The Committee will consider the following current petitions—

**PE799** Petition by Tom Vella-Boyle calling for the Scottish Parliament to urge the Scottish Executive to support COAST’s proposals to close an area of Lamlash Bay to all forms of marine life extraction [No Take Zone] and the rest of the Bay to mobile fishing gear [Marine Protected Area].

**PE839** Petition by Councillor Peter John Convery calling on the Scottish Parliament to urge the Scottish Executive to develop clear and concise guidance for local authorities on the use of moratorium to exclude telecommunication masts from being situated on council land.

**PE868** Petition by Ronald M Sutherland calling for the Scottish Parliament to urge the Scottish Executive to bring forward legislation to create a right to buy for member-based community sports clubs occupying or using land and / or premises for recreational or sports purposes.

**PE863** Petition by Bill Alexander calling for the Scottish Parliament to urge the Scottish Executive to amend the Solicitors (Scotland) Act 1980 to allow limited companies to either be given the right to apply for legal aid or the right to represent themselves in court.

**PE812** Petition by Caroline Paterson, on behalf of ‘Stirling Before Pylons’, calling for the Scottish Parliament to urge the Scottish Executive to acknowledge the potential health hazards associated with long-term exposure to electromagnetic fields from high voltage transmission lines and to introduce as a matter of urgency effective planning regulations to protect public health.

**PE865** Petition by Edward Fowler calling for the Scottish Parliament to investigate the sequestration recall process and consider amending the
law to allow the right of appeal for those made bankrupt by mistake and that all such appeals should be heard by a Sheriff.

**PE735** Petition by Vivien Dance, calling for the Scottish Parliament to urge the Scottish Executive to require NHS Argyll and Clyde and NHS Greater Glasgow to agree a special agreement on transferring responsibility for the design and provision of health services in the North Clyde area and, when appropriate, to amend existing legislation so that the boundaries of the two health boards are adjusted to achieve the transfer of authority for the North Clyde area from the former to the latter.

**PE772** Petition by Jackie Baillie MSP, calling on the Scottish Parliament to urge the Scottish Executive to ensure that any proposed clinical strategy emerging from NHS Boards, such as NHS Argyll and Clyde, must clearly demonstrate cross boundary working in the interests of patient care.

**PE895** Petition by Dr James Crowther calling for a parliamentary debate on the implications of the recent decisions by the Scottish Executive and Scottish Parliament Corporate Body regarding provision of funding to the Scottish Civic Forum.
Petition by Tom Vella-Boyle calling for the Scottish Parliament to urge the Scottish Executive to support COAST’s proposals to close an area of Lamlash Bay to all forms of marine life extraction [No Take Zone] and the rest of the Bay to mobile fishing gear [Marine Protected Area].
Public Petitions Committee - Information required for petitions to be displayed on the e-petitioner system

The Public Petitions Committee's web pages include a number of specific pages dedicated to the e-petitioner system. Before a petition can be added to the system, the principal petitioner is required to submit the following information. The size limits indicated below are for guidance only, however, we do recommend they are adhered to for best presentation of your petition on a web page viewed on a typical PC screen.

Short Petition Title: no more than 10 words

Trial of No Take Zone and Marine Protected Area in Lamlash Bay

Principal Petitioner: name of organisation or person raising the petition and the date it will start to collect signatures (include both full names, e-mail if applicable, and abbreviations of organisations)

COAST. [Community of Arran Seabed Trust]  secretary@arrancoast.co.uk

29th September 2004

Full petition text:
The text should clearly and concisely state the request of the petitioner, showing clearly the nature of the remedy or action requested from The Parliament.
To ensure easy reading and viewing of the petition text it is advisable for this to be not more than 15 lines of text, preferably less. All other background information can be put onto the "information" page.

The petitioner requests that the Scottish Parliament supports COAST's proposals to close an area of Lamlash Bay to all forms of marine life extraction [No Take Zone] and the rest of the Bay to mobile fishing gear [Marine Protected Area]. COAST believes that this trial will enable marine life, including whitefish, flatfish and scallops to regenerate, ultimately benefiting the local marine environment, local economy and, through spillover of species from the NTZ, the Clyde fishermen.

It is the petitioner's view that the Scottish Parliament has a duty under the EU Habitats Directive 1992, to protect species of maerl present in Lamlash Bay, particularly since there is a lack of candidate marine SACs in the Clyde.

No Take Zones and Marine Protected Areas have been used effectively overseas as fisheries management tools but to date have not been used in Scottish waters. It is the petitioner's view that the Scottish Parliament has a duty to ensure that proven methods of fisheries management are used in Scottish Waters.

SEERAD have to date refused COAST's requests, despite considerable support from Arran's fishing community, stating that unanimity among all fishermen using the Bay is required. COAST submits that such an approach is undemocratic since an overwhelming majority of the other users of the Bay and the local community of Arran, support COAST's proposals and that they are in the public interest for fisheries management.
COAST’s proposals require the imposition of a statutory instrument under the Inshore Fisheries (Scotland) Act 1984 and do not require further primary legislation.

Closing Date: date when the petition will stop collecting signatures and be submitted to the Parliament:

30th September 2004

Principal Petitioner Page
All correspondence regarding this petition should be sent to: provide full contact details. Also provide any logos of the organisation you wished used should be attached in GIF or JPEG format.

This petition is by and on behalf of the Committee and full membership of 1205 [720 of which are Arran residents] of the Community Of Arran Seabed Trust [COAST].

COAST
Information should include statement as to why this petition is needed and sources/links to background information. (Add information as HTML or plain text). If there are additional documents to be included send these as Word or pdf files (GIF or JPEG for graphics and photos)

It is not contentious to state that there has been a dramatic decline in fin fish stocks and the marine environment in Scottish waters over the last 15 years. It is difficult to assess the causes but scientists agree that over fishing is a primary cause.

No Take Zones and Marine Protected Areas are used in the best managed fisheries of the world such as Australia and New Zealand. No such methods have been used specifically as fisheries management tools in Scottish Waters.

Lamlash Bay has been assessed as an ideal location for such a project by an independent assessment by Tom Howden, MSc Aquatic Resource Management, Kings College, London. [see attached as appendix 1]

COAST's proposals are supported by Professor Callum Roberts of the University of York who is an acknowledged expert in the field. The University of York is ideally placed to assess the data from the Bay as it regenerates over time. The Marine Biology Station at Millport, Cumbrae have undertaken a scientific survey of part of the No Take Zone. [See attached as appendix 2 – para.3 page 8 should be specially noted] and are completing a survey of the whole Bay for COAST.

The existence, of unrivalled examples in the Clyde, of species [marr] protected under EU Habitats Directive and the Ayrshire Bio-Diversity Plan, is an additional incentive. [see attached as appendix 3]

Local divers and members of COAST have been trained and monitored by the Marine Conservation Society of Scotland to carry out 'Seasearch' research and have carried out baseline Seasearch surveys of Lamlash Bay [see attached as appendix 4]. Seasearch is an accepted research programme financed and supported by SNH.

The COAST project is partly financed by voluntary contributions, SNH, The Esme Fairbairn Trust, The National Lottery and DG fish of the European Union. Although the project is currently outside the ambit of North Ayrshire Council the Isle of Arran Local Plan supports conservation use of Lamlash Bay.

COAST's proposals could have a marked impact on the economy of the Isle. In the 1970's and 80's when regular angling festivals took place on Arran many people with families visited the Isle to take part [see attached as appendix 5]. There are also possibilities for increasing diving tourism and eco-tourism.

These represent a well rounded series of proposals supported at many levels. [A copy of the COAST Proposals are attached as appendix 6]

Summing up.

It must be remembered that fish and marine life are the property of all Scottish people. With inshore measures it is up to the Scottish Parliament to manage those stocks for future generations to enjoy and for future jobs and livelihoods. Unfortunately not all management can take place by consensus. Unless decisions are taken to investigate modern fisheries management techniques this generation of Scottish Politicians will be remembered as the ones who presided over the final destruction of Scottish marine life. Past generations can be partly forgiven because scientific information available today was not available then. Today's politicians have no such excuse.
COMMENT PAGE
Provide at least one comment to set the scene for an on-line discussion on the petition (about 150 words max).

Over fishing and destructive fishing techniques have been carried out in Scottish waters for too long. Local people and all stakeholders should have a say in the future of fisheries management. Scientific advice should be heeded and not ignored. It is in nobody's interest to extract fish and shellfish from the sea in such a manner as to affect its ability to replenish. That will lead to marine deserts.

No Take Zones have been used very effectively abroad as a management tool and should be trialled in Scotland. The broad base of community, fishermen, tourist, academic and government support make Lamlash Bay an ideal candidate for such a trial.

Contact (to obtain initial advice and agree content of e-petition)
The Clerk to the Public Petitions Committee,
The Scottish Parliament,
Edinburgh
EH9 1SP
Tel: 0131 348 5186/5414 Fax: 0131 348 5088
e-mail: petitions@scottish.parliament.uk

Contact for technical issues ONLY (after e-petition has been accepted by the Public Petitions Committee):
International Teledemocracy Centre, Napier University,

Note
Completed forms should be sent to petitions@scottish.parliament.uk

APPENDICIES

Appendix 1. Academic report on Lamlash Bay as an ideal location for a No Take Zone.

Appendix 2. Report from the Marine Biology Station, Millport, identifying maerl beds in Lamlash Bay. It classifies the area as “highly unusual and damage to the deposits may be damaging one of, if not the last, 90% live maerl bed in the Clyde Sea.”

Appendix 3. Scottish Natural Heritage leaflet on the importance of maerl

Appendix 4. Lamlash Bay Seasearch Report

Appendix 5. Copies of leaflets printed in the 1970s showing the worth of Lamlash Sea Angling Festivals to Arran.


Template for e-Petitions
12th January 2004
Dear Mr Ough,

Scottish Parliament Public Petitions Committee – Consideration PE799

Thank you for your letter of 13 July 2005 to David Brown asking the Scottish Executive for an update on the issues raised by the petition (PE 799) submitted by COAST in relation to Lamlash Bay. I regret the delay in replying.

The Executive has noted the informed discussions by the Committee on this issue on 28 June. It has also noted the terms of the responses received by the Committee from the Clyde and Southwest Static Gear Association, the Arran Sea Angling Association, Scottish Natural Heritage, the Clyde Fishermen’s Association and the Scottish Association for Marine Science. In addition, the Executive has noted that the Committee has sought further comments from the Petitioner and from Professor Roberts of the University of York.

There have been developments in a number of key initiatives and proposals relevant to COAST’s proposal since the Executive provided views to the Committee on the issue earlier this year. Details of these are provided in the attachment to this letter. You will also note from the attachment that, having met with representatives of COAST in May, Mr Ross Finnie, Minister for Environment and Rural Development, will shortly be writing to COAST to provide a formal response to the organisation’s proposals. I shall write to you again then to advise you of the Minister’s response.

In the meantime, I hope this letter and attachment is helpful. If it raises any particular questions please do not hesitate to get in touch with me.

Yours sincerely

Eamon Murphy
LAMLASH BAY, ARRAN - COAST'S PROPOSALS FOR A NO-TAKE ZONE/MARINE PROTECTED AREA

UPDATE

1. As recognised by the Scottish Parliament Public Petitions Committee at its meeting on 28 June 2005 there have been a number of relevant developments since the Scottish Executive provided comments on the proposal for a no take zone and a marine protected area at Lamlash Bay in February of this year. These are:

- The Executive published in March 2005 its Strategic Framework for Inshore Fisheries in Scotland. Implementation of the framework, work on which is underway at present, will provide a significant role for stakeholders in the management of inshore fisheries. In particular, the framework sets out the Executive's plans for the establishment of a series of Inshore Fisheries Groups around the country which will act as local management fora. While fisheries' stakeholders will have a key role on these groups, a wide range of other local and national stakeholders will have the opportunity to be involved with and influence the groups, including those particularly interested in environmental aspects of coastal and marine management. The work which is currently underway includes the identification of the first tranche of these groups and the finalisation of their constitution and conflict resolution mechanisms. We expect the first tranche of Inshore Fisheries Groups to be in place and up and running by the spring of 2006. The proposals in respect of Lamlash Bay are precisely the sort of initiative which we would expect to be covered in management plans worked up by the Inshore Fisheries Groups.

- Ross Finnie, Minister for Environment and Rural Development, met with representatives of COAST on 17 May 2005 to find out more about the organisation's proposals and what they were trying to achieve. The Minister will write in the near future to COAST, providing his formal response to its proposal for a no take zone and Marine Protected Area in Lamlash Bay.

- Mr Finnie has also published two further documents that set a clear strategic direction for marine and fisheries management generally. On Monday 12 September, he published a Strategy for the Long Term Sustainability of Scotland's Coasts and Seas, the aim of which is to secure a vision of clean, healthy, safe, productive and biologically diverse marine and coastal environments. This will be achieved by the co-ordination of sectoral strategies and time limited outputs and outcomes delivered through a Ministerially chaired stakeholder group. This group will comprise the chairs of existing national stakeholder bodies, such as the Scottish Coastal Forum, who will be asked to liaise with local groups and interests; and representatives of the environmental NGOs, industry and academia. The strategy will be supported by three pilot projects under the Scottish Sustainable Marine Environment Initiative, one of which will focus on the Clyde, to consider how various activities in and around Scotland's coasts and seas might be better managed. Some of those pilots, including that being taken forward for the Firth of Clyde, will explore the potential for marine spatial planning. A further element of the strategy will be the work Mr Finnie has commissioned from SNH, to identify possible locations for a Coastal and Marine
National Park and provide advice on the role and governance of such a body. SNH is establishing a separate stakeholder group from which to take soundings as their work progresses.

- Fisheries management is one of the key components of the Executive's approach to marine management and, on 28 June this year, Mr Finnie announced the publication of a Sustainable Framework for Scottish Sea Fisheries to complement the inshore framework and the Coasts and Seas Strategy which was already being developed at that time. The Sustainable Framework aims to bring the benefits of the inshore strategy to the wider sea fisheries sector. It aims for a sustainable, profitable and well-managed sector which will support thriving and diverse local communities and a thriving and diverse marine environment. There are three main components: development of sustainable stock management strategies to put the stocks on a more sustainable and stable footing in tandem with the development of commercial strategies to raise profitability in the sector, underpinned by more involvement from the industry in science and management as well as effective and equitable enforcement.

- Work on the Lamlash Bay Sewage outfall pipeline is now complete.

2. In addition, the response by the devolved administrations and DEFRA to the Review of Marine Nature Conservation is presently being finalised and will be published shortly. This will respond, in particular, to recommendations in the Review on the establishment of a network of Marine Protected Areas and on the identification of areas important for marine biodiversity.

3. The Minister's response to COAST on its proposals will take into account the detailed material which the organisation has provided including at its meeting with the Minister in May, the material provided by others and the various policy initiatives and proposals which are set out in the publications described above.

SEERAD
3 October 2005
To: Richard Hough
Assistant Clerk to the Public Petitions Committee
The Scottish Parliament
TG.01
Parliamentary Headquarters
Edinburgh, EH99 1SP

30th August 2005

Trial of No Take Zone and Marine Protected Area
In Lamlash Bay

Dear Members of the Scottish Parliament Public Petitions Committee,

I am writing to urge members of the Public Petitions Committee to support the petition by COAST, The Community of Arran Seabed Trust, requesting The Scottish Parliament to undertake a Trial of No Take Zone and Marine Protected Area In Lamlash Bay, Isle of Arran. A rapidly growing body of evidence from around the world points to the benefits of no-take zones to marine wildlife conservation and also to fisheries. I have reviewed evidence for both conservation and fishery effects of protection on several occasions in the last 15 years (for details of these reviews, see introduction of: http://www.worldwildlife.org/oceans/pdfs/fishery_effects.pdf).

From my research and that of many other scientists working in this field, I have concluded that lack of no-take zone status greatly compromises nature conservation objectives of marine protected areas (see Roberts 2005\(^1\)). (As yet, Special Areas of Conservation established under the Habitats Directive do not receive full protection from fishing, and often receive very little protection from fishing.) Such no-take zones are therefore an essential component of effective marine protected areas. However, I have also concluded, that conservation and fishery benefits of no-take zones are entirely compatible. Conservation of exploited species stocks is fundamental to productive and sustainable fisheries. No-take zones, or marine reserves as they are often called, are important tools in delivering such protection and the evidence of their success indicates they should be a core element of successful fisheries management programmes (see Roberts et al. 2005\(^2\)). The lack of substantial areas protected from fishing is one of the key impediments to success in current fishery management regimes.

It is quite clear from the decline in stocks of whitefish and herring in the Firth of Clyde, that fisheries there have been in serious trouble for the last two decades at least. There are few significant commercially important stocks remaining, notably Nephrops and scallops. This greatly simplified ecosystem state is highly unstable and is prone to problems affecting agricultural monocultures, i.e. disease, pest and parasite infestations. Rising infection rates by the parasite Haematodinium in Nephrops in the Clyde, rendering these animals valueless, are a warning of possible future trouble. In the past, infection rates were kept low by predation on infected prawns by whitefish such as cod. Without this control, infection rates are spiralling.


However, unlike in agricultural systems on land, we cannot remedy the problem by applying chemicals. Instead, it is critical that we maintain marine ecosystems in a healthy, intact state so that they have resilience against such problems. We can do this by creating marine protected areas that are protected from all fishing – just the kind of area that COAST is proposing for Lamlash Bay.

I understand that some fishers are concerned about a no-take zone being established at Lamlash, feeling that it will take away from their fisheries. A study that I have undertaken with a colleague Dr Fiona Gell (now working with the Isle of Man Government) reviewed evidence for fishery effects of marine reserves worldwide and found overwhelming support for the view that they can contribute to fisheries\(^2\). It was in the light of evidence like this that the Royal Commission on Environmental Pollution last year called for 30% of the seas around Britain to be protected from all commercial fishing, in their *Turning the Tide* report.

By analogy from studies elsewhere in the world, it can be expected that benefits of protection will begin to accrue as soon as protection is implemented and will build up over a period of decades as species and seabed habitats recover from the impacts of fishing. The recovery of fish and shellfish stocks inside the no-take zone can be expected to contribute to surrounding fisheries through export of adults and their offspring from no-take zone to fishing grounds. Indeed, as the evidence in the reports referred to here indicates, the fishers currently using Lamlash Bay in Arran (and there are very few of them) can expect to do better following the implementation of a no-take zone than they are doing now. Based on available evidence, we can predict that they would do even better if large no-take zones were established covering up to 30% of the Clyde estuary. The Lamlash proposal represents an important trial of the concept in Scottish waters.

The Clyde Fishermen’s Association point out in their comments that Lamlash Bay is not ‘important’ enough biologically to become a no-take zone. Again, I point to evidence in the reports referred to which indicates that no-take zones quickly become very special places biologically by virtue of the protection conferred upon them. Such a no-take zone, by fostering recovery of populations of marine life would quickly become a tourist attraction as well as a place having conservation and fisheries value. You need only look at established marine protected areas such as Leigh Marine Reserve in New Zealand, Apo Island in the Philippines, Tsitsikamma Marine Park in South Africa, and many others to see the evidence.

The Clyde Fishermen’s Association also point out that no-take zones should be established in networks. This is true, but such networks have almost always been built piecemeal. Lamlash Bay is an excellent place to start. Given the scale of the conservation problem in the sea, an immediate start is warranted, rather than delaying matters for further consultations. Lamlash Bay, if protected now, will play a critical role in informing future discussions and efforts to establish a large-scale network of protection for Scottish marine life and fisheries.

We urgently need to get to grips with protecting marine life and ecosystems. At present, there are many protected areas on land, but there are virtually none in Scotland or the UK that protect marine wildlife from the impacts of fishing. The modest proposal made by COAST represents a highly welcome step in the right direction. Evidence from marine protected areas around the world shows that areas which have community support are far more successful than those implemented by centralized authorities without such support. Therefore, community initiatives like COAST’s are to be doubly welcomed, because they are likely to lead to significant benefits more quickly than areas designated for protection which lack such broad community participation.

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There is an urgent need in Scotland and the United Kingdom for domestic examples of the effects of no-take zones. I think that Arran should be at the forefront of gathering knowledge of these effects in order to serve the national interests. The Scottish Parliament should not miss this excellent and important opportunity to create the first statutory no-take marine reserve in Scotland.

Yours sincerely,

Callum Roberts
Professor of Marine Conservation
Pew Fellow in Marine Conservation
29th August 2005

Eileen Martin
TG 01
Parliamentary Headquarters
EDINBURGH
EH99 1SP

Dear Ms. Martin

Scottish Parliament Public Petitions Committee – Petition PE 799

I attach a hard copy of the electronic copy I sent to your office today of the COAST comments on the responses to Petition PE 799.

Yours sincerely

Tom Vella-Boyle
Secretary of COAST
Responses to the Scottish Parliament Petitions Committee – Petition PE799.

COAST’S COMMENTS ON THE RESPONSES

EXECUTIVE SUMMARY

The response from the consultee’s can be summed up in the Executive Summary as the ‘pro’s,’ the ‘con’s’ and the ‘don’t knows’.

The Pro’s

The Scottish Association For Marine Science

Direct and to the point. They provide clear scientific endorsement for this Trial.

The Clyde & Southwest Static Gear Association

Fully supports the proposal and acknowledges “Unrestricted rights to fish for all is no longer an excuse for inaction by the Scottish Executive”.

Arran Sea Angling Association

Fully support the proposal

The Con’s.

Both SEERAD and The Clyde Fisherman’s Association reply pre-date the COAST proposal of February 2005 and it is quite clear by their response they have not read it.

THE CLYDE FISHERMAN’S ASSOCIATION

The CFA should say how many of its members operate in the Bay.

The CFA is wrong in saying that there is no legislation to support COAST’s Trial.

COAST are pleased that the CFA endorse MPAs in principle

COAST are not arguing that economic benefits are solely from angling. Benefits would come from eco-tourism also.

The CFA should show what proportion of their member’s income derives from Lamlash Bay.

COAST totally support CFA’s counter proposals but feel their experiment should take place in the waters around Carradale.
SEERAD

SEERAD show undue bias to certain sections of the fishing industry with little regard to all stakeholders.

SEERAD says it requires a level of consensus before any action. They should be making informed and impartial decisions about the national resources to benefit all stakeholders including future generations.

SEERAD's local information on the proposed Trial area is incorrect and in direct contradiction to the Scottish Environment Protection Agency's appraisal of the area.

SEERAD seem incapable of making a decision on this Trial without waiting for the results of their numerous reviews. There is no reason why this Trial cannot be implemented to run in parallel with any management reviews they may be having.

SEERAD can enact existing legislation now and no new primary legislation is necessary for the Trial to proceed.

The Don't Know's

NORTH AYRSHIRE COUNCIL [NAC]

COAST urges the Committee to ask NAC to respond as they are the local authority nominally responsible for the implementation of the UK BAP

SCOTTISH NATURAL HERITAGE

SNH concentrate their comments on the political rather than the environmental issues.

COAST finds it hard to understand why SNH are equivocal in their response while other parts of the UK would support this Trial.

SNH say that a review of inshore fisheries and other reviews should be completed before any fisheries management issues are settled. COAST does not agree.

SNH suggests other forums where this project should be debated. COAST does liaise with these forums but they are not decision making bodies.

SNH suggests that under the Habitats Regulations the setting up of Special Areas of Conservation will do the same job. This is not so, the Habitats Regulations are not used as a fisheries management tool in Scotland.

SNH have not detailed the environmental obligations present under OSPAR or the UK BAP.

SNH have no policy for dealing with community based proposals such as this.

END OF EXECUTIVE SUMMARY.
Dealing in detail with the comments of the various respondees in turn

North Ayrshire Council

Lamlash Bay has the “most significant maerl bed in the Clyde” according to University Marine Biological Research Station at Millport. Maerl is a recognised habitat under the UK Biodiversity Action Plan. It is very disappointing that we have not had a response from North Ayrshire Council who is the local authority nominally responsible for the implementation of the UK BAP.

The UK Biodiversity Action Plan for maerl beds states authorities should: “ensure that fishing policy takes account of the potential impact of operations with mobile gear on maerl beds and seeks to avoid or minimise operations”

Requested Action

We would urge the committee to ask North Ayrshire to respond to COAST’s Trial as soon as possible.

Scottish Association for Marine Science (SAMS)

This response provides clear support by virtue of both the nature of the habitat we are trying to protect and confirmation of the scientific credibility of the experts that are part of the COAST trial.

The conclusion to their letter reads The COAST proposal for a marine regeneration trial is interesting and conforms to current thinking on the development of MPAs, as described in the recent report of the Royal Commission on Environmental Pollution. We are in support of this approach to inshore fisheries management.

This is the view from Scotland’s leading marine scientists and should not be ignored.

Scottish Natural Heritage

COAST are grateful to SNH for their grant support for COAST. The difficulty that we have with SNH’s position is that they seem to be commenting in a political rather than an environmental capacity. We feel it is for SEERAD not SNH to make the political decision as to the relative environmental and economic merits of the COAST Trial.

Given the level of support of No Take Zones by their English and Welsh counterparts it is hard for COAST to understand why SNH are quite so equivocal in their response.

The main reasons given by SNH are:

1 – The review of the inshore fisheries has not been completed. COAST do not agree. Is SNH saying that because the review has not been completed then no fisheries management issues should be settled in the meantime?

2 – The Clyde Fisheries Management Project is the kind of forum where this could be debated – COAST are liaising closely with the CFMP but its role seems to be to highlight issues rather than deal with them as it is a non-statutory consultative project.
3 – The Clyde Forum is a more appropriate forum – The Clyde Forum is another consultation body with no statutory powers, and COAST do liaise closely with them.

4 – Sustainable Scottish Marine Environment Initiative - This review is about new management practices. COAST wish their proposal to be adjudicated under the current marine management regime.

5 – A mechanism exists under the Habitats Regulations to set up Special Areas of Conservation which will do the same job. This is not the case. The Habitats Regulations are there to protect habitats from “plans or projects” they are not Marine Protected Areas or No Take Zones in the fishing sense. The Habitats Regulations are not currently used as a fisheries management tool in Scotland. There is no question that if our proposals had been put forward south of the border it would have had very full support.

Environmental obligations are present under OSPAR and the UK Biodiversity Action Plan, neither of which are explained or commented on by SNH, but both of which are fully set out in our proposal.

Requested Action by the Committee in respect of the SNH response

SNH should be requested to comment on specific points to do with this Trial not on the broader picture of what may or may not be happening in years to come.

1 – Are SNH commenting on the February 2005 proposal, if so it would be useful if their response was confined to the Proposal itself rather than its national context?

2 – Is the COAST trial viable as a protective measure for the maerl beds particularly in light of the objectives in the UK Biodiversity Action Plan and would it help the environmental obligations of OSPAR?

3 - What is the SNH policy in dealing with community based proposals looking to protect the marine environment?

The Clyde and Southwest Static Gear Association.

Their voice of support is particularly important, and demonstrates just how viable this proposal is.

It is a tribute to their membership that they are happy to trial No Take Zones as a method of restocking the sea. It sheds light into what is often seen as a polarised debate between fishermen not wanting No Take Zones and scientists recommending them. It shows that many commercial fishermen do indeed support the scientific recommendations.

The Arran Sea Angling Association

The support by the Arran Sea Angling Association shows the depth of local support on Arran for the Trial.
The Clyde Fisheries Association

The CFA are a trade organisation whose brief in this matter is to lobby on behalf of their members and the commercial interests they represent. Many fishermen are not represented by the CFA. There are various shortcomings in this response and they are not based on the latest draft [Feb 2005] of the COAST proposals.

Turning to each of the points that the CFA have made.

1 - The Respondent has not quantified how many of its members actually operate in the Bay and for how long this has taken place. COAST's understanding is that presently 2 or 3 CFA members operate in Lamlash Bay. These are scallop dredgers. The majority of the users of the Bay are either non-affiliated or represented by the Clyde and Southwest Static Gear Association.

2 – The CFA’s argument that there is no legislation to support the proposal is without foundation. The Inshore Fisheries Scotland Act (1984) does confer sufficient powers to close Lamlash Bay for the extraction of sea fish (which includes scallops).

3 - COAST were not aware that the CFA had supported the Irish Sea Pilot, but we are glad that they apparently do now endorse MPAs in principle.

4 - Supporting Recommendations
   These points are covered above and are in the latest proposals

5 – Legislation
   b) The latest proposal does not make reference to the Habitats Directive but the UK Biodiversity Action Plan.
   c) Inshore Fisheries (Scotland) Act 1984 – The CFA view conflicts with SEERAD’s

6 – Socio Economic Balance.
   a) The Petitioner is not arguing that economic benefits will solely be due from angling. The presence of a NTZ/MPA can enable Lamlash to be marketed as an eco-tourist destination as well as having knock on effects to all fishing sectors.

   b) and c) The CFA’s assertion that Carradale is entirely dependent on fishing is untenable. No community in the western world is entirely dependent on one source of income. The CFA have given no evidence as to the proportion of their members’ income which derives from Lamlash Bay.

   d) COAST are very supportive of CFA’s counter proposals and are pleased that the CFA see the need for these measures. We believe that if CFA members are serious about re-seeding the sea bed with scallops then it is appropriate that such an experiment should take place in the waters adjacent to Carradale. We would be happy to assist with Seasearch training for their divers, the use of the data from the Lamlash Bay Trial, as part of the control and any other logistical support we can provide.
Requested action by the Committee in respect of the CFA response

We would request that the Committee asks the CFA:

1 - How many of CFA members’ fish in Lamlash Bay?
2 - How often they fish there?
3 - How long have they done so?
4 - The type of fishing activity they carry out?
5 - The size of catch from Lamlash Bay over the last five years?

With this information SEERAD could then evaluate their claims.

The Scottish Executive Response

This response was drafted in January and prior to receipt of the February 2005 Proposal.

We will not comment on all paragraphs as some of the points raised have been dealt with elsewhere.

3 – SEERAD show great concern that the fishermen face being “squeezed out”. The same concern is not shown towards the coastal communities who traditionally relied on fish stocks within their vicinity. There are no No Take Zones in Scotland and the idea that the current decline in fish stocks can be attributed to third parties “squeezing out” the fishermen is not a sensible one. Nobody took the local views into account when scallop dredging was permitted in the Bay. There is a remarkable congruence in the commencement of dredging and the collapse of the fishery.

To state the “fishing industry would find these proposals more meaningful if they were justified as part of a wider management strategy for the fisheries in the Clyde” is inaccurate as COAST are supported by the majority of stakeholders. We understand that it is only the controversial scallopers, who are represented by the CFA, who oppose our proposals and no one else. It would appear therefore that SEERAD is merely voicing the CFA’s unsubstantiated claims rather than polling the stakeholders.

4 - The Scottish Executive are not commenting on the 2005 Proposals which go into great detail as to the aims and objectives of the COAST proposals and how this can be assessed using the latest scientific evidence.

5 - We note that the Executive requires a “general level of consensus” before enacting the requisite Order. The role of government in that case is to decide what to do in the context of the policy of the day. There are various manifesto commitments to environmental protection but we feel that SEERAD should be broadening their view as to who their stakeholders are, for instance Labour’s charter for angling states:
"there is better economic return in limiting over-exploitation of the sea by commercial fishing and allow[ing] sea angling to develop and prosper". The COAST trial is supported by the majority of stakeholders including anglers.

It is important that SEERAD makes sure that its traditional working relationship with the CFA has not clouded its judgement in the context of this application and that it makes sure that it is liaising with ALL the stakeholders interested in the Bay.

Protecting the Marine Environment

9 – The UK Biodiversity Action Plan requires alterations in fishing policy. In contrast to the assertions in SEERAD’s response where they say the dredgers have not affected the maerl beds we have a letter from the Scottish Environmental Protection Agency which clearly attributes damage to the Lamlash maerl beds to the action of scallop dredging. Moreover COAST have photographic and sidescan imagery of damage to the maerl beds wholly consistent with the action of dredging.

Strategic Considerations.

10 – SEERAD mentions the inshore review. This proposal is not one which is being applied for under the new process but under the existing regime. We do not consider that waiting for the outcome of the review after completion of the proposed Partnership Agreement is a tenable strategy for this particular Proposal.

12 - SEERAD should adjudicate our proposal on the information now available, then we would feel that all stakeholders were being treated equally. We also feel that as an ‘off the peg product’ the COAST proposals could easily be incorporated into any new strategy. We do not feel we should be made to wait for the inauguration of the area fisheries groups.

15 – Legislation

The powers under the existing Inshore Fisheries (Scotland) Act 1984 are extremely broad and therefore no new primary legislation is necessary.

16 - Conclusion

It would appear that SEERAD may be too busy dealing with its own internal complex governmental review processes to truly evaluate this Trial. The COAST Trial could run in parallel to their review process at little additional use of government time but with huge potential benefits to Scotland.

COAST would like the committee to request from SEERAD:

Confirmation that SEERAD will not hold off making a decision about the COAST Trial until the outcome of the various reviews it has enacted but will make its assessment under existing regulations as they stand today and using its existing powers;
A timescale by which time SEERAD will make a decision about these proposals;

SEERAD’s policy on how they adjudicate community based proposals.

OTHER ISSUES

The Downing Street Strategy Unit report ‘Net Benefits’ recommends “the UK Government and devolved administrations should develop an experimental programme of marine protected areas focussing initially on areas which provide benefits to multiple users (commercial fishing, tourism, environment, recreational fishermen etc)”. This is exactly what we are asking for and what SEERAD are ignoring.

In both SNH’s and the Scottish Exec’s responses no mention is made of the community’s views. SNH’s mission statement is “working with Scotland’s people to protect our natural heritage”. SEERAD aims to ensure that the needs and interests of rural Scotland are reflected in all of the Executive’s policies and priorities. This rhetoric should be incorporated into their actions.

We would request that the Committee interview:

1 Professor Callum Roberts of the Royal Commission on Environmental Pollution and University of York – “Turning the Tide”. We feel that Professor Roberts will be able to put into context the scientific basis because he is a member of a multidisciplinary committee and has the support of all the relevant experts for the political, legal, economic and social backgrounds which underlie our proposal.

2 Bryce D. Beukers-Stewart of Port Erin Marine Laboratory at the University of Liverpool who conducted trials in closing the scallop fishery off the Isle of Man, of a similar scale.

3 Professor Geoff Moore of the University Marine Biological Station Millport. He can set the proposals into context on the Clyde.

Finally we would like to take this opportunity to thank the committee for their investigation to date, which has been most helpful in understanding why our Proposal still remains in bureaucratic limbo.

Yours sincerely

Tom Vella Boyle
Secretary of COAST
Public Petitions Committee – a template for public petitions

Should you wish to submit a public petition for consideration by the Public Petitions Committee please complete the template below. Please refer to the Guidance on submission of public petitions for advice on issues of admissibility before completing the template. You may also seek advice from the Clerk to the Committee whose contact details can be found at the end of this form.

Details of principal petitioner:
Please enter the name of person and organisation raising the petition, including a contact address where correspondence should be sent to, email address and phone number if available

COUNCILLOR PETER JOHN CONVERY
SOUTH AYRSHIRE COUNCIL (ON OWN BEHALF)

Text of petition:
The petition should clearly state what action the petitioner wishes the Parliament to take in no more than 5 lines of text, e.g.

The petitioner requests that the Scottish Parliament considers and debates the implications of the proposed Agenda for Change legislation for Speech and Language Therapy Services and service users within the NHS

The petitioner requests that the Scottish Parliament........

CONSIDERS AND DEBATES THE NEED FOR CLEAR AND CONCISE GUIDANCE BY PARLIAMENT TO LOCAL AUTHORITIES IN THE USE OF MORATORIUM TO EXCLUDE TELECOMMUNICATION MASTS BEING SITUATED ON COUNCIL LAND.

Additional information:
Any additional information in relation to your petition, including reasons why the action requested is necessary, should not be included here. However, it may be appended to the petition and will be made available to the Public Petitions Committee prior to its consideration of your petition. Please note that you should limit the amount of any additional information which you may wish to provide in support of your petition to no more than 4 sides of A4.
Action taken to resolve issues of concern before submitting the petition:

Before submitting a petition to the Parliament, petitioners are expected to have made an attempt to resolve their issues of concern by, for example, making representations to the Scottish Executive or seeking the assistance of locally elected representatives, such as councillors, MSPs and MPs. Please enter details of those approached below and append copies of relevant correspondence, which will be made available to the Public Petitions Committee prior to its consideration of your petition.

They have petitioned John Scott MSP. They have voiced their concerns at a number of South Ayrshire Council Planning Meetings. They have attached a motion. This was refused on advice of the Director who stated the current rules should remain until there is further clarification from Scottish Executive.

Request to speak:

Petitioners may request to appear before the Public Petitions Committee in support of their petition, although it should be noted that requests to speak will only be granted if the Convener considers that a brief statement from the petitioner would be useful in facilitating the Committee’s consideration of the petition. Due to the large volume of petitions being considered the Committee will usually only hear presentations on up to 4 new petitions at each meeting.

Please indicate below whether you wish to request to make a brief statement before the Committee when it comes to consider your petition.

Yes [ ]
No [x]

*Delete as appropriate

Signature of principal petitioner:

When satisfied that your petition meets all the criteria outlined in the Guidance on submission of public petitions, the principal petitioner should sign and date the form in the box below. Other signatures gathered should be appended to this form.

Signature:

Date: 16-4-05

Please note that any additional information, copies of relevant correspondence and additional signatures should be appended to this form and submitted to:

The Clerk to the Public Petitions Committee,
The Scottish Parliament,
Edinburgh
EH9 9SP
Tel: 0131 348 5186                      Fax: 0131 348 5088
e-mail: petitions@scottish.parliament.uk
SCOTTISH EXECUTIVE
Development Department
Victoria Quay
Edinburgh EH6 6QH

Dr James Johnston
Clerk to the Public Petitions Committee
TG.01
Parliamentary Headquarters
EDINBURGH
EH99 1SP

Dear Dr Johnston,

SCOTTISH PARLIAMENT PUBLIC PETITIONS COMMITTEE -- CONSIDERATION PE839

Thank you for your letter of 29 July about the above petition by Councillor John Convery of South Ayrshire Council calling on the Scottish Parliament to urge the Scottish Executive to develop clear and concise guidance for local authorities on the use of moratorium to exclude telecommunications masts from being situated on council land.

Having looked at the Official Report on the Committee’s consideration of this Petition, I should explain that there are two aspects to this matter. There are the decisions by local authorities, in their role as planning authority, on planning applications for mobile phone masts and there are the decisions by local authorities on whether to lease their property to mobile phone operators for mobile phone masts. These are two separate decisions. As with any planning application, the grant of planning permission does not remove the right of the owner of the proposal site to refuse to allow development on their land.

If a local authority has a stated land management policy of not allowing mobile phone operators on its property, it is unlikely that an operator would pursue a planning application for development on an authority owned site because even if planning permission were granted, they would be unable to carry out development as the authority would refuse to lease them the land.

The issue of how a local authority manages its estate is a matter for them and the Executive does not produce guidance on such matters beyond that associated with the general duty on local authorities to secure Best Value (see http://www.scotland.gov.uk/library/localgov/lgsvy-s00.asp ). It would be for the local authority to consider how its decisions on managing its land sits with this and any other statutory duties.

National Planning Policy Guideline (NPPG) 19: Radio Telecommunications contains the Executive’s guidance on planning considerations in relation to mobile phone masts and similar developments. Although the role of Planning guidance is not to provide guidance on how local authorities manage
their estates, paragraph 60 of NPPG 19 discusses relationships between operators and planning authorities, pre-application discussions and the identifying of alternative planning solutions. It states "Planning authorities should be aware that if suitable council owned property is not potentially available the optimum siting and design solutions may not be achievable."

The Official report of the Committee’s consideration also indicates that the issue of precautionary measures in relation to mobile phone masts and concerns about non-established health effects was cited as a reason for the moratorium on the use of council land for such masts. Paragraph 55 of NPPG 19 states that it is the responsibility of the Scottish Executive and the UK Government to decide what measures are required to protect public health. It goes on to say that provided the guidance is followed it is unlikely that planning authorities could find justification for applying extended or alternative requirements either in development plans or development control.

Paragraph 40 of NPPG 19 refers to minimising public concerns about the siting and design of mobile phone base stations and states that operators are expected to make all reasonable efforts to select sites which minimise public concerns. The ability of operators to select such sites is likely to be restricted in areas where all local authority land is subject to a blanket moratoria with regard to leasing sites for mobile phone masts.

The Executive intends to review the guidance in NPPG 19 in late 2006, subject to other planning priorities at that time, particularly in relation to the modernising planning programme. While not wishing to pre-empt that review, it seems unlikely that clearer guidance could be given on the effect of moratoria on the use of council land for masts or on where the responsibilities for the protection of public health lie.

I hope this information is of assistance.

LINDA CRAIK
PS/DD
Public Petitions Committee – a template for public petitions

Should you wish to submit a public petition for consideration by the Public Petitions Committee please complete the template below. Please refer to the Guidance on submission of public petitions for advice on issues of admissibility before completing the template. You may also seek advice from the Clerk to the Committee whose contact details can be found at the end of this form.

Details of principal petitioner:

Please enter the name of person and organisation raising the petition, including a contact address where correspondence should be sent to, email address and phone number if available

Ronald M Sutherland

Text of petition:

The petition should clearly state what action the petitioner wishes the Parliament to take in no more than 5 lines of text, e.g.

The petitioner requests that the Scottish Parliament considers and debates the implications of the proposed Agenda for Change legislation for Speech and Language Therapy Services and service users within the NHS

Petition by Ronald M Sutherland calling for the Scottish Parliament to urge the Scottish Executive to bring forward legislation to create a right to buy for member-based community sports clubs occupying or using land and / or premises for recreational or sports purposes.

Additional information:

Any additional information in relation to your petition, including reasons why the action requested is necessary, should not be included here. However, it may be appended to the petition and will be made available to the Public Petitions Committee prior to its consideration of your petition. Please note that you should limit the amount of any additional information which you may wish to provide in support of your petition to no more than 4 sides of A4.
Action taken to resolve issues of concern before submitting the petition:

Before submitting a petition to the Parliament, petitioners are expected to have made an attempt to resolve their issues of concern by, for example, making representations to the Scottish Executive or seeking the assistance of locally elected representatives, such as councillors, MSPs and MPs. Please enter details of those approached below and append copies of relevant correspondence, which will be made available to the Public Petitions Committee prior to its consideration of your petition.

Numerous individuals and organisations from both private and public sectors have been consulted, including MSPs across the political spectrum, The National Playing Fields Association (Scotland), and the Scottish Sports Association Ltd. - the latter representing Scottish Governing Bodies of Sport.

Responses received have been highly supportive of this proposed Petition.

Request to speak:

Petitioners may request to appear before the Public Petitions Committee in support of their petition, although it should be noted that requests to speak will only be granted if the Convener considers that a brief statement from the petitioner would be useful in facilitating the Committee's consideration of the petition. Due to the large volume of petitions being considered the Committee will usually only hear presentations on up to 4 new petitions at each meeting.

Please indicate below whether you wish to request to make a brief statement before the Committee when it comes to consider your petition.

Yes / No*

*Delete as appropriate
Signature of principal petitioner:

When satisfied that your petition meets all the criteria outlined in the Guidance on submission of public petitions, the principal petitioner should sign and date the form in the box below. Other signatures gathered should be appended to this form.

Signature

Date 31 May 2005

For advice on the content and wording of your e-petition please contact:

The Clerk to the Public Petitions Committee
The Scottish Parliament
Edinburgh
EH99 1SP
Tel: 0131 348 5186 Fax: 0131 348 5088
e-mail: petitions@scottish.parliament.uk

Note
Completed e-petition forms should also be sent to petitions@scottish.parliament.uk
Petition PE821 calls for "the Scottish Parliament to urge the Scottish Executive to ensure that all planning applications for planning consent to change the usage of recreational spaces should be routinely sent to the appropriate Minister for consideration." This Petition suggests a potentially useful catch-all in situation where recreational spaces are targeted for development involving change of use. Fall-back legislation already exists with sportscotland automatically empowered object to the change of use of existing designated sports facilities.

Clearly, for numerous health, social and indeed sporting reasons, any diminution in the supply or provision of such facilities would be regarded as a retrograde move.

Many member-based community sports clubs and similar groups in Scotland do not own the either the facilities or the accommodation they use regularly or otherwise occupy for playing, training or social purposes. Frequently, the basis of tenure is informal, insecure and unreliable. In many instances, the tenure of sport and recreational facilities is unsatisfactory in terms of access and availability.

All of this instability represents a strong disincentive to physical development or long-term planning, and frequently adversely affects the capacity to obtain or attract funding.

Introduction of an additional statutory right to acquire such facilities on preferential terms would in many cases provide a significant potential platform of collateral security to offer against development loan finance, which in turn would enable grassroots sports organisations to develop and prosper. It is anticipated that such a discounted "right to buy" would apply to both public and private sectors.

It is not envisaged that any sports club, group or organisation would seek frivolously to acquire minimal or inappropriate facilities, of little or no inherent sporting development value, at any point in time.

This Petition links to the following Parliamentary Motion :-

S2M-2615 Mike Watson: Protecting Land Used for Organised Sport and Other Forms of Physical Activity—That the Parliament notes with concern the continuing diminution in the number of sports pitches and open space across Scotland, despite the efforts of sportscotland and the National Playing Fields Association Scotland; believes that this will make it more difficult for the Scottish Executive to achieve its stated aim of improving the health of young people in Scotland and reducing levels of obesity; endorses the need, as expressed in the report of the Physical Activity Task Force, for all primary and secondary pupils to have a minimum of two hours each week of quality physical education, and considers that the Executive should ensure that more robust measures are introduced to the planning process to protect land used for organised sport and other forms of physical activity.
Richard Hough
Assistant Clerk to the Public Petitions Committee
The Scottish Parliament
Parliament Headquarters
Edinburgh
EH99 1SP

26 October 2005

Dear Richard,

PETITION PE868

Thank you for your letter of 6 July 2005 seeking comments on petition number PE868 submitted by Mr Ronald Sutherland. I apologise for the delay in replying. Please find enclosed a memorandum setting out the Scottish Executive's views.

I hope this is helpful.

Yours sincerely

SIMON FORREST
DCLO
MEMORANDUM

Response from the Scottish Executive to the Scottish Parliament Public Petitions Committee on the petition submitted by Mr Ronald Sutherland.

The Committee considered PE868 by Mr Sutherland calling on the Parliament to urge the Scottish Executive to bring forward legislation to create the right to buy for member-based community sports clubs occupying or using land and/or premises for recreational or sports purposes.

Scottish Executive Response

The Scottish Executive is committed to working with its partners to ensure there are sufficient facilities of an adequate standard to meet the needs of the people of Scotland. The availability of quality sports facilities is paramount to ensuring that we develop a truly sporting nation and maximise the many benefits that sport can deliver to individuals and communities alike.

Target 8 of Sport 21 focuses on the need to strengthen infrastructure and work is in hand with local authorities to ensure that the target of over 500 sports halls are within a 20 minute walk for 70% of the population of Scotland by 2007. Local authorities have a statutory responsibility to ensure there is adequate provision of sporting and recreational facilities for their residents and we would expect this to be an integral aspect of their sports strategies. It is vital that local authorities, their partners and the public recognise the role sport can play in delivering in a wide range of policies and ensure that this acknowledged in the community planning process.

While we are aware that some sports clubs who currently own their facilities are experiencing pressure from developers to realise their assets. As these are private clubs there is no scope for local authorities or the Scottish Executive to intervene but we are nonetheless concerned about the potential loss of sports amenities. We are, therefore, not convinced of the need for legislation specifically to give member-based community sports clubs a right-to-buy. We appreciate that there can be a converse problem of security of tenure but believe that this can be addressed through long term lease arrangements. Ownership of facilities may not necessarily be a solution as it can impose considerable financial and other burdens on clubs which could put at risk long-term sustainability. The quality of the commercial sector sports facilities has raised the public’s expectations and has resulted in a dramatic and beneficial rethink on the quality of public sector facilities. High quality facilities stimulate interest and attract members but the costs are not insignificant and could be a very real burden for a relatively small community owned club. We would not want to put at risk crucial community facilities because of the regular financial pressure of having to upgrade buildings and equipment.

That said, support and assistance is currently available to clubs through the ‘Help for Clubs’ website developed by sportsScotland. sportsScotland can provide financial assistance for clubs who are seeking to buy land or premises where the facility, and ultimately the club’s existence, is under threat. Clubs can also apply to sportsScotland’s Lottery funded Building for Sport programme to help develop and upgrade facilities but funds are limited and there are always more bids than available resources.
Opportunities for rural communities to purchase land already exist through the Community Right to Buy in Part 2 of the Land Reform (Scotland) Act 2003. This legislation allows community bodies to apply to Scottish Ministers to register an interest in and exercise a right to buy land where the purchase of the land will contribute to the sustainable development of the local community and where purchase of the land will be in the public interest. The legislation does not prevent community sports clubs from applying to register an interest. Further information on the Community Right to Buy can be obtained from the Scottish Executive’s Land Reform Branch on 0131-244-6003. Within the Executive’s Partnership Agreement, there is a commitment to pilot an extension of the Land Fund to assist communities not currently eligible under the scheme, with the purchase of land for community activity. Officials are currently working up proposals for Ministers’ consideration on how best to take forward this commitment.

The Executive is aware of a range of pressures facing sports clubs and has commissioned research on the sustainability of local sports clubs in Scotland. This research seeks to establish information on a wide range of issues affecting sports clubs including over the maintenance and upgrading of facilities. The research will help inform sportscotland and the Scottish Executive in our work to support clubs, volunteers, player development and coaching. We would encourage clubs to participate in the research.
8 September 2005

Mr Richard Hough  
Assistant Clerk to Public Petitions Committee  
Scottish Parliament  
Edinburgh  
EH99 1SP

Dear Mr Hough

**Scottish Parliament Public Petitions Committee - Consideration PE868**

Thank you for your letter of 6 July regarding the above petition and for giving **sportscotland** the opportunity to respond.

**sportscotland** view security of tenure for clubs and organisations as key to the ability of sport to grow and for allowing the widest possible opportunity for people to participate. In principle, **sportscotland** agrees to proposals that open up the opportunity of giving sports clubs the right to security of tenure and right to buy, under certain qualified circumstances, may form part of a solution to insecure or informal arrangements. However, whilst a detailed response has been provided below, **sportscotland** is mindful that greater detail on this issue is required on any right to buy proposals and the implications for property law.

**sportscotland** considers that any proposals to grant rights should only exist in cases where the landlord has is not willing to offer long term security through leasehold arrangements and is unwilling to sell. Right to buy should not exist where a landlord has willingly entered into a long and stable lease, at a reasonable price, with a tenant. Nor would it be appropriate at the end of a long lease where both parties had been clear for some time that the lease would not be renewed.

**sportscotland** considers that where short term leases are entered into on the understanding from the outset, by both landlord and tenant, that the lease would not be renewed, this would not trigger right to buy. This safeguard will allow landowners to offer use of their land for specific periods, perhaps as an emergency option for a club, without fear of facing a right to buy claim.

Any prospective measure perhaps should only apply where there is one clear, identifiable body in occupation. It may be not practicable or sensible to extend the right to buy to clubs, which share the use of premises and have letting arrangements, for example a club using a local authority sports hall or a centre.

Long leases, typically of 25 years or more, offer significant long term security and allow sport to plan with confidence and invest in its future. Right to buy may be an appropriate measure where there is genuine concern and a real threat that an informal or short term agreement will not be renewed, where the landlord is unwilling to enter into a long-term lease agreement and where the landlord is unwilling to sell the facility to the occupying club. This inability to obtain security through unwilling landlords could
be addressed through right to buy, even if the ability of an organisation to pursue right to buy was in itself a driver to persuading a landlord to grant the organisation a more secure tenancy.

In addition, a 'discounted' right to buy may well be appropriate where clubs can demonstrate the lack financial capacity to purchase in their own right is as a direct result of the insecurity of their current arrangements. It will be important for the Parliament to consider the appropriate level of value to be apportioned to the parcel of land, given that land for sporting use is of significantly less value than that with permission for residential development. Clearly, there will be significant cost implications to the taxpayer for any discount scheme should any valuation take into account possible future value.

Local voluntary sports clubs can approach sportscotland for funding to help buy either new premises or land or buy out their existing lease if they can demonstrate that the facility is under threat at the end of the lease or at a lease break, there is a willing seller and Lottery Fund criteria can be satisfied. sportscotland has provided finance in the past but only where the club could prove that it was genuinely under threat. sportscotland does not support applications to purchase where it is clear that a club is capitalising its revenue by buying out its lease.

It may also be helpful if right to buy was extended to those organisations, which, even though in possession of a long lease, were restricted from developing their club due to the actions of the landlord. Failure to allow reasonable sporting development could well be viewed as an action, which would trigger the commencement of right to buy procedures.

However, our in principle support for right to buy is tempered by a concern that ownership in itself does not, automatically, provide security and may, in some circumstances, lead to increased pressure to sell.

A possible solution to the difficult issue of future sell off would be the requirement to have inserted in the constitution of any club, which exercised its right to buy, a clause which protected the public investment. sportscotland is of the view that the dissolution clause should not allow any benefit from sale to accrue to members and that the whole value of any receipt should be required to be returned or reinvested in a not for profit organisation. Given that the ownership is as a direct result of legislation and that the original right to buy was supported because it was for the public good, this very strong clause would be wholly in keeping with the spirit of the legislation.

Yours sincerely

John Duncan
Public Affairs Manager
Richard Hough  
Assistant Clerk, Petitions Committee  
The Scottish Parliament  
TG.01  
Parliamentary HQ  
Edinburgh  
EH99 1SP

1 September 2005

Dear Mr Hough,

**Petition PE868**

Thank you for your letter of 6th July 2005 regarding the above mentioned petition.

The NPFA in Scotland broadly supports the terms of the petition with the proviso that the right to buy be limited to charitable organisations or sports organisations with charitable status thereby ensuring that individual members can never profit should that land purchased be sold at a later date.

I trust you will take our views into account.

Yours sincerely,

Colin Rennie  
Development Officer for Scotland
Public Petitions Committee – a template for public petitions

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Details of principal petitioner:
Please enter the name of person and organisation raising the petition, including a contact address where correspondence should be sent to, email address and phone number if available

Bill Alexander

Text of petition:
The petition should clearly state what action the petitioner wishes the Parliament to take in no more than 5 lines of text, e.g.

The petitioner requests that the Scottish Parliament considers and debates the implications of the proposed Agenda for Change legislation for Speech and Language Therapy Services and service users within the NHS

The petitioner requests that the Scottish Parliament........

Petition by Bill Alexander calling for the Scottish Parliament to urge the Scottish Executive to amend the Solicitors (Scotland) Act 1980 to allow limited companies to either be given the right to apply for legal aid or the right to represent themselves in court.

Additional information:
Any additional information in relation to your petition, including reasons why the action requested is necessary, should not be included here. However, it may be appended to the petition and will be made available to the Public Petitions Committee prior to its consideration of your petition. Please note that you should limit the amount of any additional information which you may wish to provide in support of your petition to no more than 4 sides of A4.
PETITION PE 863 – BILL ALEXANDER

Thank you for your e-mail of 8 July inviting the Scottish Executive to comment on the issues which arise in Petition PE 863, lodged by Mr Bill Alexander.

It appears that Mr Alexander is seeking changes in legislation in relation to rights of non-natural persons to obtain legal aid and in relation to rights of non-natural persons to represent themselves in court proceedings.

The Petition refers to the Solicitors (Scotland) Act 1980. That Act does not appear to be directly relevant to the two areas of concern arising in Mr Alexander's Petition.

The scope of legal aid is governed by the Legal Aid (Scotland) Act 1986 which provides that legal aid is open to defined persons. Individuals, including sole traders and self-employed persons, are eligible to apply for legal aid for pre-litigation advice and legal representation in court.

Limited companies are not currently eligible to apply for legal aid. In the Parliamentary debate of the Justice 1 Committee in 2002 in relation to “Report on Legal Aid inquiry” the then Deputy Minister for Justice commented that the Executive considered that the more appropriate route for limited companies to ensure legal representation would be through the use of legal insurance. As the Committee may be aware, consultation on the reform of legal aid is currently being undertaken as part of the consultation on the Strategic Review of legal aid, advice and assistance. In the Parliamentary debate on 23 June 2005 the Deputy Minister for Justice indicated his desire to receive the widest possible response to issues of concern, which would include any representations on this question.

Such representations will be carefully considered. In general terms, however, we are unaware of any significant call for legislative change in this area. Equally, in the light of overall pressures on the Legal Aid Fund, the specific arguments in favour of change would require to be considered carefully. There is no evidence of which we are aware to suggest
that the current rules have led to specific areas of unfairness and in the absence of reasoned case justifying change, the case for amendment does not appear to be made. A final view can be taken following the end of the consultation period.

As far as representation in court is concerned, the position at present is that, with some limited exceptions, representatives of a party involved in litigation who is a non-natural person require to be suitably qualified solicitors, advocates or solicitor/advocates. In the view of the Executive, this best serves the interests of both the court and litigants.

There are a number of reasons for this. Legally qualified representatives owe duties to the court by being officers of the court and the fact that they have been trained in court procedure avoids the risk of court business being slowed down because the judge or sheriff requires to provide basic procedural or legal advice. This ensures that court time is used efficiently and effectively to allow identification of relevant issues of law and fact. The litigant who is represented by a qualified lawyer is protected against unacceptably poor standards of representation by a number of safeguards; qualified lawyers are subject to professional rules and discipline, are covered by compulsory professional indemnity insurance, and can be the subject of a complaint under statutory arrangements involving the legal professional bodies and where necessary the Scottish Legal Services Ombudsman.

Again, on the basis of the information before the Executive, there does not appear to be a general case made for change in the rules in order to facilitate a non-natural person such as a limited company “representing” itself in court proceedings and accordingly the Executive does not agree that legislative change in this regard is justified.

I should stress that issues around representation and rights of audience are and have been under consideration recently. For example, although there are differences between rights of representation and rights of audience, the question of extension of rights of audience in certain circumstances is under consideration by the Working Group for Research into the Legal Services Markets in Scotland, which is expected to report to Ministers shortly.

I hope that the foregoing is of assistance to the Committee in its consideration of this Petition.

PAUL CACKETTE
Ref: JM/NS

Dear Sirs

Consideration PE863

Thank you for giving us the opportunity to give our views on the above.

I have enclosed comments on the Federation's views and hope you find them useful.

If you wish to further discuss any of the comments please contact Susan Love our Scottish Policy Development Officer on telephone: 0141-221-0775 or by e-mail Scotland.policy@fsb.org.uk.

Yours sincerely

Andy Willox
FSB Scottish Policy Convener

Enc.
Public Petitions Committee Consideration of PE863
Submission from the Federation of Small Businesses

Introduction
The Federation of Small Businesses is Scotland’s largest direct member business organisation and campaigns for a social, economic and political environment in which small businesses can grow and prosper. As such, we welcome this invitation to comment on Petition PE863, which proposes changes to the Solicitors (Scotland) Act 1980.

Limited Companies
In Scotland, around 37 per cent of small businesses are limited companies¹, and we have seen a fairly steady rise in this figure over recent years due to now rescinded tax allowances for limited companies which were not given to sole traders or partnerships. Many small firms with a handful of staff have now decided to incorporate when this would perhaps not have been the case even a few years ago.

Representation in Court
There are a number of reasons why a limited company might find itself in court, but the most likely of these is to pursue a ‘bad’ debt or to fight an action from a creditor.

There are two court processes whereby a director of a limited company can represent the firm in court: Small Claims Court Action and a Summary Cause raised in the Sheriff Court. The respective upper limits for these are currently £750 and £1500; small sums if we are talking about the pursual of a debt by one company against another.

This situation means that a bad debt can effectively force a company out of business if one outstanding debt is sufficiently large to cause significant problems. For example, company A is owed £50,000 by company B. After repeated requests for payment the only option left to company A is to raise a court action. To do this it has to engage a solicitor, but the company’s perilous financial situation means that it does not have the means to do this, and the inability to pursue this large bad debt means that Company A is unable to pay creditors, effectively bankrupting the company.

¹ Lifting the Barriers to Growth 2004, Federation of Small Businesses
Recommendations

Anecdotal evidence suggests that problems with cash flow and bad debt are both significant causes of company failure, and anything which makes it easier for small firms to pursue payment should contribute to helping Scottish firms' survival.

The Federation of Small Businesses sees no good reason why directors of a limited company should be barred from representing the company in court, just as an individual can represent him or herself. While we accept that a solicitor has a duty not just to represent their client but also to uphold the rules of the court, i.e. they must not make any statements they know to be false, any individual is also bound to respect the rules of the court, and perjury is a punishable offence. Therefore, it seems that the rules governing the conduct of solicitors are not so different from those governing individuals representing themselves.

One very obvious consequence of the current law is that if a business is in financial difficulty, it can often not afford to engage a solicitor to pursue a debt owed by another company, or to fight an action brought against them by another firm, which makes it even harder for the company to recover its financial position.

A related area which may be worthy of consideration is the raising of the limits of debt that can be claimed in the Small Claims Court of the Sheriff Court and the value that can be pursued through a Summary Cause. We are aware that this may be pursued in proposed bankruptcy reform legislation; however, we would suggest that £1500 and £5000 would be reasonable levels for each of these procedures. This would allow directors of a limited company to represent themselves in cases of greater value than at present without any changes to the Solicitors (Scotland) Act 1980.

In summary, the Federation considers that the points raised in Petition PE863 are valid and agrees that the Scottish Executive should consider bringing forward proposals to amend to the Solicitors (Scotland) Act 1980, as outlined above.

For further information please contact Niall Stuart, Scottish Press and Parliamentary Officer, niall.stuart@fsb.org.uk or 0141 221 0775
RESPONDENT INFORMATION FORM

Please complete the details below and attach it with your response. This will help ensure we handle your response appropriately:

Name: ANDY WILLOX

Postal Address: 

Consultation title:

1. Are you responding as: (please tick one box)
   (a) an individual (please tick one of the following boxes) (go to 2)
   (b) on behalf of a group or organisation (go to 3)

2. If responding as an INDIVIDUAL:
   (a) Do you agree to your response being made available to the public (in SE library and/or on SE website)?
      Yes (go to 2b below) x
      No, not at all □
   (b) Where confidentiality is not requested, we will make your response available to the public on the following basis (please tick one of the following boxes)
      Yes, make my response, name and address all available X
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3. IF RESPONDING ON BEHALF OF GROUPS OR ORGANISATIONS:

   Your name and address as respondents will be made available to the public (in the SE library and/or on SE website). Are you content for your response to be made available also?
   Yes x
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4. We will share your response internally with other SE policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so.

   Are you content for the Scottish Executive to contact you again in the future for consultation or research purposes?
   Yes x
   No □
LS146/mpc/mmg

Richard Hough, Esq.,
Assistant Clerk, Public Petitions Committee,
The Scottish Parliament,
EDINBURGH
EH99 1SP

By e-mail: Richard.hough@scttish.parliament.uk

Dear Mr. Hough,

SCOTTISH PARLIAMENT PUBLIC PETITIONS COMMITTEE – CONSIDERATION PE863

Thank you for your letter of 8th July regarding Petition PE863.

The Society has the following comments to make:-

1. The right to apply for legal aid is governed by the Legal Aid (Scotland) Act 1986 rather than the Solicitors (Scotland) Act 1980 and therefore, any amendment to legal aid legislation to allow limited companies to be given the right to apply for legal aid would need to be in that context.

2. In respect of the right for limited companies to represent themselves in court, the Rules of Court and the statutory provisions on who can represent a party are not a matter for the Society, but it is possible for the courts to allow authorised representatives in summary causes or small claims (Summary Cause Rules 2002, Rule 2.1).

3. The issue of representation in Court is also covered in Volume 13 of The Laws of Scotland: Stair Memorial Encyclopaedia, paragraphs 1453-1458.

I hope this is helpful.

Yours sincerely,

Michael P. Clancy
Director
Dear Mr Hough

SCOTTISH PARLIAMENT PUBLIC PETITIONS COMMITTEE – CONSIDERATION PE863

Thank you for your letter of 8 July 2005, inviting the Board to comment on the issues raised by Mr Alexander’s Petition.

Mr Alexander seeks changes in legislation to allow businesses to prepare and submit documents to the court and to represent themselves without a solicitor or to qualify for legal aid. The question of who may represent a limited company or other corporate body is a question of law relating to the legal personality of the company. Both that question, and what appears to be an issue relating to the criminal offence under Section 32 of the Solicitors (Scotland) Act 1980 for certain documents to be prepared by unqualified persons, are matters which would more appropriately be dealt with by the Law Society and Scottish Executive. The second strand, which I will comment upon, is the question of legal aid for companies.

The Petition asks the Scottish Executive to amend the Solicitors (Scotland) Act 1980 to allow limited companies to be given the right to apply for legal aid or represent themselves in court. The Solicitors (Scotland) Act does not govern the scope of legal aid, as that Act relates to the regulation of the solicitor profession. The scope of legal aid, including the parties who may apply for it, is governed by the Legal Aid (Scotland) Act 1986. It is that Act which would require to be amended to extend the current scope of legal aid.

The Legal Aid (Scotland) Act 1986 created a structure whereby legal services (whether pre-litigation advice or representation in court) may only be provided to persons. “Persons” are defined in Section 41 of the 1986 Act as not including “a body corporate or unincorporated, except where such body is acting in a representative, fiduciary or official capacity”. Therefore, advice and assistance and legal aid cannot be provided in most cases to limited companies, partnerships, voluntary bodies, clubs or associations. The very rare case occurs where such a body is able to seek legal aid for example in a capacity such as that of Executor.
Since legal aid is available to individuals, it can therefore be made available to individuals who act as sole traders. Therefore, some sole traders involved in pursuing or defending civil actions, or defending criminal charges arising from their business dealings, may receive legal aid, subject to assessment of the usual means and merits tests.

The question of extending the scope of legal aid beyond helping individual citizens is a significant public policy issue for Ministers. Although the present Scottish Executive Consultation “Advice for all: Publicly funded legal assistance in Scotland – the way forward” does not specifically ask whether legal aid should be extended to companies or other corporate or unincorporated bodies, the Justice Minister did explain in the Parliamentary debate on 23 June 2005 that the issue could perhaps be considered during the consultation, and asked members for real life examples. Although the issue has been raised from time to time (for example during consideration of the Justice 1 Committee inquiry into legal aid), the Board is not aware of any significant demand for publicly funded legal assistance to be extended to corporate or unincorporated bodies.

There could be significant practical difficulties in dealing with corporate or unincorporated bodies. For example, it is difficult to envisage how financial eligibility could be determined, nor how questions of joint interest with directors and shareholders could be overcome. There could also be significant issues of reasonableness in relation to civil legal aid, if a corporate body has failed as part of its financial and risk management strategy to allocate adequate resources for payment of professional services. Companies also require to carry insurance for employer’s and public liability risks. Such a policy might constitute a right or facility which would exclude the availability of legal aid.

I hope you find this helpful. Should you require any further information or assistance, please do not hesitate to contact me.

Yours sincerely

Lindsay Montgomery
Chief Executive
Mr Richard Hough  
Public Petitions Committee  
Scottish Parliament  
Edinburgh  
EH99 1SP

27 October 2005

Dear Mr Hough,

PETITION PE863

Thank you for your letter of 22 September regarding the above, please do accept my apologies for the delay in responding.

The points we would like to make are as follows:

1. The Petition refers to limited companies but does not refer to other incorporated organizations, e.g. those various bodies which are incorporated by Act of Parliament and are described as corporate bodies. Clarity would be required as to whether the Petition would give these other incorporated bodies and legal entities the power to represent themselves or not, and whether this might increase the likelihood of getting vexatious litigation.

2. We are given to understand that the Law Reform (Miscellaneous Provisions) (Scotland) Act 1960 gives companies the means to be represented by a responsible person not necessarily a solicitor, however, in order to do so they must make an application to the Lord President and the Secretary of State for Scotland. This again requires clarity in terms of the Petition.

3. Limited companies can, in any event, be represented by a responsible person in the Small Claims procedure in the Sheriff Court.

4. We remain to be convinced that allowing limited companies to represent themselves would cause harm, provided the category of persons who can represent limited companies is clearly established and only includes what might reasonably be described as responsible persons. It is one thing for a limited company to send a Director or the Company Secretary along to represent them, because they have duties to the company which are considerably above those of
another employee. However, it would be questionable whether sending other employees would be appropriate.

5. A question remains as to why a company would wish to appear in the Court of Session without proper legal advice. We recognise that for all proceedings in the Sheriff Court which are generally (but not invariably) less complex, a stronger case can be put for allowing a company to represent itself but possibly not in the Court of Session. We understand that a company can, if the Sheriff holding a Fatal Accident Enquiry agrees, be represented by an authorised lay representative such as the Company Director and perhaps the way forward in the Sheriff Court is to say that a company could be represented by an authorised lay-representative approved by the Sheriff.

6. We remain to be convinced by the proposal concerning legal aid, especially as the Government appears determined to clamp down on Legal Aid. We would require more detail as to the circumstances in which it would be requested before commenting further.

I trust this is in order and appreciate the opportunity to contribute on behalf of Scottish Chambers of Commerce.

Regards,

David Lorisdale
Policy Officer