



Northern Ireland
Assembly

**COMMITTEE FOR THE
ENVIRONMENT**

**OFFICIAL REPORT
(Hansard)**

**Wildlife and Natural Environment Bill —
Briefing from Ulster Wildlife Trust**

25 February 2010

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mrs Dolores Kelly (Chairperson)
Mr Jonathan Bell
Mr John Dallat
Mr Ian McCrea
Mr Alastair Ross
Mr Peter Weir

Witnesses:

Dr John Faulkner) Ulster Wildlife Trust
Dr Hilary Kirkpatrick) Ulster Wildlife Trust
Mrs Heather Thompson) Ulster Wildlife Trust
Mr Andrew Upton) Ulster Wildlife Trust

The Chairperson (Mrs D Kelly):

I welcome Dr John Faulkner, vice chairman; Mrs Heather Thompson, chief executive; Mr Andrew

Upton, conservation director; and Dr Hilary Kirkpatrick, policy officer. We have received a written briefing from the Ulster Wildlife Trust, and we appreciate that. Perhaps you can take us through some of the salient points before members ask questions.

Mrs Heather Thompson (Ulster Wildlife Trust):

Thank you for giving the Ulster Wildlife Trust the opportunity to brief the Committee. As you know, we are interested in all habitats, marine and terrestrial, across Northern Ireland. We are a locally based conservation charity with more than 7,700 members, all of whom are active in the work that we do in Northern Ireland. We are the lead partner for the Irish hare species action plan, which members may have some questions on. Today, we will focus on three areas that are raised in our submission. Moreover, we welcome the protection measures in the Bill for the basking shark and the barn owl in Northern Ireland. We are the lead partner on the barn owl species action plan.

We are concerned that, in the clause that deals with biodiversity, there is no mention of the genetic component of biodiversity. We would like that clause to be expanded to include diversity

within species, between species and in ecosystems. We agree that the biodiversity strategy needs a set reporting timeline rather than that being left as “from time to time”.

Dr Faulkner will talk about the biodiversity duty, Andrew Upton will talk about enforcement issues, and Dr Kirkpatrick will talk about strengthening protection for areas of special scientific interest (ASSIs). We also want to speak about the need to simplify environmental legislation, which some of our members said they find difficult to navigate. Our members will have to work out how the Bill — yet another piece of legislation — fits in with the existing legislation. Sometimes it can be difficult for people to see where their compliance is, although they recognise that they have to abide by the legislation.

If further issues are raised today, we are more than happy to submit more evidence if necessary.

Dr John Faulkner (Ulster Wildlife Trust):

I will tell the Committee why we think that the biodiversity duty on public bodies and

Departments is an important measure. Loss of biodiversity, along with physical change to the environment and climate change, is one of the critical environmental issues of the century. However, it is difficult to grasp what exactly it means. It is easy to fall into the comfort zone of talking about individual species, which, important though that is, glosses over the fact that there are perhaps more than 40,000 species in Northern Ireland. Sometimes, it helps to think of loss of biodiversity as the gradual homogenisation of life: common things — particularly pests and weeds — becoming more common and scarce flora and fauna becoming scarcer.

A great many human activities impinge on biodiversity, and many benefit from it. Of those, farming is perhaps the most important in Northern Ireland, but there are many others: fishing, forestry, mineral extraction, construction, transport, flood management, recreation, gardening, park management, health and the drug industry, and education. Those activities all play their part, and, over the years, the combined effects of those areas of human activity has been the insidious erosion of biodiversity. That was recognised in the Northern Ireland biodiversity strategy of 2002.

It cannot be left to one Department to do it all; the Department of the Environment does not have a monopoly on the relevant responsibilities. Therefore, although commendable attempts have been made by public bodies to do something for biodiversity — for example, by district councils and bodies such as Translink — too often, public servants shy away from modifying their proposals on the effect on biodiversity simply because they do not have a statutory duty to do so. That is why it is important to establish a duty: it will place an obligation on people to take account of biodiversity and to further it wherever they can reasonably do so.

We are not talking about introducing new functions to Departments; it is about building biodiversity into existing functions. Therefore, it is not a costly addition to Government expenditure. There appears to be a good case for public bodies reporting their activities in some way under the biodiversity duty, and, without being too bureaucratic, I suggest that that could be done every three years. However, whether done through annual reporting systems or through the reporting system in the Northern Ireland biodiversity strategy, it should be considered further. In the trust's view, the provisions in the Bill that deal with biodiversity are among its most important provisions.

Dr Hilary Kirkpatrick (Ulster Wildlife Trust):

I will keep my submission very brief. The Ulster Wildlife Trust would like to see a strengthening of the protection of areas of special scientific interest in the Bill, as they are the jewels in the crown of our countryside.

In 2007-08, 109 instances of damage to ASSIs were recorded; in 2008-09 that figure had risen to 143. Approximately half those instances resulted from action taken by landowners; however, the other half resulted from the actions of third parties, which are more difficult to prosecute under the current legislation.

Neither must we underestimate the difficulty of restoration, even if a restoration order is made by a court. Those sites have developed over a very long time, often in conjunction with various human management and farming activities; therefore restoration costs can be considerable. For example, it cost £10 million, with an annual maintenance cost of £250,000 to deal with four badly damaged bog sites in the Netherlands. The Dutch authorities were prepared to pay that because they had lost so many of their peatland sites; nevertheless, that is a very large sum of money.

Another example was the creation of a new wetland area to compensate for the Cardiff Bay barrage; it cost almost £6 million in capital works. Furthermore, moving equipment in and out of sites by helicopter to avoid damage could cost £1,000 an hour.

We must not underestimate the difficulties of restoration, and, therefore, it is very important to prevent damage occurring in the first place.

Mr Andrew Upton (Ulster Wildlife Trust):

The Ulster Wildlife Trust welcomes the provisions in the Bill that strengthen enforcement, particularly those that will introduce custodial sentences for the worst offences. The trust also welcomes the fact that the PSNI has had a wildlife liaison officer for the past couple of years, and that the Northern Ireland Environment Agency (NIEA) has a full complement of wildlife officers. That is extremely important.

The trust, however, feels that wildlife crime continues to be treated as a non-serious crime. Therefore the reporting of wildlife crime has been affected, which has led to an under-resourcing

of the issue. The trust is aware of several instances of the public reporting wildlife crime and not being taken seriously. It is also aware of several PSNI stations not being prepared to issue crime reference numbers, which could lead to under-reporting. Conversely, however, there are instances, such as in Hillsborough, where badger baiting has been taken extremely seriously by the police, and that has led to a noticeable decrease in that activity. That is how the trust wants enforcement to be addressed.

The Chairperson:

I note that the trust shares the opinion of many others about the curlew and says that the figures are a little skewed because migratory birds are counted along with indigenous species, which does not provide a true picture of the decline in numbers.

Will you elaborate on your recommendation that barn owl sites should be protected?

Mr Upton:

The sites that barn owls use for breeding can be used all year round by birds coming back to

roost; however, if a site is disturbed or damaged outside the breeding season, the birds may desert it. That will have a serious effect on the population of barn owls, since there are only 40 to 50 pairs in the Province.

The Chairperson:

I would like clarification on your call for the legal status of any species where there is a change to the Latin name as a result of research findings.

Mr Bell:

Dulce et decorum est.

The Chairperson:

Dulce et decorum est pro patria mori.

Dr Kirkpatrick:

We are throwing the issue back to the legislators, because the names of some species could alter as a result of further research. Something that was thought to be a species might turn out to be a sub-species, or a sub-species will become a full species. Taxonomists will spend hours studying two plants to make sure that they are, in fact, different. I speak as one who checked 250 bags of sphagnum during my PhD and found that they were all the same species. *[Laughter.]* It took a fortnight of staring down a microscope. They all looked subtly different, but they were exactly the same thing; however, one can tell only by checking under a microscope.

Scientists are involved in that level of taxonomic investigation all the time. We would hate something to be renamed and therefore no longer afforded legal protection because of a technicality. That was the rationale.

One example that my colleague drew to my attention was the skate. Research by Spanish biologists suggests that what we think of as the common skate should be two species and that the size variation that people thought was merely large and small skates reflects two different species.

If it is, therefore, listed as the common skate, does it have any protection if, subsequently, skate are recognised as separate species?

The Chairperson:

Thank you; that was helpful.

Mr Kinahan:

I was intrigued by what you said about half the instances of damage to ASSIs being the fault of landowners. I appreciate that you might only be able to hazard a guess, but what proportion of landowners know that they are doing damage and how many are ignorant of what they are doing? It is hard on farmers who have grown up in a certain way and who may not be aware of their environmental obligations. Do you have any idea how many landowners do what they do on purpose?

Dr Faulkner:

There is a substantial amount of both. Some landowners do not realise because they did not study

the documentation that they were given, and a very few landowners will not have received the documentation at all. From my background in the Northern Ireland Environment Agency, I know that great steps were taken to ensure that every landowner received documentation; in fact, some of it was sent by recorded delivery. Therefore only a small number of landowners will not have had the opportunity to know how to behave.

Mr Weir:

I was intrigued by what you said about the reclassification side of it of different species on that basis. Obviously we want to ensure that protection is put in place that will allow for any flexibility in changing circumstances. As you say, it would be a slightly ridiculous situation if we set out to protect a species and, due to some sort of external reclassification, a certain number of the species fell outside the protected group.

How does international scientific reclassification affect domestic law? Just in terms of the process from a legal point of view, and I do not know if you, I mean, in terms of, be it international scientific reclassification, how does that sort of impact in directly on domestic law,

ie, I mean, presumably there is some sort of scientific body which is the official body for this, if they were, in the case of the skate, for example, to reclassify it into two separate sort of species on it, does that become an automatic in terms of sort of international acceptance of that, does it directly have an impact on a legal position or would that then have to be sort of reclassified, if you know what I mean?

Dr Kirkpatrick:

I accept your point, and, in a sense, that is why we raised the issue. There are international bodies that decide whether something is taxonomically correct. From my experience in botany, I look to the Royal Botanic Gardens at Kew to decide whether something is a species or has been renamed. That tends to filter into the books used to identify species. There is an international code of biological nomenclature; you could refer to it as the ultimate authority.

Mr Weir:

You said that, depending on research, one type of skate could be classified as another species. For the sake of argument, I will refer to the two species as the greater skate and the lesser skate. I

am trying to establish whether, if that happened and was accepted, it would have automatic legal effect. If the terms “greater skate” and “lesser skate” were used in the scientific community, and if legislation pre-dating that reclassification refers only to “skate”, presumably it would still protect both species. Although there may need to be subsequent changes to legislation, in the short term would the legislation that protects skate provide a degree of protection for the greater skate and the lesser skate before there was something in legislation that referred to and differentiated between the two new species?

Dr Faulkner:

I am not sure whether I can contribute very much to that. However, some 40 years ago, I did research in taxonomy and was involved in helping to decide whether some species were in fact two separate species or hybrids. The process is not clear-cut. It is not as simple as there being a point in time at which everybody stops referring to one species of skate and starts referring to two. A scientific paper will be published proposing the change, and that may or may not be picked up and adopted by others, such as those writing definitive works.

Mr Weir:

If part of the aim is to protect a species, the danger may be that somebody catching or killing a species could claim that the legislation referred to one species — for the sake of argument, the skate — but that the greater skate and the lesser skate were different species.

Dr Faulkner:

One can imagine that happening with hares in Northern Ireland, because there are a very small number of brown hares.

Mr Bell:

Peter knows all about that.

Mr Weir:

My colleague is more of an expert on the grey hair. *[Laughter.]*

Dr Faulkner:

I am reluctant to go down the track of talking about hares. I remember commenting on behalf of the trust on the Wildlife (Northern Ireland) Order 1985, and that debate was dominated by hare issues.

Mr Weir:

I expect that it is unlikely, but if, for example, scientists decided that there was some degree of cross-breed, for example, a greyish hare. If there was some degree of a scientific development of that nature, and a greyish hare was killed, presumably the argument could be made that that hare did not fall within the protection for the Irish hare.

Dr Faulkner:

It is more a problem for lawyers than scientists.

The Chairperson:

Exactly.

Dr Faulkner:

It is not a scientific issue. However, it is interesting, because there is a dispute among scientists about whether the Irish hare should be recognised as a separate species or as a sub-species. I belong to the sub-species camp, but there are those who suggest that the Irish hare should be designated as a separate species and not classified alongside the circumpolar arctic hare.

The Chairperson:

Part of your proposal was that the Department should seek to provide clarification.

Dr Faulkner:

Yes. It is an interesting point that is worth discussing in relation to one or two species. I am not sure how significant it would be —

Mr Weir:

There may be a PhD in it.

Dr Faulkner:

For lawyers, perhaps, but not for scientists.

Mr Dallat:

Could we get off the subject of grey hares, please? *[Laughter.]*

Is the Ulster Wildlife Trust a pre-partition or post-partition organisation? I will tell you why I ask that in a moment.

Mrs Thompson:

It was established in 1978.

The Chairperson:

That answers that question.

Mr Dallat:

You said earlier that a great deal of animal cruelty, such as badger baiting and other terrible things, occurs on the border. Is there parallel legislation in the South, or do you have connections with a similar body in the South so that we could do something to end the use of the political border as a convenient meeting place for the cruel treatment of wild animals? Wild animals do not have passports.

Dr Faulkner:

In the not very distant past it was suggested that animals were being trapped in Monaghan in order to be coursed in Northern Ireland.

Mr Dallat:

That is true.

Dr Faulkner:

The coursing took place particularly in south Tyrone. That should not be happening now, at least

not legally. I think that it was illegal under the Republic's legislation, but it was hard to demonstrate that it was happening, and, consequently, to bring prosecutions. To the best of my recollection there are provisions in the Republic's legislation to prevent that happening.

Mr Dallat:

That is something that we should check out, because we are in a comfortable position now that we can look at each other's legislation and make sure that we eliminate, as far as possible, the opportunities for the criminals who exploit wildlife in the most terrible ways.

The Chairperson:

It was agreed at last week's Committee meeting that research into the legislative barriers and commonalities should be undertaken, and that has begun.

Mr Bell:

You said that people who cause environmental damage through unlawful activity should pay for putting it right. I am keen on the principle of restorative justice: those who do the damage should

be held accountable. I wonder whether fines are in proportion to the amount of damage; we are probably agreed that they are not. Could research be done on that in future? The costs of habitat restoration can be considerable. Is there any way of quantifying damage and the cost of putting it right? When those issues go before the courts we should be able to go after the criminals' assets in order to put right the damage that they have done.

Mrs Thompson:

I am sure that you are aware of the debate about putting a value on ecosystems services. That is being discussed at a UK level at the Joint Nature Conservation Committee (JNCC), and some local work is being done. If it is possible to put a value on those services — and the JNCC is looking at putting a specific monetary value on them — it will be much easier for us to answer that question. However, I know that the JNCC is finding it difficult to do that, because there are so many different levels of service. It is not just about habitat, but about what the habitat does for us in controlling flooding or pollution. That work is well under way, and economists are trying to arrive at a valuation, but it is not just about the value of the services. How do we put a price on the time that it has taken those habitats to develop? That will be the challenge.

Mr Kinahan:

We have already talked about making lawyers wealthier, but what about the insurance industry?

Given the figures involved in repairing and restoring an area, should we encourage some form of insurance? Farmers will never have the sort of money that it takes to make restoration for damages. An insurance system might allow that to happen.

Mrs Thompson:

Do you mean for inadvertent damage?

Mr Kinahan:

Yes.

Mrs Thompson:

The question is whether insurers can take it on. If people are aware of the legislation, compliance issues will be in place. Therefore, I would have thought that it would be very difficult for an insurer to insure, because everything is in place to tell people what they should do.

The Chairperson:

You said in your opening remarks that we need a more comprehensive guide to educate people about what is permissible and what is not.

Mrs Thompson:

A great deal of work was done on ASSI legislation in the Environment (Northern Ireland) Order 2002, and case officers have been appointed to landowners so that they are aware of compliance requirements. However, the 2002 Order, the Wildlife (Northern Ireland) Order 1985, the habitats directive and the birds directive are all in place. If someone tries to investigate the legislation that governs the environment, a huge amount of reading will be required to get to the nub of the issue.

Therefore, simplification is required. Despite NetRegs, the question is whether information is easy enough to understand in layman's terms to supply people with the information that they need. That area needs attention, especially for people who are in business, such as farmers or horticulturists. They tell us that it is a significant issue for them. They do not have the time to

run a business, manage staff and, on top of that, look after legislative requirements, the wording of which is sometimes difficult to penetrate.

The Chairperson:

Information must be much easier to read and more accessible. Thank you very much for your helpful presentations. Feel free to send further information to the Committee during its deliberations on the Bill.