

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

CIV 2005-404-4495

UNDER Part 1 of the Judicature Amendment Act 1972

IN THE MATTER An application for review

BETWEEN THE NEW ZEALAND RECREATIONAL FISHING
COUNCIL INC AND NEW ZEALAND BIG GAME
FISHING COUNCIL INC

Applicants/Third Counterclaim Respondent

AND MINISTER OF FISHERIES

First Respondent/First Counterclaim Respondent

AND CHIEF EXECUTIVE OF THE MINISTRY OF
FISHERIES

Second Respondent/Second Counterclaim Respondent

AND SANFORD LIMITED, SEALORD GROUP LIMITED
AND PELAGIC & TUNA NEW ZEALAND LIMITED

Third Respondents/Counterclaim applicants

**AFFIDAVIT OF T D CHATTERTON IN SUPPORT OF APPLICATION
FOR STAY PENDING APPEAL**

Sworn: May 2007

Next Event Date: 2007

Judicial Officer: Harrison J

**Crown Law Office (Peter McCarthy/Sara Ritchie)
Telephone: 494 5602, PO Box 2858, DX SP 20208,
Facsimile: 494 5680, Wellington Central.**

PAR EM

I, **THOMAS DAVID CHATTERTON** of Wellington, Manager, swear:

1. I am a senior official employed in the Ministry of Fisheries as Manager Deepwater and National Issues. My responsibilities include managing staff who participate in and contribute to annual processes that review sustainability measures and other regulatory controls for various New Zealand fisheries. For example, my staff have been responsible for the recent reviews of the kahawai fishery that resulted in the Minister's 2004 and 2005 decisions for kahawai stocks. They will also be responsible for the process and advice for the Court directed review of certain kahawai decisions.
2. The annual processes for review of sustainability measures and other regulatory controls requires a substantial commitment of resources and typically involves the following steps:
 - 2.1 proposals are made for amendments to total allowable catches, total allowable commercial catches, recreational allowances, customary allowances, and recreational and regulatory controls;
 - 2.2 those proposals are made available for public consultation usually by way of an Initial Position Paper (*IPP*);
 - 2.3 the Ministry undertakes an analysis of public submissions; and
 - 2.4 the Ministry prepares final advice and recommendations for the Minister of Fisheries.
3. The Ministry each year develops a list of fish stocks and regulatory issues which it considers should have priority for review and consultation on options to amend their current management or application. I attach as Exhibit "A" to this affidavit the list of 28 species, stocks and regulatory controls that the Ministry considers should have priority this year.
4. The first entry in that list relates to kahawai stocks. This is because the decision of the High Court issued in this proceeding on 21 March 2007 required reconsideration of those stocks forthwith. In practical terms, that means that the kahawai stocks must be included for review in the process that results in the Minister making decisions for the 2007/08 fishing year, which starts on 1 October 2007.

5. Two Ministry employees will be primarily responsible for preparing advice in relation to the kahawai reconsideration: Arthur Hore, a Manager in the Ministry's Auckland office, and Graeme McGregor, a Fishery Analyst also based in the Auckland office. Between now and early July, when the Ministry's IPP will be submitted to the Minister for his approval and then released for public comment, both Mr Hore and Mr McGregor will be working full-time on development of options for management of kahawai stocks. Public submissions will be received within about six weeks after the release of the IPP and Mr Hore and Mr McGregor will then be engaged full-time until the end of August analysing the public submissions and preparing a draft of the final advice to the Minister. The FAP will be presented to the Minister on about 10 September 2007.
6. A number of other Ministry officials will also be engaged in the development of both the IPP and final advice, as part of the standard review process undertaken by the Ministry.
7. I estimate that the total time spent by Ministry officials in preparing the kahawai IPP, final advice, and related material (e.g. letters, other communications and media releases) will be between 300 and 400 hours. Stakeholders will themselves also devote considerable resources in preparing submissions to respond to ~~the~~ any proposals concerning the reconsideration of kahawai.
NSC
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8. In addition, the Ministry believes there is a real possibility, given the appeal and cross appeal, that steps will be taken to challenge any decisions made and interim relief sought to prevent the decisions taking effect prior to the determination of the appeal and cross appeal.
9. The Ministry therefore requested its counsel to discuss with the other parties' legal representatives whether they considered that the reconsideration directed by the Court could be deferred until after the decision of the Court of Appeal was received. I understand that discussions took place both by telephone and by email. (A copy of the emails exchanged is annexed as Exhibit "B".) No such agreement was reached.

10. Annexed hereto marked "C" and "D" respectively are the Notice of Appeal of the third respondent and the Notice of Cross Appeal of the plaintiffs.
11. Counsel for the Ministry have sought to expedite the hearing of the appeal and cross appeal by seeking the prompt setting down for hearing and the equally prompt settling of the case on appeal (see annexed email exchange marked "E"). Counsel for the Ministry are instructed to continue to pursue the prompt determination of the appeal and cross appeal.
12. If the reconsideration directed by the Court could be deferred, the Ministry would be in position to commence the reconsideration of the kahawai stocks forthwith after the decision of the Court of Appeal was received – so that any new decisions by the Minister in respect of kahawai stocks could be in place for the 2008/09 fishing year, which starts on 1 October 2008.

SWORN at Wellington)
 this 23rd day of May 2007)
 before me:




A (Deputy) Registrar/Solicitor of the High Court of New Zealand

Erin Michelle McBride
 Solicitor
 Wellington

2007 Sustainability and Regulatory proposals

MFish has prioritised 17 sustainability issues and 11 regulatory issues to be progressed.

Sustainability issues

- Kahawai (KAH) – proposal to review sustainability measures and other management controls;
- Deemed Values – proposal to review and recommend adjustments to the deemed value rates for an assortment of stocks;
- Hoki (HOK) – proposal to review the TACC and east-west catch split for the stock;
- Orange roughy (ORH1) – proposal to review the TAC and TACC for the stock;
- Orange roughy (ORH3B) – proposal to review the TAC and TACC for the stock;
- Orange roughy (ORH7B) – proposal to review the TAC and TACC for the stock;
- North Island Eel stocks (SFE20-23 & LFE20-23) – proposal to set a TAC for the stocks;
- Flatfish (FLA3) – proposal to review the TACC and set a TAC for the stocks;
- Red Cod (RCO3) – proposal to review the TACC and set a TAC for the stock;
- Oreo (OEO1) – proposal to review the TAC and TACC for the stock;
- Tarakihi (TAR1) – proposal to review the TAC for the stock;
- School shark (SCH1) – proposal to review the TACC and set a TAC for the stock;
- Rubyfish (RBY8) – proposal to correct a TACC drafting error in the regulations.
- Conversion Factors – proposal to update various conversion factors used to assess greenweight of fish landed from a processed state;
- Northland scallops – proposal for an in-season TAC review for the stock;
- Coromandel scallops – proposal for an in-season TAC review for the stock;
- Squid (SQU1T) – proposal to review the TAC and TACC for the stock..

Regulatory issues

- Hector's Dolphins – proposal to enact measures to protect dolphins and to

2007 Sustainability and Regulatory proposals

MFish has prioritised 17 sustainability issues and 11 regulatory issues to be progressed.

Sustainability issues

- Kahawai (KAH) – proposal to review sustainability measures and other management controls;
- Deemed Values – proposal to review and recommend adjustments to the deemed value rates for an assortment of stocks;
- Hoki (HOK) – proposal to review the TACC and east-west catch split for the stock;
- Orange roughy (ORH1) – proposal to review the TAC and TACC for the stock;
- Orange roughy (ORH3B) – proposal to review the TAC and TACC for the stock;
- Orange roughy (ORH7B) – proposal to review the TAC and TACC for the stock;
- North Island Eel stocks (SFE20-23 & LFE20-23) – proposal to set a TAC for the stocks;
- Flatfish (FLA3) – proposal to review the TACC and set a TAC for the stocks;
- Red Cod (RCO3) – proposal to review the TACC and set a TAC for the stock.

This is the exhibit marked "A" referred to in the annexed Affidavit of **Thomas David Chatterton** sworn at Wellington this 23rd day of May 2007 before me:

Erin Michelle McBride
Solicitor
Wellington


A **(Deputy) Registrar/Solicitor of the High Court of**
New Zealand

meet international obligations;

- Turtles – proposal to review regulations relating to the capture of marine turtles;
- National Rock Lobster Management Group (NRLMG) Proposals (2) – MFish has planned for up to two regulatory issues to be progressed from a NRLMG meeting on 24 May 2007;
- Destination X – proposal to resolve issues concerned with the Destination X reporting code;
- Scallop season – proposal to review the recreational scallop season in the north-west coast of the North Island;
- Rock Lobster Form – proposal to introduce a new Rock Lobster Catch Effort and Landing Return;
- Kaipara Harbour – proposal to review regulation permitting the stalling of nets in Kaipara Harbour;
- Paddle Crab – proposal to add Paddle Crab to the Sixth Schedule to enable species be returned to the sea;
- Deepwater Crab – proposal add Deepwater Crab to the Sixth Schedule to allow species to be returned to the sea;
- Surf Clams – proposal to amend regulations to allow a new Surf Clam dredge size.

Peter McCarthy - [Fwd: RE: Kahawai]

From: Alan Ivory <alanivory@sylo.co.nz>
To: Peter McCarthy <peter.mccarthy@crownlaw.govt.nz>, Bruce Scott <Bruce.Scott@chapmantripp.com>, <stuart.ryan@heskethhenry.co.nz>
Date: Wednesday, 16 May 2007 12:02:02 PM
Subject: [Fwd: RE: Kahawai]

Below is the series of emails between Stuart Ryan and myself regarding the question of whether the recreational parties agree reconsideration should not be undertaken prior to the determination of the appeal and cross appeal.

Regards,

Alan

Alan Ivory
Barrister
P O Box 105 396
Auckland 1000
New Zealand
Phone 64 9 309 3528
fax 64 9 366 3084

----- Original Message -----

Subject:RE: Kahawai
Date:Tue, 15 May 2007 08:57:52 +1200
From:Stuart Ryan <Stuart.Ryan@heskethhenry.co.nz>
To:Alan Ivory <alanivory@sylo.co.nz>
CC:Alan Galbraith <argalbraith@xtra.co.nz>

Alan,

In brief, the primary reason expressed on behalf of the Crown for any deferment is that if kahawai is to be included in this years allocation then one or more (unspecified) species will have to be deleted in this years round, i.e. a resource issue for MFish.

My clients' do not consider this a sufficient reason to delay application of the High Court's direction to reconsider/ review the 2005 decisions forthwith.

It is understood that a draft plenary report on kahawai has been prepared by MFish, which now includes a stock assessment for KAH1.

In terms of preserving the position pending the hearing of the case on appeal, the fishing sectors can continue to fish under existing allocations until the outcome of any fresh decision.

Regards,

Stuart Ryan
Partner

Direct Dial: +64 9 375 8778

Erin Michelle McBride
Solicitor
Wellington

This is the exhibit marked "B" referred to in the annexed Affidavit of **Thomas David Chatterton** sworn at Wellington this 23rd day of May 2007 before me:


A (Deputy) Registrar/Solicitor of the High Court of
New Zealand

Direct Fax: +64 9 375 8771
Mobile: +64 21 286 0230
Website: www.heskethhenry.co.nz

-----Original Message-----

From: Alan Ivory [<mailto:alanivory@sylo.co.nz>]
Sent: Monday, 14 May 2007 11:15 a.m.
To: Stuart Ryan
Subject: Re: Kahawai

Could you please give me a brief summary of your clients' reasons as these will be relevant on the consideration of any question of a stay. In the event a stay is applied for the Court would want to know your clients' reasons had been provided and considered before taking the Court's time.

Regards,

Alan Ivory

Alan Ivory
Barrister
P O Box 105 396
Auckland 1000
New Zealand
Phone 64 9 309 3528
fax 64 9 366 3084

Stuart Ryan wrote:

Alan

I have received instructions from both NZBGFC and NZRFC that they do not support a deferment of the Minister's reconsideration for this years round.

Regards,

Stuart Ryan
Partner

Direct Dial: 09 375 8778
Direct Fax: 09 365 5278
Mobile: 021 286 0230
Website: www.heskethhenry.co.nz

-----Original Message-----

From: Alan Ivory [<mailto:alanivory@sylo.co.nz>]
Sent: Thursday, 10 May 2007 4:40 p.m.
To: Stuart Ryan
Subject: Re: Kahawai

Stuart, I've conferred with MFish and they share my view that it's not appropriate for them to appear in any way to bargain species for review in respect of whether or not kahawai should be reviewed before the determination of the appeals, so I cannot advance that aspect any further than I have already done.

Regards,

Alan

Alan Ivory
Barrister
P O Box 105 396
Auckland 1000
New Zealand
Phone 64 9 309 3528
fax 64 9 366 3084

Stuart Ryan wrote:

Alan,

I am taking instructions on the point discussed yesterday. I overlooked asking which fish species might not make the cut in the event that kahawai is included in this years decision making round. Could you please advise. I note the need for a response to your query by the end of this week.

Regards,

Stuart Ryan
Partner

Direct Dial: 09 375 8778
Direct Fax: 09 365 5278
Mobile: 021 286 0230
Website: www.heskethhenry.co.nz

Hesketh Henry Lawyers

This electronic communication (including any attachments) is confidential and may be privileged. If this email is used, disclosed, distributed, retransmitted or copied, please delete this communication from your system. We are not responsible for any changes made to, or interception of, this communication after sending, virus or other defect. Nothing in this communication designates an information system for the purposes of section 11(a) of the Electronic Transactions Act 2002.

Hesketh Henry Lawyers

This electronic communication (including any attachments) is confidential and may be privileged. If this email is not intended for use, disclose, distribute, retransmit or copy this communication or any of its contents, and please delete this communication from your system. We are not responsible for any changes made to, or interception of, this communication after sending, nor for the consequence of virus or other defect. Nothing in this communication designates an information system for the purposes of section 11(a) of the Electronic Transactions Act 2002.

Hesketh Henry Lawyers

This electronic communication (including any attachments) is confidential and may be privileged. If this email is not intended for you, you must not use, disclose, distribute, retransmit or copy this communication or any of its contents, and please delete this communication from your information system. We are not responsible for any changes made to, or interception of, this communication after sending, nor for the consequences of any virus or other defect. Nothing in this communication designates an information system for the purposes of section 11(a) of the Electronic Transactions Act 2002.

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EM

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

This is the exhibit marked "C" referred to in the annexed Affidavit of **Thomas David Chatterton** sworn at Wellington this 23rd day of May 2007 before me:

Erin Michelle McBride
Solicitor
Wellington



A (Deputy) Registrar/Solicitor of the High Court of
New Zealand

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

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;

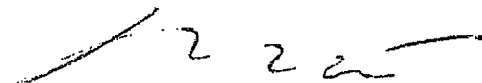
- (ii) both recreational and commercial interests supported no reduction;
- (iii) there may be a greater risk of economic impacts of a TAC reduction in KAH 8;

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.

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

This is the exhibit marked "D" referred to in the annexed Affidavit of **Thomas David Chatterton** sworn at Wellington this 23rd day of May 2007 before me:

Erin Michelle McBride
Solicitor
Wellington


A (Deputy) Registrar/Solicitor of the High Court of
New Zealand



HESKETH HENRY
Lawyers

First Respondents Solicitors
11th Floor
41 Shortland Street
Private Bag 92093
DX CP 24017
AUCKLAND
Tel +64 9 375 8700
Fax +64 9 375 8771

Solicitor
Counsel acting

Stuart Ryan
Alan Galbraith QC

09 375 8778
09 309 1769

stuart.ryan@heskethenry.co.nz
alan.galbraith@xtra.co.nz

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



.....

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

From: "Bruce Scott" <Bruce.Scott@chapmantripp.com>
To: "Peter Mccarthy" <peter.mccarthy@crownlaw.govt.nz>
Date: Monday, 21 May 2007 1:39:36 PM
Subject: RE: kahawai

I will phone you to discuss

-----Original Message-----

From: Peter Mccarthy [mailto:peter.mccarthy@crownlaw.govt.nz]
Sent: Monday, 21 May 2007 12:12 PM
To: Bruce Scott; Geoff Carter; Stuart.Ryan@heskethhenry.co.nz
Cc: Tristan.Meo@fish.govt.nz; alanivory@sylo.co.nz
Subject: RE: kahawai

Stuart,

Thanks for this. I'll need to hear back from Bruce/Geoff before any decisions can be made about the case on appeal, but I'll apply for a fixture now. I'll ask for a bench of three and two days.

About security - noted (with some surprise).

And yes, in the absence of a stay kahawai will be included in this year's sustainability round.

Peter

>>> "Stuart Ryan" <Stuart.Ryan@heskethhenry.co.nz> Thursday, 17 May 2007

>>> 17:03:33 >>>

Peter,

In terms of the fixture application, this is supported. We suggest two days be allowed, and that Court comprise at least two permanent members of the Court on appeal.

In terms of the case on appeal it may be easier to include all documents. The earlier Chapman Tripp bundles were paginated and presumably can be the basis for the case on appeal.

I am instructed to seek a dispensation of security for costs for the fishing councils, which will be applied for by the end of next week.

In terms of my earlier communications with Alan Ivory, please confirm that kahawai will be included within this years decision making round.

Regards,

Stuart Ryan
Partner

Direct Dial: 09 375 8778
Direct Fax: 09 365 5278
Mobile: 021 286 0230
Website: www.heskethhenry.co.nz

This is the exhibit marked "e" referred to in the annexed Affidavit of **Thomas David Chatterton** sworn at Wellington this 23rd day of May 2007 before me:


A (~~Deputy~~) Registrar/Solicitor of the High Court of New Zealand

Erin Michelle McBride
Solicitor
Wellington

-----Original Message-----

From: Peter Mccarthy [mailto:peter.mccarthy@crownlaw.govt.nz]
Sent: Thursday, 17 May 2007 4:19 p.m.
To: Bruce.Scott@chapmantripp.com; geoff.carter@chapmantripp.com; Stuart
Ryan
Cc: alanivory@sylo.co.nz
Subject: kahawai

Stuart/Bruce,

Mfish would like to have the appeal progressed, but we haven't heard anything from either of you about a draft index to the case on appeal or an application for a fixture. Please let me know what documents (if any) you think can be left out of the case on appeal, and whether there is any reason why we shouldn't apply for a fixture. I'm instructed to apply on Monday unless there is a compelling reason not to.

Peter

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