

between: **Sanford Limited** of 22 Jellico St, Auckland, **Sealord Group Limited** of Vickerman St, Nelson, and **Pelagic & Tuna New Zealand Limited** of 29 Jellico St, Auckland
Appellants

and: **The New Zealand Recreational Fishing Council Inc** of 19 Ladbroke Drive, Newlands, Wellington and **New Zealand Big Game Fishing Council Inc** of 22 Houhere Place, Tikipunga, Whangarei
First Respondents

and: **Minister of Fisheries** of Wellington
Second Respondent

and: **The Chief Executive of the Ministry of Fisheries** of Wellington
Third Respondent

Notice of appeal

Dated: 19 April 2007

Chapman Tripp *Barristers & Solicitors*

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Wellington 6140 NZ DX SP20204

Reference: B A Scott/G T Carter

NOTICE OF APPEAL

Sanford Limited, Sealord Group Limited and Pelagic & Tuna New Zealand Limited, the appellants in the proceeding identified above (together, the *Commercial Fishers*), give notice that they appeal to the Court against the following parts of the decision of the Honourable Justice Harrison delivered on 21 March 2007 in the High Court at Auckland (CIV-2005-404-4495), namely:

- 1 The Court's reasoning, findings of fact and conclusions relating to its declarations that the Minister of Fisheries' (the *Minister*) decisions in 2004 and 2005 were unlawful to the extent that the Minister:
 - 1.1 fixed the TACCs for all kahawai stocks without having proper regard to the social, economic and cultural wellbeing of the people (paragraphs [54] – [83]);
 - 1.2 failed to take into account sections 7 and 8 of the Hauraki Gulf Marine Park Act 2000 when fixing the TAC for KAH 1 (paragraphs [75] – [83]);

- 2 The Court's reasoning, findings of fact and conclusions relating to its rejection of the Commercial Fishers' allegations that the Minister's decisions were unlawful on the basis that the Minister:
 - 2.1 erroneously assessed non-commercial utilisation when setting TACs, allowances and TACCs in 2004 and 2005 (paragraphs) [84] – [107]);
 - 2.2 predetermined his 2005 TAC, allowances and TACC decisions (paragraphs [127] – [132]);
 - 2.3 failed to impose a catch monitoring regime in relation to recreational fishers (paragraphs [133] – [142]).

Specific grounds

- 3 The specific grounds of the appeal are:
 - 3.1 The Court erred in fact and in law by declaring that the Minister's decisions in 2004 and 2005 were unlawful in that the Minister fixed the TACCs for all kahawai stocks without having proper regard to the social, economic and cultural wellbeing of the people. In particular, the Court erred in:
 - (a) finding that there was a distinction between the concepts of sustainability and utilisation which was recognised in

the different purposes of a TAC under section 13 of the Fisheries Act 1996 (the Act) and a TACC under section 21 of the Act;

- (b) its interpretation of "wellbeing" in section 8 of the Act and its view of the quantitative and qualitative assessment required to be undertaken;
- (c) concluding that kahawai is of low value to the commercial sector and that commercial interests provide for people's wellbeing (other than through employment) to a low extent;
- (d) concluding that the Minister was not entitled to use catch history as the measure of utilisation to allocate the TAC;
- (e) considering that under section 21 of the Act, recreational fishing interests must be provided for to the extent they exist, unlike commercial fishing interests;
- (f) concluding that the potential effect of catch reductions on commercial operations was irrelevant when allocating the TAC;
- (g) finding that the Minister did not take into account both qualitative and quantitative factors when allowing for recreational interests;

3.2 The Court erred in declaring that the Minister's decisions in 2004 and 2005 were unlawful in that the Minister failed to take into account sections 7 and 8 of the Hauraki Gulf Marine Park Act 2000 when fixing the TAC for KAH 1, despite the evidence demonstrating that:

- (a) the Minister was advised by the Ministry of Fisheries (*MFish*) that the proposed management measures would meet the requirements of sections 7 and 8 of that Act;
- (b) the Minister had particular regard to recreational catch concerns relating to the Hauraki Gulf and in 2005 requested specific advice from MFish to constrain commercial fishing in that area;

- (c) there had been no commercial purse seine fishing in the Gulf since the early 1990s, as well as substantial commercial fishing and trawling prohibitions;

3.3 The Court erred in rejecting and/or failing to address the Commercial Fishers' allegations that the Minister wrongly assessed non-commercial utilisation when setting TACs, allowances and TACCs in 2004 and 2005. In particular, the Minister:

- (a) adopted revised estimates of recreational utilisation which were contrary to the best available information;
- (b) erroneously used the stock assessment yield estimates as a reference point to reduce revised estimates of total current utilisation, without recognising the effect of the higher revised recreational catch estimates on the yield estimates;
- (c) failed to reconsult on the fundamental changes between the MFish 2004 initial advice and final advice in relation to estimates of non-commercial utilisation;
- (d) adopted arbitrary estimates of customary utilisation on the erroneous basis that there was no quantitative information, despite MFish having quantitative information in the form of customary reporting;

3.4 The Court erred in rejecting the Commercial Fishers' allegations that the Minister predetermined his 2005 decision on the TACs, allowances and TACCs. In particular, the Court failed to address or refer to the third respondents' allegation that the Minister erred in law and predetermined his decision by:

- (a) reducing TACs, allowances and TACCs by an arbitrary further 10% contrary to the best available information and without an adequate cost-benefit analysis;
- (b) failing to consider not reducing the TAC, allowances and TACC for KAH 8, despite MFish advising that:
 - (i) there was a "point of difference" in relation to KAH 8;

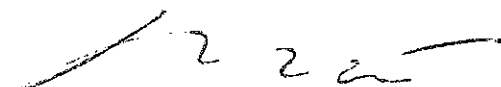
- (ii) both recreational and commercial interests supported no reduction;
- (iii) there may be a greater risk of economic impacts of a TAC reduction in KAH 8;

3.5 The Court erred in rejecting the Commercial Fishers' allegations that the Minister failed to impose a catch monitoring regime in relation to recreational fishers. In particular, the Court erred in:

- (a) concluding that the declaration sought by the third respondents was "barren" without identification of what regulatory measures should be imposed;
- (b) assuming, contrary to the evidence before the Court, that since 2005 MFish had made considerable progress in relation to monitoring recreational catches of kahawai and employing improved information gathering techniques for the recreational fishery.

4 The Commercial Fishers seek the setting aside of the parts of the decision of the High Court which are subject to this appeal, and declarations in the terms set out in the Commercial Fishers' counterclaim.

Dated: 19 April 2007



B A Scott
Counsel for appellant

To: The Registrar of the Court of Appeal

And to: The first respondents, by their solicitor

The second and third respondents, by their solicitor

This document is filed by B A Scott, solicitor for the appellants, of the firm Chapman Tripp Sheffield Young. The address for service of the appellant is at the offices of Chapman Tripp Sheffield Young, Level 14, 10 Customhouse Quay, Wellington.

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

- (a) posted to the solicitor at PO Box 993, Wellington 6140; or
- (b) left for the solicitor at a document exchange for direction to DX SP20204, Wellington; or
- (c) transmitted to the solicitor by facsimile to facsimile number (04) 472 7111.