

## **Kahawai Legal Challenge Decision – Sweet Success**

*April 2007*

The common law right for the public to fish under current legislation has been recognised by the courts in a landmark High Court decision by Justice Rhys Harrison.

In March Justice Harrison overturned the Minister of Fisheries' 2004 and 2005 decisions for kahawai, saying the public right to fish must be 'allowed for' by the Minister so as to enable people to provide for their social, economic and cultural wellbeing.

"After years of having our rights trampled on the High Court has ruled in favour of claims by non-commercial fishers that our common law right to fish is recognised and protected in current fisheries legislation," says the Kahawai Legal Challenge team.

They say the High Court has -

- Recognised recreational fishing interests as "rights" that stem from common law;
- Held that allowing for people's wellbeing - people's health or physical welfare - is the 'starting point' when setting the total allowable commercial catch (TACC);
- Found that people provide for their wellbeing either by catching or purchasing fish;
- Held that it is open to the Minister to set the TACC at zero and that both customary Maori and recreational fishing interests must be provided for where they exist. The same does not apply for commercial interests;

The Minister is now required to make a new decision for kahawai before October 2007. The status quo applies until then. Jim Anderton will also need to reconsider whether there should be a change in bag limits for kahawai.

The court has ruled that sustainability "must be the Minister's ultimate objective". For many of our coastal fisheries this should equate to more conservative management decisions if information is uncertain and lead to a rebuild of depleted fisheries, to allow for our children's future needs.

Aside from more abundant fisheries, the focus on sustainability and people's wellbeing should also result in a return to better catch rates. Hopefully the days of standing on a beach, waiting and hoping one stray fish goes past maybe numbered.

The High Court's decision relates to kahawai but it will also be a precedent applicable to all other species. The decision mentions the loss of access to other more highly prized species such as snapper. All parties to the legal challenge, including the Minister and the fishing industry have until mid April 2007 to appeal the ruling.

The Court has provisionally ruled in favour of the New Zealand Big Game Fishing Council and New Zealand Recreational Fishing Council in awarding a contribution to costs against the Minister. Full recovery of costs involved in mounting the challenge is not possible as the award only applies to a limited scale. All other costs will be met by public and private contributions to the Kahawai Challenge Fund.

### **Landmark case**

The judicial review was a test case to help better define the nature and extent of the public's right to fish.

This is the first time the Minister has been challenged in court by amateur fishing groups. The NZBGFC and the NZRFC took the case to the High Court supported by option4 and Te Runanga A Iwi O Ngapuhi.

### **To Contribute**

While this is a huge victory in the recognition of the public's right to a fair slice of the fishery, it has come at a big monetary cost.

The challenge was underwritten primarily by the NZ Big Game Fishing Council, option4.co.nz and a handful of private backers. If you would like to make a contribution towards the costs, you can do so via a secure online facility at [www.kahawai.co.nz](http://www.kahawai.co.nz) or by posting your cheque to Kahawai Challenge Fund, C/- NZ Fishing News, PO Box 12-965, Penrose, Auckland.

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