

MEMORANDUM ON THE UN CONVENTION ON THE LAW OF THE SEA, ARTICLE 66

Wild Salmon in Scotland has been a very precious resource and of vital economic importance to the rural areas, perhaps of value in excess of £150,000,000, sustaining thousands of full time and seasonal jobs for the Scottish people.

Healthy freshwater conditions and unhindered migration to and from the ocean are absolutely essential to the survival of wild Atlantic salmon populations and to enable a return to historic high levels. Over the last few decades the International Council for the Exploration of the Sea (ICES) has reported a drop of around 95% in Scottish wild salmon catches. Crude estimates suggest that there has been an 80% to 90% decline in salmon abundance and that there is ample unused habitat in most rivers for many more spawners to remedy the situation naturally.

There are many contributing factors, the principals being: not enough Scottish brood stock is allowed to survive, wrong priorities in research, poor science and selection of management models. The Scottish authorities have not really been exercising their international rights to protect their interests. This is particularly so in respect of unsustainable catches of salmon by interceptory nets (drift and coastal) in the North East of England. These nets constitute a 'mixed-stock fishery' and they are engaged in the indiscriminate and large-scale killing of salmon native to Scottish rivers. It has been scientifically confirmed that about 65% of wild salmon caught in this fishery are of Scottish origin.

English authorities are responsible for these nets and the EU, with Scottish indifference, has failed to protect these vital interests under the principles of the UN Convention on the Law of the Sea, Article 66. It is obvious that some important economic and ecological interests of Scotland are at stake here. We believe that Scotland is fully entitled to safeguard those interests under international law.

The 1982 *United Nations Convention on the Law of the Sea* (UNCLOS) is in force for both England and Scotland.

Article 66 of the Convention lays down special provisions for anadromous stocks of which the North Atlantic Wild Salmon is one of the most important. Paragraph 1 of this provision declares: '*States in whose rivers anadromous stocks originate shall have the primary interest in and responsibility for such stocks.*'

Paragraph 2 further provides that a State of origin '*. . . may, after consultations with the other States referred to in paragraphs 3 and 4 fishing these stocks, establish total allowable catches for stocks originating in its rivers.*'

Paragraph 3 provides that salmon fisheries shall be conducted only in waters landward of the outer limits of exclusive economic zones except in cases where this '*would result in economic dislocation for a State other than a State of origin*'. With regard to such other States harvesting salmon at sea, paragraph 3(b) provides: '*The State of origin shall cooperate in minimising economic dislocation in such other States fishing these stocks, taking into*

account the normal catch and the mode of operations of such States, and all the areas in which such fishing has occurred.'

Paragraph 4 states: *'In cases where anadromous stocks migrate into or through the waters landward of the outer limits of the exclusive economic zone of a State other than the State of origin, such State shall cooperate with the State of origin with regard to the conservation and management of such stocks.'*

Finally, paragraph 5 states: *'The State of origin of anadromous stocks and other States fishing these stocks shall make arrangements for the implementation of the provisions of this article, where appropriate, through regional organisations.'*

From the above it seems evident to us that as a State of Origin Scotland has every right under international law to preserve its stock of wild salmon in the North Atlantic. Also, we hold that England is under an obligation to support in good faith action taken by Scotland for this aim and that this must include a prohibition on the catching of wild salmon and the application of such a prohibition within English waters on the interceptory nets.

One must also take into account the possibility that English interests could still be preserved by economic means by compensating fishermen who stop fishing for salmon. This has already been successfully done in most areas of the North Atlantic region for the last 25 years through the programs of NASF and its conservation partners. Despite long standing attempts by NASF to address these matters with the relevant English authorities, our organisation has, as yet, had no success even though obvious ecological interests are at stake.

Scotland, being the State of origin representing the most vital interests here, and with help from the EU while the UK remains a member, may find it appropriate to take this matter up with the English authorities.

Article 283 of the Law of the Sea Convention calls on States which are parties to a dispute concerning its interpretation or application to proceed expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means.

Under Article 287, where no settlement has been reached by recourse to such means, the dispute may be submitted to a court or tribunal having jurisdiction under section 2 of Part XV of the Convention. Such recourse is, however, limited by Article 297(3) in the case of fisheries within the exclusive economic zone. Nonetheless, the option of compulsory conciliation under Annex 2, section 2, of the Convention is available to States which allege that a coastal State has manifestly failed to comply with its obligations to ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not seriously endangered (Article 297[3][b][i]).

Compulsory conciliation is indeed the correct first steps as Timor-Leste has now initiated against Australia where similar principles apply and through the International Tribunal for the Law of the Sea (ITLOS), the Hamurg-based judicial body established to deal with disputes under UNCLOS.

Finally, as an NGO with relevant resources and experience in these matters NASF is prepared to offer the authorities all possible support that they might find helpful. We believe it is in our primary common interest to preserve the Wild North Atlantic Salmon. We must lose no time to rebuild public confidence that concerted strategy for salmon's recovery is possible.

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