



Northern Ireland  
Assembly

**Committee for Agriculture and Rural  
Development**

**OFFICIAL REPORT  
(Hansard)**

**Ulster Wildlife Trust**

**13 March 2012**

# NORTHERN IRELAND ASSEMBLY

## Committee for Agriculture and Rural Development

### Ulster Wildlife Trust

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**Members present for all or part of the proceedings:**

Mr Paul Frew (Chairperson)  
Mrs Dolores Kelly (Deputy Chairperson)  
Ms Michaela Boyle  
Mr Thomas Buchanan  
Mr Willie Clarke  
Mrs Jo-Anne Dobson  
Mr William Irwin  
Mr Oliver McMullan  
Mr Robin Swann

**Witnesses:**

|                       |                       |
|-----------------------|-----------------------|
| Dr Jade Berman        | Ulster Wildlife Trust |
| Mr Joe Furphy         | Ulster Wildlife Trust |
| Ms Victoria Magreehan | Ulster Wildlife Trust |
| Mrs Heather Thompson  | Ulster Wildlife Trust |

**The Chairperson:** I welcome to the Committee from the Ulster Wildlife Trust: Mr Joe Furphy, the chairman; Mrs Heather Thompson, the chief executive; Ms Victoria Magreehan, the strategic development director; and Dr Jade Berman, the living seas manager. I hope that I got all those names right; I apologise if I did not. If you have a presentation to deliver, please do that. That could well be followed by questions from members. You are very welcome, and thank you very much for attending. Without further ado, please commence.

**Mrs Heather Thompson (Ulster Wildlife Trust):** Thank you very much for inviting us to give evidence today. You have done the introductions, so I will not do them again. We aim to keep our briefing short. The subject matter is quite complex, because a number of issues are in play. We respect the need to leave adequate time at the end for questions and useful dialogue.

Our complaint to Europe centres on the failure to implement the habitats directive. Responsibility for compliance with the directive in relation to Strangford lough lies with two Departments: the Department of the Environment (DOE) and the Department of Agriculture and Rural Development (DARD). The Department of the Environment is the primary competent authority and has responsibility for the transposition of the EU directive and for the provision of advice and guidance to other Departments on it. The habitats regulations, which is the transposed legislation, places a duty on all Northern Ireland Departments to comply with and be bound by the European legislation.

DARD's fisheries division describes itself as being responsible for:

*"sea fisheries, aquaculture and fish health policy; the enforcement of fisheries legislation; the licensing of aquaculture; fishing vessel licensing; the administering of fisheries grant schemes".*

Although we recognise that DARD has been proactive on a number of EU directives in recent times in other areas of its responsibility, there has not been a similar approach in the Department's fisheries responsibilities in implementing the habitats directive. The Department has not adequately carried out its role as the competent authority for the habitats directive.

We have five key areas of concern. The first is the failure to fund and deliver the implementation of the Strangford lough modiolus biogenic reef restoration plan. The disagreement with government over protection and management has been running since the late 1980s. Europe has previously investigated an Ulster Wildlife Trust complaint in 2003 regarding horse mussel community decline in the lough and the lack of protection that is required by the EC habitats directive. Europe responded by putting the Government on notice that it was considering taking infraction proceedings against them. A temporary ban on mobile gear fishing was implemented, which is now a permanent ban. In 2005, the European Commission was satisfied with the restoration plan that was proposed by DARD and the DOE, the purpose of which was to bring the horse mussel communities back to favourable conservation status in Strangford lough. On that basis, the European Commission agreed that it would take no further action, and the potential infraction case was closed. However, the Ulster Wildlife Trust believes that there has been a systemic and deliberate failure to honour the commitments that were set out in the restoration plan, which has seriously compromised the protection of the modiolus reefs and undermined wider compliance with the habitats directive in Northern Ireland.

Our second concern relates to the habitats directive article 6 test of likely significance for pot fishing in Strangford lough and the appropriate assessment that was taken in February 2011. An appropriate assessment for pot fishing was promised by the UK permanent representation to the European Union for completion in 2006 and was finally commissioned and presented by DARD to the European Commission in January 2011. The time taken to undertake that assessment is totally unacceptable; in fact, at the point of the proposal when Strangford lough was designated as a special area of conservation (SAC), the precautionary principle should have been applied, as required by the habitats directive. We believe that the article 6 assessment itself, which is now available, is seriously flawed in its consideration of the ecological impacts aside from the physical impacts on which it concentrates.

Our third concern centres on the final regulatory impact assessment (FRIA) of the sea fishing exclusion zones that were put in place in 2011. The fishing exclusion zones were promised to Europe in 2005 as part of the restoration plan to protect both the pristine and damaged modiolus communities. There has been a serious delay in the implementation of those zones. Their current extent does not provide the total protection that was promised to Europe of the existing and damaged modiolus beds, as was outlined in the Strangford lough restoration plan.

Our fourth concern focuses on the final report and recommendations of the modiolus restoration research group. One million pounds of taxpayers' money was paid to fund restoration and research work over a three-year period. An independent research group was set up to oversee the restoration plan and its work. In August 2011, the findings of the research undertaken by Queen's University, commissioned by DARD and the DOE as a key part of the restoration plan, were released. The report recommends a far larger non-disturbance zone than the two very small fishing exclusion zones that were designated by DARD in March 2011.

Our fifth concern is the incorrect interpretation of the habitats directive by the Water Appeals Commission and DARD's failure to use its powers to overturn the commission's decision. DARD continues to issue fish culture and shell fishery licences, irrespective of what is happening in Strangford lough and the appropriate assessments that are required there. Even when DARD has identified an issue and a licence has not been issued, or conditions have been placed on a licence and the applicant has taken the case to the Water Appeals Commission, it appears that, when the Water Appeals Commission makes a judgement and DARD has an opportunity to overturn it when it is in

breach of the habitats directive, that opportunity has not been taken. It is imperative that, as enforcer and regulator, DARD meets its legal obligations on licences or activities in a special area of conservation.

Finally, rather than simply concentrating on the problems, we want to conclude by suggesting some solutions on how the Committee can ensure that Northern Ireland adequately implements the habitats directive for the horse mussel reefs in Strangford lough. First, we suggest a review of the article 6 assessment. It should be carried out with a view to looking at the ecological impacts of the removal of predators and scavengers from the horse mussel reefs, as well as looking at the physical impacts on the muddy-bottom biogenic reef systems. Secondly, we believe that there is a need to finalise and implement a management plan for Strangford lough fisheries, including an options appraisal for a sustainable fisheries plan, providing for local fishermen, and an official assessment of the fish stock and the carrying capacity of Strangford lough, which we believe is unavailable at present. Thirdly, we would like there to be non-disturbance zones, wherein fishing and other potentially damaging activity is prohibited, properly monitored and enforced. Finally, we want adequate funds and commitment in the DOE and DARD to support the work that is needed to restore the mussel beds.

That concludes our presentation, and we welcome any questions.

**The Chairperson:** Thank you very much for your presentation. I have a number of questions, but I will try to keep to one question and then open up the discussion to members.

Have you heard anything from the European Commission about your complaint?

**Mrs Thompson:** My understanding is that the Commission will send a letter today or tomorrow to the Cabinet Office. The letter will then go to the various Departments. I know nothing else, other than the fact that there will be a 10-week period for Departments to respond to the letter.

**The Chairperson:** As I understand it, the original issue was the impact of mobile and dredge fishing, which then changed to pot fishing. What are your views on pot fishing? Is the practice itself damaging, or is it damaging because there are so many pot fisheries?

**Mrs Thompson:** I will start off, and I will then hand over to Jade. Initially, the level of pot fishing was much lower than it is now. When the ban on mobile fishing gear came into place, there were only five or six vessels engaged in pot fishing. After that, there was what we would call "displacement activity" and a growth in the pot-fishing industry. Therefore, once people lost the other mechanisms of fishing, they moved to pot fishing, which greatly increased the level of pot fishing in the lough.

**Dr Jade Berman (Ulster Wildlife Trust):** Pot fishing definitely has much less impact on the lough than, for instance, trawling. However, there are highly damaged modiolus there. That was in the article 6 assessment, and comparisons were made with, for example, Wales, where the modiolus beds are solid. If you were to drop a hard object onto a solid bed — you could think of it like a bed of nails — it is normally fine, but if you drop that object onto a bed that is scattered, it is more likely to break the bed. Therefore, the modiolus get smashed and cannot recover. Moreover, if the pots are dragged through continuously, the modiolus in Strangford lough cannot re-form their unique clump forms. It is about giving the damaged and intact modiolus beds the chance to recover to their previous levels.

**The Chairperson:** Am I right in saying that that could take between five and seven years?

**Dr Berman:** Yes. That is when we should start to see a change. I am not saying that we will have pristine beds by then, but we will start to see if that action is making a difference.

**Mrs Thompson:** There are also ecological impacts with pot fishing, in that it removes predators and species. That is one of our key concerns.

**Dr Berman:** It is like a food web: if you keep taking away one area, a food web will collapse, and the balance will be shifted. The answer is not to take all the starfish away; they are supposed to be there. It is about having a balance of top predators and a middle level. That will keep everything else in check so that the lough is a functioning ecosystem. That is what you want.

**The Chairperson:** Next for a question is the Deputy Chairperson, Dolores Kelly. Dolores, may I remind you that your party colleague, Patsy McGlone, referred to starships. *[Laughter.]*

**Mrs D Kelly:** I am afraid that I am not a Trekkie. *[Laughter.]* I will try to stick to the briefing, which was very helpful. I welcome you to the Committee.

I note that you first made a complaint to the European Commission in 2003, and at that stage, the DOE and DARD agreed a restoration plan. Are you now telling me that the restoration plan was not enacted in full, and that you, therefore, felt the need to lodge a further complaint last year? You referred to a letter that will be sent to the Westminster Government. Is that an article 258 letter, which is the first formal stage of the process of taking infraction proceedings against the Department?

**Mrs Thompson:** As I understand it, the system has changed slightly since we made our initial complaint in 2003. We are now going through the EU pilot system, whereby a letter is sent down with a range of concerns, and there is a 10-week period for Northern Ireland to respond. Depending on the responses, the next stage is an infringement letter. There is a time before that would come to Northern Ireland.

**Mrs D Kelly:** I am trying to tease something out. I have an article 258 letter, which presumably is the letter to which you refer. It comes from Brussels and gives the Government two months to reply in what is called an article 258 reasoned opinion. That is what the Government have to come back with. The letter states:

*"An article 258 reasoned opinion is a formal determination by the EC that the member state is in breach of its legal obligations."*

That, potentially, is the next stage. As a scrutiny Committee, we want to protect the public interest in relation not only to the protection of natural habitats but to infraction proceedings. The Department has 10 weeks in which to respond to Westminster about what action it is going to take or how it is going to rebut the accusations or allegations regarding the restoration plan. We are in a very dangerous scenario. That is my interpretation of what I have heard this afternoon.

**Mrs Thompson:** It flags up the fact that there is a serious issue, but I firmly believe that, with the Committee's help, there is every good chance that, if appropriate action is taken, Northern Ireland will not be taken forward into infraction fines. Any action would need to be taken relatively quickly.

**Mrs D Kelly:** We are talking about a need for decisions to be made within 10 weeks to avert any proceedings and financial penalties. It is my understanding that financial penalties commence at €8 million.

**The Chairperson:** Do you want to come back on that? Are you happy that you have answered the question?

**Mrs Thompson:** There was a question about whether we felt that the restoration plan had been implemented. That is a key area of our concern: the restoration plan was put forward to the European Commission saying that this was how the issue would be dealt with. Our understanding is that the European Commission took that in good faith and responded that if we did what we said we were going to do, that would bring around the restoration of modiolus. The restoration plan has not been enacted in the way in which it should have been. Part of the plan was predicated on the fact that exclusion zones would be put in for modiolus in existing and damaged areas in Strangford lough. That would be monitored and, therefore, any restoration would be seen. However, no such zoning was put in place until March 2011, after we had visited the European Commission in December 2010 and said that we were concerned. They then met officials from the Department for Environment, Food and Rural Affairs (DEFRA), through whom we work with Europe, and our Northern Ireland officials. Questions were asked about why those things had not been put in place. As part of the response, the exclusion zones were established in March 2011 when they should have been put in at the front end of the restoration plan in 2008. In that way, there would have been at least three years in which it could have been observed whether any restoration work had taken place.

**Mrs D Kelly:** Minister O'Neill responded to the Committee that a plan had been forwarded to the European Commission and that she awaited an outcome. Has that plan been rejected by Europe?

**Mrs Thompson:** We do not know the outcome of that meeting. We did not see any of the paperwork connected to that meeting.

**Mrs Dobson:** Thank you for your presentation. I want to follow on from your comments and Dolores's comments. Your January press release said that the options for restoration of the habitat were limited. Do you believe that the damage to the horse mussels has gone too far for any DARD and DOE restoration plan to have a substantial effect at this stage? I read that there were examples of reefs repairing themselves naturally in New Zealand, for instance. Could that happen in Strangford lough?

**Mrs Thompson:** I will hand over to Jade, who has worked in New Zealand and will probably be able to give you direct experience.

**Dr Berman:** The reefs that they are talking about in New Zealand are in the Foveaux strait, which is off the south coast. There was lots of dredging in that area. The area has been monitored and the oyster reefs have recovered.

As for here, the good signs for Strangford lough are that, when the research was carried out, it was seen that the age structure of the modiolus has everything from brand-new recruits — the babies — all the way up to 50-year-old mussels. Therefore, although the modiolus is damaged and spaced out, recruitment is happening. That is a good sign that there is potential for recovery. We now want to give it the chance to recover and to re-form the clumps so that they are more protected from other damage that may occur.

**Mrs Dobson:** You said that local fishermen have a voluntary code but that fishermen who come from outside the lough do not follow it. If they did, would that substantially limit the damage that pot fishing can cause to the reefs?

**Mrs Thompson:** At present, we do not know. Part of the problem concerns the monitoring and information that is available on the catch from Strangford lough. There is no independent data on what is caught and the landings for Strangford lough on its own. There is no clear evidence of what comes out of the lough and out of other parts around the neck of the lough. It is very hard to say exactly who is catching what and what the impact is. However, it is our belief that where there is a voluntary code and people come into the lough and do not abide by it — we do not know who those people are — there is the possibility of ongoing competition.

**Mrs Dobson:** What steps could you take to make them comply?

**Dr Berman:** There is a need for a non-disturbance zone. It is important that, in the area that is left, there is a permitting system for local fishermen so that it is known who is coming in and how much they are taking. An assessment also needs to be made about the carrying capacity. We need to know how much can be taken from the area that is left so that people can still make a living from it. We also need to ensure that the environment is protected so that there are sustainable fisheries for the future.

**Mrs Dobson:** However, it is very difficult to monitor and assess.

**Mrs Thompson:** Yes it is, because the information is currently not there. That is a fundamental issue across the board. If the baseline information is not there, it is very difficult to assess what changes are or are not happening with all the fish stock in Strangford lough.

**The Chairperson:** You mentioned adequate non-disturbance areas. What does that mean? What do you see as a non-disturbance area? Does it affect just fishing, or does it affect other elements such as recreation, boating and yachting? What does it mean to have an adequate non-disturbance area?

**Dr Berman:** You are probably aware that the Department of the Environment has consultation out on anchoring and diving for the area recommended by Queen's. That should also be the case for the non-disturbance zone. There is talk that, before yacht racing, there will be a dive to check that an area

does not have modiolus so that the mooring can be put in. That zone has been in consultation with the dive community and the yachting community. They have agreed that that is the best way forward, which is why the limits are where the modiolus are not.

**The Chairperson:** You mentioned the code of practice and the difference between local fishermen and fishermen who come in from beyond the area. Will you give us some detail on that code of practice? What is asked of fishermen?

**Mrs Thompson:** There are two documents. One is a voluntary code that has been agreed by the Strangford lough fishermen themselves. We have not seen it. There is also a code of conduct that was given to the European Commission after the December 2010 meeting as a mechanism for an agreed way of managing the lough. That code of conduct was to have been implemented last year but, as far as I am aware, it has not been. There was also a requirement for the stakeholders to be consulted. As far as we are concerned, it, too, is still in abeyance.

**The Chairperson:** So you have not really seen the code of practice.

**Mrs Thompson:** We have not seen the voluntary code that the fishermen manage themselves. It is an internal voluntary code that they operate. There is also a code of conduct that was taken to the European Commission as being the way forward.

**The Chairperson:** Have you seen that?

**Mrs Thompson:** We have seen the code of conduct, and there are areas of it that we question. If it were properly implemented, it might allow fishermen the opportunity, when taking catch, to get involved in listing what they have caught and what the by-catch is and to help with the monitoring approach that could be taken. However, there is an issue with the implementation and enforcement of that, which is another discussion.

**Mr McMullan:** I will not keep you. Thanks for your presentation. You talk about the fishermen's code of conduct. Am I right in saying that outside fishermen come in?

**Mrs Thompson:** Yes.

**Mr McMullan:** You could work with the local fishermen. I think that there are only seven boats locally.

**Mrs Thompson:** There are 23 in total.

**Mr McMullan:** Are they all local?

**Mrs Thompson:** Those 23 boats are local; whatever else comes through is not local.

**Mr McMullan:** You could work with local boats, but how could you work with outside boats? That would be the trouble if you implement the permit system. If somebody bought up all the permits, you would have a problem. That is one question. My other question is this: if there was word that something such as that had happened, would local fishermen get priority and would you restrict numbers?

**Mrs Thompson:** We have been looking at whether the permit system is right. You would work with the local fishermen, but there would be an enforcement issue involved in respect of how that would be managed. There are examples in other parts of Ireland where a permit system has been introduced and has worked very well. For the system to work, we would need buy-in from local fishermen, and we have been very clear about that the whole way through. We are not anti-fishing. We want a sustainable fishery in Strangford lough. One issue is that we do not know the carrying capacity and the stocking capacity of the lough. If people had that information, they would be in a position to identify the permits that could be given and what the catches should be so that the situation could be managed. In our view, a body of work is needed in that area.

**Mr McMullan:** Who really has a say over who can pot fish in Strangford lough?

**Dr Berman:** At the moment, no one has any real say over it. Anybody can go in with a pot and fish.

**Mr McMullan:** You are talking about widening the area out, diving down and seeing what is there, and so on, before implementation. How long do you think that would take?

**Mrs Thompson:** To do an assessment?

**Mr McMullan:** Yes.

**Mrs Thompson:** I am not sure how long the full assessment of the Shetland's fishery took.

**Dr Berman:** I am not sure, but I could refer you to the relevant document. A good example is the recent assessment of the Shetland inshore brown and velvet crab, lobster and scallop fishery, which was carried out by the Marine Stewardship Council. That is a good example of an appropriate assessment. If you like, I can provide that for the Committee.

**Mr McMullan:** How long does such as assessment take?

**Dr Berman:** I do not know how long it would take.

**Mr McMullan:** I am just curious.

**Dr Berman:** I would have to ask the council how long it took.

**Mrs Thompson:** We can find out for you.

**The Chairperson:** If there is anything you can provide to the Committee to help with that, there is no problem.

**Mrs Thompson:** One thing we failed to do at the beginning of the meeting was to ask whether there was any chance of having a closed session at the very end.

**The Chairperson:** We can certainly ask members. I do not think that there is any reason why we could not do so. Are members in agreement about going into closed session at some point, not necessarily now?

*Members indicated assent.*

**The Chairperson:** Do any other members want to speak or ask questions in open session? No members have indicated that they wish to do so. In open session, I want to thank you for your presentation and your answers.