

between

**Sanford Limited, Sealord Group Limited and Pelagic & Tuna New Zealand Limited**

Appellants

and

**The New Zealand Recreational Fishing Council Inc and New Zealand Big Game Fishing Council Inc**

First Respondents

and

**Minister of Fisheries**

Second Respondent

and

**The Chief Executive of the Ministry of Fisheries**

Third Respondent

**Notice of Cross-Appeal by First Respondents and Memorandum of Counsel to Support Decision Appealed On Other Ground**

**Dated: 4 May 2007**



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**Notice of cross-appeal**

1. The New Zealand Recreational Fishing Council Inc and the New Zealand Big Game Fishing Council Inc (together the "*Recreational Fishers*"), give notice that they cross-appeal to the Court against part (only) of the decision of the Honourable Justice Harrison delivered on 21 March 2007 in the High Court at Auckland (CIV-2005-404-4495), namely:
  - a. The Court's reasoning [at para 76] that the Hauraki Gulf Marine Park Act 2000 is relevant only when setting sustainability measures such as a TAC and that there was no comparable requirement when fixing an allocative mechanism like a TACC.

**Specific grounds**

2. The specific grounds of the appeal are:
  - a. The Court made a material error in its decision on the Hauraki Gulf Marine Park Act 2000 by finding [at para 76] that the Hauraki Gulf Marine Park Act is relevant only when setting sustainability measures such as a TAC and that there was no comparable requirement when fixing an allocative mechanism like a TACC.
3. The Recreational Fishers seek the setting aside of this part of the decision of the High Court which is subject to this appeal, and a declaration or directions that the Minister of Fisheries' 2004 and 2005 decisions fixing the TACC (including setting the recreational allowance) for KAH1 failed to have particular regard to the provisions of sections 7 and 8 of the Hauraki Gulf Marine Park Act 2000, as sought in the plaintiff's first amended statement of claim.

**Memorandum of counsel to support decision on appeal on other ground**

4. In addition, or alternatively to the cross-appeal the Recreational Fishers give notice pursuant to rule 33 of the Court of Appeal (Civil) Rules 2005 of their intention to support the decision of Honourable Justice Harrison (CIV 2005-404-4495) on a ground other than the one on which it is based.
5. The recreational fishes support the Court's reasoning, findings of fact and conclusions that:
  - a. The Minister of Fisheries fixed the TACCs in 2004 and 2005 for all kahawai stocks without having proper regard to the social, economic and cultural wellbeing of the people (paragraphs [54] –[83]).

- b. The Minister of Fisheries failed to take any or proper account of sections 7 and 8 of the Hauraki Gulf Marine Park Act 2000, when fixing the TAC for KAH 1 (paragraphs [75] – [83]).
- 6. As an additional ground, and/or different ground in relation to the fixing of the TACCs, the Recreational Fishers say that the Minister's decisions when fixing the TACCs (allowing for recreational interests, and setting the TACC, if any) in 2004 and 2005 failed to have particular regard to the provisions of sections 7 and 8 of the Hauraki Gulf Marine Park Act 2000.
- 7. The obligation to have particular regard to the provisions of sections 7 and 8 of the Hauraki Gulf Marine Park Act 2000 arises pursuant to section 13 of the Hauraki Gulf Marine Park Act 2000, and applies to all persons exercising and carrying out functions for the Hauraki Gulf, including the exercise of the powers of fixing the TACCs, setting the recreational allowance, and other powers and functions exercised under the Fisheries Act 1996, and the Fisheries Act 1983.

**Dated** at Auckland 4 May 2006

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**SJ Ryan**

Solicitor for the First Respondents

To: The Registrar of the Court of Appeal

And To: The Appellants, by their solicitor

And To: The Second and Third Respondents, by their solicitor

This document is filed by **Stuart James Ryan**, solicitor for the first respondents, of the firm Hesketh Henry. The address for service of the first respondents is at the offices of Hesketh Henry, 41 Shortland Street, Auckland.

Documents for service on the first respondent may be delivered to that address or may be:

- (a) posted to the solicitor at PO Box 92093, Auckland 1142; or
- (b) left for the solicitor at a document exchange for direction to DX CP 24017, Auckland; or
- (c) transmitted to the solicitor by facsimile to facsimile number (09) 365 5278