

under: Part I of the Judicature Amendment Act 1972

in the matter of: an application for review

between: **The New Zealand Recreational Fishing Council
Inc, and New Zealand Big Game 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 Respondents

Application of third respondents for stay pending determination
of appeal

Dated: 8 June 2007

Next Event date:

Judicial Officer: Harrison J

Chapman Tripp *Barristers & Solicitors*

1-13 Grey St Tel +64 4 499 5999
PO Box 993 Fax +64 4 472 7111
Wellington NZ DX SP20204

Reference: B A Scott/G T Carter

Take notice that on day of 2007 at am/pm or as soon thereafter as counsel may be heard, the third respondents will move the Court at Auckland for orders:

- 1 Staying the judgment dated 21 March 2007 pending the determination of the appeal against the decision by the third respondents and of the cross-appeal by the applicants.
- 2 Such order as to costs that the Court deems just.

Upon the grounds:

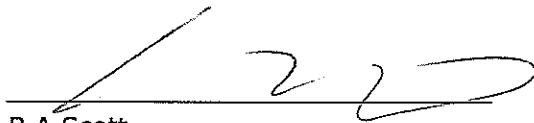
- 1 The decision of the Court requires the first respondent to undertake a reconsideration or review of the 2005 decisions forthwith to take into account the terms of the declarations of unlawfulness.
- 2 Unless the proceeding is stayed, the reconsideration of kahawai stocks will occur in this year's sustainability round, with decisions to be implemented with effect from 1 October 2007.
- 3 Both the applicant and the third respondents have appealed the judgment of the Court on differing grounds, and the Court of Appeal has allocated a hearing date for the appeal of 26 and 27 February 2008.
- 4 The third respondents' appeal raises genuine issues for determination on appeal.
- 5 In the event that the Court of Appeal were to allow all or any of the grounds of appeal, the first respondent will have made decisions on reconsideration effecting the rights of parties, including the third respondents, on a wrong legal basis. Those decisions will be subject to reconsideration or review with consequential resource implications for the Ministry.
- 6 If a stay is not granted, the third respondents' rights and the rights of other quota holders of kahawai stocks may be injuriously affected in the form of reduced TACCs, and the third respondents' appeal will be rendered nugatory.
- 7 If a stay is not granted, the rights of quota holders in other fisheries under review as part of the 2007 sustainability round may be injuriously affected in the form of reduced TACCs.

- 8 Reconsideration of sustainability measures for kahawai stocks in the 2007 sustainability round will mean that resources are not available for consideration of new sustainability measures for a number of other stocks.
- 9 The applicants will not be injuriously affected by a stay pending the appeal.
- 10 The decision under appeal is of public interest and is considered by the Minister of Fisheries (the first respondent) to have profound implications for the commercial sector.

This application is made in reliance of:

- Rule 12 Court of Appeal (Civil) Rules 2005
- *Dymocks Franchise Assistance (NSW) Pty Limited v Bilgola Enterprises Limited* (1999) 13 PRNZ 42
- *NZ Fishing Industry Association v Minister of Fisheries* [1997] NZLR 316
- *Squid Fishery Management Company Ltd v Minister of Fisheries and Anor* (2004) 17 PRNZ 104
- The affidavits of V W Wilkinson and N Gibbs filed in support of this application.

Dated this 8th day of June 2007



B A Scott

Counsel for third respondents