



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Rural Affairs and Islands Committee

**Wednesday 28 February 2024**

**Session 6**



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**RURAL AFFAIRS AND ISLANDS COMMITTEE**  
**6<sup>th</sup> Meeting 2024, Session 6**

**CONVENER**

Finlay Carson (Galloway and West Dumfries) (Con)

**DEPUTY CONVENER**

\*Beatrice Wishart (Shetland Islands) (LD)

**COMMITTEE MEMBERS**

\*Alasdair Allan (Na h-Eileanan an Iar) (SNP)

\*Ariane Burgess (Highlands and Islands) (Green)

\*Kate Forbes (Skye, Lochaber and Badenoch) (SNP)

\*Rhoda Grant (Highlands and Islands) (Lab)

\*Rachael Hamilton (Etrick, Roxburgh and Berwickshire) (Con)

\*Emma Harper (South Scotland) (SNP)

\*Elena Whitham (Carrick, Cumnock and Doon Valley) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Allan Gibb (Scottish Government)

Mairi Gougeon (Cabinet Secretary for Rural Affairs, Land Reform and Islands)

Jamie Halcro Johnston (Highlands and Islands) (Con) (Committee Substitute)

James Hamilton (Scottish Government)

Dr Coby Needle (Scottish Government)

**CLERK TO THE COMMITTEE**

Emma Johnston

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



# Scottish Parliament

## Rural Affairs and Islands Committee

Wednesday 28 February 2024

[The Deputy Convener opened the meeting at  
09:00]

### Subordinate Legislation

#### Scottish Food Commission (Appointment) Regulations 2024 [Draft]

**The Deputy Convener (Beatrice Wishart):** Good morning, and welcome to the sixth meeting in 2024 of the Rural Affairs and Islands Committee. Before we begin, I remind anyone who is using electronic devices to please switch them to silent. I have received apologies from Finlay Carson, which is why I am convening this morning and why Jamie Halcro Johnston has joined us as his committee substitute.

Our first item of business is consideration of the draft Scottish Food Commission (Appointment) Regulations 2024, which is an affirmative Scottish statutory instrument. I welcome to the meeting Mairi Gougeon, Cabinet Secretary for Rural Affairs, Land Reform and Islands, and her officials: Lisa Nowak, policy officer for the good food nation team, and James Hamilton from the legal directorate.

I invite the cabinet secretary to make an opening statement.

**The Cabinet Secretary for Rural Affairs, Land Reform and Islands (Mairi Gougeon):** Thank you for inviting me to the committee to speak to the regulations.

The Good Food Nation (Scotland) Act 2022 establishes a Scottish food commission, and, as we work towards that goal, one of the first tasks will be to appoint the commission's members. The schedule to the act stipulates that the appointments of members to the commission

"are to be made in accordance with regulations made by Scottish ministers."

This instrument provides the necessary framework for the appointment of those members.

The purpose of the instrument is twofold and relates directly to the appointment process for members. It aims to

"provide that the Scottish ministers must have regard to the desirability of ... a member who is representative of interests of the food business sector and food-related third sector bodies"

and to

"provide that the Scottish ministers must have regard to the desirability of ... a member who has experience or expertise of food-related issues in relation to"

a range of "relevant matters."

Those requirements provide an important context and refer back to the aims of the 2022 act. They will provide a meaningful and relevant framework for Scottish ministers when making appointments, but they will do so without being overly restrictive or limiting with regard to the potential pool of candidates, and they will ensure that a degree of flexibility is maintained in the process.

The instrument also ensures that, due to their flexibility, the regulations are future proofed in respect of the changing needs of the body throughout its existence.

I am happy to take questions and to hear any comments that committee members might have. Thank you.

**The Deputy Convener:** Do members have any questions?

**Emma Harper (South Scotland) (SNP):** Good morning, cabinet secretary. In my work on the Health, Social Care and Sport Committee and in various health-related cross-party groups, and following the work of Henry Dimbleby and Chris van Tulleken, I have been looking at different issues around ultra-processed foods—that is, foods with a high fat, sugar and salt content. I am therefore interested in the work of the commission in that respect. Will its remit include food production as well as food security? Given that that is part of how we look at the whole food system, will that be a focus of the commission?

**Mairi Gougeon:** You are right to highlight the breadth of policy areas that food touches on. We have our good food nation plan, which is out for consultation until 22 April, and, ultimately, the Scottish food commission's role will be to monitor the plan's effectiveness. We can ask it to pick up specific pieces of work in relation to what you have mentioned, too. With the regulations that we are introducing today, we hope to ensure that we have the relevant expertise to cover the broad variety of areas on which food policy touches. The matters that you have raised in relation to the importance of food production and food security are strong themes that we have picked up through our good food nation plan, which I should say will come to the committee for consideration soon and on which I would encourage all members to make their views known.

I attended last night's meeting of the cross-party group on food, which Rhoda Grant chairs, and I heard different perspectives on the plan and the issues that people see as important being picked

up. Given that this is our first plan, we want to get it in as strong a position as possible.

**Rhoda Grant (Highlands and Islands) (Lab):** I have a quick question on the back of that. Given that the commission has still to be set up and given that the plan is still being consulted on, can you tell us what the commission's remit is with regard to the plan? As it might be in place before the commission itself, will the commission be able to influence what is in it?

**Mairi Gougeon:** The intention was always to establish the commission at the same time as the laying of the final plan, which is why the timescale is for those sections of the 2022 act to come into effect at the same time. It is important that we introduce the regulations now, in order to at least start the work of building the commission, so that they can help to shape what the body will look like in time for the laying of the final plan.

As I set out at last night's meeting of the cross-party group on food, this is our first iteration of the plan. Further reviews and progress reports on it will take place as we proceed and once the plan is finally laid, and the commission will play a critical role in that process. Our delivering the good food nation plan will set the direction for the other relevant authorities that have to produce such a plan for our local authorities and health boards, and we hope that the commission will help us in that work, too.

**Jamie Halcro Johnston (Highlands and Islands) (Con) (Committee Substitute):** I have never been on a committee with so many Highlands and Islands members. I therefore wonder whether you could comment on how the regions will be represented. Will the approach ensure that the Highlands and our more remote rural areas are represented?

**Mairi Gougeon:** Do you mean in relation to the plan itself?

**Jamie Halcro Johnston:** Yes.

**Mairi Gougeon:** That point is separate from the regulations that we are considering today, but I am more than happy to have a separate discussion with you on the matter. First of all, we want to ensure that our consultation on the plan is as broad and as far reaching as possible, which is why we have produced a variety of materials to make it as accessible as possible. Indeed, the consultation's accessibility and its being as inclusive as possible were key themes that arose from the committee's scrutiny of it.

We have commissioned Nourish Scotland to hold workshops for us—I think that it is holding them across the country—to enable stronger engagement. If the committee has not seen it

already, I am happy to provide that information, if that would be helpful.

**Ariane Burgess (Highlands and Islands) (Green):** I am grateful that the cabinet secretary is here today to clarify points around the SSI, but can she tell us what it means when it refers to “a board”? The term is not used in the 2022 act, and my understanding is that the role of the chair and the set of commissioners will be more than the standard role that a board plays. I would appreciate clarification in that respect, because, as you will know, we discussed the point at length during the passage of the good food nation legislation.

The point of the Scottish food commission is to provide board expertise and understanding of all aspects of the food system to ensure that good food nation plans and other policies bring about the fundamental changes that we need. In what situation would the Scottish Government appoint a member of the food commission who is not

“representative of ... the food business sector or ... third sector bodies”

or does not possess

“expertise in or experience of”

the list of “food-related issues”?

**Mairi Gougeon:** Our overall approach to setting up the commission is very similar, in respect of numbers and so on, to how the Scottish Government has set up other commissions and bodies, such as Environmental Standards Scotland, Consumer Scotland and the Scottish Commission on Social Security.

I am sorry—perhaps I need to be clearer with regard to the last element of your question. The matters that we have set out to be taken into consideration in relation to the appointments reflect the matters that are listed in sections 1(6) and 10(6) of the 2022 act. The provisions in the SSI mirror those provisions, essentially to ensure that we are not limiting ourselves at this time.

I know that, given all the evidence that it took as part of the scrutiny of the bill, the committee will be aware of how many different representatives and organisations from across civil society and different policy areas are interested in the good food nation plan and the 2022 act. We want to encompass that broad range of expertise in the board members that we appoint, so I will not pre-empt that process by talking about the types of expertise or the people we would be looking to appoint at that stage—it is far too early for that. With these regulations, we want to have flexibility and reflect the broad range of expertise of people who might put themselves forward.

**Ariane Burgess:** Thanks for that.

I go back to the reference in the regulations to “a board”. Could you go into a bit more detail about what that means and about what you imagine the chair and the commissioners will be doing?

**Mairi Gougeon:** In my previous responses, I have set out the commission’s role, which is also set out in the legislation, and I have also set out the timescales and why various sections of the act will be commenced at relevant times. That is to ensure that the commission is in place to enable us to take forward the work in the plan and to help us to review and monitor its progress.

I am sorry, but I am not entirely aware of the reference to the “board” that you have mentioned. Lisa Nowak or James Hamilton might have more information on that.

**James Hamilton (Scottish Government):** The reference to the “board” is just a way of describing the members of the commission. The schedule to the act requires

“the commission ... to consist of a member to chair”

and between two and four other members. The reference to the “board” is simply a reference to the members of the commission.

**Ariane Burgess:** So, you are just using the term as a quick, catch-all, shortened way of saying all of that.

**James Hamilton:** Yes.

**Ariane Burgess:** That was really helpful—thank you. Indeed, it is, I would say, reassuring.

I am also interested in understanding in what situation the Scottish Government would appoint only one commissioner who is

“representative of ... the food business or ... third sector”

and only one commissioner who possesses the “expertise or experience” with regard to the list of “food-related issues”. Again, why would we not want all commissioners to fulfil at least one of those criteria? I understand that this is about flexibility, but I just want to understand what you are imagining here. I know that you are trying to create flexibility in order to bring all kinds of people in, but surely, as you thought through the SSI, you would have imagined certain scenarios where that might have been the case.

**Mairi Gougeon:** I do not think that we are talking at cross purposes in relation to what we are trying to achieve. We have set this out as we have exactly because we want to achieve what you have talked about and to recognise the broad level of experience that can exist. It is not that those things are mutually exclusive; we just need to ensure that we take those matters into consideration. As I say, the instrument also mirrors

what is in the act, which is why we have framed it in that way.

**The Deputy Convener:** If there are no other questions, we will move to the formal consideration of the motion to approve the instrument. I invite the cabinet secretary to move motion S6M-12052.

*Motion moved,*

That the Rural Affairs and Islands Committee recommends that the Scottish Food Commission (Appointment) Regulations 2024 be approved.—[*Mairi Gougeon*]

**The Deputy Convener:** Does any member wish to speak in the debate on the motion?

**Ariane Burgess:** I would just like to get a few things on record. I was a strong advocate for the inclusion of the Scottish food commission in the Good Food Nation (Scotland) Act 2022. We have seen examples of strong commissions that have achieved transformational change, such as the Scottish Land Commission, or which have pulled together different strands into a whole-system approach, such as the Just Transition Commission. We absolutely need that kind of thing now in Scotland, but, in order to do those things, the commission needs the right expertise and experience.

The appointment of the chair and commissioners is central to how the culture of the Scottish food commission will develop and, in turn, how it will carve out its place and a reputation for stewarding the 2022 act and holding national Government and relevant authorities to account. The appointment group will set the tone for how areas of work are driven forward, particularly in respect of policy coherence and holding ministers to account for how the 2022 act and the good food nation plans impact, or are impacted by, the plethora of existing—and future—policies and legislation.

As such—and given the focus on the transformation of our food system—it is essential that a group of highly engaged individuals who are comfortable with systems thinking are appointed. They must have a breadth and depth of experience and skills as well as lived experience of our food system. It is not desirable for places to be reserved for any specific sector or stakeholder group, as all commissioners will need to be able to consider the impact on multi-stakeholder and public groups and be skilled in understanding the tensions, power dynamics and interests at play.

Looking at the text of the regulations, I think that in regulation 2, which relates to the appointment of commissioners, the third paragraph is the weakest of the three and is quite oddly worded. I have concerns about what it means and how skills and “expertise” will be established and prioritised

within recruitment. I understand the desire to keep the provision broad, but it is important to ensure that commissioners have the appropriate skills and experience. Appointed commissioners will need those core skills and competencies, and it will be worth checking how that will be managed through the person specification appointments process. The key is to ensure that those skills and competencies are not dependent on sectoral expertise or a candidate's connections and that a commissioner should not be appointed to represent particular interest groups.

I will vote for the secondary legislation, but I strongly encourage the Scottish Government to go further. Not only should it consider the desirability for the board to include one member who fulfils the criteria that are set out, but it should consider how much more effective the commission will be if all members fulfil all those criteria.

09:15

The food commission will not have an easy job. Our country is not well served by the current operation of our food system, which is letting down producers and consumers alike and is putting pressure on our healthcare system and our environment. However, if the food commission has the right expertise and know-how to put things into practice, our food system can, instead of contributing to problems, contribute to solutions, which will help us to reach net zero; improve health and wellbeing; strengthen national food security and local economies; provide good jobs; and ensure that everyone in Scotland can afford and enjoy the world-class food that is produced in our good food nation.

**Emma Harper:** Thinking about my original questions to the cabinet secretary, and noting that these regulations stem from the 2022 act, I think it important that we achieve a healthy nation that is underpinned by good diets, as is set out in the act. I am interested in our pursuing the core values of the food commission, which are to support Scottish agriculture and food production, to ensure Scottish food security and to ensure that the food commission will work closely with our valued Scottish farmers. I would like to make sure that we achieve that as we progress.

**Mairi Gougeon:** I acknowledge the committee's interest and the points that have been raised by its members today. This is in all our best interests, and we all share the same aim in what we want to achieve through the 2022 act and the plans that we have produced, as well as what we hope the Scottish food commission can help us to achieve. I welcome the interventions that have been made today.

*Motion agreed to,*

That the Rural Affairs and Islands Committee recommends that the Scottish Food Commission (Appointment) Regulations 2024 be approved.

**The Deputy Convener:** Is the committee content to delegate authority to me to sign off our report on the instrument?

*Members indicated agreement.*

**The Deputy Convener:** That completes our consideration of the instrument. I thank the cabinet secretary and her officials for attending, and I suspend the meeting briefly to allow for a changeover of officials.

09:17

*Meeting suspended.*

09:18

*On resuming—*

### **Sea Fish (Prohibition on Fishing) (Firth of Clyde) Order 2024 (SSI 2024/6)**

**The Deputy Convener:** Our third item of business is consideration of a negative Scottish statutory instrument. I welcome back to the meeting Mairi Gougeon, and I welcome her officials Allan Gibb, who is chief negotiator for international fisheries, and Dr Coby Needle, who is the chief fisheries adviser for Scotland. I invite the cabinet secretary to make an opening statement.

**Mairi Gougeon:** Thank you for inviting me to give evidence on the motion that is before the committee. The order was laid on Thursday 11 January. I note that, since then, letters have been exchanged between the committee and the then Minister for Energy and the Environment, Gillian Martin, on some follow-up questions.

As with the previous order, this order seeks to maximise protection of spawning cod and the habitats in which they are likely to spawn by prohibiting all fishing activity in two specific areas of the Firth of Clyde during the spawning season. Disturbance is a key feature, and that is why previous exemptions were removed in the 2022 order, which has helped to deliver the maximum protection possible.

I acknowledge that the closures have a short-term impact on some local fishers. However, the action is necessary to allow the stock to replenish, which, ultimately, will be beneficial for fishing interests. It is a complex issue, and I appreciate that it has elicited strong feelings in the local area. That is why, following a consultation last year and in the lead-up to the closure, my officials have been working with local fishers.



In addition, on 31 January, the then Minister for Energy and the Environment met the Clyde Fishermen's Association. At the meeting, the Government's commitment to work in partnership with the CFA and to undertake additional research during the closure period was underlined.

Revising the closure areas is a pragmatic and evidence-based solution that reflects our commitment to protecting spawning cod while minimising socioeconomic impacts on coastal communities. Ultimately, we have a duty to balance environmental and economic issues.

I am happy to take any questions that committee members might have.

**The Deputy Convener:** I will kick off with questions on the evidence base around cod stocks. The minister has reiterated that the evidence that was reviewed to inform the closure is the same evidence that was used for the 2022 order. The minister's response to the committee's letter does not indicate that any wider evidence on the Clyde inshore stock has been reviewed. Will you give us a bit more information about the evidence that has been used on this occasion?

**Mairi Gougeon:** Yes, I am happy to give some initial comments, and perhaps Coby Needle will come in on the back of them.

The order is based on the same evidence, because it is the best scientific evidence that is available to us on which to base the decision.

It has been a couple of years since I last came to the committee in relation to the order. Monitoring work has taken place during that time, and the results of that were set out in information to the committee from the minister, Gillian Martin. Very few spawning cod were found during the monitoring work as a result of the closure, which could suggest a couple of different things, one of which is that the closure is in the right place.

However, to return to the initial point, I note that we are basing the order on the best scientific evidence that is available to us, which is why the work still stands.

**The Deputy Convener:** You will appreciate that some of the representations that we have received are about the impact being disproportionate on a small number of fishers, as you have pointed out.

On the evidence, has the marine directorate taken account of PhD research that is being undertaken at the University of Strathclyde and supervised by Professor Mike Heath? An abstract of the research was sent to the marine directorate. How much account has been taken of that information?

**Mairi Gougeon:** I will ask Coby Needle to comment on that question.

**Dr Coby Needle (Scottish Government):** We are involved with the Strathclyde assessment model, as we co-supervise the student who is working on that. The research has not yet been published. I believe that she has only recently submitted her thesis, so there has been no external or internal peer review of the model. Therefore, I would argue that we remain in a position of not having a Clyde-specific stock assessment for cod.

The wider northern shelf cod assessment—specifically, the north-western sub-stock thereof—is positive and has led to a change in management. The International Council for the Exploration of the Sea, which developed that assessment, has been clear that the Clyde and other inshore areas around Scotland cannot currently be assessed as separate stocks, due to lack of data.

It is possible that the Clyde area is recovering in a similar way to what we see in the north-western sub-stock of the northern shelf cod stock. It is also possible that the on-going closure has a positive effect on that. It is not our only spawning closure; we have 10 others in the North Sea. You could argue that those management measures, along with good work by the fishing industry and positive environmental signals, have a positive effect on the cod stock. For me, therefore, it would not be appropriate to remove the spawning protections for cod at this early stage of cod recovery.

**The Deputy Convener:** Thank you.

**Alasdair Allan (Na h-Eileanan an Iar) (SNP):** I appreciate that this is a supplementary question, but I wonder whether I could split it in two. My first question is about the science relating to the Irish Sea. I appreciate that there are connections and similarities between Firth of Clyde cod and those in the Irish Sea. What data, if any, on stocks and their viability has been drawn from the Irish Sea, and has it been applied in the Clyde area?

**Dr Needle:** Irish Sea cod are currently viewed by ICES as a separate stock from the west coast of Scotland cod and from Clyde cod. The latter is currently assessed as part of the west coast of Scotland stock structure. Irish Sea cod are treated as quite separate. The extent to which Irish Sea cod are linked with Clyde cod and the extent to which Clyde cod are linked with the west of Scotland cod is currently unclear.

In any case, the specific stock structure that we have in that area does not make much of a difference, because we do not have the data or the information that would enable us to treat Clyde cod separately from how we treat the cod to the south or the cod to the north. Therefore, the most pragmatic and defensible position is to treat Clyde cod in the way that ICES does, which is to treat it

as part of the wider north-western sub-stock of the northern shelf cod stock and proceed on that basis.

**Alasdair Allan:** My other question is about the cod box and the preferred spawning grounds for cod. What kind of sea bed are we talking about? Are we talking about sandy mud, muddy sand or sand? In identifying areas with those types of sea bed, has the precautionary principle been applied? What was the thinking around that?

**Dr Needle:** It is clear from the published peer-reviewed literature on cod spawning that they prefer gravelly sandy areas. The original Clyde cod closure that we had prior to the last time that I appeared before the committee was much wider, and it included areas of muddy substrate that we know cod will not spawn on. The reason for that is that male cod develop what are known as leks, which are small areas of the sea bed where they guard against other males, and they use vocalisations to attract females to those areas. They need a specific type of substrate for that.

In developing the new closure, we looked at the substrate information that we have and chose areas with rougher substrates—in other words, gravelly sand, all the way up to gravel and cobbles. We have left the muddy area free of the restrictions.

With regard to where the precautionary principle comes in, we allowed for a small buffer zone around what we would consider to be prime cod spawning habitat in order to ensure that there would be no transgressions into that. The cod might be spawning where we think they might be spawning, or they might be spawning in a slightly different area. The purpose of the buffer zone is to ensure that they have that protection.

**Emma Harper:** I am interested in other issues that might impact the spawning of cod, such as climate change, predation by other species and activities other than disturbance of the sea bed. One of my local fishermen says that he is witnessing more sea bass in the northern waters. Could you say something about the impact of climate change and other activities that might affect spawning?

**Mairi Gougeon:** I will comment briefly on that before I turn to Allan Gibb, who will be able to provide a bit more detail on that and some of the changes that we are seeing as a result of the issues that you raised.

There are other measures in place and other changes that have been developed in an attempt to protect spawning cod as much as possible, which Allan Gibb will be able to talk about. I am referring to changes to the size of mesh panels and to the engine sizes of vessels to ensure that

we minimise disturbance as much as possible and that we do not catch what we should not catch.

**Allan Gibb (Scottish Government):** It is important to separate the two issues: the impact on cod as a species and the cod stock; and the impact on that species when it is spawning or trying to spawn. We are trying to give cod maximum protection when they are spawning. The evidence suggests that they need to be protected from disturbance up to 10m from the sea bed.

Broadly speaking, when it comes to the broader question about climate and environmental impacts on cod, it is hard to be definitive, but it looks as though there are environmental factors at play. It would appear that cod stocks have moved a little bit further north. Two years on, we have had a transformational set of advice regarding cod recovery. It has been amazing: the biomass has almost doubled and we no longer have any zero total allowable catch advice. It has been a fantastic turnaround.

As Coby Needle mentioned, we have 10 identical measures in the North Sea. There are real-time closures when lots of juvenile cod are identified, and we have real-time reporting and move-on provisions. We have also increased mesh size. Depending on the size of your vessel, you must have a 200mm square mesh panel or a 300mm square mesh panel. All those measures are designed to increase protection for cod and other juvenile gadoids. It is highly improbable that those measures, as well as seasonal closures, have not contributed to what has been transformational change in the status of cod stocks.

09:30

**The Deputy Convener:** How would something such as hand diving for scallops impact spawning areas?

**Mairi Gougeon:** Ultimately, as Allan Gibb set out, the available scientific evidence indicates that any disturbance to the sea bed can disrupt spawning cod. We want to make sure that we protect spawning cod as much as possible, which is why there are no exemptions for the closure, in line with our policy over the previous couple of years.

**Rhoda Grant:** I will press you a wee bit in relation to juvenile cod being discarded by the prawn fishery trawling industry. The evidence that we have received suggests that the closure approach is wrong and that most juvenile cod are caught by trawling. What evidence do you have that that is not the case and that the gear that is used allows cod to escape? It seems that the policy is not based on scientific evidence as such and that creelers and divers, which have very little

impact, as we know, are being caught up in the closures. That probably is not having the impact that we are looking for.

**Mairi Gougeon:** I will hand over to Allan Gibb to respond to that question.

**Allan Gibb:** We are talking about two completely different issues. Juvenile cod do not spawn; they are too young for that. They have to be a certain age—

**Rhoda Grant:** I am sorry—I did not mean that those cod spawn. Does the impact on cod stocks mean that they are not getting to adulthood?

**Allan Gibb:** That is why we have increased selectivity. For example, in the Clyde, the nephrops fleet used to use a 70mm cod end, but an 80mm one is now used, with increased square mesh panels. We are trying to provide protection, which is why we have juvenile cod real-time closure schemes in place. There can be bycatches, but we try our hardest to minimise them.

A fisheries manager has two focuses: they must protect juvenile fish to allow them to become adults and spawn, and they have a duty to protect the adults so that they can spawn and create juveniles. There needs to be a mix of those two elements.

All the evidence indicates that you must stop disturbance in order to allow spawning to take place. I am not saying that a diver or a creel on the sea bed has the same impact as a trawler; of course they do not. We are saying that the issue is disturbance. A local fisher says that, in his area, between 4,000 and 5,000 creels would be deployed, and there are several local fishers in the area. Every time that you pull up a creel from the sea bed, it drags across the sea bed before it lifts. Although the level of disturbance is not the same, many thousands of creels are pulled up and shot down every day, so, cumulatively, that creates a significant amount of disturbance. We are trying to avoid that in order to protect cod.

**Ariane Burgess:** It is clear from the committee's fisheries adviser's advice, as well as the stakeholder evidence that has been sent to the committee over the past few days, that the SSI before us is necessary but is not sufficient to restore the Clyde cod stock. As the deputy convener has said, we are aware of the PhD work on the Clyde stock assessment, which is being supervised by the marine directorate and the University of Strathclyde. The committee's fisheries adviser, Professor Paul Fernandes, said that such an assessment is necessary in order to properly manage the Clyde stock and that peer review is not essential for it to be used to inform policy.

As many of our comments and questions today have indicated, there is concern about the scientific evidence. I would appreciate a commitment from the Government that the PhD work in relation to the SSI will be shared with the committee, although I understand that it is a draft. That is the work of the marine directorate and Professor Mike Heath at the University of Strathclyde on the state of the stock and the recommendations for recovery.

I would appreciate a commitment to using the latest science, including that PhD, when such SSIs are developed—I am thinking, in particular, of the replacement SSI on the Clyde cod closures from 2026 onwards. I would also appreciate it if the Scottish Government marine directorate could begin scoping additional measures to protect the stock, especially bycatch reduction measures, because the latest science says that that is the main pressure.

**Mairi Gougeon:** You have raised quite a few points, some of which I would be happy to follow up on. I would have to take advice on sharing the PhD work, given the stage that it is at. Having a peer review process is important—I could be criticised at committee for using an evidence base when a peer review process has not taken place. Rather than commit to that today, I am happy to follow up on that. I would need to take further advice on that.

**Allan Gibb:** I offer some reassurance on your final point about the need for us to continue to improve protection selectivity and so forth. I will highlight two pieces of work. The United Kingdom-European Union-Norway trilateral collectively manages the northern shelf stock. It has been agreed that a review will be carried out to look at the appropriateness of all the current measures that are in place, including the Clyde seasonal closure and the 10 identical closures in the North Sea. That review, which will look at whether those measures are in the right place and whether they are doing the right thing, as well as mesh size and so forth, will be carried out at international level.

Domestically, committee members will be aware of the future fisheries management strategy and, in particular, the future catching policy. Work is ongoing with a range of stakeholders on the need for increased or changed technical measures. Without prejudging the outcome of those discussions, I can say that those measures are likely to include increased selectivity and increased mesh size. A significant amount of work is under way in that direction.

**Ariane Burgess:** I would appreciate knowing about that work.

I want to pick up on Allan Gibb's anecdotal mention of a creel fisherman in the area. You said

that 4,000 to 5,000 creels are being deployed—I do not know what the right word is—or dropped every day, or frequently. I would appreciate some evidence on that. I remember that, when you were here last year or the year before, you mentioned such staggering numbers. Other people have said to me that that would be impossible unless it is a cumulative figure. I would like you to give the committee some evidence on that.

I am also interested in what the Government is doing to look into the issue. As I understand it, there are creelers who work on the west coast—although not necessarily in the Clyde—who are calling for a cap or limit on what they can deploy, and I think that we need to take that on board. It is very reasonable to request that there be a cap so that there is enough to share between everybody; meanwhile, we would get proper recovery of stocks and so on.

What are we doing here? We are trying to ensure that there will be fisheries in Scotland 30 or 100 years from now and that we will be able to continue to say that fishing is part of our culture. I would like to get a bit more information from the Scottish Government marine directorate on the evidence on the number of creels that are being deployed in the Clyde cod box area and a bit more on what work is being done to look into the cap that creelers are calling for.

**Mairi Gougeon:** I will address your last point first, before Allan Gibb comes in. Specific work is being done to identify the different pressures that we have been hearing about from fishers. That work is being done through the inshore fisheries sub-group of the fisheries management and conservation group. I would be happy to follow up on that and provide more information to the committee.

**Allan Gibb:** As an individual official, I would not simply suggest that 4,000 or 5,000 creels are being deployed—that is a direct quote from a fisherman, who had an article in a newspaper as well as writing to me. My understanding from what he said is that, in his area, in addition to his boat, there are two other boats—in other words, cumulatively, there would be two or three boats operating together. That is about right. Every single fleet of creels can number 50 to 75, and numerous fleets will be hauled each day. There will be more fishermen, so a figure of many thousands is factually accurate.

It is true that we do not know how many creels there are in the water. In my personal opinion, it is bound to be a staggering number. We had a consultation on capping creel numbers, and the fishermen themselves decided that they did not want that. Those in a couple of areas said that they might like to do something locally, but the result of that consultation was overwhelmingly that

fishermen did not want a cap. Attitudes may have changed now, but the question of whether such a cap would be appropriate will form part of the discussion on future catching policy. I do not have a view on whether a cap would be appropriate, but I think that having an understanding of how many creels are in the water would be invaluable for fisheries management.

**Ariane Burgess:** Do you have a sense of how the marine directorate could pursue work to understand how many there are? I know that remote technology is now available—in fact, I think that I forwarded information about that to the marine directorate—but that is more to do with losing gear. If we have tracking equipment that can prevent fishermen from losing gear, which causes a marine litter problem, that could also help us to understand the number of creels in the water. Do we need a policy on that? What could we do to get such an understanding? We are having to make decisions without having the full picture.

**Mairi Gougeon:** A couple of initiatives are under way in relation to targeted projects in the Outer Hebrides and Mull, from which we will take learning on such issues. It is critical that we work with our fishers, including through our regional inshore fisheries groups. Allan Gibb will have more information on that, and I think that Coby Needle wants to come back in to address a previous point.

**Allan Gibb:** On that very technical point, it is a matter of proportionality, to my mind. Of course, there is modern technology available. A lot of the boats in question are very small—they are under 10m—but we could use a barcode reader, for example. There could be a barcode on the creel and, as the creel came up, it would go over the barcode reader and be counted. We could make a rule that every creel had to have a marking and a barcode. However, that would be a huge undertaking for several thousand creel boats, and I am not sure about the cost of all that. We have more than 2,500 boats in our fleet, and the vast majority are small inshore creel boats that are under 10m. That would be a huge undertaking, but it would not be impossible. It is a question of proportionality.

People might think that that would be a straightforward thing to do and that it is simply a case of saying, “Okay, let’s do that.” However, how would we know whether a creel had a barcode on it? Creels are under the water and it is not possible to check every single creel by monitoring them. If we were to haul in people’s creels, we would have to be able to show that we had not disturbed them or caused damage, and we would need to put them back exactly as we found them, which is nearly impossible. Therefore, I would suggest that, although the technology

exists, we would need to balance that with proportionality. I know that directorate officials are looking into that.

**Ariane Burgess:** Cabinet secretary, you pointed to a couple of learning projects in Mull and the Western Isles. I know that the marine directorate is very busy with lots of things, and it is challenging for the committee to understand all the work and all the bits of the puzzle. We come across little bits of it when we consider an SSI or when a piece of work comes to the committee. In order for us to contribute well to the scrutiny of your work, it would be good to understand some of the elements that you are working on that contribute to the fuller picture. I would appreciate some more information on those initiatives and on what you are seeking to get from them.

09:45

**Mairi Gougeon:** Absolutely. Broadly, it is about working together and managing that competition for space. Where we have had those pilots, they have been operating well, but I am more than happy to follow up with more detail on those projects.

**The Deputy Convener:** Following on from a point that Ariane Burgess raised, the business regulatory impact assessment states, among other things, that

“additional scientific data gathering in the Clyde region would be beneficial, yet under current resource constraints this is not possible.”

Cabinet secretary, you will recall that I have raised the issue of marine directorate resource in the past. Will you say something about that?

**Mairi Gougeon:** Yes, I am happy to provide more information. As I have mentioned, Gillian Martin, when she was in post as Minister for Energy and the Environment, set out some more information to the committee. We have an additional three strands of work that we are looking to take forward in relation to the evidence gathering and monitoring. We have committed to resourcing that and taking that work forward.

**Elena Whitham (Carrick, Cumnock and Doon Valley) (SNP):** I will follow on from the question that the deputy convener has just posed. Like many others, I am interested in understanding how the Scottish Government and the marine directorate will resolve the data deficiencies. In her letter to the committee of 8 February, Gillian Martin outlined that the three strands in question were enhanced observer coverage, passive acoustic monitoring and a science presence on compliance vessels. I am interested in understanding how we can move firmly into a co-management principle sphere, where we work collectively with our fishers, who have a vast

knowledge of the area that they work in. They also have an interest, as we all do, in ensuring that the bedrock of the marine environment is protected. That is a key plank in our planet’s ecosystem, but it is their livelihood.

You have already alluded to the fact that you have had meetings with the CFA, and I hope that you will meet the Scottish Creel Fishermen’s Federation as well, but, given the financial pressures that the marine directorate is under, how do we ensure that we involve the industry in developing shared scientific data? There will always be vested interests in different aspects of this matter, but, given that we do not have a shared understanding of the scientific data at the moment, how can we involve the industry meaningfully?

**Mairi Gougeon:** You are absolutely right. There are a couple of different forums. The FMAC is important in ensuring that we have that engagement with our fishers across the board. There are a number of sub-groups of that—I mentioned the inshore fisheries sub-group and some of the work that it is looking to take forward. That is a really important forum for engagement across the piece.

I also point to the three strands of work that I alluded to. It has been important to ensure that we engage in relation to that, particularly with the CFA. I appreciate the constructive way in which the CFA has come forward. It very much wants to work with us, because it is in all our best interests to ensure that we are working on the same basis and that we involve the CFA in that process. It is important that we take forward that work with the CFA. We are having discussions with the CFA about how it could potentially be involved in the strand of work on having a science presence on marine protection vessels. After the meeting that the minister had, there have been follow-up discussions with officials, because the issue that you raise is an important one.

Coby Needle wants to come in with more information on a specific point.

**Dr Needle:** I will talk about two of the strands that were mentioned. We are allowing for enhanced observer coverage in the Clyde in this quarter. That would normally be done using randomly selected vessels on the west coast anyway. We have a history of observer coverage in the Clyde, but we have been able to move resources around a bit and enhance that for quarter 1.

The other strand is the passive acoustic monitors, which you mentioned, which are potentially very useful devices for determining where cod are spawning, because their vocalisation means that you can hear them from

quite a long way away. One of those monitors is being placed just south of Arran—that was going in anyway as part of another piece of work that we are doing. For the second one, we had a position determined, and in consultation with the CFA, we decided to move it to a different place in that southern closure. One of the skippers said, “Well, you never see spawning cod where you think, so here’s a better place to put the monitor.”

That is an example of our work with local fishermen to understand where cod are spawning and whether we are protecting the correct areas. On the basis of the published literature and the substrate information that we have, we think that we are doing that, but we can always refine that understanding. Local fishermen know the area extremely well and we can utilise that information to improve those management risks.

**Mairi Gougeon:** Allan Gibb wants to respond.

**Allan Gibb:** I have a general point. There has been lots of discussion of Clyde stocks, Clyde cod and Clyde fish stocks. The Clyde is not unique or different. Fish do not know about lines on maps. The Clyde and the Irish Sea are quite close and it might be the case that some of the cod that are in the Clyde, as opposed to Clyde cod, are genetically linked to the Irish Sea stock. That is what happened on the west coast and in the North Sea, where the benchmarking showed that there is quite a lot of intermixing of stock between the two areas.

The fisheries in the Firth of Forth, the Cromarty Firth and the Firth of Clyde are broadly the same. There is no stand-alone Clyde set of stocks and species; they are part of the broader west of Scotland stock. They come and go: pelagic fish will migrate in and out of the Clyde; saith will stay there when they are small but go offshore when they are bigger. Therefore, the idea of managing Clyde stocks in the Clyde is not right. There are fish stocks, and some of those stocks are found in the Clyde. It is important that we recognise the difference.

**Elena Whitham:** You have made a really important point, which alludes to what Emma Harper said earlier. We also have fish that are moving for climate reasons. It will be very difficult to manage fish so that they stay in one area when other pressures are influencing fish behaviour and where they go. It will be important for us to understand what the science tells us is happening beneath the surface of the sea. That shared scientific data, which our fishers and our marine directorate will come to together, will be really important.

**Jamie Halcro Johnston:** Before I ask about the financial impact, I have a question about the

evidence that was used in relation to the previous order. When was that research conducted?

**Dr Needle:** The evidence is mostly based on published literature, which is very clear on how cod spawn, where they would like to spawn and where they can spawn. We combine that with an on-going set of substrate data from the British Geographical Survey.

**Jamie Halcro Johnston:** You are saying that none of that evidence is based directly on fish numbers or anything like that. It is evidence that you would not expect to change, so the data that you used for the 2022 order and for the new one is not likely to change any time soon, because it is not based on fish numbers.

**Mairi Gougeon:** I am sure that Coby Needle can say more about what evidence the order is based on, but the whole reason that we have introduced it is to protect spawning cod in the areas where that activity is most likely to take place.

**Dr Needle:** It is difficult to develop new information on spawning cod because, in order to find spawning cod within the spawning area, you would have to kill them, which is something that we are trying to avoid doing. We specifically try to avoid any disturbance of spawning cod.

We have three measures—the three strands—that we look at. To be fair, the observer programme and the scientific presence on protection vessels cover cod outwith the closure, but we also have passive acoustic monitors, which give us a non-invasive, non-lethal way of trying to determine where cod are spawning. We are quite optimistic that that will give us a lot of information that we do not currently have.

**Jamie Halcro Johnston:** That would certainly be interesting. In a previous role, I used to have meetings with fishermen. There was always great frustration with the scientific evidence, mainly because they did not agree with it. They were seeing decent stock numbers at a time when ICES was saying that those areas were under threat. However, we cannot show that with the data, as it relates to the most likely places for cod to spawn. That is what we know. Unless new monitoring ways come in, the data will not necessarily change.

On the financial impact of the closures, the then responsible minister’s response said that the Scottish Government was

“not considering any additional financial support schemes ... related to this closure”—

not even for vessels that cannot fish in other areas. Obviously, that has financial implications. What are the reasons behind that decision?

**Mairi Gougeon:** Again, we set that out previously. I understand that there is an impact for that short period but, again, we do not implement such measures when we have other closures, nor when it comes to our marine protected area. That is why we have not offered compensation, as we have not previously. We have not changed the position this time round.

**Jamie Halcro Johnston:** However, do you recognise that there are implications and that alternatives may not be available as they are in other areas where there are closures?

**Mairi Gougeon:** Yes. As we have stated, we appreciate and recognise that. Some fishers can move elsewhere during the period of the closure, which is short term, but that is not the same for everyone across the board, and there is an impact. However, for the reasons that I set out, we do not intend to change our position.

**Jamie Halcro Johnston:** The Clyde Fishermen's Association secretary, Elaine Whyte, said that the ban will have a devastating impact on fishermen. She said:

"Financially, the closure has had a massive impact. We have had mobile boats that have lost areas but, more significantly, we have had creel boats that have completely lost their areas and which have no other option to go anywhere."—[*Official Report, Rural Affairs, Islands and Natural Environment Committee*, 2 March 2022; c 3.]

Those people do not have other options. Essentially, you are asking them to stop their business for that period. Could more consideration be given to the impact on them?

**Mairi Gougeon:** Again, I appreciate your point. We discussed that at length in relation to the previous order, which provided for the closure over the past couple of years. As I have highlighted, although some people can move elsewhere, I know that that is not possible for everyone. However, we have not changed our position this time round.

**Jamie Halcro Johnston:** Do you recognise how frustrating it will be for fishers whose businesses are being put on pause without there necessarily being relevant evidence for doing that? You have made a commitment to look at more ways of collecting data, but, at the moment, that is not in place. Do you understand how frustrating that will be?

**Mairi Gougeon:** I absolutely do, as I intimated in my opening comments. I know that the issue has elicited strong feeling, as it did last time round. The work that we have agreed to take forward is therefore important.

As I also set out in my opening remarks, this is about the balance that we have to strike between taking environmental measures to protect

spawning cod and the economic impact of doing so. None of these decisions is at all easy to make but, ultimately, in making them, we are trying to encourage the restoration of the stock through protecting those spawning cod as much as possible.

I hope that, given the other work that we have set out, and through continuing to engage with the likes of the CFA as we take things forward, we can continually improve our evidence base. However, as things stand, we base our decisions on the best available scientific evidence.

**Jamie Halcro Johnston:** As you will be aware, the Scottish Creel Fishermen's Federation has expressed its disappointment at the lack of exemptions. In future years, if you will not look to provide any financial support, are you more likely to consider exemptions, if you can, particularly if the scientific data improves?

**Mairi Gougeon:** I will not prejudge a position that could be taken in a couple of years, but, as with anything, we have to continue monitoring and looking at that. The position this time round might not be the same in a couple of years, but we need to see what emerges during the closures over the next couple of years.

**Jamie Halcro Johnston:** Lastly, everyone has agreed, and your officials have said, that this is about working with the sector. Do you feel that the sector has confidence in its discussions with you that it is not just being talked to but is being worked with for the future?

**Mairi Gougeon:** Such decisions will always be really challenging—there is no getting round that. I know that some people would like exemptions to be in place, as there were before we brought in the order that came before the committee previously. Given the impact that closure has on people's businesses, none of these decisions are taken lightly. I talked about the balance that we have to try to achieve between the environment and the economy. We need to get all of that right. However, when you are telling people to stop fishing in a particular area and that impacts on their business, there is no getting round the fact that that is a really difficult decision for us, as well as being difficult for them financially.

10:00

That is why we are continuing engagement with the likes of the CFA. We want that to be part of the process and the work that we are taking forward. I hope that we can continue to work together in that vein and provide more of an evidence base.

**The Deputy Convener:** There are a couple of supplementary questions.

**Ariane Burgess:** The Sustainable Inshore Fisheries Trust, otherwise known as SIFT, in its response to the 2024-25 spawning closure consultation, said:

“There is a measurable economic cost of prohibiting creeling within the closed area, without a concomitantly measurable benefit to the resident cod stocks.”

That is based on evidence that it has. If including creeling in the closure makes very little difference to cod stocks, why not allow creeling to support the economic benefit while focusing management measures where they will make a big difference, such as minimising bycatch from nephrops trawling?

**Mairi Gougeon:** Allan Gibb will want to come in on specific issues in relation to that in a moment.

To go back to a point that Allan made previously, when we look at the different methods of fishing in isolation, we see that they might not have much impact, and the impact of the different fishing methods is very different, but the issue is the collective nature and what that means in relation to creeling. We have talked about what varying numbers of creels could look like and the hauling that is involved, which could cause disturbance on the sea bed. That goes back to the decision that we have taken.

Allan, are there specific points that you want to come in on?

**Allan Gibb:** There is not much to add. I am not sure what specific evidence SIFT claims that it has, but it is well documented that creels catch cod. I accept that, as the cabinet secretary said, closures that restrict economic activity are difficult. However, including the Clyde closure, there are 11 identical closures—the Clyde one is the one that is talked about all the time, but they are identical. I understand that, apart from the benefits to the environment and the flourishing fish stocks, a recovering cod stock will not benefit a creel fisherman economically. However, I go back to my original point, which was that we have the best available evidence on where cod spawn, and the evidence is that we protect cod by stopping disturbance—and creels are part of that disturbance factor. I am not suggesting that they are the biggest factor, but they are a factor at the cumulative level.

That is why we are taking this approach, although I totally accept that these are difficult decisions and discussions.

**Mairi Gougeon:** Coby Needle would like to come in on that as well.

**Dr Needle:** I concur with the point about disturbance, but there is also the bycatch issue. In our experience, cod bycatch in creels is not insignificant. We have run projects recently in

which we required live cod for aquarium experiments for various things. In that situation, we go to creelers to get live cod, because we know that they will be catching cod. They are not fishing for cod—they are fishing for crabs and lobsters and things like that—but they catch cod. We have fairly good information from certain skippers who we got to for cod on how much they are catching.

We have just started on what we intend to be a two-year project in which we are looking at ways to design creels that mitigate cod bycatch, and we would not be doing that if we did not think that there was an issue. It is not just cod; haddock, whiting and other similar species appear in creels. We are working on ways to help creelers to devise methods by which they can continue fishing for what they are actually fishing for and avoid catching fish that they should not be catching.

**Ariane Burgess:** Thanks for that. It is good to hear that that work is being done. I understand that the Strathclyde university assessment provides clear evidence confirming the results of peer-reviewed studies that show that high fishing mortality, not disturbance of the sea bed, is the key cause of low population size.

I go back to my earlier point that bycatch from nephrops trawling is part of the issue. It is interesting that we end up returning to bycatch in a discussion about creeling, but I think that we need to keep at the forefront of our minds the fact that it is trawling that is the issue.

Earlier, in response to a question about the benchmarking of the stocks in the west of Scotland, Allan Gibb made a point that I want to bring into the conversation. In a letter to the committee, Gillian Martin said:

“In the West of Scotland ICES benchmark report (ICES 2022), it is made clear that ... , the best scientific evidence indicates that ... Clyde cod are very likely to be a distinct stock from the rest of Division 6a”

but that they are lumped together with those cod—that is, the other west of Scotland cod—because of “data limitations.” I want to get the message out there that those stocks are considered to be separate.

That comes back to the issue around data that we have been getting into today. I know that we carry out our work on the basis of scientific evidence, but we are now asking what that scientific evidence is and who is using which evidence. Elena Whitham made a good point about gathering evidence in partnership with the sector and with the tremendous marine environmental non-governmental organisations that are doing work in the area. We need to get a much better understanding of the picture that we are looking at, and Gillian Martin’s point about



data limitations shows that there is work to be done if we want to get the best picture of what we are trying to support in terms of stock recovery and so on. I go back to my point about the fact that we are trying to ensure that there is a flourishing fishery across all sectors.

**Allan Gibb:** You can break that down into two points. It is likely that some of the cod in the Clyde—I will not describe them as Clyde cod—are actually part of the Irish Sea genetic stock, but, as we do not have the definitive data to enable us to say that that is the case, the international scientific community assesses all those fish as the broad west of Scotland stock. However, I think that that is irrelevant. It does not matter whether the stock is genetically linked to the Irish Sea or to the west of Scotland, because, either way, it is equally important to give it an element of protection, because the Irish Sea stock is in a perilous condition compared with the northern stocks. Affording those fish protection during spawning to allow the babies to be born and grow up is the objective, regardless of what stock they are part of. The question of whether the fish are part of the Irish Sea stock or the west of Scotland stock is irrelevant in terms of the objective.

On the issue of the biggest cause of mortality, fishing with nets and catching fish to sell for food is a big part of that. There are some bycatch issues as well, but the issue is the combination of the two things. Earlier, I said that we sit here today having seen the state of cod transform. There is a myth that cod is in a perilous condition in Scottish waters in the northern shelf, but that is not true, as the biomass has almost doubled. It has been shown that there is no distinct west coast cod stock or North Sea cod stock, due to mixing, and I suspect that the situation is similar in the Clyde and the Irish Sea.

The situation is extremely healthy, and it is hard to imagine that that level of recovery just happened on its own. It is improbable that the measures that we have in place—the mesh size, the juvenile and real-time closures and the 11 seasonal closures, including the one in the Clyde—have not in some way contributed to the fantastic recovery of northern shelf cod.

**Rhoda Grant:** People who usually urge us to take conservation measures are contacting us with concerns about the science behind the closure. Everyone wants to make sure that every stock of fish is healthy, but the trouble is that you are asking people to forgo a quarter of their annual income on the basis of science that they do not really trust, which makes the proposition difficult.

The committee also faces a motion to annul the order, which we will have to make a decision on. It seems to me that a vague indication that the Government might look at things in a couple of

years' time will not be satisfactory to the people who are coming to us about this issue. Is there a way to look at things again, to ensure that those less harmful methods of fishing can be allowed? Those who cannot move out of the area will have no alternative but to shut up shop for three months. Is there a way to come back with a new instrument or a guarantee that, next year, something quite different might come before the committee? We are making decisions about people's livelihoods without convincing science.

**Mairi Gougeon:** I absolutely appreciate the points that you and others have made today. Again, these are not decisions that we take lightly. We use the best available scientific evidence, as I have outlined. I want to highlight that, if the instrument is annulled today, there will be no protection in place at all.

Although I appreciate the points that have been made, I point to what I said about the strands of work that we will have under way that will continue to build the evidence base and monitoring. I repeat that, if the instrument is annulled today, we will not have in place any protections for spawning cod—those will come to an end.

**Rhoda Grant:** Can you give the committee any assurance that you will look at the matter again and in a shorter timescale?

**Mairi Gougeon:** The work that we have set out is a key step in that regard. As I said in response to Jamie Halcro Johnston, the position taken in this order might not be the same as it would be the next time that we introduce an instrument, because there might be more evidence or monitoring to draw from by that time, which could result in changes. I cannot prejudge that, but that is why I point to the work that we have set out as the key step in helping us to develop that wider picture.

**Rhoda Grant:** I want to really push you on the issue. If evidence came to the fore, before you were due to renew or change the instrument, would you introduce a new order?

**Mairi Gougeon:** I am not sure what the process for that would be. I would have to take further advice. Again, we are basing the order on the best available scientific advice. I understand that there are different views and that people are not necessarily content with this position, but we have to base the order on the best information that is available at this point.

I appreciate your pushing me, exactly because of the important points that you have raised. We are dealing with people's livelihoods and I recognise the impact. This is a short-term closure and, ultimately, we are doing it for the protection of the stock.

**Emma Harper:** I want to pick up on what has been said, including about bycatch, the need for a complete absence of disturbance on the sea bed and what Dr Coby Needle said about changing the design of creels to avoid bycatch. We need to ensure that we are working with our fishermen. The Galloway Static Gear Fishermen's Association has 20 vessels and more than 40 members. Their knowledge makes them experts in the territory where they are fishing. I am keen to ensure that we continue to work with the fishermen so that the science, data and evidence are accurate and they can fish for the future.

**Mairi Gougeon:** You raise an important point. I go back to the point that Coby Needle made earlier about how engagement with fishers has already altered some of the plans that we had. You are absolutely right that they are the experts in the areas where they fish, which they know really well. That is why we want to continue to work with them.

I go back to Allan Gibb's earlier point about all the measures in totality. How well the recovery is going is due to all the measures that we have implemented across the piece, including those to reduce bycatch and to protect the spawning areas. Those have all been critical to enabling the recovery.

**The Deputy Convener:** Rachael Hamilton has a supplementary question.

**Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con):** It is supplementary to Rhoda Grant's question. I believe that she is trying to meet the Scottish Government halfway, cabinet secretary. That is within your gift—the Scottish Government has already demonstrated that it can make changes, as it has done so previously.

10:15

To go back to the previous Clyde cod box closures, the consultation results showed that the vast majority of responses supported the previous situation, but the concluded consultation was reopened and altered because two campaign groups complained. We have been in the same situation previously and changes were made.

We have heard evidence today that we can debate shortly; I will not go into that now. However, it is important to acknowledge that, if it is possible, changes should, and can, be made, because the evidence that you have given today is not compelling whatsoever.

**Mairi Gougeon:** As I said, we have been using the same evidence base that we supplied previously. At that time, there were similar questions about the science that we were using. As I have said many times today, we use the best

scientific evidence that is available to us on which to base our decisions.

I appreciate what you say about the efforts that Rhoda Grant has made. However, as I have pointed out, if we annul the instrument that is in front of us today, there is no protection in place. We would not be able to bring forward another order in time to enable any changes to be made, let alone to allow time for us to undertake further monitoring and gather more information and evidence through the measures that I have talked about.

Again, I say that I cannot pre-empt what that work is going to look like or what evidence it may produce. Nevertheless, I emphasise that, if we annul the order that is in front of us today, there will be no protections in place for spawning cod. I appreciate that it is about working together to find a solution and a way through the issues. Ultimately, that is where we want to be. The work that I have set out today is important because it will enable us to do that.

**The Deputy Convener:** Item 4 is formal consideration of the motion to annul. I ask Rachael Hamilton to speak to and move motion S6M-12276.

**Rachael Hamilton:** Thank you for giving me the opportunity, convener. The evidence session has been useful for all committee members. I feel as if we are back in a mini highly protected marine areas nightmare here, with confusion and resentment and the possible devastation of the livelihoods of local fishermen in the Clyde. We are repeating many of the arguments that we made last year.

Last year, I was reassured that the Government would learn lessons, but it seems as though its position today is unyielding, and I do not believe that there has been any reflection on what happened at that time. I will summarise the arguments and concerns that some of my colleagues have expressed today. Whichever party we represent and whatever action we want to see, each and every one of us is concerned to protect spawning cod in one way or another.

First, I ask the Scottish Government why, despite—as others have said—no additional monitoring or science having taken place in the area, it has chosen to reinstate the Clyde cod box. I do not believe that that question has been sufficiently answered.

The Clyde Fishermen's Association has said that no additional science or monitoring has been conducted in the area and that there has been only a partial BRIA; a full assessment has not been conducted. Again, I ask why, with regard to learning lessons from last time.

In January, as has been said, the Scottish Government announced that

“measures to protect spawning cod in the Firth of Clyde will continue”.

That was much to the disappointment of half of the respondents to the consultation, who supported an exemption. My colleague Jamie Halcro Johnston has explored where the Government sits with regard to specific exemptions.

We have also heard today that stocks of cod have recovered in Scotland. The Scottish Government and Allan Gibb have acknowledged that. I am not going to repeat the areas that have been discussed, but, after last year’s debacle, why was the work that was promised in 2024 not carried out earlier? It seems extraordinary.

One of the main issues that we have heard about today is the lack of reliable data. The cabinet secretary said that the Government is using the best scientific evidence available, but that is not good enough—is it, cabinet secretary?—because the best scientific evidence is not available. There is insufficient data on cod stocks in the Clyde to acknowledge the effectiveness of the closures.

As the cabinet secretary will be aware, there has been a change in the west coast total allowable catch, with an increase in cod allocation, and a change in the formal classification of Clyde cod to the north west stocks as opposed to the sub-stock of the Irish Sea, which only makes the closure of the cod stocks less justifiable in the eyes of fishermen. Dr Coby Needle said that the situation is unclear and that there is no evidence to support treating Clyde cod separately, so I would like some clarification on that.

Mairi Gougeon admitted that Atlantic cod stocks were recovering in January and that further evidence gathering cannot be carried out due to the cuts in the marine budget, which we heard about. The latest marine funding and marine budgets were worth a combined £99.9 million in 2023-24, and that was cut to £93 million. A lot of my colleagues have been asking how the resource and capacity of Marine Scotland will play out due to that.

The committee’s adviser, Professor Paul Fernandes, said that more scientific evaluation needs to be carried out, which was mentioned by colleagues. Professor Fernandes also said that seasonal closures are not effective. That particular statement might be cherry picking, but he said:

“If they want to give cod the best chance to recover, the evidence suggests that they are targeting the wrong thing (closure).”

The 2005 ICES study is damning. It found that the Clyde cod box had no effect on cod stocks.

Elaine Whyte, the secretary of the CFA, said that the CFA

“was not convinced there was enough scientific data on the cod stocks to justify the closure.”

She added that

“survey data was inadequate, and data on cod catches was being gathered from compliance officers boarding boats to check catches, rather than scientifically. It was also often collected from boats that were nowhere near the cod closure area.”

Jamie Halcro Johnston covered the financial aspect sufficiently. More than half of respondents to the partial BRIA supported some exemptions to the ban. It is important that the livelihoods of fishermen are supported.

The cabinet secretary commented that 11 weeks is a long time, and the committee is concerned that the cumulative pressures and the resulting financial pressure would mean that fishermen would leave the market. That is anecdotal, but I am going to operate a tit-for-tat tactic, because all three of you mentioned anecdotal evidence—it was not clear evidence. We are in a situation in which we cannot rely on what the Government is saying. The partial BRIA that I discussed earlier does not reflect the financial impact that is felt by local fishermen. A lot of fishermen do not feel that it is a viable option for them to simply fish somewhere else.

Even the increased time and resource that have been spent on this issue by civil servants and the organisations that represent fishermen has been disproportionate. We find ourselves in a repeat of what happened before: there is a lack of peer-reviewed data to support the closure, fishermen cannot fish anywhere and there is almost a nirvana of displacement. A ban has been in place for 20 years, and the Government and Marine Scotland still cannot give us proper information about why we should agree to the order.

The cabinet secretary described the approach to protecting spawning cod as pragmatic and evidence based. It is absolutely not. She talked about the challenges of the socioeconomic impact. It is absolutely devastating. Even if the closure is for 11 weeks, it will be devastating.

I urge members to vote for the annulment on the basis that the advice from the Government is unclear and that the committee lacks an understanding, based on the information provided, of why the Scottish Government is taking this measure to close off livelihoods for fishermen in the Clyde.

I move,

That the Rural Affairs and Islands Committee recommends that the Sea Fish (Prohibition on Fishing) (Firth of Clyde) Order 2024 be annulled.

**The Deputy Convener:** Does any member wish to comment?

**Ariane Burgess:** As I said, the science says that the SSI is necessary but not sufficient to protect and restore cod stocks. Rhoda Grant raised a serious point about the impact on creelers' and divers' livelihoods. A 2015 document from Marine Scotland showed that trawling affects the sea bed more than 18,000 times as much as creeling does. I reiterate my request for assurances from the Scottish Government that it will share with the committee the PhD work that the marine directorate and Professor Mike Heath at Strathclyde university are supervising, after the cabinet secretary has sought advice, so that we can see the recommendations for recovery.

I ask for a commitment to use the latest science, including the PhD work, when there is a replacement for the Clyde closures SSI in 2026 and beyond. I also request that the Scottish Government begin scoping additional measures, especially bycatch reduction, in order to protect the stock, because the latest science says that that is the main pressure.

I want to clarify a point about the Clyde cod stock being separate from the other west of Scotland cod stock. That is about not genetics but the potential to manage our Clyde cod stock separately. The Clyde cod stock sits completely within the Scottish Government's purview, so we could absolutely bring in measures to minimise bycatch from trawling. I am glad to hear about the work that is being done on that, but I urge that that be accelerated, given the state of Clyde cod and our at-risk seabirds.

**Rhoda Grant:** I accept that the Scottish Government wants to take a precautionary approach, but it is not taking enough cognisance of the fact that creelers and divers cause less damage. I will support the motion to annul on the understanding that I look to the Government to bring back another instrument as soon as possible to protect the spawning areas. There is bycatch in creels, but it is not killed—it is simply let away. Bycatch in creels is not an issue here at all. I ask the Government to look at the issue again and to come back with something sensible.

**Jamie Halcro Johnston:** Rachael's and Rhoda's points covered most of what I intended to say. There is a lack of data—and a lack of data that we can have a huge amount of confidence in. There is a lack of exemptions and, generally, a lack of trust in those organisations and individuals who will be most impacted by the order. There is too much reliance on some of the anecdotal evidence, which has been highlighted. Putting people's lives on hold, even for a short period, without supporting information—or information that we can have confidence in—is not the right

approach. I will vote for the annulment, and I hope that others will, too.

**The Deputy Convener:** As no other members want to come in, I invite the cabinet secretary to make some comments.

10:30

**Mairi Gougeon:** I fully appreciate the strength of feeling that the instrument has elicited, as I highlighted in my opening remarks. I would like to make a few points of clarification, because we have broadly set out the key arguments and why we have introduced the order.

Rhoda Grant made a point about bycatch, but that is not necessarily the issue. We want the maximum protection for spawning cod, and in that regard it is the disturbance of the sea bed that is predominantly the issue, given the number of creels and the disturbance that they can cause. I just wanted to clarify that.

On Rachael Hamilton's comments, I do not know whether the member was referring to the partial BRIA that was published with the consultation, but a full BRIA was published with the instrument. I would have thought that that would be available to the committee. Also, enhanced monitoring has been put in place since the previous period of closure, as I touched on in my comments.

I have set out our position. I appreciate the impact on fishers, but, ultimately, this measure is about the protection of the stock and ensuring that we have maximum protection for spawning cod.

**The Deputy Convener:** I call Rachael Hamilton to wind up the debate and to indicate whether she wishes to press or withdraw the motion.

**Rachael Hamilton:** On the BRIA, 61.7 per cent of people supported the reintroduction of some or all exemptions to the seasonal closure. I do not think that the Scottish Government has recognised or even spoken about that.

I understand that the cabinet secretary is sympathetic and wants to support spawning cod but, as I described, we are now 20 years on and we have had plenty of opportunity to make changes and learn lessons. We have to be absolutely clear that cod numbers have not recovered. Many of my colleagues have commented on the need to examine alternative solutions to the issue rather than continuing with this failed policy.

I will press the motion.

**The Deputy Convener:** The question is, that motion S6M-12276, in the name of Rachael Hamilton, be agreed to. Are we agreed?

**Members:** No.

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

**For**

Grant, Rhoda (Highlands and Islands) (Lab)  
Halcro Johnston, Jamie (Highland and Islands) (Con)  
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire)  
(Con)  
Wishart, Beatrice (Shetland Islands) (LD)

**Against**

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)  
Burgess, Ariane (Highlands and Islands) (Green)  
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)  
Harper, Emma (South Scotland) (SNP)  
Whitham, Elena (Carrick, Cumnock and Doon Valley)  
(SNP)

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

*Motion disagreed to.*

**The Deputy Convener:** The committee must now produce a report on the draft instrument. Is the committee content to delegate to me authority to sign off that report?

**Members indicated agreement.**

**The Deputy Convener:** That completes our consideration of the instrument. I thank the cabinet secretary and officials for attending, and I suspend the meeting briefly to allow them to leave.

10:34

*Meeting suspended.*

10:35

*On resuming—*

### **Sandeel (Prohibition of Fishing) (Scotland) Order 2024 (SSI 2024/36)**

**The Deputy Convener:** Our fifth item of business is consideration of another negative Scottish statutory instrument. Do members wish to make any recommendations relating to the instrument?

**Rhoda Grant:** We should perhaps write to the Scottish Government to ask what discussions it has had with the Danish Government on fisheries. I understand that we do not fish for sand eel at all, but I think that the species is important to the Danish fishery. It would be good to understand what discussions were held with the Danish and whether there are any implications for international negotiations on fisheries.

**The Deputy Convener:** Do members agree to that suggestion?

**Members indicated agreement.**

### **Retained EU Law (Revocation and Reform) Act 2023 (Revocation) Regulations 2024**

#### **Plant Health (Fees) (England) and Official Controls (Frequency of Checks) (Amendment) Regulations 2024**

**The Deputy Convener:** Our sixth item of business is consideration of two UK statutory instrument consent notifications. Unless there are any comments on either of the notifications, are members content to agree with the Scottish Government's decision to consent to the provisions that are set out in the notifications being included in UK, rather than Scottish, subordinate legislation?

**Members indicated agreement.**

**The Deputy Convener:** That concludes our business in public and we move into private session.

10:37

*Meeting continued in private until 11:29.*



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