The Regulation of Commercial Fishing for Salmon in England and Wales: The Changing Law on Fixed Engines

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1. International perspectives on the conservation and exploitation of salmon

Over the last decade the conservation and rational management of the salmon has ceased to be regarded as a matter of merely national concern and has come to be seen as an international issue requiring co-operation between all states with the capacity to exploit the resource. The international character of salmon conservation and management has been recognised in two international conventions: The United Nations Convention on the Law of the Sea 1982 and the Convention for the Conservation of Salmon in the North Atlantic Ocean 1982. Though only the latter of these is presently in force, it is clear that the implications of the two for the domestic law of the United Kingdom are considerable.

The Third United Nations Conference on the Law of the Sea made a notable step forward in international law by bringing into prominence the concept of the exclusive economic zone as an area beyond and adjacent to the territorial sea, not extending beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. Within this zone coastal states have sovereign rights for the purpose of exploring and exploiting, conserving and managing the living or non-living natural resources of the waters superjacent to the sea-bed. These rights fall short of territorial sovereignty but are nonetheless of great importance in allowing states to regulate exploitation and conservation of the natural resources of the marine environment. The implications of this are made explicit in a number of articles of the LOS Convention. Article 61 provides that a coastal state is to deter-

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mine the allowable catch of the living resources in its exclusive economic zone, which involves the state taking account of the best scientific evidence available to it to ensure that the maintenance of the living resources in the exclusive economic zone is not endangered by over-exploitation. These measures should be designed to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, that is to say, the maximum quantity of a species which can be caught on a continuing basis without the stock of the species declining. Article 62 presents the other side of the duty to manage living resources properly by stipulating that coastal states shall promote the objective of optimum utilization of the living resources in their exclusive economic zone without prejudice to the obligation to avoid over-exploitation. The objective behind these provisions is that states should adopt a balanced approach to the use of living marine resources which leads neither to under-utilization nor to exhaustion.

In the case of fishery resources, however, the exclusive economic zone is not always a fully appropriate concept on which to pin the rights and duties of states. In particular, the problem is that many species of fish are not permanently resident within the zone of any one state for the whole time, but move between the zones of several states according to natural patterns of migration. The difficulty which this raises is that of how the balance of exploitation of a migratory fish resource is to be allocated between different states to achieve a just distribution of the resource. To some extent this difficulty is tackled by Article 63 of the Convention which places states under a duty to agree upon measures which are necessary to co-ordinate and ensure the development of stocks of fish which are found within the exclusive economic zones of two or more coastal states.

Another approach to the problem of regulating exploitation of migratory species of fish is to be found in Articles 66 and 67 of the LOS Convention which make special provision for anadromous and catadromous species of fish. Anadromous species of fish are those which leave the sea to spawn in fresh water. In England and Wales this category would include fish such as the salmon, sea trout and lamprey. Catadromous species are those which live in fresh water but descend to the sea to spawn. The eel is the main example of a fish of this kind. In respect of anadromous species the coastal state in which such fish originate is given the primary interest and responsibility for such stocks. In the case of catadromous species the coastal state in whose waters such species spend the greater part of their life cycle is given responsibility for the management of such stocks and ensuring ingress and egress. Insofar as anadromous stocks are concerned, Article 66 obliges the state of origin to ensure their conservation by the establishment of appropriate regulatory measures for fishing in all waters landward of its exclusive economic zone. Moreover, the state of origin may, after consultation with other states fishing the stock, establish total allowable catches for stocks originating in its rivers. Fishing for anad-