

*under:* Part 1 of the Judicature Amendment Act 1972

*in the matter of:* an application for review

*between:* **The New Zealand Recreational Fishing Council Inc**  
*Applicants*

*and:* **Minister of Fisheries**  
*First Respondent*

*and:* **The Chief Executive of the Ministry of Fisheries**  
*Second Respondent*

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

---

Joint memorandum of counsel of the first to third respondents

---

Dated: 16 April 2007

Judicial Officer: Harrison J

---

**Chapman Tripp** *Barristers & Solicitors*

10 Customhouse Quay    Tel +64 4 499 5999  
PO Box 993                Fax +64 4 472 7111  
Wellington 6140 NZ      DX SP20204

*Reference:*    B A Scott/G T Carter

## MAY IT PLEASE THE COURT:

### Compensation Declaration – Issue Resolved Between Parties

1. The counterclaim respondents have sought certain declarations regarding the possibility of compensation for loss of quota in some situations.
2. The first and second respondents are opposed to the making of the declarations sought, including on the grounds the declarations sought are hypothetical in the present proceeding.
3. However, the first and second respondents note that in the Report Back of the Select Committee on the Fisheries Bill 1994 which was subsequently enacted as the Fisheries Act 1996, in respect of the issue of possible compensation, the Select Committee reported in particular as set out at pages xxxvi-xxxvii,-

*...However, we agree that, when taking steps under the Bill that significantly impact on the ability of commercial fishers to take their ACE for the purposes of managing disputes and competing claims between fishing sectors, the possibility of compensation should be [sic] not be excluded.*

*We therefore recommend clause 308 which clearly sets out the provisions of the Act that the Crown is protected from liability for compensation in administering. For the matters not referred to in this clause [cl 308], namely managing conflicts between sectors, the issue of compensation may arise.*

4. The first and second respondents agree the Act as enacted, in particular s308, gives effect to this intention.
5. The first and second respondents and the counterclaim applicants would be grateful if this confirmation could be recorded in the judgment in due course.

### Issues

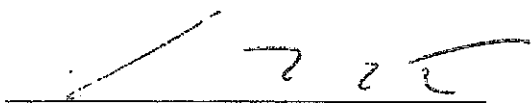
6. The issues as perceived by the Minister/Ministry are essentially as follows.
  - 6.1 Did the Minister make a reviewable mistake of fact as to the nature of the recreational interests (s21 Fisheries Act)?

**JOINT MEMORANDUM OF COUNSEL**

May it please Your Honour:

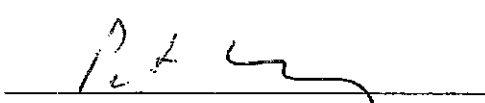
- 1 The third respondents sought certain declarations in the proceedings regarding compensation. The first and second respondents opposed the making of the declarations sought.
- 2 The parties resolved the issue and requested that the Court record their agreement in the judgment, in the terms expressed at page 3 of the first and second respondents' submissions dated 8 November 2006 (copy **attached**).
- 3 The judgment of the Court, dated 21 March 2007, does not record the agreement.
- 4 If the omission in Your Honour's judgment of any mention of the understanding reached between the Crown and industry parties was an oversight, the first to third respondents respectfully request that the Court record the agreement by way a minute.

Dated: 16 April 2007



---

B A Scott/G T Carter  
Counsel for the third respondents



---

A Ivory / P McCarthy  
Counsel for first and second  
respondents

To: The Registrar

And to: The Applicants