates to the marine directorate in particular, but it probably happens in other Government departments—is that there are a lot of strategies and plans at the moment, and sometimes they are at cross-purposes or are siloed from one another. Therefore, there might be a duplication of effort or missed opportunities for a holistic approach. To give an illustration, for the marine environment, there is the future fisheries management strategy, the national marine plan, the inshore fisheries management improvement programme, the 21 fisheries management plans, the biodiversity strategy, the seabird conservation action plan and the planned marine and coastal restoration plan.

We would like to see an amendment to the bill about a concerted effort, possibly led by Environmental Standards Scotland, to review all those plans and their efficiency and to maybe streamline things a bit and encourage more holistic working between departments, whether it is a case of them needing to be resourced or to be a bit creative, or whether departments need to be mixed up a bit rather than being siloed. I think that the policy landscape is getting very complex and confusing and is not transparent. Even for those within it who are trying to navigate it, it is very hard to achieve what we are trying to achieve.

Bruce Wilson: Ultimately, the climate targets have been successful in delivering a kind of paradigm shift from where Scotland was on climate to where we are now. I would like to see something similar happen with nature. To my mind, a lot of the processes for considering multiple options already exist. Take the land use strategy, which is maybe a parallel to what Rea Cris was talking about at sea. It does not have any teeth. No one is really interested in it. It has no real impact on the agricultural reform process or on any land use planning decisions. It just kind of sits there. It is a very useful tool, but it does not have any hierarchy. My hope is that something like the targets would reinvigorate interest in that and help drive consideration of multiple land uses at scale or embed an ecosystems approach such as that used for the marine environment. The lesson that I take from the climate targets is that they have the power to give things a boost and ensure that mainstreaming.

Calum Duncan: I completely agree about the need for climate and nature goals to align. That is what good planning should deliver.

For full transparency, I note that we were among those expressing concerns about the Berwick Bank offshore wind farm, for example. However, if there is a good consenting process, you can unlock other opportunities for offshore wind by getting it in the right place.

The fact that 152 million tonnes of carbon is estimated to be stored in the top 10cm of Scotland's sea bed illustrates and underlines the importance of the opportunities for getting good results for climate mitigation as well as biodiversity by having an appropriate area of marine habitat protected. Currently, only something like 2.7 per cent of inorganic carbon and 1.6 per cent of organic marine carbon are protected in the marine protected area network. That is an illustration of the need to view climate and biodiversity side by side.

To point to a specific opportunity to streamline and join up those processes, I suggest that it might also be prudent to amend section 5(3) of the Marine (Scotland) Act 2010, so that policies around the national marine plan are required to meet the primary targets that are set, particularly if we separate extent and condition, and the secondary targets that come out of that. That is what the national marine plan should do: it should deliver the greatest public good from the use of our seas while striving for improvement in the status of nature. There is an opportunity for the bill to improve the national marine plan, which is in the process of being updated.

Dan Paris: One of the lessons that we can learn from climate legislation is that we cannot legislate to guarantee good outcomes. It is important that, when we are considering a bill such as this, we take the opportunity to ensure that the framework is as robust as it can be and that we look for opportunities to mainstream the delivery.

One of the things that we could do relates to the biodiversity duty. The bill introduces targets as an amendment to the Nature Conservation (Scotland) Act 2004, which is where the biodiversity duty currently sits, as well as the requirement to produce a Scottish biodiversity strategy. The biodiversity duty—which requires public bodies to "have regard to" the Scottish biodiversity strategy—has clearly not worked, as we are 20 years on from that legislation and we are still sitting here, talking about the need to set targets to restore nature. However, in the national park section of the bill, there is something from which we can take inspiration. In that section, the Government is amending a duty on public bodies to "have regard to" national park plans to a stronger duty, which is to "facilitate the implementation of" national park plans. With regard to the Scottish biodiversity strategy and the delivery of the nature targets overall, there is a strong logic to the suggestion that, if we are doing that on a regional basis for a national park plan, we could strengthen the biodiversity duty in a similar way.

Bruce Wilson: On the duty and how we are setting the targets, I note that progress is paired with the Scottish biodiversity strategy, but I think that it would be better if we pegged it to something a bit more tangible, such as the targets. The previous strategy ended in 2020, so we were in a no-man's land for a long time. We do not really want that situation with something as important as biodiversity. At the moment, we have legislation that is tied to something that can run out and can be changed.

Emma Roddick: There were some very explicit suggestions there. Does anyone have an example from elsewhere of where these suggestions have worked before?

No? Okay; that is grand.

The Convener: I am going to suspend the meeting briefly while we deal with a technical issue.

09:44

Meeting suspended.

09:46

On resuming—

The Convener: Welcome back. Mark Ruskell has a supplementary question.

Mark Ruskell: As Bruce Wilson was talking, I was thinking about the biodiversity strategy and the delivery plans that come out of it. I go back to Rea Cris's point that, unless action is tied to targets, we will not meet the targets. Is the framework around delivery plans addressed enough in the bill? Is the link to action explicit enough in the bill, or is there an assumption that the targets will drive the delivery plans? I am curious about your thinking on that.

Bruce Wilson: I think that everyone would have preferred a more linear approach to targets, strategy and delivery plans—that would have been better—but we are where we are with the way that this all came about, as we, in essence, ran out of time with the previous strategy.

It would be worth considering whether there is a strong enough tie in the bill. Do we need to review the delivery plans once the targets are in place to make sure that the plans take us in the right direction to achieve the targets in the bill?

The Convener: I was going to bring in Evelyn Tweed to ask a question, but that response takes us to a question about how the targets would be reviewed and monitored, so I will jump to that. The bill provides for reporting every three years and a review of the targets every 10 years, but we are not sure what would happen if a target was missed. Does anyone have comments on the bill's review and monitoring provisions?

Ailis Watt: We are concerned that section 2G(4) provides ministers with the ability to reassign the role of Environmental Standards Scotland as the regulatory body. That line could undermine the strength of ESS's function, so it should not be in the bill.

Zooming out a bit and looking more broadly at the oversight role of ESS, I think that, given the dynamic nature of biodiversity, it is important that targets can be reviewed. For example, if we were moving towards a target at pace and wanted to increase our ambition, we would not want there to be a completely static system.

In our Scottish Environment LINK response, we recommend that reviews of the targets be treated as improvement reports under the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021. That would trigger statutory response mechanisms once the reports were tabled in the Parliament. That is another way to bake in further accountability in the bill.

The Convener: Are you saying that you do not think that ESS is an appropriate body to do the review, given its current role as an environmental watchdog?

Ailis Watt: No. I am saying that ESS is the appropriate body, but one line in the bill gives ministers the ability to reassign its role, and there is no explanation for that. We want ESS to fulfil that function, but we do not want the bill to say that that function could be changed at some point.

Rea Cris: The bill would be strengthened if it had a more explicit provision that said that ESS could request that Scottish ministers do a review or that they review the targets. Something a bit more proactive on the ESS side should be included so that it is able to react to things as they happen, as opposed to waiting for the review periods. To link back to Emma Roddick's question, I note that the Climate Change (Scotland) Act 2009 has something similar. Actions are not dependent only on the serving Government; outside bodies can also influence the procedure.

The Convener: Given that the policy direction is to halt biodiversity decline by 2030, and we will probably not pass the bill until 2026—it will take perhaps another year to get secondary legislation in place—is reporting every three years appropriate? Should we be looking for interim reports or on-going reports? Given that we have a biodiversity crisis, is it reasonable to suggest that three years on would be too far in the future?

Ailis Watt: We touched on that in our response to the call for evidence. We support there being reports focused on outcomes and progress after every three years, as is set out in the bill, but you are right that we are moving towards 2030 rapidly. Getting an understanding of what progress has been made only every three years might not be enough, so we have recommended an annual sufficiency review, which the Scottish Government would carry out to assess whether its actions were on track. It would involve looking not at changes in species abundance or the actual indicators but at the actions that were being taken in relation to funding and public policy, and it would review whether they were likely to shift the dial in two or three years' time. Therefore, we would know whether today's actions are enough without reviewing the outcomes annually.

Bruce Wilson: It is very important that the timeframes are tightened up a bit in the secondary legislation. The 12-month deadline that is set out in the bill must be seen as a maximum if we are to have any hope of meeting the 2030 targets. The biodiversity duty also needs to be tightened up. For example, when a public body submits a report, there is no real requirement to publish it and no central place on the NatureScot website for it to be published. Addressing that issue would help to improve accountability in general.

Rea Cris: The other thing that goes hand in hand with that is that the bill as drafted sets out that the provisions will come into force only when the Scottish ministers make that decision, so commencement is a real issue. I wholly agree with Bruce Wilson about the 12-month timeframe, which is really tight if we are to reach the 2030 targets. An amendment should be lodged to say that the provisions will come into force the day after the bill receives royal assent. Given the urgency of what needs to be done, it should not be up to the Scottish ministers to start the stopwatch.

Evelyn Tweed (Stirling) (SNP): We have touched on the timeframes. The bill does not dictate short-term or long-term timeframes for targets. What are your views on that? Should the bill include specific timeframes for targets? If so, what would the appropriate timeframes be?

Bruce Wilson: I mentioned that a useful first step would be to—I am paraphrasing the bill here—tie the targets to the delivery of the biodiversity strategy. It would be useful to include the 2030 reversal target and the 2045 nature positive targets as a broad starting point.

The Convener: Let us move on to part 2 of the bill, which sets out powers to modify or restate environmental impact assessment legislation and habitats regulations.

Rhoda Grant (Highlands and Islands) (Lab): The policy memorandum sets out that the overarching policy intention in taking the delegated power in part 2 is

"to ensure that the legislation remains fit for purpose and could be adapted, if required, to allow effective action in response to the twin climate and biodiversity crises."

Do you agree that the proposed power is needed to ensure that EIA legislation and habitats regulations remain fit for purpose?

Ailis Watt: To provide some context, I note that RSPB Scotland has a real interest in EIA legislation and habitats regulations, not only from a conservation practitioner perspective but as an organisation that would make comments on planning applications and would make planning applications in relation to our reserves. We engage with the legislation from all angles. Together, EIA legislation and habitats regulations are the bedrock of environmental protection in Scotland.

It is our strong view that the proposed power is not needed and that there is sufficient flexibility in the habitats regulations to adapt to climate change. That has been rigorously tested in case law. Ten years ago, there was a comprehensive review of habitats regulations, which looked

specifically at their operation in the context of climate change. The review was clear in its view that the regulations were fit for purpose from a legal perspective and that what was holding back important work on the ground—this is where some of the frustrations that the committee might hear about from practitioners come from—was a lack of implementation and a lack of clear policy guidance on how they should operate in the context of a changing climate, rather than it being the case that the legislation itself was not fit for purpose.

Bruce Wilson: That was brilliantly put—I completely agree with that, from the perspective of a practitioner on our reserves and in relation to dealing with planning applications.

I think that this is much more a guidance issue. We should adopt the precautionary principle and take the far less costly approach of looking at and refining the guidance first. Even if we went down the route of amending the regulations, we would still have to create guidance. Let us go down the route of dealing with the guidance first, to clarify what can and cannot be done. That makes sense for lots of reasons, not least because it would tie up less of our time in creating new legislation when we could be spending our time working for the good of the biodiversity crisis.

Dan Paris: Our members are concerned about part 2 of the bill as it currently stands. Ailis Watt and Bruce Wilson have outlined some of the problems with it. Fundamentally, the bill will hand an extremely broad enabling power to ministers. The legislation could be on the statute books for decades, and future ministers could use the power to modify crucial parts of environmental protection for, in essence, any purpose that they wanted to. Although any modifications would need to follow the six purposes that are outlined in section 3 of the bill, those purposes are extremely broadly drafted. Purpose (f) is

"to improve or simplify the operation of the law."

Whether something improves or simplifies the operation of the law is a very subjective judgment. However, if a future Government thought that radically weakening the effect of the habitats regulations would improve the operation of the law, it would be able to do so under the bill as it is currently drafted.

The policy memorandum says that the proposed power is needed because, as a result of Brexit, we have lost powers that we previously had under the European Communities Act 1972. However, there is a really important distinction to make. When we were a member of the EU, ministers had the power, through regulation, to amend the protections, but they could do so only in line with European law. The power existed because, if the European directives changed, the domestic Government needed to have a way of implementing those changes in domestic law, but there was a backstop, whereby the power could never be used to go beyond what was in European law to undermine the protections.

As the bill is currently drafted, there is no such backstop, so there is nothing to prevent future Governments from drastically weakening the level of environmental protection that EIA legislation and habitats regulations, which are important parts of our current law, provide.

Rea Cris: I completely agree with everything that Dan Paris said, so I will not repeat it, but, when the cabinet secretary gives evidence, I would welcome the committee scrutinising the policy decision that has been made. The policy memorandum pitches the issue as a legislative and technical one when, in fact, it was a policy decision to draft such broad and sweeping powers. To illustrate that, I note that the policy memorandum says that some technical things need to be done, and it gives the example of changing some applications to an electronic form. The Government could have done that in a schedule to the bill, but it has decided not to. That re-emphasises the point that this was a policy decision as opposed to a technical and legislative one. I would welcome it if the committee were to ask the cabinet secretary to marshal the reasons for that.

10:00

Ailis Watt: It is also important to consider that the Delegated Powers and Law Reform Committee, which has just reported on the use of framework legislation and Henry VIII powers, concluded that

"powers allowing flexibility 'just in case' are unlikely to meet the test for the necessity of the power"

and should be considered inappropriate. In the policy memorandum and the explanatory notes, every use of the power, with the exception of one example relating to digitising environmental impact assessment, is repeatedly framed as something that might be needed just in case in the future, without there being tangible examples of the use of primary legislation to introduce changes in the bill. Even digitising EIA does not require primary legislation; it could be done via guidance. It is really important to note that "just in case" powers have recently been found to be inappropriate, so the committee should think about that when it is considering the extent to which such powers could be used to weaken our environmental protections.

The Convener: Before I ask Nick Hesford to respond, I will take a question from Tim Eagle, which will tie the issue together and might help Nick to form a response.

Tim Eagle (Highlands and Islands) (Con): In the policy memorandum, the Scottish Government sets out clearly that it feels that there is a massive gap here. However, we had the academics in last week, and I think that they, and pretty much all of you, are saying that you think completely differently. To go back to your point, Dan, what is the Scottish Government suggesting that it needs following our withdrawal from the European Union that you say is not required?

Dan Paris: The bill introduces an enabling power that would mean that changes to the habitats regulations or the EIA legislation could be introduced through secondary legislation. Flexibility is already built into the habitats regulations that means that some of the policy objectives that the Government might wish to pursue would not require those new powers. That is an important distinction.

There are various powers in various bits of legislation that some of my colleagues are probably better qualified to talk about, where there is already the power to introduce changes by secondary legislation in particular circumstances. However, the bill as drafted brings in an overarching, broad and sweeping power that has very few limitations on it. There is no non-regression clause and no requirement for changes to be based on scientific advice or even to be consistent with the nature targets that the bill is bringing in. There is a distinction here. The previous powers were necessary in the context of being an EU member, to implement European directives. Those are not currently required.

Tim Eagle: The policy memorandum highlights things such as forestry and offshore and onshore wind. There is the ability to change specific things within the habitats regulations, such as the broader concept of climate change. I think that I agree with you, but I am just playing devil's advocate. Is that not what the Scottish Government is trying to do—to give it that power? If it wanted that, what would be the backstop? How could you secure that? Should we remove part 2 in its entirety, or could there be a risk in doing that? What would be the backstop if we were to leave in part 2?

Dan Paris: There are a number of ways that the drafting could be improved. Removing part 2 entirely is an option that the committee should consider. I believe that the committee has had previous evidence on the implementation of the habitats regulations and the flexibility that might be needed on the ground to do with climate adaptation or even nature restoration. That could be things such as allowing natural regeneration of woodlands into open ground or the planting of riparian woodlands in protected areas.

We strongly believe that, if the flexibility is used, those are all possible under the current habitats regulations. Regulation 9D requires that ministers must adapt the habitats regulations in line with the UK site network's management objectives. There is also the ability to add new designations to the protected features. There are flexibilities that could be used, which do not raise the risk of the protections being fairly undermined.

Ailis Watt: In relation to your wider question, one of the justifications that is provided is about ensuring that the protected areas network is flexible in the face of climate change. We think that we definitely already have the powers to do that.

On making progress towards the net zero targets, it is important that the committee is aware that the Scottish Government has power to alter the habitats regulations through the Energy Act 2023 for offshore wind. The Planning and Infrastructure Bill is also introducing changes to electricity-related environmental impact assessment to facilitate more onshore wind in Scotland. If the issue is about making progress and expanding renewables capacity, that is dealt with in other pieces of legislation.

Scotland has an amazing capacity for renewable energy, which has been expanded rapidly in the past 20 or 30 years within the current regulatory environment, with the habitats regulations in place. It is not that environmental impact assessment or the habitats regulations are mutually exclusive with renewable energy generation; it is just that they help to steer generation towards the right places. We can have both—the regulation and the generation—and Scotland is demonstrating that we do have both. We do not think that the justifications for the proposals stack up.

Bruce Wilson: I completely agree. Alongside regulation 9D, regulation 11 gives the further clarification that we can also delist sites—not that we particularly want to see sites delisted, but the power exists.

Calum Duncan: I echo all the concerns that have been raised. The Marine Conservation Society is also incredibly concerned about the rationale for the proposals, and we support everything that has been said about them. I highlight that the habitats regulations are the backbone of the marine protected area network. There are 58 special areas of conservation—SACs—with a marine component as well as a number of marine bird SPAs. The regulations have ensured that those areas have played a leading role in demonstrating how the network should be adequately protected. I acknowledge the successful activism in the early 2000s to secure protection for the Firth of Lorn; that protection is as

a result of the regulations, so we would be very concerned about them being watered down in this way.

In relation to the marine space, other EU nations are using the regulations to allow other features to be added to marine SACs, such as native oysters. The regulations are already being applied in a flexible way, and there are examples of that happening without having to amend the legislation.

The Convener: Beatrice Wishart has a brief supplementary, then we will go back to Tim Eagle.

Beatrice Wishart: It is a very brief question about Calum Duncan's point. Do you think that, if there were any change, it could undermine the MPAs?

Calum Duncan: Yes. For all the reasons that Dan Paris and others have set out, we would be extremely concerned about how the powers might be used in future parliamentary sessions.

Tim Eagle: Thank you all for your interesting answers—the subject came up significantly in committee last week and I want to be clear in my mind that, by not allowing powers, we are not restricting what we need to do for biodiversity, climate change and so on. I do not think that any of us would want to see that.

My main question was going to be on the purposes for which the regulations could be changed but, to be absolutely clear, do all of you agree that it is not about the purposes that are set out in the policy memorandum but about the fact that, fundamentally, the power should not be there? Does that make sense? Dan, you mentioned the various purposes that the Government sets out in the policy memorandum, such as ensuring consistency or compatibility with other legal regimes or taking account of changes in technology and so on, but you would not add to or amend those purposes?

Dan Paris: The Government has not convinced us of the need for the powers in the first instance. We could go through the purposes line by line. Section 3(a) states that the power can be used

"to maintain or advance standards in relation to ... restoring, enhancing or managing the natural environment".

I would not be concerned about that being in legislation. However, the concern is the power overall as introduced, as it comes without a non-regression provision or the levels of scrutiny that we would expect for such powers. It also has a very broad scope.

We are particularly concerned about the purpose in section 3(b), which is

"to facilitate progress toward any statutory target relating to the environment ... in particular, the net zero emissions target set by ... the Climate Change (Scotland) Act 2009".

We are, of course, concerned about meeting the net zero targets, but it is really important as a point of principle that, when we introduce legislation that is designed to protect the natural environment, we do not unintentionally play off nature against climate, when we know that meeting net zero can and should be done in conjunction with restoring nature.

We have particular concern about a power that could allow nature protections to be significantly weakened in order to meet net zero.

Ailis Watt: I do not think that part 2 is needed. To ensure that the protected areas network is flexible in the face of climate change, we have regulation 9D. On making progress towards net zero, that is dealt with in the Planning and Infrastructure Bill and the Energy Act 2023. To restore the powers that were lost after Brexit, even though there was a non-regression provision, the Scottish Government has committed to keeping pace, and we have the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 right up until 2031, if it is extended.

We have looked at the issue in great detail, as you would imagine, and we cannot find any justification in existing regulations or other pieces of legislation that point to the need for the powers in the bill, never mind them being as broad and sweeping as they are, given the list of purposes.

Rea Cris: I reiterate that this is a policy choice, not a technical choice. As Ailis Watt just said, the Scottish Government has the powers in the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 until 2031. If it was a technical issue, the provision would have been drafted very differently.

On Dan Paris's comments, as I said earlier, climate change targets should not be in competition with biodiversity targets, and the sweeping powers in the bill could have the unintended consequence that a future Government would do just that.

When the cabinet secretary comes to give evidence, they need to marshal their argument about why they need the power. The easiest thing to do would be to lodge an amendment that would leave out the provisions. However, there is so much more in them that could be questioned. For example, the only thing that is left to affirmative procedure is if an offence is created. Under section 3(f), the power could be used for anything

"to improve or simplify the operation of the law".

That could either be through the negative or affirmative procedure, and would be based on a future Scottish minister's decision.

Yes, you need to allow flexibility in secondary legislation, but that can increasingly become an

act of faith and a significant blow to scrutiny. The way in which the bill is drafted is based on policy choices. Non-regression is not baked in; most of the possible changes are left to negative, not affirmative procedure; and there could be the unintended consequence of having competing targets, which really should not be the case.

Tim Eagle: I know that we were slightly repeating ourselves there, but it is an important point. We could go through the purposes line by line, but that is maybe not the point that we should be focusing on. There is a bigger point here.

The Convener: One of my points last week was about the Kendoon to Tongland power upgrade, which will go through scenic areas. The matter went to the reporter, who recommended that the planning application be turned down because of the unacceptable impact on the environment. The Scottish Government ignored those views, as it thought that the impact was acceptable on the grounds of energy security. That would suggest that the Government already has powers to ignore, if you like, or dismiss concerns when it comes to protecting the environment.

Ailis Watt: I reiterate that the habitats regulations are amazing at protecting the most important places and species that we have in Scotland. However, the regulations include the imperative reasons of overriding public interest—IROPI—clause. If you need to do something that will negatively impact on a designated site for reasons of human health or if there is a need to construct a road to enable hospital access, there are exceptions baked into the regulations. If the Scottish Government can demonstrate that it needs to do something in a certain area for the public good and for public benefit, that flexibility exists in the regulations, and it has been used to allow access to hospitals or, in some cases, renewable energy projects. There is flexibility in there for lots of reasons.

10:15

Mark Ruskell: Tim Eagle has covered a lot of the questions and points about part 2, so I will go back to one of the specific purposes, which is about ensuring consistency or compatibility with other legal regimes. I am interested in your reflections on that, particularly on what is happening in the rest of the UK, the direction of the habitats regulations and their potential weakening to allow economic growth in some areas.

Ailis, in your written submission, you touched on the relationship with the Electricity Act 1989. I am interested to know whether you think that there is a particular concern about the divergence of regimes between what is there under section 36 and 37 powers, which is well understood by industry—the requirements of EIA, the habitats regulations and everything else—and what we have at the moment for other development that is protected by habitats regulations and EIA procedures.

Ailis Watt: One of the purposes that we are most concerned about is ensuring consistency and compatibility with domestic or international legal regimes, regardless of whether those regimes are strengthening or weakening. We have the commitment to keep pace, and we should therefore be able to improve habitats regulations and EIA, if that is appropriate.

However, as you said, we are seeing changes to habitats regulations for planning down south. We do not want the Scottish Government to put something in the bill that would allow our most important protections to be dragged down by progress stalling in other places, rather than being pulled up to work towards best practice where we can, which is what we should look to do in maintaining or advancing standards.

Mark Ruskell: Can you spell out what the concern is with the legal regime in other parts of the UK?

Ailis Watt: It could be anything, really. It could be any legal regime, here or abroad, that we could look to align with. There could be a number of examples of anything that could be done to EIAs or the habitats regulations, which we know are often perceived to be blockers to development, even though it is our strong view that they steer development to the right places and that the IROPI clause allows development when there is a good enough reason.

There are a number of examples. The issue with the purposes is that they are so broad, so it could be any reason. Without a non-regression clause, you can make any sort of restatement or amendment to the habitats regulations or to EIA.

Bruce Wilson: It is not just this Government that we are talking about; it is any Government at any point in the future. If the Government changed down south, would we race to the bottom with it? That is the thing that we are really concerned about.

Mark Ruskell: I want to understand what a race to the bottom might look like practically. Where do you see the potential erosion in protections for the environment in other regimes?

Bruce Wilson: We have recently seen a lot of comment from down south about newts versus development. There is obviously a strong lobby for getting rid of some of those protections. We do not want to be in a situation in which we are playing those two things off against each other. It is like

net zero and nature positive—we cannot play those things off against each other. If we want a sustainable future, we will have to make them work together. There could be any number of impacts on EIA or habitats regulations that would have negative environmental outcomes.

Mark Ruskell: Would that include the regulations on European protected species, not just on sites and habitats, but on the marine environment and the disturbance of EPS? I am trying to understand what the threat is from alignment with other legal regimes. What is underneath that?

Calum Duncan: I will give an example. In England, consideration is being given to measures that could be put in place to compensate for any damage to nature that is caused by rolling out offshore wind. Part of that is looking at potentially de-designating bits of sites or finding other sites. That sort of thing is a concern.

That goes back to the point that I made about the SACs being the internationally important spine or bedrock of the MPA network. We would not want anything that would put them at risk. That may not be the policy intent at all but, as we have said multiple times, the concern is that there would be nothing stopping future Governments from using the powers to potentially weaken those areas. That is the big concern for us.

Rea Cris: Because the powers are so broad and sweeping, we would be held hostage to fortune in relation to a future Government. For example, at the moment, the national marine plan is meant to set out planning at sea and should take a holistic approach, in the spirit of the Marine (Scotland) Act 2010. As we have mentioned already, the powers in section 3(f) on

"the operation of the law"

could be used by someone who will say, "We really need to meet our climate change targets, so we need to de-designate this or push this out of the way or completely bypass whole sectors." However, the sectors all need to work together. The national marine plan should have sectoral targets and we should hear from everyone—not only offshore wind, fisheries and marine protected areas but coastal communities as well.

The concern with the bill—as we said on the point about regression—is that a future Government could come in and say, "We are going to sweep that all away and it is all about this or that industry because we have to meet this target." That is an extreme example, but I guess that that is what you were asking for—it was about how far the policy could be pushed.

Calum Duncan: I have a quick comment on that point. That highlights what is sorely lacking in the marine space, which is a proper spatial management framework to enable assessment of the cumulative impacts and prioritisation of effective and appropriate use of different parts of the marine environment, different sea bed types and so on. We are calling for that right across the UK. There needs to be a proper ecosystem base framework that starts from the premise of what the space looks like and what the appropriate use is for each type of sea bed. The bedrock of protection is the MPA network, but the question is what other measures are required beyond that.

Elena Whitham (Carrick, Cumnock and Doon Valley) (SNP): The first part of my question is about your views on the Scottish Government's decision not to include a non-regression clause in part 2, but we have already heard your views on that quite clearly. Are there alternative approaches to framing the powers that you would like to see in the bill? For example, would you like things such as protection for certain aspects of the core aims of the regimes or a requirement for additional consultation, scientific input or, indeed, parliamentary scrutiny of changes that could arise? In the absence of a non-regression clause, would there be other ways to consider the powers in the round and to start to curtail where the powers could go? Alternatively, you could just come back and tell me your views on the absence of a non-regression clause.

Ailis Watt: As everyone in the room will probably now be aware, putting aside the fact that we do not think that part 2 is justified, we think that, if it has to be included, it is essential that it be strengthened in a number of ways. The power is to "modify or restate" EIA legislation and habitats regulations, but we want to change that to "amend". We ideally want there to be a non-regression clause but, if that cannot be in the bill, there at least needs to be a public explanation of and justification for the use of powers before they are ever employed.

There should also be a requirement that, before using the powers, the Scottish Government would have to seek independent expert advice, either from NatureScot or Environmental Standards Scotland. All regulations should definitely be subject to the affirmative or super-affirmative procedure, rather than the negative procedure. Public consultation would also be welcome.

It is clear from the policy memorandum that the Scottish Government decided not to include a non-regression clause because it feels that that would limit the flexibility of the powers too much. That goes back to the just-in-case side of things that we take issue with. One of the purposes for the use of the powers is

"to maintain or advance standards in relation to ... the natural environment".

Were that to have primacy, and should it have to be achieved before the purpose to

"improve or simplify the operation of the law",

that would be a means of including non-regression in the bill without calling it that.

That is all in our response to the call for evidence. If part 2 must be included in the bill—we would like it not to be—there are a number of essential safeguards that must be baked in.

Rea Cris: I concur with everything that Ailis Watt has just said, but I would go a step further. An amendment could be lodged to require that the provisions in paragraphs (b) to (f) of section 3 can be used only in pursuit of the purpose in paragraph (a), which would be primary. That would strengthen how the powers would be intended to be used.

Dan Paris: I fully agree with Ailis Watt's summary of the ways in which that part of the bill could be improved. The Scottish Parliament information centre briefing on the bill also has a useful analysis of the other bits of legislation that already give ministers some of these powers in particular circumstances. The briefing highlights the fact that, in those cases, environmental safeguards have been built into those bits of legislation. As drafted, the bill stands out from those other bits of legislation through the absence of such environmental safeguards.

The Convener: To save us an awful lot of work, grief and concern, we should just dump part 2 of the bill altogether. Does anybody disagree with that? I see people shaking their heads. I like to keep things simple.

We are about to move on to part 3, which is on national parks. We will have a brief suspension for a comfort break for five minutes.

10:27

Meeting suspended.

10:34

On resuming—

The Convener: Welcome back. We will now ask some questions on part 3 of the bill, which is on national parks.

Emma Harper (South Scotland) (SNP): Good morning. Nikki Sinclair, I will come to you first with this question. Part 3 of the bill proposes to broaden the purposes of national parks to include stronger emphasis on supporting biodiversity and nature recovery in addressing the climate crisis. Earlier, Dan Paris mentioned biodiversity targets in relation to national park strategies. What are your views on the changes to the statutory purposes of national parks in the bill, and what will the practical impact be of implementing those changes?

Nikki Sinclair (Action to Protect Rural Scotland): The proposed changes to the four aims of the national parks are really modernising. They are fairly modest, but they perhaps reflect 20 years of experience of what the parks are now focusing on. It is good to see the addition of the list in the proposed new section 1(2) of the National Parks (Scotland) Act 2000, which includes aims relating to biodiversity and climate, among other things. That will focus minds on what the parks are about and on what is a main focus for them.

The current aims are quite broad, so you could argue that biodiversity and climate are within scope already, but it is good to see them highlighted in the bill.

The change to the duty on public bodies to "have regard to" the aims might be the most important change in that section.

Emma Harper: You mentioned modest changes. We were at Cairngorms national park on Sunday and Monday, when we talked about the language used. Instead of saying,

"sustainable use of ... natural resources",

the bill says,

"sustainable management and use of ... natural resources".

What is the impact of adding that one word?

Nikki Sinclair: It probably better reflects natural capital approaches to land management and thinking about biodiversity and climate in those terms, rather than just about the sustainable use of resources—for example, in relation to the extraction of minerals.

Emma Harper: We also discussed the use of the language of restoration and whether that means restoring biodiversity to what it was in Victorian times or to what it was 200 years ago or 300 years ago. Referring to enhancement is perhaps more objective than referring to restoring. Do you have any thoughts on altering any of the language in the bill?

Nikki Sinclair: Are you referring to subsection (2)(a) of the proposed new section 1 and the provision on

"restoring and regenerating biodiversity in the area"?

Emma Harper: Yes.

Nikki Sinclair: I take your point about what we would be restoring to, but you could be minded to think of it as restoring to good ecosystem health.

The word "enhancing" might also be open to interpretation, but it is used in national planning framework 4, for instance, in relation to biodiversity, so it might be equally good.

Emma Harper: Does anyone else wants to come in before I move on to byelaws?

Dr Hesford: The Game and Wildlife Conservation Trust is broadly supportive of the progress to clarify the aims of national parks, but we are also concerned that, here and elsewhere in the bill as currently drafted, there is a risk of placing increasing obligation on landowners and public bodies. People would be delivering for biodiversity without being provided with adequate support, resource or clear routes for implementation. We are concerned that that would create a culture of compliance rather than one of ecological improvement.

It would be great if we could see in the bill a mechanism to allow us to build on collaboration with and support for land managers to allow them to meet those biodiversity targets, particularly through clustering. With the national parks, that provides an opportunity for us to achieve a landscape-scale delivery for biodiversity. We know that such a clustering approach, from our experience in the south, works incredibly well in delivering tangible biodiversity benefits.

We are broadly supportive of the aims of the bill in relation to national parks, but there are opportunities that we need to capitalise on.

Rhoda Grant: To slightly turn the issue on its head, what is so wrong with the national parks aims, as they stand, that they need to be amended by the bill? What is being prevented? I remember that the aims were hard fought for at the time, and the right balance seemed to have been created. If it ain't broke, why fix it?

Nikki Sinclair: Perhaps nothing is particularly wrong with the aims, but the legislation is more than 20 years old. We are now in a different place due to the urgent threats to climate and biodiversity, and it helps to see those words in the legislation. The bill is proposing a modernisation of the words used rather than major changes.

The Convener: In section 1 of the National Parks (Scotland) Act 2000, the aims are listed in subsections (a), (b), (c) and (d). Was there a hierarchy in the aims? Was it a case of there being priority 1, priority 2, priority 3 and so on? Does that approach roll into the proposed updates in the bill?

Nikki Sinclair: National park authorities' main job is to collectively achieve those national parks aims. Section 9(6) of the 2000 act comes into play only if there is a perceived conflict between the four aims. That is the Sandford principle, or the national park principle as it is sometimes called. It means that national park authorities have to give more weight to the first aim, which is the aim to conserve natural and cultural heritage.

The Convener: The bill includes a list under the proposed new section 1(2) of the 2000 act. I do not particularly like lists, because they often suggest that something is being missed out. It starts by saying:

"Without limit to the generality of"

the above aims,

"those aims include—".

It does not exclude anything, but the fact that it includes paragraphs (a) to (f) means that it is a list.

Is there a risk that the aims become far more stringent when it comes to investment or development in a national park? Are those proposed aims listed in order of priority? An objective to promote sustainable development might be overtaken by the need to restore and regenerate biodiversity in the area. Is it your understanding that those aims are also listed in order of priority?

Nikki Sinclair: No. I do not see any order of priority being implied. The only priority is set out in section 9(6) of the 2000 act.

The Convener: Therefore, is there any benefit to having such a list in the bill? Surely, it could just be part of the guidance.

Nikki Sinclair: It is extra information that perhaps gives the wider world an understanding of the breadth of what national parks are doing. You could probably argue that the parks could already do everything that is included in the list, but it is perhaps clearer to have those things included in that.

The Convener: You stated that we now have 20 years' experience of the aims, so the bill is only updating them. Surely, at some point over those 20 years, we should have had an independent review of how national parks are performing.

Currently, we have annual reports, but they are produced by the national park boards. We have heard the argument that boards are, in effect, marking their own homework. Given that the 2000 act is more than 20 years old now and we are making amendments that are supposed to improve how national parks function, is it not time to have an independent review, to see what national parks are delivering, in order to have confidence in their aims?

10:45

Nikki Sinclair: We need to keep things under review, but the climate and biodiversity issues, in particular, are urgent. There is a concern that if we had a review and then legislated, it might be a decade before the legislation was changed. The United Kingdom national parks review panel—the Edwards review—published in 1991 its report "Fit

for the future", in which it recommended that there should be a duty on public bodies to further the aims of national parks. That duty came into play in England only in 2023, so it took a long time. We need to get on with making public bodies and national parks more effective now, instead of waiting for another decade.

The Convener: Without the evidence from an independent review on what could be most effective, how do we know that what is done is right?

We have just finished considering parts 1 and 2 of the bill, and a lot of the discussion was on review reporting targets, but it appears that national parks do not have to undertake reviews on an independent basis—again, they are marking their own homework. Another area in Scotland is potentially being designated as a national park, and one of the big issues that we see there is a lack of confidence that national parks are actually delivering. If an independent review had been undertaken at some point, the benefits, or otherwise, would be clear and transparent.

Nikki Sinclair: Yes—there has been a lot of public consultation about the national parks' activities and the legislation over the past three or four years. Three separate consultations have looked at aspects of their operation. I appreciate that that is not the same as a review, but some things have come out very clearly from that process. It is clear that the public wants parks to do more for biodiversity. That came out very strongly in the responses to the latest consultation.

Yes, we should keep things under review—I am perfectly happy with that, and we would not be against it—but there is a need to move things on and to try to improve them now, rather than in a decade's time.

Emma Harper: It is useful to hear that. I know that there have been calls for an independent review, especially if we are going to establish a new national park—for instance, in Galloway.

My other thoughts relate to tackling the climate and nature emergency and promoting biodiversity. Loch Lomond and the Trossachs National Park Authority already has the power to issue fixed-penalty notices, and the bill introduces new powers to enable Scottish ministers to set out in regulations how fixed-penalty notices could be used for enforcing national park byelaws.

I am interested in how you think that the power to introduce regulations in relation to fixed-penalty notices will be effective in supporting national parks in tackling the climate and nature emergency. I am thinking about their potential for dealing with wildfires such as we have seen—that is one example of how byelaws could help to support nature.

Nikki Sinclair: It is understandable that the parks are looking at byelaws for tackling wildfires; I know that the Cairngorms National Park Authority has put a byelaw before ministers. The current process for enforcing byelaws seems to be quite slow and onerous on both the authority and the court system, so it is quite difficult for the national park authorities to use the backstop of enforcement in that way. I can see that introducing fixed-penalty notices would make enforcement more active and perhaps more real to people on the ground. It seems to be a practical, and perhaps a more proportionate, response to dealing with those issues.

I imagine that it would still be quite difficult for people on the ground to do that job. Our concern is, first, that it might slightly change the perception of rangers, who may be seen as more of an enforcement service than an education service.

Secondly, if it is easier to enforce a byelaw, does that mean a shift in culture to enforcement first, rather than engaging, educating and encouraging before you get to the backstop of enforcement? It would be good to have it confirmed that it is the backstop position rather than a shift in culture. The public probably understands a fixed-penalty notice and the implications of that more clearly than the alternative that we have just now, so it might well help.

Emma Harper: We use the language of carrot and stick. Education is one of the first things that the rangers would be doing, so would you be in favour of continuing that approach, with the backstop being the of issuing a fixed-penalty notice, for instance?

Nikki Sinclair: Absolutely. If there is education and provision of alternative facilities for fires in certain places or controlled ways, that might remove some of the issues.

Dr Hesford: We are wholly supportive of the introduction of fixed-penalty notices elsewhere in national parks, learning the lessons from Loch Lomond and the Trossachs, provided that that is coupled with education and partnership, which are absolutely crucial.

Mark Ruskell: I have a question that goes back to the central purpose of national parks. We now have the expanded list and we have the Sandford principle whereby, where there is conflict, we can prioritise nature. What are your thoughts on making nature the central overriding purpose? I think that the Government consulted on that. The designation is based on nature and the environment. What are your thoughts on that?

Nikki Sinclair: The designation is based on natural and cultural heritage. There might be a bit of concern if that was lost completely. Natural and

cultural heritage contribute to landscape quality, but there is certainly public support for the parks doing much more on biodiversity. That was reflected in the consultation responses.

From memory, I note that the Government consulted on a raft of changes including biodiversity and climate being introduced to the overall purpose of national parks. It also changed the aims, and then there was a change in the wording of the aims from "natural heritage" to "natural assets". It was not entirely clear to us what the outcome of all those changes together would be, which is a concern.

Mark Ruskell: What is your view on the proposed change to make the purpose focused on nature and climate?

Nikki Sinclair: There is nothing to prevent parks from doing a lot on climate and nature. The breadth of the aims allows them to be an exemplar in that regard while still involving people who live in the area and those who visit. The recreational and access aspects of national parks have always been really important. It would be a big shift for them to focus solely on biodiversity. However, as they stand, the parks have an amazing role in mainstreaming biodiversity, which colleagues have talked about today, and showing how it can be restored, enhanced or whatever in a working landscape.

Bruce Wilson: Because of constraints on our capacity, we have focused on parts 1 and 2 of the bill. Unfortunately, we have not had a lot of time to focus on part 3, on the national parks. In general, however, we would like to see an ecosystems approach being taken across all land use, and we think that national parks could be exemplars of that. Of course the Scottish Wildlife Trust wants nature, biodiversity and climate to be prioritised, but we are very aware that there has to be a place-based approach that is led by local people. That is important even with regard to how national parks are described. If climate and nature were the only focus, significant numbers of stakeholders might be disengaged from the outset.

Dan Paris: Mark Ruskell hit on the good point that the proposed redrafting of the aims has its roots in the Government's initial proposal to bring in an overarching purpose for national parks.

As a sector, we want national parks, under our public bodies, to prioritise nature and climate, as Bruce Wilson said. It is not entirely obvious how that overarching purpose would differ in practice from the Sandford principle. I understand the convener's hesitation about adding lists of everything to the bill, but I welcome the fact that biodiversity and climate have been added to the list of aims, which could help with the interpretation of the first aim when it comes to the application of the Sandford principle.

Dr Hesford: I back up the points that Dan Paris and Bruce Wilson have made. If the focus is solely on nature and climate, we risk disincentivising other practical uses of land within the national parks that are actually delivering for biodiversity and climate, even though that might not be their primary objective.

Nikki Sinclair: On the point about the Sandford principle, we wonder whether the committee might consider whether it should also apply to any other public bodies, including the Scottish ministers, on which there is a duty to have regard to the aims, although the duty could perhaps be strengthened to make it more active. The principle may not come into play very often in that regard, but it might matter sometimes.

Mark Ruskell: Do you mean that a local authority that covers the same area as a national park should also have to apply the Sandford principle?

Nikki Sinclair: Only in respect of activities that affect the park particularly.

The Convener: That leads us on to the next question, which will be asked by Tim Eagle.

Tim Eagle: Are there any prior examples of the Sandford principle being put in place?

Nikki Sinclair: A similar principle exists in English national parks.

Tim Eagle: Let us go back to the points that Bruce Wilson and Nick Hesford made. My worry—which the convener picked up on, too—is that the aspect that we are discussing is listed in subsection (2)(f), which talks about the local community and the economic development of national parks. One of the early criticisms when the bill was published was about the fact that a national park is surely at its best when we recognise the people who live and work within it and the fact that, although the aims are not listed in order of priority, when people see a list, they automatically think, "We're down at the bottom, so all the other stuff is more important."

Are you concerned about that at all? You mentioned the Sandford principle. I may not know it well enough, but the principle is that conservation will take priority over public enjoyment of the park, is it not?

Nikki Sinclair: Only if there is a conflict.

Tim Eagle: Where a conflict exists.

Nikki Sinclair: On your point about people appearing only in subsection (2)(f), they are also listed in one of the four main aims of the national parks.

Tim Eagle: They are in the first four.

Nikki Sinclair: Yes. Admittedly, they are in the fourth aim, but the aims are not ranked at all, apart from in relation to the Sandford principle.

Tim Eagle: If they are not ranked, it would not matter if we moved them around a bit.

Nikki Sinclair: I do not think that anyone would object to shuffling them around.

Tim Eagle: Fair enough—very good. That point was picked up by a lot of local people, and I would have thought that, if you are going to drive forward your climate and biodiversity aims, you will have to do that with local people in mind.

The bill seeks to upgrade the duty on relevant public bodies with a change in the wording from "have regard to" to "facilitate the implementation of". As a former councillor, I am aware that councils—there are other public bodies, of course—such as Moray Council and Aberdeenshire Council, in the Cairngorms national park, would fall within that, and they would have huge responsibilities even though there is a massive lack of funding and not a lot of staff resource to put into such things. How do you see that change working? What is your initial feeling about it? What would it really mean in practice?

Nikki Sinclair: The upgrade refers to the substitution of the duty to "have regard to" the park plans with a duty to "facilitate the implementation" of them. That is seen as a more active duty that could promote more engagement with the development of the plans. There is already a lot of collaboration, but we hope that the proposed change would focus minds a bit more and help the whole thing to become slightly more effective.

11:00

Tim Eagle: What was not there previously? You are right that any council or local person could have fed into a national park plan through a consultation process, so why is the change necessary?

Nikki Sinclair: I think that the phrase "have regard to" means that it is considered to be quite a weak duty.

Tim Eagle: Fair enough.

Nikki Sinclair: It is quite hard to hold anyone to account on it unless they say that they have not had regard to something. They might say, "We've had regard to it, but we've ignored it." The phrase "duty to facilitate implementation" implies that the person will have to take the park plan seriously. If, during the consultation process, they commit to something or agree that it will be in the park plan, they will at least do their best to see that it happens.

Tim Eagle: Do you see how that could be quite scary for some public bodies? What does it mean in practice? Would a financial contribution or a time commitment be required? How would they do that, given the possible competing priorities?

Nikki Sinclair: I see that it is a shift in thinking, but, if we are serious about making national parks more effective, a shift from the wording "have regard to" to something that is more powerful will be a useful tool to ensure that the park plans that have been agreed through a consultative and collaborative process are not just plonked on a public body's desk. We will not just be saying to them, "Here you go—this is what you have to do. Sorry we didn't consult you." Instead, they will have been involved during the process.

Dan Paris: It is interesting that, as a former councillor, you defaulted to thinking about how the proposed change would impact local authorities, which are significant public bodies and might face particular resource challenges if they were expected to take significant actions as a result. When I read about the proposed change, my first thought was about national agencies such as NatureScot, Forestry and Land Scotland and Scottish Forestry. Ultimately, national parks are designated because they are deemed to be of national importance. It is important that the public sector delivers against national objectives, which is exactly what we discussed in the first part of the meeting when we spoke about mainstreaming biodiversity progress across the public sector.

Tim Eagle: My first thought was about councils. You are probably right that there are broader organisations, although I can imagine that local authorities been particularly affected.

Nikki Sinclair: Another example might be deer management and how NatureScot aligns its work with the national parks. It might also apply to how Transport Scotland considers road building; to woodland grants and whether they are used for natural regeneration, which is the parks' preferred method of woodland expansion; and to where fences are placed with respect to endangered species. It would cover a whole load of things and not just councils.

Tim Eagle: Yes—absolutely.

The Convener: Before we move away from the subject of national parks, I want to touch on what is not in the bill in that regard. Everyone will be aware of the controversy about the potential designation of a national park in Galloway. There is concern about how the decision that Galloway would be the sole contender for that designation was arrived at, and the lack of transparency about or understanding of how we got to that point. There is nothing in the legislation that sets out the

route for an area to be identified as a candidate for a national park.

Whichever side of the argument people are on—whether they are pro or anti national parks—I do not think that there is any doubt that the process has been a car crash that has caused a lot of division. There are many polarised views. Ultimately, the process has totally derailed what should have been a very positive experience and one that was similar to the experience 25 years ago, when the first designations took place. At the weekend, we heard from stakeholders that 300 or 400 businesses got very actively involved in setting up the Cairngorms national park, and we heard how businesses, individuals and communities played a massive part in that. With the proposed Galloway national park, that has been completely absent.

There has not been a clear indication of what the proposed national park would be. Should there be something in legislation to make clearer the Government's obligations to ensure that the process to designate new national parks is more engaging and contains more information? One of the problems is that there is a massive vacuum in relation to how the new national park might look. We are always told that Galloway is an area of intensive forestry, intensive farming and intensive renewables, which is unlike any other national park in the world. We are told that it will be different, but not in what way. Should the legislation on national parks have contained more direction on future policy on the designation of parks, given the mess that the current process is in?

Nikki Sinclair: The 2000 act clearly sets out the requirements for designation. The Government chose a different process in the lead-up to the designation with the nominations process. That was publicly consulted on and laid out, and the nominations process seemed to be carried out according to the process that had been developed. Two other areas of Scotland were considered to have met, through the nominations process, the requirements to be a national park, and Galloway was one of the possibilities that the minister chose to take forward.

That non-statutory process does not have to be repeated by a future Government that wants more national parks. The approach could be varied. I do not know whether setting out a process that appeared to be appropriate now would stand the test of time.

The Convener: We will move on to our final question, from Evelyn Tweed.

Evelyn Tweed: You have been saving the best until last, convener.

Are there any areas that we have not covered that you would have liked to see addressed in the bill?

Rea Cris: The Scottish Sentencing Council's latest strategy indicates that it is going to consider and report on wildlife sentencing. We do not want to prejudge that report, and we really hope that the report aligns with when stage 2 amendments can be lodged. We would like the Scottish Sentencing Council to consider sentencing for marine crimes—particularly whether the current low penalties are creating an effective deterrent and whether the level of sanction is proportionate to the harm caused. Again, we do not want to prejudge what the Scottish Sentencing Council is doing, but we would love it if, should it find that the penalties are not enough of a deterrent and the fixed penalty notices are too low, especially in relation to England, that aligned with the time in which amendments can be lodged.

I reiterate that, at the moment, the issue of the marine environment is not dealt with explicitly in the bill—it is kind of implicit but not explicit. However, Scotland has significant responsibility and a leadership role to play, since it holds 60 per cent of UK seas and 13 per cent of Europe's marine area. If the legislation is to deliver any support for our marine ecosystems, we would welcome more explicit amendments regarding the issue of the marine environment.

Calum Duncan: I absolutely support that point. It should be clear that the legislation applies to the extent of the exclusive economic zone.

With regard to our suggestions, we would like section 5 of the Marine (Scotland) Act 2010 to be amended so that the national marine plan is required to deliver nature recovery targets. We often talk about the three-pillar approach to nature conservation, which recognises site-specific measures, species-specific measures and wider seas measures. That approach was very much in mind in the drafting of the Marine (Scotland) Act 2010, which recognises that delivery for nature involves not just the MPA network and other sites, but also wider species and seas measures, such as marine planning and fisheries management. We have made some suggestions in our written evidence that could help to tighten up further those connections in law.

For example, section 68(7) of the 2010 act says that Scottish ministers must have regard to "mitigation of climate change" when setting up MPA networks, but it could be amended to require them to have regard to climate adaptation. Section 68(9) says that the purposes of MPAs could include protecting essential fish habitats and juvenile congregation areas. There is often quite a siloed approach between fisheries management and MPAs, and it would be great if the law could

reflect the benefits that designations can provide for improving fisheries management.

Section 68 could also be amended to introduce a duty to support ecosystem recovery in the development of the site network and a duty to review MPA site selection guidance and publish updated guidance by a specified date.

We have also suggested that section 2A(3) of the Inshore Fishing (Scotland) Act 1984 could be amended to add to "marine environmental purposes", mitigation and adaptation to climate change and supporting ecosystem recovery.

Tweaks to those acts would help to emphasise the fisheries benefits of protecting nature and the role of improved fisheries management in contributing to ecosystem recovery and climate change adaptation and mitigation.

The Convener: I will go round the table, because I am quite sure that you will all have something to say on this.

Dr Hesford: I think that our points have already been made, but we would like to see more focus on collaborative, landscape-scale approaches to delivering biodiversity. That is not explicitly delivered by the bill, although it may come through secondary legislation.

Dan Paris: We have made a number of suggestions in our written submission, and I will go through them briefly. In addition to the marine points that Calum Duncan has covered, we think that the legislative basis for the land use strategy could be updated to include the nature recovery targets as part of the land use strategy's required objectives. We also think that the strategy should include ecological connectivity through nature networks.

On nature networks more broadly, we are calling for a duty on ministers to report regularly on progress on nature networks. We think that the bill is a good opportunity to introduce powers to ban the use of peat in horticulture. That is a long-standing commitment that there is no other legislative opportunity to take forward.

We have made suggestions in our written submission on a number of areas related to invasive non-native species, which are a significant driver of biodiversity loss.

Finally, we have suggested that the Government undertake a review of community participation and decision making. The community aspect has come up a number of times today. It is inseparable from the achievement of nature recovery targets, and we think that communities of interest and communities of place are the most effective way to input into policy making across nature recovery.

Nikki Sinclair: There is a bit of part 3 that is to do with access rights and tidying up the Land Reform (Scotland) Act 2003. We think that it might be useful to include legislative provision that would strengthen powers for national parks with respect to securing access to core paths, and rights of way in particular. We have put some information in our written evidence, too.

11:15

Ailis Watt: I can give you a quick overview of the invasive non-native species provision. There are three key asks that we, at RSPB Scotland and Scottish Environment LINK, are really keen to focus on: first, better access powers for NatureScot in carrying out species eradication and programmes involving highly mobile species such as stoats; secondly, a polluter-pays principle for commercial forestry, given that Sitka spruce is invasively seeding across peatlands and into native woodland and, as a result, is consuming conservation budgets of public bodies and the likes of the environmental organisations around the table; and, thirdly, better regulation of the release of non-native game birds, particularly in the context of highly pathogenic avian influenza.

Bruce Wilson: I strongly agree with all of that. The particular issue for us is the land use strategy and nature network provisions that Dan Paris mentioned, as they will provide balance for some of the difficult discussions that need to happen. A real sense of urgency is needed, and giving a boost to the land use strategy will really help.

The Convener: Thank you. I call Mercedes Villalba.

Mercedes Villalba (North East Scotland) (Lab): Thanks, everyone, for such a great evidence session.

In evidence given to the committee on 5 March, Lisa McCann, head of the Scottish Government's biodiversity unit, stated that the Scottish Government takes

"the view that targets are a key way to drive action"—[*Official Report, Rural Affairs and Islands Committee,* 5 March 2025; c 2.]

I think that, from what we have heard today, every member of the panel will agree with that statement—I am just checking for any shaking of heads. No—I see that everyone agrees.

In the same session, Ms McCann also stated that

"There is no simple way to measure biodiversity ... There is not one apex target".—[*Official Report, Rural Affairs and Islands Committee,* 5 March 2025; c 3.]

We have heard agreement from witnesses on that point, too.

We have also heard that, of the seven target topics identified by the programme advisory group, only three are being taken forward in the bill. There was a bit of discussion about the target topics at the start of today's evidence session, and I just wanted to circle back to that on the basis that we are all in agreement of the importance of statutory targets and the need to tackle biodiversity from multiple angles.

Ms McCann explained the reasons for not taking forward two of the targets. On investment, she said that the Scottish Government believed that

"there was a risk of potentially perverse outcomes"

such as the

"risk of potential greenwashing",—[*Official Report, Rural Affairs and Islands Committee,* 5 March 2025; c 5.]

which is an issue that came up earlier. She added:

"There is already quite a lot of work going on across Government to develop responsible private investment in natural capital."—[*Official Report, Rural Affairs and Islands Committee,* 5 March 2025; c 6.]

Do the witnesses believe that the Scottish Government can support the protection and restoration of Scotland's natural environment without public investment? How likely do they believe public investment in nature to be without a statutory target?

Bruce Wilson: In my opinion, the funding landscape of the future will be blended, as there cannot be a reliance on purely private or purely public funding. What we cannot see is any idea that this is just a write-off—in other words, that investing in biodiversity and nature is pure expenditure for the public purse. According to the most recent estimates that I have seen, any return on investment on nature comes back 9:1. It is a very complicated picture.

If we include all the different sources—that is, if you add together all the agri-environment and biodiversity-specific funding—the fact is that over the years there have been real-terms declines in environmental funding across the board. Therefore, I do not think that, without specific measures in the bill, we will see the funding levels that are necessary. Moreover, I do not think that we will get to a place where private sector funding is able to support key biodiversity aims without public money.

We need something such as the land use strategy to act as a framework to allow that at-scale investment. We know that the private sector is not really interested in investments of a few million pounds. The investment needs to be on a scale that makes it worth it. There needs to be both private and public investment.

Calum Duncan: It is a really good question. The issue is one that we are very keen to explore. I completely agree with Bruce Wilson on the need for blended finance. I will give a marine flavour to the discussion. Only 1 per cent of global climate finance is spent on the ocean, and the World Economic Forum has estimated that $175 billion of blue finance will be needed each year up until 2030 in order to fulfil sustainable development goal 14. Between 2015 and 2019, a total of only $10 billion was invested. I do not have the Scottish figures, but I imagine that they are analogous.

One of the things that our natural capital specialist is looking at is blue bonds. That is not my area of expertise, but we would encourage the Scottish Government to explore the use of those to help to get some private investment in the scale of ocean recovery that is needed. We would be happy to have a conversation about that and to provide supplementary information.

Rea Cris: That comes back to the point about accountability and transparency. Regardless of whether the funding is a blend of private and public money, if public subsidies are being given to private bodies, information about what is being done with that money and what the outcomes are needs to be publicly available. There needs to be accountability.

A comparable example is the marine fund Scotland. That is a public fund that is given to private individuals, who might say, for example, "We want to try out new gear in order to test whether it helps with climate mitigation or bycatch." At the moment, there is no requirement to report back, which means that that information is not publicly available.

Therefore, whatever funding mechanisms are put in place, there needs to be accountability, public availability and transparency. If the purpose of the funding is to enable people to look into the science of something, the information needs to be available so that other people can build on that science and move forward. I am again ringing the bell for accountability and transparency.

Ailis Watt: I thank Mercedes Villalba for what was an interesting question. I agree with Bruce Wilson. The reality is that we will need to have a blend of public and private finance, but public finance should lead the way. The success of the nature restoration fund is a strong example of how far public money can go. Although that was a relatively modest fund, the gains that it delivered for nature and for people far outweighed the investment in it. If more such funding can be provided at a greater scale and administered in the right way, we can make a lot of progress towards the targets and on the other parts of the bill that we support.

Mercedes Villalba: Do I have time to ask another question?

The Convener: If it is brief, although Tim Eagle has a supplementary.

Mercedes Villalba: I intended to move on to a different area.

The Convener: In that case, we will go to Tim Eagle first.

Tim Eagle: It is an interesting question. As the convener mentioned, we visited Cairngorm national park earlier this week, and the subject of biodiversity credits came up. I struggle to get my head around carbon credits, let alone biodiversity credits. What impact will biodiversity credits have? That vehicle could be a significant driver of private investment, could it not? How does the idea of biodiversity credits work alongside the setting of statutory biodiversity targets?

Bruce Wilson: It has large potential. I emphasise that public funding cannot go away, but biodiversity credits have a role to play. There are questions about whether we would have compliance-based markets, which might involve something to do with biodiversity net gain, or voluntary markets. There are all sorts of questions around that. The idea is in its infancy in Scotland, and the best thing that we can do at the moment is to build the infrastructure so that we are ready.

I will give a quick example. At the moment, under the national planning framework 4, planning authorities require EIA-level developments to show positive effects for biodiversity. Developers are approaching non-governmental organisations, local authorities and private landowners to ask where they can find positive effects for biodiversity. There is no slate of projects that can be invested in. Through nature networks and regional land use partnerships, we should have been developing a bunch of projects that were ready to be invested in. We need to get that infrastructure up to scratch, and quickly.

Mercedes Villalba: In her evidence to the committee, Ms McCann also stated that the Scottish Government

"had not envisaged doing any formal public consultation on the regulations for the targets"—[*Official Report, Rural Affairs and Islands Committee,* 5 March 2025; c 8.]

due to the technical nature of what is in the targets. Do any of you have a view on whether there is a need for public consultation on the regulations for the targets?

Bruce Wilson: There is a balance to be struck between expediency—getting this done—and involving others in the process, but there definitely needs to be input. So far, co-design has not gone fantastically well on some elements of the biodiversity framework, so that needs to be well considered at the next stage.

Rea Cris: I would say that there needs to be public consultation, and it is incumbent on a serving Government to make that consultation as accessible as possible, because it will impact people's lives. Things are happening in the marine environment that fisher folk and coastal communities were not even aware had been consulted on and the impact of which they did not understand. It is incumbent on Governments to consult. If they are setting up a procedure, it is up to them to make that procedure available to everybody.

Calum Duncan: We absolutely support that.

If I can quickly add something in response to the previous question, we would like other industries that benefit from the public good of the marine environment to contribute to the Scottish marine environmental enhancement fund.

The Convener: We have run out of time. I thank you all for your very valued contributions this morning.

We will have a brief suspension before moving on to the next item. We will resume at 11:35.

11:26

Meeting suspended.

11:34

On resuming—

Subordinate Legislation

Town and Country Planning (Marine Fish Farming) (Scotland) Amendment Order 2025 [Draft]

The Convener: Welcome back. Our second item of business is an evidence session on the draft Town and Country Planning (Marine Fish Farming) (Scotland) Amendment Order 2025. We are very pleased to be joined by a panel of five stakeholders to discuss the instrument.

We have Sean Black, senior scientific and policy officer for aquaculture, Royal Society for the Prevention of Cruelty to Animals; Elspeth Macdonald, chief executive, Scottish Fishermen's Federation; Mike Spain, director of aquaculture, Crown Estate Scotland; Dr Iain Berrill, head of technical, Salmon Scotland; and—joining us remotely—Professor Paul Tett, reader in coastal ecosystems, Scottish Association for Marine Science. I thank you all for being here.

We had invited other stakeholders, but, unfortunately, they are unable to attend. It is disappointing that we do not have any representatives from our local authorities, because one of the major concerns is about their capacity to deal with this new legislation. However, we will carry on, and I hope that we will get some information from them before we have to make a decision on the instrument, in a couple of weeks.

We have allocated around an hour for the session, and we have a few questions to get through. Once again, I ask everybody to be as concise as possible with their questions and answers. I remind everyone that you do not need to operate your microphones—that will be done for you.

I will open with a very broad question, which I hope will set the scene. What are the possible risks and benefits of locating fish and shellfish farms beyond 3 nautical miles, and is the current evidence base and regulatory regime good enough to enable assessment of those risks and benefits of siting farms beyond 3 nautical miles before allowing developments to go ahead? Who would like to kick off?

Dr Iain Berrill (Salmon Scotland): The important point to start with is that the legislation already permits salmon farms to develop in those regions, so this is a discussion about who the appropriate authority should be.

In relation to the proposed change and who should be the appropriate authority, we think that it should be local authorities. They are currently doing this job out to 3 nautical miles. They have the expertise and local decision making is at the heart of what they do. Overall, they are best placed to carry out the role, and they have a framework through which to do it, which is a benefit.

The challenge for salmon farming is that we are slowly developing so that we can move into more exposed locations, which one might assume would be further offshore. At the moment, all of our farms are within 3 nautical miles. For us, the siting of farms is about identifying the right location and the right conditions for them. Some of those conditions might well exist between 3 and 12 nautical miles, so the benefits are that we open up the zones and we can move to farm in the best locations for our fish, the environment and wider stakeholders.

The Convener: You said that local authorities are best placed to deal with the issue. Do they have the expertise and the capacity to make informed judgments about the appropriateness of fish farms beyond 3 nautical miles?

Dr Berrill: I believe that they do. On the question of their expertise, they have a framework that allows them to understand the pressures, to bring people together to make the decision and to bring in stakeholders who might support a planning proposal or might have concerns about it. The framework allows for that stakeholder engagement.

It is not necessarily a step change; we should think of it as more of an incremental change. The local authorities will be learning as we move further into more and more exposed locations. In that respect, they do have expertise.

In relation to their capacity, a lot of us have concerns about the resources of local authorities. Where that sits within the discussion is a difficult one for me. I feel that there is a discussion to be had around the principles of the proposed change and identifying the right body to be the competent authority. That competent authority should be properly resourced. Regardless of whether this measure comes into play, resourcing is already a challenge.

Elspeth Macdonald (Scottish Fishermen's Federation): Good morning. Like the other major food producers from the sea, the fishing industry has some views on the matter. It was disappointing that the Scottish Government did not draw its consultation directly to our attention. Fortunately, we spotted it ourselves, but it was disappointing that we were not on the list of organisations that the Government contacted directly.

We have a number of reservations about and objections to what is set out in the instrument, as you will have seen from our consultation response.

As committee members will be aware, we are primarily concerned about the increasing spatial constraints on our waters, as so much of the sea bed becomes exclusively leased for other activities, such as aquaculture or offshore wind. One of our concerns is that the cumulative impact of that is squeezing our industry into less and less space over time.

We also have concerns about the potential safety risks that those new developments will pose to people in our industry if and when they become a feature in Scottish waters. I understand that the developments will be very large, and, because they will be in deeper waters that are further offshore, they will need extensive and elaborate mooring systems so that they stay where they are put. Anything that is subsurface creates a snagging hazard for the fishing industry, and anything that is above the surface creates an area that we cannot go into.

Our sectors already have challenges, such as when fish farm site equipment goes beyond site boundaries and floats free. Sometimes, smaller inshore vessels become entangled with fish farm debris, which is a safety hazard for our industry.

Over time, we need to understand more about the new systems—indeed, we understand that the structures will look very different from conventional fish farms. What technical assurances will given about their robustness and ability to withstand conditions further offshore?

We have also raised concerns about our not yet knowing what will be the environmental impacts of moving the industry further offshore. We have concerns not just with fish farming but with other structures in the sea, such as wind turbines. Do they present a potential network to allow invasive non-native species to come into our waters?

Iain Berrill touched on local authority resource issues, which is a concern that many of us probably share. Local input and decision making on those issues is important. However, the issue is not just whether local authorities, which are under many pressures, are adequately resourced to get more involved, but whether assessments might become more complex if such sites move further offshore.

Sean Black (Royal Society for the Prevention of Cruelty to Animals): Good morning, committee. We are primarily looking at the welfare of the farmed fish. When it comes to the benefits and risks, we are focused on the fish.

Our questions are about the evidence base. As Iain Berrill highlighted, no farms in Scotland are located beyond 3 nautical miles, and very few are around the world. The evidence base on the impact of, for example, current speed and wave height on farmed fish is unknown. We want to see either a commitment from the Government, industry and other research bodies to focus research on farmed fish welfare or more work in other countries on that front.

What are the positive impacts of moving the farms offshore? Is there less of an impact on sea lice, plankton and jellyfish? What are the negatives? How do maximum current speeds impact on the swimming ability of farmed fish? There is some evidence about the maximum current speed that fish, particularly salmon, are able to swim in. We want to ensure that any farms are not overly stressing the fish, because that has a negative impact on their welfare.

There are other aspects, too, and we are seeking assurance as to what farms will do. If the structures are offshore and, as Elspeth Macdonald said, they are very large, how will farmers perform their standard husbandry practices? How will they ensure that the fish are in good health? That can probably be done in a number of ways, but we want assurances about what that looks like. How will they perform welfare outcome assessments and undertake a lice count? At the moment, there are a lot of unknowns in this area.

We do not have an opinion on the local authority issue—it is not within our remit to talk about that.

11:45

Mike Spain (Crown Estate Scotland): Good morning. It is important to note that Crown Estate Scotland approaches the issue not as a regulator but in our role as manager of the sea bed for the benefit of Scotland as a whole. As the lessor of areas of the sea bed, we want to ensure that a robust and consistent regulatory framework is in place to support responsible and sustainable development, and we see that as being in line with the Scottish Government's objectives with regard to the growth of the aquaculture industry more broadly.

We are not qualified to speak on the scientific or local authority issues, but I should say that part of my remit as director of aquaculture and marine ecosystem services is to have an understanding of what ecosystem services might derive from the proposed approach. Given that shellfish were mentioned, it might be useful to highlight an offshore mussel farm that sits beyond 3 nautical miles off the south coast of England—off Devon, I think—where the deployment of spat naturally from that farmed site has led to the regeneration of the native mussel beds that had previously existed in the English Channel and that had depopulated. There might, subject to scientific research and confirmation, be benefits from mussel expansion to ecosystem services.

The Convener: Professor Tett, would you like to comment?

Professor Paul Tett (Scottish Association for Marine Science): Yes, and thank you for the opportunity to give evidence remotely.

First, I would point out that SAMS's interest lies especially in the west coast of Scotland, where the area of sea within the 3-nautical-mile limit is already very large. The limit goes from the coastal baseline, or from headland to headland, which effectively includes most of the seas in the Inner Hebrides and around the Outer Hebrides and the Minch. Therefore, the extension to 12 nautical miles will go a bit further beyond that. In any case, if we are talking about the west coast, we are talking about a very large area of sea; indeed, it means that, within Argyll and Bute Council's remit, there will be more sea than land. That brings to mind my first question: do the local authorities and the statutory consultees on planning have, as other people have suggested, the resources and the expertise to deal with developments in that area?

Secondly, we are dealing with an interconnected body of water. After all, the sea does not stop flowing when it gets to the boundary of Argyll; water flows from the Mull of Kintyre north to Cape Wrath, then up the Minch and around the islands. That brings me to my other point, which is about the need for some strategic planning. Local authorities deal with operational planning in the sea—for example, they give consents for development—but, as far as I can see, there are no strategic plans for fish farming in the sea area other than those implied in the Scottish Government's locational guidelines.

Again, drawing on comments that other people have made, I think that there is a need for strategic planning for the whole of these sea areas so that we can look at the requirements of all sea users, including the fishing community, the marine renewable energy community and the aquaculture community. In a way, it seems to me that, if we split planning between local authorities, the Scottish Government and other entities, we will not be getting the best kind of planning that is relevant here.

Our suggested approach would be to leave planning consent to local authorities, as proposed, but to consider further implementation of regional marine planning partnerships alongside the idea of a joint partnership for the whole of the west coast of Scotland, whose remit would be to devise a strategic plan for aquaculture and identify areas suitable for offshore aquaculture on the west coast.

The Convener: That question was certainly a good opener, as the responses have probably touched on every other question that we are about to drill down into. Therefore, please do not make any apologies for reiterating or restating what you have already said in what could be regarded as your opening statements.

We will now move to a question from Mark Ruskell.

Mark Ruskell: Before I move on to my question, convener, I want to get a bit of clarity from Iain Berrill. Does the industry see the instrument as effectively being about the relocation of salmon farms from inshore to a more high-energy environment offshore? Alternatively, is it about expansion—retaining existing salmon farms but then expanding into the offshore environment?

Dr Berrill: As I have said, we want to locate farms where it is most appropriate to do so, and some of those locations might be further offshore. In cases where we believe that farms in sheltered environments are not better placed, that would result in a relocation. The discussion about relocation is complicated, because the consenting system is difficult. As an industry, we want to expand, but we want to do so with the right farms in the right locations. That is key for me.

If we look at the matter in the round, the concerns that have been raised today are legitimate. For me, the issue is that we have primary and secondary legislation that already defines that the planning of aquaculture facilities—salmon farms and shellfish farms—can occur out to 12 nautical miles. What we do not have is a clear, competent authority to make that decision or a framework for how those issues are brought together and appropriately discussed for individual planning applications. My understanding is that any developer would need to put in an application to Scottish ministers, for them to decide on, but without their having a clear framework in which to do so.

A planning framework would allow stakeholders, such as those around this table and others, to bring together those points, and it would provide a clear mechanism for discussing them in relation to individual applications and for those applications to be given consent, or not, on their merits or otherwise.

Mark Ruskell: We will probably come back to that in future questions.

Sean Black, you touched on what appears to be a lack of evidence of the animal welfare implications. I assume that the RSPCA is not in a position right now to update its salmon farming certification in order to allow the certification of salmon farms that are located in an offshore environment, because you do not have that data and you therefore cannot set the standards. Is that correct?

Sean Black: Yes, that is correct. We would consider offshore farming to be a novel technology, which means that no standards exist within our current welfare standards for either Atlantic salmon or rainbow trout, so—

Mark Ruskell: Does that mean that, if those salmon farms were involved in production, we could not buy that fish with RSPCA accreditation from Marks and Spencer or anywhere else?

Sean Black: Yes—that would not happen automatically. There could be considerations, and we would want to work with the farmer and to look at some research, but that salmon would not automatically be able to go on sale under our scheme, RSPCA Assured, if that makes sense.

Mark Ruskell: Okay. Let us turn to the impacts on animal welfare. I am interested in several different areas. First, cleaner fish—lumpfish and wrasse—have not evolved in a high-energy offshore environment. I am interested in the evidence and the standards in that regard.

Secondly, I am also interested in what you said about salmon. What could be the implications of rearing salmon in that high-energy environment over a long period? What do you know about the welfare implications of that? What aspects have already been studied?

Sean Black: There are a couple of studies that look more broadly at Atlantic salmon in that setting—for example, at their maximum swim speed and what current speed they can hold a swimming pattern in. I think that they can hold a steady swim at a current speed of around 0.6m per second. If the current is going to be above that all the time, the fish will become very stressed; I think that we would all agree that that is suboptimal. If the current speed is below that, they are not stressed out all the time, and they can drop below that.

Those studies are done in a wider setting—we can also get current speeds in inshore locations such as the Pentland firth, so I do not think that that applies specifically to offshore, but it is a consideration.

There is a good paper from the Institute of Marine Research in Norway that examines the welfare impacts on offshore fish farms, but it is more about the research that is already available. That paper is from 2023, so the research would have been done before then.

There are still a lot of unknowns. What happens with wave heights. Are there fewer sea lice? What is the impact of a larger current? Is the oxygen at a higher level all the time? From our point of view, there is not enough research, and we want to see more, as well as a cross-collaboration between different countries, for Scotland to be able to—

Mark Ruskell: What about cleaner fish?

Sean Black: We suggest that cleaner fish should not be used in offshore farms. As you suggested, they are used to much more inshore locations. Many farms in the inshore environment—within the 3 nautical miles—decide not to use cleaner fish because the areas are too tidal. In particular, lumpfish are not suitable for those locations, so they would not be suitable in high-energy offshore farms, even with the use of hides and refuges.

Mark Ruskell: From the industry perspective, how easy will it be to monitor fish health in what is, in effect, an offshore environment? I am thinking about adverse weather conditions.

Dr Berrill: The producers who are currently in Scotland are looking at incremental changes and development in different environments. To my knowledge, at the moment, companies have no direct plans to move immediately into that location. We need to learn and develop expertise and understanding.

We already have camera-based systems on our farms that allow remote monitoring of health and welfare. Our fish are monitored effectively on cameras and can be monitored at any time. Those systems can be operated remotely if need be, but they also be operated when people are on the farms. Those are the farms that are in existence now. A lot of companies are developing remote feeding systems that can be managed from a central location on a shore base, in an office in a city or anywhere.

That remote work is already in place, but it does not get us away from the fact that having individuals on a farm is very important for monitoring the fish. We are already moving into that area where we understand—and are increasingly monitoring—our fish and their health and welfare on a day-to-day basis.

Mark Ruskell: You just said that you are not ready to move into the offshore environment.

Dr Berrill: I am saying that the producers who are here at the moment are making incremental changes.

Mark Ruskell: In the inshore environment.

Dr Berrill: I am talking about more flushed or exposed locations that are further away from the coast.

There are companies that have facilities in other countries—Norway, specifically—and are in those locations at the moment. They have some links to our companies, but those that are operating here at the moment are doing that work in an incremental manner.

The Convener: That leads us on nicely to a question from Elena Whitham.

Elena Whitham: My original question was around the resourcing of local authorities to undertake that work. It was interesting to listen to Professor Tett outlining the issue around the wider strategic planning and how that could work in practice in regional partnerships.

I do not want to stray into other members' lines of questioning, but I am interested to understand what Elspeth Macdonald thinks about that. Obviously, spatial conflict would arise, but it is about the complexity of how a local authority would undertake the assessment of what could operate beyond the 3-nautical-mile mark. How would that impact on your organisation and members?

Elspeth Macdonald: Clearly, a lot of policy work around planning in our seas is going on at the moment. A new national marine plan is being developed, and a lot of work is going on there. That work recognises that, whether it is business sectors, conservation interests or climate reasons, a lot of different activities and policies are impacting on our marine environment, and the existing national marine plan needs to be updated to accommodate that impact. That work is on-going. Obviously, that will be a national marine plan for Scotland, but I expect a lot of sectoral elements to sit underneath that.

12:00

On how the particular issue that we are talking about today will operate, thought needs to be given to how it will fit with the wider strategic piece about how you connect the local issues with the bigger part of it. It also touches slightly on the question that Mark Ruskell asked Iain Berrill a moment ago about whether it is relocation or expansion. I am also keen to understand a bit more about that. We have a question in our industry about the size at which we might be able to move fish further offshore. Do we still need sites in inshore waters to rear them to a particular size before they are big enough or strong enough to move out into more high-energy areas? We are yet to understand all those things. Is it about more sites or replacement sites?

I also appreciate what Iain Berrill said about the change being incremental. The industry here has not worked out how to do this. There is a lot that we are talking about here today that is very specific to the planning zones, but it needs to be seen very much in the context of what the national marine plan will set out, because that should be what sets out the framework for our future marine planning.

I am not personally close to the specific activities of the local authorities in relation to their role in consenting or planning consents for aquaculture. However, when we take a system in inshore waters that is probably quite well understood by the local authorities that are involved with it and we move it further offshore, where the marine environment is different, the situation becomes more complex. Professor Tett has spoken about the fact that there are no neat boundaries in the sea. There is a question about not just whether local authorities have the resources to undertake the task, but whether they have the expertise to do it and whether they are plugged into the wider national marine planning framework, which should be the overarching framework for all of this.

Elena Whitham: The second point that I was going to come back to is about expertise. The issue is not just about capacity in terms of resourcing but about the individuals who undertake work in closer-to-shore activity in the marine space, especially those who work for local authorities. We are thinking about high-energy waters and trying to understand how a site could work in that space. Is there the expertise for that?

Dr Berrill: It sounds a little bit as though I am an avid advocate of local authorities, but I want to be clear that they are already dealing with a process and a framework that involves multiple layers of understanding around regional development plans, local development plans and the national plan. Although I do not disagree that there is perhaps a requirement for specific plans at different scales, and they are in development—some of them are further behind, which is for others to comment on—the structure and framework of the planning system means that, when they are making decisions and sometimes making recommendations to local committees, planners have to have due regard to those regional, national and local development plans and structures. They are already set up for that.

Putting the resource issue to one side, local authorities already have the expertise and the framework to do this, so they are the right people to continue that work. Although this is very much about a change from 3 to 12 nautical miles, we must not necessarily see it in that way—we must see it as a continuum of going further off the shore. It just means that local authorities might encounter different plans that require consideration within the framework that they are already under.

Elena Whitham: As a former chair of a council planning committee, I understand how the system works, although I did not have marine in my planning authority. I can think about it in terms of being on a planning committee during the

proliferation of wind energy and understanding that from its beginnings and as it expanded rapidly, with the planning committee members and officials having to increase their knowledge base rapidly. It is important to look at it in that respect, because the local authorities are not coming from a standing start. They have knowledge, but how do we ensure that, if this goes forward, they have knowledge beyond their current capacity as well as expertise that they can draw on to make the best decision in a very busy space? I guess that was what I was trying to get at.

Dr Berrill: I apologise if I am speaking out of turn—I want to temper expectations that, once it has been clarified, all of a sudden, development kicks off in huge swathes of the sea. It is an incremental process of learning how we can do it, learning about the environmental benefits and potential impacts and learning how we will farm our fish in those locations. It is important to have the competence and authority so that you can be involved in that journey, which we are already on, as we move into more flushed locations further from the shore. It is not about a step-wise change; it is about having clear legislation and a clear consenting system, so that everybody knows whose responsibility everything is when we get to the point of development. However, getting to that point will not happen next week. We need to work towards it.

Emma Harper: I have a quick supplementary question for Elspeth Macdonald. We hear a lot about spatial competition around the coast of Scotland. Can you furnish us with any good examples of planning and development in areas that have worked really well that we can learn from in national, local and regional planning?

Elspeth Macdonald: There are some good localised examples. Generally, it helps when people speak to the fishing industry earlier rather than later. For aquaculture, seaweed farming or offshore wind sites, for example, the earlier we can start discussions about where we put a site that has the least impact on you while it still meets our objectives, the better we are able to find accommodations around it.

Such examples tend to be the minority of cases. It tends to be that fishing has to accommodate other users of the sea. An argument that is sometimes made to us about offshore wind development is that offshore wind could be co-located with aquaculture—that fish or shellfish could be grown alongside it and that you could double up the use of spaces so that two activities can happen in one place, rather than fishing being excluded from some areas. I do not know how practical that is; there would be all sorts of other constraints to consider. However, my sense is that there are good examples, albeit localised, but that they tend to be in the minority.

We are in discussions with a fish farm developer on the west coast who wants to develop a site that is in an important prawn fishing ground. We are having good and fruitful discussions about how to do that in a way that allows both industries to continue to operate. We are not there yet, but the discussions continue. The key is early engagement and a recognition and respect for both industries in trying to find a way through it.

Emma Roddick: Elspeth, you have touched on the fact that your sector has to work within the wider regulatory framework. How do the proposals align with the wider considerations?

Elspeth Macdonald: When I read the business regulatory impact assessment that accompanies the draft Scottish statutory instrument, it was a little frustrating not to see any figures. There were a lot of statements in the BRIA, but there was not a lot of evidence. A lot of assumptions were made, one of which was that they did not foresee that the content of the SSI would put costs on businesses.

It feels a bit like I am dancing on the head of a pin, but, although Iain Berrill is correct in saying that the SSI is about who does it, I think that there is a bigger issue about whether it is the right thing to do. I would contend that expanding aquaculture from the 3-nautical-mile limit to the 12 nautical mile zone will potentially have a financial impact on our businesses. It is more that the regulatory change will have a knock-on impact on our industry than there will be a direct impact from the regulation itself.

Emma Roddick: Does the industry need a wider view to be taken in marine planning? Presumably, marine planning could be very helpful for fisheries if it is done in the right way and with a broader view rather than in a way that, as you say, squeezes fisheries.

Elspeth Macdonald: The point that you make about doing it the right way is key, because we would contend that the existing national marine plan is quite a good plan; it is just that it has not been well implemented. We need to be careful not to spend a huge amount of time developing a lovely new national marine plan for Scotland that says all the right things, sounds marvellous and will deliver great solutions for everyone if it then does not do that or is not equipped to do that, whether that is because of the underlying infrastructure or because it simply is not implemented well. Things on paper might be fine, but it is about how they translate into the real world. That is the proof of the pudding, if you like.

Emma Roddick: That is helpful.

Professor Tett: I want to comment on resourcing. To my mind, the resource issue applies not only to local authorities but to their statutory consultees—namely, the marine directorate, the Scottish Environment Protection Agency and so on—who have to advise local authorities on potential environmental impacts and related issues. My view is that, at the moment, those consultees probably do not have the necessary resources to properly support local authorities in relation to offshore sites.

The Convener: Before we move on to the next question, I note that, as part of its work on the salmon farming inquiry, the committee recommended that the Scottish Government commission research into the potential risks and benefits of moving fish farms further from the coast to more exposed waters. The Government did not respond favourably to that and, in effect, said that it was up to the Crown Estate, local authorities, SEPA, the marine directorate and other statutory consultees to do it. It agreed that there was an opportunity to use innovation sites to look at the impact, but it said that that would not be delivered until after a successor for the sustainable agriculture innovation centre funding had been set out. So, there might be an answer to some of the questions there.

Tim Eagle: Elspeth Macdonald has pretty much answered this, but does anyone else have thoughts on the impact of the changes on other marine users?

Dr Berrill: I completely understand the issue of marine spatial squeeze, because it affects our members as much as it affects anybody else. It comes down to the question of who makes the decision about any activity in any location, whether that decision is about an offshore renewable development, a salmon farm or aquaculture facility, or fishers being able to operate in an area.

We do not have a clear system in which, ultimately, one person or body makes the decision. As I said, we have regional plans, a national plan, an on-going consultation process and planning guidance, but—I keep coming back to the same point—we need somebody or an organisation to be the point at which all that information is brought together and considered in a legitimate way, along with the views of local communities, stakeholders such as Elspeth Macdonald and her members, and other organisations that are concerned, such as offshore energy companies. We need to enable everyone to come together at that one point to look at what the environmental pressures and the other business pressures are at that location so that a decision can be made.

In my view, the discussion that is being had here, and the issue that the committee has been asked to comment on, is about which organisation or body should perform that role. Again, my view is that local authorities are well placed to do that, because they have the expertise, which is what it comes down to. However, to be frank, spatial squeeze is a problem for every marine user.

12:15

The Convener: Elspeth, do you want to come in on that?

Elspeth Macdonald: I reiterate that it increasingly feels as though fishing gets the crumbs that are left that nobody else wants when it comes to spatial needs. There is massive ambition for offshore renewable energy. That is the case not only in relation to offshore wind—there is innovation, development and ambition in relation to tidal and wave energy, which might be more in inshore waters.

It is important to remember that waters closer to shore tend to be where our inshore fishing fleet operates, and it is not easy for them to simply go somewhere else. The bigger vessels can go further offshore, because they are able to work in harsher conditions and have a bigger range. However, it is important to remember that our inshore fleets that work in coastal waters face particular challenges and that it is not easy for them to simply go somewhere else.

I go back to my point that the spatial constraints are part of our concerns but that we also have significant safety concerns about how the fishing industry can safely co-exist with such developments as they move further offshore. We already have significant safety issues with our co-existence in inshore waters.

Rhoda Grant: What processes take place to consult the fishing industry about all the developments, not just those in aquaculture? I ask that because it feels as though you will be squeezed and squeezed, especially in the case of some of the bigger offshore energy projects. I do not know whether you can work in between those, but I would not have thought so. Are you consulted? Are changes made to accommodate your needs?

Elspeth Macdonald: That is a good question, and it is almost linked to what Professor Tett said a moment ago about resources, not only in local authorities but in the other bodies that are consulted on such matters. We are consulted on all manner of marine licensing applications, and it is important that we are consulted, because we have to understand whether there will be an impact and how we can make representations on that. However, that eats up an enormous amount of our resources. The amount of work that our organisation has to do now, particularly around

offshore wind consenting, in an effort to protect our industry's interest is huge. In the time that I have been in this role, we have had to massively expand the resource that we invest in that.

On aquaculture, we see a slightly patchy picture. Some local authorities are better than others at bringing us into the process early. However, when things are at the marine licence stage with the marine directorate licensing team, we are consulted. We tend to find that we make a lot of representations but that those do not result in much change—that is the usual position.

It goes back to my point that the earlier we are engaged, the better. The sooner a fish farm company or an offshore wind company, for example, that is thinking about a development somewhere comes to talk to local fishermen but also to us as the federation that represents wider interests, the better, because that is an opportunity for us to prevent problems from arising in the first place. That approach tends to be much more fruitful than our trying to effect change during the formal stages of the process. However, it is a big resource requirement on us, from the point of view of capacity and expertise.

Rhoda Grant: My substantive question is about statutory impact assessments. Do any of you have concerns about how such assessments might, or might not, apply to aquaculture developments beyond the 3-nautical-mile limit?

Dr Berrill: I am not aware of any significant concerns about that, if I am honest. Can you clarify exactly what you are referring to when you say "statutory impact assessments"?

Rhoda Grant: We have heard some concerns that assessments would apply beyond the 3-nautical-mile limit, while other feedback has suggested that they would not. There seems to be a bit of dubiety in that respect.

Dr Berrill: Okay—I see what you are saying. There should always be an appropriate impact assessment. Our members want to put the farms in the best locations—that is, locations where conflict can be avoided, as much as possible. Of course, that is not always possible, which is why I said "as much as possible".

I agree that early engagement is really important, and appropriate full assessments should be undertaken, whether we are talking about a zone up to 3 nautical miles or further offshore. I would always argue that we want to go through the right process and ensure that it is thorough and that, if certain impact assessments are required to be undertaken, it is important that they be carried out.

The Convener: Before we move on, I note that the Government's response was to decide

"that a Strategic Environmental Assessment was not required",

nor was "a Habitats Regulations Assessment". Do you have concerns about that?

Elspeth Macdonald: That was in relation to the consultation on the SSI. It goes back to my metaphor about dancing on the head of a pin. I think—if my recollection is correct—that the Government said that these things would be done as and when an application came forward. Basically, it had scoped them out of doing them as part of the exercise of bringing forward this legislation. I thought that that was a bit strange, because I felt that there should have been some attempt to have such assessments.

When I was rereading some of the papers this morning, I was a little confused about the reference to an island communities impact assessment, because that made it sound as though there had been a bit of one but not a full one. Bearing in mind that a great deal of Scottish aquaculture is set around islands, I would have thought—given that we are looking at the impact on island local authorities—that that point would have been relevant.

If my recollection is correct, the Government said simply, "There will have to be an SEA and an HRA as and when somebody comes forward with an actual proposal," but, in the case of this specific instrument and the consultation on it, it did not feel that that was necessary. I would have thought that it would have been helpful to have made some sort of attempt at an SEA—a strategic environmental assessment—and an island communities impact assessment.

The Convener: That would contradict what Professor Tett has suggested with regard to the flow of waters and the cumulative impact. If that sort of thing is not done on a far bigger scale, local authorities will be making a determination on individual sites instead of looking at the potential overall impact.

Rhoda, do you want to come back in?

Rhoda Grant: It seems to me that it is not altogether clear what regulation with regard to impact assessments would be required. The information that we have is that strategic environmental assessments will not be required, but wider environmental impacts could be considered. It is just not very clear that, given the 3-nautical-mile limit, the legislation that applies further inshore does not apply that far out.

Dr Berrill: Any development will always need an environmental impact assessment—that is clear—and that impact assessment will develop and change. It is location specific, but it must consider the wider impacts, too. In other words,

how will a development, be it a farm or, for that matter, anything else, impact on its environment, both at local level and further away?

That approach would stand; that is the planning system that we have at the moment, and the planners would require that. There has been some question about how the impact assessment might change as we move further off into the 3-to-12-mile zone, but I go back to my previous point about looking at this in an incremental way. That impact assessment has to be undertaken now to look at what is happening in that local environment and more widely; if we move the farm, the impact assessment has to be adjusted accordingly.

There will always be an appropriate level of environmental impact assessment. Whether the statutory instrument requires certain layers of assessment is perhaps more a question for the Scottish Government or the officials to take a view on, but any applications that come forward will always go through that detailed process. Arguably, it is one of the most detailed aspects of making an application at the moment.

Rhoda Grant: Okay.

Mark Ruskell: I appreciate that there is competition between private interests for the use of the seas, but the public interest in the room really lies with Mike Spain. After all, the Crown Estate could be leasing the sea bed.

Therefore, Mike, I am interested in hearing your views on the regulatory frameworks that are being established here. As I understand it, SEPA's controlled activities regulations licensing will not apply when it comes to waste discharges, lice treatments, medicines and so on. Those things might or might not be necessary, but given that you will be leasing the sea bed in the public interest, can you tell us how that public interest is reflected in a regulatory framework that does not replicate what we have inshore, where there are some quite strict environmental limits that are monitored by a public agency?

You have been a little bit quiet this morning, so I would like to hear what the public interest says about what is before us and how you are managing private interests to ensure that the public interest in the environment is being protected.

Mike Spain: Obviously, the regulatory framework is set by someone other than ourselves. As we are not a regulator, we have to take a step away from the regulations and how they are applied.

However, we need to ensure that, before anyone enters into a lease, they have fulfilled all the obligations and requirements of the regulatory framework that is set up. We hope that, with the development of the instrument and any other future legislation, a robust, transparent and effective set of regulations is put in place by those who are authorised to do so, to ensure that when we consider issuing a lease, all those requirements have been met in full. If they have not been met, no lease will be issued.

Moreover, it is important that, as we consider the impact of this change, we consider, too, the number of potential sites or applications that might come our way and on what timescale. I think that, as Iain Berrill has said, this represents a transition—that is certainly the feedback that we are getting. It is not going to be the equivalent of a gold rush, with people saying, "Let's expand massively all at once." There has to be a transition and an understanding of what is going on.

That is where our colleagues in marine science have an important advisory role to play. In developing the regulatory framework—which, as I have said, lies with others—those involved will need to rely heavily on colleagues in the marine directorate science branch and the likes of the Scottish Association for Marine Science, which is part of the University of the Highlands and Islands aquaculture hub, and, I would imagine, the institute of aquaculture at the University of Stirling. A lot of science needs to go into making sure that the regulations are robust enough to support a responsible, sustainable move. Only if those things are in place will we offer a lease, which will bring benefits back to the people of Scotland.

Mark Ruskell: In that case, would you say that, when it comes to granting a lease, the statutory instrument before us sets out a robust regulatory framework, or do you think that there is still some way to go before you can confidently start issuing leases, knowing that the robustness is there with this regulation, as you would expect it to be with all the other leases that you issue for wind farms, inshore salmon farming sites, kelp farming and everything else?

12:30

Mike Spain: I must confess that I have not had time to read this in detail, because I got a phone call inviting me to attend the meeting while I was on holiday last week. I have come back from holiday and straight into the meeting, so I apologise if I am not as fully prepared as I might like to be.

Mark Ruskell: In that case, you might need to get back to us.

Mike Spain: I am more than willing to get back to you on that detail.

The Convener: As part of the salmon inquiry, we were informed about the pilots of the single-

case flow approach, which co-ordinated SEPA's CAR licensing process, along with local authorities. That was on-going in Shetland and the Highlands. The independent valuation was supposed to be published in April, but that has not been done yet, as far as I am aware.

On SEPA's responsibility, the Scottish Government says:

"Work is underway to consider how best to implement assessment and regulation of fish farm discharges between 3-12 nautical miles".

Do we have the cart before the horse? Are we looking to approve an SSI before the work has been done to allow those applications to navigate that process successfully?

Dr Berrill: That is not the case. Notwithstanding the gap that we are discussing today, we have consenting bodies that already have responsibility out to 12 nautical miles and further afield. It varies and, in the area of environment, that is the one space where it varies. We have a complex consenting system. That point was picked up in the inquiry that the committee undertook, in a number of strands of Professor Griggs's work and so on. In effect, five permits, consents and leases are required. Although they speak to one another to a degree, what is material for the environmental licence is very much that you need an environmental licence and all these other things.

From that perspective, this is a slightly separate discussion to that about who should be the authority for planning, because we look at planning in its own right and then we look at the environment. On the environment, at the moment, responsibility for the 3 to 12 nautical miles zone would fall to a marine licence. SEPA would be a statutory consultee to that marine licence, and I have every confidence that the officials who would be required to undertake that assessment through a marine licence would have full dialogue with SEPA, which would therefore be working hand in hand with the team assessing that through the marine licence.

Therefore, although I appreciate that SEPA does not have responsibility out to 12 nautical miles, that does not mean that its views and its position would not be integral to the decision-making process, and it would therefore, de facto, be making the decision for the marine directorate under a marine licence.

Elspeth Macdonald: I will touch on your question, convener, and on Mr Ruskell's.

A moment ago, Mr Spain said that this is not likely to be a gold rush, and that made me think of what I tend to call the wind rush, which is the ambition for offshore wind and the number of sites that have been leased for offshore wind development in Scottish waters far exceeding the Scottish Government's sectoral marine plan for wind. Indeed, there was no plan at all for the innovation and targeted oil and gas sites. They are now playing catch-up with planning, and we expect to see a consultation on an updated sectoral marine plan at the end of this month. The cart definitely came before the horse in that regard.

There is a regulatory gap, because we now have exclusivity agreements for offshore wind developments in significant areas of the sea bed, lots of developers with lots of ambition spending a lot of money and a regulatory system that is having to play catch-up, because it was not designed for the scale of floating offshore wind in particular. It is a novel technology, and there is not really a regulatory system for it.

We do not have a good understanding of the environmental impacts of offshore wind at scale. I am not saying that the expansion of aquaculture into waters further offshore is anything like the same. There is not the same public policy push behind it, but there is a parallel in that we can see that there is ambition for expansion from the industry sector and from the Government, but there are gaps in the regulatory system. It is having to play catch-up, and the plan is, in essence, being retrofitted to what has already been. It is not quite at the lease stage, but rights are certainly being given to developers to do things. The committee might want to dwell on and reflect on that.

Evelyn Tweed: Could you summarise any concerns about the proposed boundaries and how they align with the Scottish marine regions that are used for regional marine planning?

Elspeth Macdonald: As Professor Tett said, it is very difficult to draw lines in the sea. I suspect that he might have more to say on that.

The Convener: Would you like to comment, Professor Tett?

I believe that there is a fire drill happening at the moment, so Professor Tett's connection is muted. Would anybody in the committee room like to respond?

Dr Berrill: We have a range of plans, at different layers, that need to be considered. I take the point that we cannot draw lines, but there has to be a line at some point, at whatever scale. The discussion on the draft Scottish statutory instrument before us is about where those lines are for local authority jurisdictions. I do not necessarily have a view on whether they are in the right place, but we have a framework for decisions on whether there should be development—aquaculture in this case, although it could be other development—and I believe that local authorities should have a decision-making role. They need to

understand what their boundary is for that decision making.

I thoroughly take the point that it is very difficult to draw lines in the marine environment, but there have to be some lines for local decision making and regional planning. I will not comment on whether they have been drawn correctly, but I believe that there should be lines to assist the process.

The Convener: If Professor Tett wishes to come in, I am sure that we can bring him in after the next question.

Beatrice Wishart: Do the witnesses have any other concerns that have not already been discussed that they would like to raise now?

Elspeth Macdonald: We are talking today about an embryonic, next-steps stage in the aquaculture industry, as Iain Berrill has described it, certainly as far as fin fish are concerned. It is important, at the early stages, to also think about the end stages: the decommissioning of such structures, their life cycle, how long they are going to be there for, what commitments the planning system will require for taking things away and where the long-term liability sits for the structures and all the subsurface infrastructure.

From a fishing industry perspective, we would not want to be nearing the end-of-life stage of a development only to find that the company that developed the site had moved on or that the site had been sold or whatever, with a lack of clarity about who was responsible for taking the structure away at the end of its life. It is important not just to think about what might happen now; it should be ensured that whatever regulatory system is in place makes provision for appropriate and safe decommissioning.

Dr Berrill: Not in relation to that, but in relation to your question, Ms Wishart, there is something that we have not really delved into—although that is right, as it is not a key part of the proposal. There is a challenge around resource in local authorities. That needs to be addressed in a separate forum, and it was raised when the committee discussed and considered salmon farming more generally.

There have been calls from every stakeholder involved in salmon farming to improve the consenting system. For a consenting system to be improved, it needs clarity. For me, the proposed change improves clarity in one aspect, where things are a little bit murky at the moment. It is really important to get that clarity—albeit with all the caveats that we will not rush straight to the area concerned—so that, when we want to move there for legitimate reasons such as fish health or environmental benefits, the structures are in place to allow us to do that.

Mike Spain: I want to go back to the point about decommissioning, which will be very important in this context, given that the size and nature of the structures will be significantly different if they are to be able to survive in the environment in question. As the landlord of the sea bed, we very much take the view that it will be a condition of lease that decommissioning is taken into account, and we are investigating with our legal advisers how to implement that most effectively in this environment to ensure that we commission responsibly and adopt the policy, as we do with the oil and gas industry, of leaving no trace wherever possible. Even in our inshore waters, we try to ensure that our tenants remove all obstructions at the end of the lease, and we wish that to continue.

The Convener: Professor Tett, I think that your fire alarm has ceased. Would you like to comment not just on the Scottish marine regions but on any other issues that have not yet been raised and which you would like to put on the record?

Professor Tett: Yes, I want to say two things, the first of which is about cumulative impacts. A normal environmental impact assessment looks at the direct effect of a new development on a site, but if, in the long run, we are envisaging a number of offshore farms, there is a question about the capacity of waters on the west coast of Scotland, particularly in the Minch, to assimilate the dissolved and particulate wastes. The advantage of being offshore is that the wastes are spread over a much larger area, so, individually, they get resolved in low concentrations, but we do not have a firm grasp on the overall capacity of those waters. That will be one of the tasks for regional marine planning.

The second issue, which I do not think has been touched on so far, is from the point of view of communities on the islands and in Argyll in particular. The offshore farms are going to be very large structures, and they will need maintenance, cranes and so on. The question that arises, therefore, relates to the port facilities supporting the structures. There is some scope to have synergies with offshore renewable energy installations, which, again, need large supporting boats. At the moment, though, I do not know whether there are places in Argyll or in the Western Isles that have the port facilities to support those offshore structures and that will need to be taken into account in planning. Again, that might fall within the scope of local authorities, or larger-scale regional planning might be needed.

Sean Black: I want to make two points. First, I reiterate that, as part of this, fish welfare must be front and centre. One reason for moving fish farms into offshore locations relates to fish health and welfare, but it is a bit theoretical, and we would

want to see more evidence of the benefits and challenges—we have talked about some of them, such as cleaner fish—and get some of that empirical evidence down on paper. All stakeholders should be working on that together.

It is not my area of expertise, but there is one other issue that has not been mentioned. Our organisation also has a wildlife department. We have talked about spatial competition, but what will be the impact on the wildlife in the offshore locations? The developments could affect other species of cetaceans or birds, and there has been a lot of talk about the effect on offshore wind, too. I am sure that that impact is included in other assessments, but I just want to reiterate the point that there are lots of things to take into account, and we have to ensure that they are all taken into account, regardless of what we want to do at the end of the day. We must ensure that the regulatory environment supports the right decision being made for all stakeholders, including the fish.

The Convener: As we have no further questions, I thank all of you for joining us today. Your evidence will certainly help the committee in a couple of weeks' time, when we will have the minister before us and we will consider and dispose of the instrument.

I suspend the meeting to allow the witnesses to leave before we move on to the next item on our agenda.

12:44

Meeting suspended.

12:45

On resuming—

Disease Control(Miscellaneous Amendment) (Scotland) Order 2025 (SSI 2025/108)

The Convener: The next item on our agenda is consideration of a negative instrument. Does any member wish to make any comment on the order?

Emma Harper: I have a quick comment in relation to paragraph 4 on page 29 of our briefing papers, which says:

"The SSI includes ... An extension of the definition of 'premises' to include those without birds."

Is that purely for infection control and the prevention of cross-contamination?

The Convener: I think that that is the case, yes.

Tim Eagle: That very question had occurred to me, too. I was a bit worried about the SSI's potential broadness, but my understanding is exactly as you have said. At the moment, the regulations allow such measures only within the avian context, but if the disease moves into mammals, the SSI will give a veterinarian the ability to say, "Actually, we need to close down these premises, because of the risk that it has now moved into X species and we need to prevent it from moving elsewhere." I now feel secure about what is proposed—I do not think that the provisions would be abused. Indeed, I would be very surprised if that were to be the case.

The Convener: That is my understanding, too. It is about ensuring that, if a disease moves from one species to another, regulations are in place to allow control. In fact, paragraph 5 sets that out when it talks about a virus "of avian origin".

As there are no other questions, that concludes the public part of the meeting.

12:47

Meeting continued in private until 13:03.

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