

EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MARITIME AFFAIRS AND FISHERIES

THE DIRECTOR-GENERAL

Brussels,
MARE/B1/ARA/

Mr Jari Koskinen
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Dear Mr Koskinen,

Thank you for your letter of 11 June 2012, to the Commissioner Maria Damanaki, by way of which you put forward a number of queries about the conservation and management of anadromous fish stocks, and in particular of the Tornionjoki River salmon stock. Ms Damanaki has asked me to respond you on her behalf.

In the given context, you rightly refer to the provisions of Article 66 of the United Nations Convention on the Law of the Sea (UNCLOS), pursuant to which the States in whose rivers anadromous stocks, and thus salmon stocks, originate shall have the primary interest in and responsibility for such stocks. Consequently, the "State of origin" of anadromous stocks is the State in whose rivers those stocks originate. It follows that Finland and Sweden are the "States of origin" for the *Tornionjoki river* salmon stock under international law.

Notwithstanding this situation under international law, the matter must be viewed through the prism of Union law. Article 3(1)(d) of the Treaty on the Functioning of the European Union (TFEU) provides that the Union shall have exclusive competence for the conservation of marine biological resources under the common fisheries policy. Article 2(1) of the TFEU specifies that, in an area of exclusive competence, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union or for the implementation of Union acts.

Salmon stocks are clearly marine biological resources in the sense of Article 3(1)(d) of the TFEU and they are such resources throughout their entire life cycle, i.e. when they spent their life at sea and also when they move up rivers in order to reproduce. It would be too artificial an approach and it would unduly impair the Union's exclusive competence to adopt sound and effective regulatory measures for the conservation and management measures for salmon stocks if one distinguished the part of their life cycle which is spent at sea from the part of the life cycle which is spent in rivers. In actual fact, any such distinction would prevent the Union from effectively exercising its exclusive competence in this area both at the internal level as well as in the relations with other States and/or international organisations.

In these circumstances, it is in the nature of things that the rule-making authority of the Union exists insofar as the Member States have similar authority under international law or, to say it in other terms, the rule-making authority of the Union also covers the authority of the Member States as the States of origin of salmon stocks, for the conservation and management of which they are primarily responsible under the provisions of Article 66 of UNCLOS. This means in the present instance that the States of origin of the salmon stocks from the Tornionjoki River under the terms of Article 66 of UNCLOS (i.e. Finland and Sweden) have conferred upon the Union the competence to adopt regulations for the conservation and management of the salmon stocks concerned.

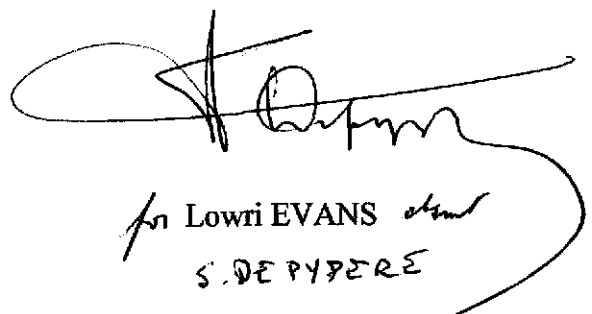
By virtue of the exclusive competence conferred upon the Union through the aforementioned provisions of the Lisbon Treaty, it is thus solely for the Union to exercise this rule-making authority for the conservation and management of salmon stocks throughout their entire life cycle. This reasoning is indeed at the basis of the Commission proposal for a Regulation of the European Parliament and of the Council establishing a multiannual plan for the Baltic salmon stock and the fisheries exploiting that stock (see COM(2011) 470 final of 12.08.2011). An identical reasoning is also at the basis of the definition of the terms "marine biological resources" given in Article 5, second indent, of the Commission proposal for the Reform of the Common Fisheries Policy (see COM(2011) 425 final of 13.07.2011).

In this vein, it is for the Union to define the rules governing salmon fishery, including the fixing of TACs. The principle and procedures are the same as in any other fisheries. Nevertheless, the Commission proposal for the Baltic salmon stock foresees that the MS would be empowered to determine the TACs in rivers.

The present system of TAC allocation is based on historical rights and fishing practices of member States around the Baltic Sea. It is not planned to revise the allocation key.

I hope that this explanation can be useful to clarify the legal framework for anadromous species.

Yours sincerely,



for Lowri EVANS *et al*
S. DE PYPERE