

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

Affidavit of Nicola Gibbs in support of third respondents'
application for stay pending determination of appeal

Dated: 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

I, **Nicola Gay Gibbs**, of Wellington, Policy Manager, swear:

- 1 I am the Policy Manager for the New Zealand Seafood Industry Council Limited (**SeaFIC**).
- 2 SeaFIC is a company established to work on behalf of the New Zealand seafood industry. Its shareholders are commercial stakeholder organisations (**CSOs**), who are in turn owned by rights owners (permit holders or quota owners).
- 3 SeaFIC provides professional advice to government and the industry on sound fisheries management policies and practices and represents the industry in central, local and international government decision-making processes.
- 4 SeaFIC takes a leading role in representing the industry in relation to the Ministry's various consultation processes relating to fisheries management, including each year's sustainability measures for various fish stocks.
- 5 SeaFIC is not a named party in these proceedings. However, it has maintained a close interest in the proceedings because wider issues relating to fisheries management and the rights of commercial fishers were in issue. SeaFIC also provided detailed submissions in the course of consultation relating to the Minister's 2004 and 2005 kahawai decisions.
- 6 In SeaFIC's view, the decision of this Court which is under appeal by the third respondents significantly impacts on fisheries policy and management, as well as the rights of commercial fishers generally. I also note that the commercial fishing industry was put on notice of this in no uncertain terms by the Minister of Fisheries during his speech at the May 2007 Seafood Industry Conference, when he stated that the decision "*has profound implications for the commercial sector*".
- 7 SeaFIC has analysed the decision and its ramifications, and supports the appeal by the third respondents. SeaFIC also supports the applications by the first and second respondents, and the third respondents, for a stay of the decision pending the determination of the appeal. I understand the appeal is to be heard in late February 2008.

- 8 The annual sustainability round represents a very important and extensive consultation and decision making process for the Ministry and stakeholders. It typically runs over a 4 month period and involves many thousands of hours of Ministry and stakeholder resources.
- 9 Using the 2005 sustainability round as an example, SeaFIC's main submission consisted of 64 pages, with a further 13 pages specifically relating to kahawai. Our submission incorporated substantial amounts of policy, scientific, economic and legal analysis. As well as the considerable resources and costs associated with obtaining the analyses necessary for the submission, SeaFIC committed further resources to consulting with its shareholders to reach an agreed industry position in relation to the submission. In addition, affected CSOs and fishing companies, such as the third respondents, did their own submissions, many of which also involved substantial analysis and advice.
- 10 SeaFIC is concerned that if kahawai is included in this year's sustainability round, and the appeal is successful, the entire process will need to be repeated for kahawai again next year, at considerable cost to the Ministry and stakeholders. The considerable Ministry and stakeholder resources applied to the reconsideration of kahawai stocks will have been in vain. If a stay is granted, Ministry and stakeholder resources could instead be used to address sustainability issues for a number of other fish stocks.
- 11 SeaFIC is also concerned about the potential effect on the commercial rights holders in fish stocks other than kahawai if a stay is not granted pending the appeal.
- 12 Each year the Ministry provides generic advice to the Minister as part of the sustainability round. This advice applies generally to all fish stocks which are under review and sets out the Minister's statutory obligations and policy guidelines. It includes directions in relation to the purpose of the Act, setting a TAC, determining catch levels, and allocation of the TAC by allowing for customary Maori, recreational fishers, other sources of mortality and the TACC.
- 13 In SeaFIC's view, the decision under appeal affects the Ministry's general advice to the Minister, and therefore the Minister's decisions in relation to all fish stocks under review, beyond any reconsideration of kahawai. This is because the Ministry has

indicated that a number of fish stocks with significant non-commercial components are to be reviewed as part of this year's sustainability round, including tarakihi, flatfish, red cod and school sharks.

- 14 SeaFIC is therefore of the view that the status quo should be maintained and a stay granted, pending the determination of the appeal and clarification as to the correct interpretation of the relevant sections of the Fisheries Act 1996. Otherwise, not only will the kahawai decisions need to be revisited if the appeal succeeds, other decisions may also need to be remade.

Sworn at Wellington)
on June 2007)
before me:) _____
Nicola Gay Gibbs

A Solicitor of the High Court of New Zealand