

## **Kahawai Challenge Team**

Update #25

June 2007

The Kahawai Legal Challenge asked the High Court to clarify how the Minister of Fisheries should be making decisions for all shared fisheries not just kahawai. The primary objective was to achieve a rapid rebuild of depleted kahawai stocks.

### **Industry appeal, Ministry applies for a stay – business as usual**

News of the fishing industry's move to appeal the High Court ruling on kahawai has certainly fired up a lot of people. Many of these people have also responded with contributions to assist the recreational groups defend the rights of the public, as set out in Justice Rhys Harrison's decision. Our costs to participate in the appeal hearing are estimated to be at least \$80,000.

The Kahawai Legal Challenge team is inspired by the commitment to protect the historic judgment set down by the High Court. Aspirations are that shared fisheries of importance, from kahawai to the mighty marlin, are managed sustainably to provide for the social, economic and cultural wellbeing of the people of New Zealand.

To everyone who has made an investment in our collective fishing future a very big thank you and we look forward to your continued support.

For those who have yet to make a stand, or haven't done so for a while, the secure online facility is available at [www.kahawai.co.nz](http://www.kahawai.co.nz) or by dialing 0900 KAHAWAI (0900 52 42 92) which will automatically donate \$20 via your phone account. For larger amounts please contact the team directly so we can discuss alternative ways you can contribute. Call Jo Harris on 0800 KAHAWAI (0800 52 42 92). Cheques made out to the 'Kahawai Challenge Fund' can be sent to the team via *New Zealand Fishing News*, PO Box 12-965, Penrose, Auckland.

### **Application for Stay**

Compounding the appeal proceedings is an application by the Minister and Ministry of Fisheries for a stay on the High Court decision. The Minister and MFish are keen to avoid having to make any management changes before the Appeal Court has heard the case from Sanford Ltd, Sealord Group Ltd and Pelagic & Tuna NZ Ltd plus the cross-appeal from the recreational fishing organisations.

Both the New Zealand Big Game Fishing Council and the New Zealand Recreational Fishing Council have rejected Crown law's reasons for delaying management decisions. The argument put forward is essentially that MFish does not have the resources to review kahawai and other species within the annual sustainability round.

The Challenge team does not believe a lack of MFish resources is a sufficient excuse to delay the High Court's directions. Another concern is that the appeal is not likely to be heard before December this year.

Non-commercial fishers are keen for the Minister to complete his obligation to review how kahawai are being managed. Doing so will give us a clear indication of how officials are going to ensure sustainability while allowing for people's wellbeing, as per the High Court ruling and current legislation.

### **Why the Stay Application Was Not Accepted**

Fisheries scheduled for review this year include tarakihi and red cod. For the first time MFish is proposing to set an annual allowance for amateur fishers and review the total allowable commercial catch (TACC) for these species. A stay on the High Court decision would mean that MFish could fall back on its old “policy preferences” of allowances based on current use alone, with proportional reductions where they deem necessary.

Enormous amounts of time, energy and resources have been committed to the challenge, the single largest effort made on behalf of amateur fishers in this country’s history. The hearing was delayed and made even more costly by the fishing industry when they joined the case and demanded to see MFish’ files on recreational kahawai fishing. This process of discovery took months and resulted in the late filing of evidence. As a consequence the original June 2006 hearing was adjourned.

Finally, after three years hard work we have a High Court judgment in our favour, so recreational fishing groups do not want the Minister’s new decision for kahawai management delayed until some time in 2008.

### **Process Highlight**

Ngapuhi, New Zealand’s largest iwi has remained firm in its commitment to this legal challenge. We can only speculate what the outcome of this process would have been without their input and support. Raniera (Sonny) Tau, Chairman of Te Runanga A Iwi o Ngapuhi (TRAION), encapsulates the thoughts of many in his affidavit to the High Court when he submits,

“When schools of kahawai are less plentiful this affects not only the ability to put food on the table, but also our ability to enhance the mana of our Marae. Individual mana enhancement is also drastically reduced.

“TRAION has resolved to support this legal challenge by the Recreational Fishing Council and the Big Game Fishing Council, which aims to increase the amount of kahawai in the sea, and to increase the quality of the fishery for non-commercial fishers to enjoy. This includes the 99.99% of the time Māori go fishing non-commercially.

“The Minister in his decision has cut, in equal proportion, the commercial and non-commercial take. This cuts right across our Tikanga or principles, developed and upheld since the beginning of our existence as Tangata Whenua in this land. This also drastically reduces our ability to exercise our rights guaranteed in article two of Te Tiriti O Waitangi. The inability of the Ngapuhi nation to satisfy these Tikanga because of bad advice given to the Minister leading to his final decision is unacceptable to TRAION.

“I am clear that our people require that when it comes to a reduction being required for a fish that is a staple food, that cut must come initially from the commercial sector.

“Quite simply if there is to be a cut to a fishery, then our board wants to see food put on the tables of our people, ahead of it being sent to foreign tables or wasted as pet food or Australian Cray bait.”

The affidavit in support of the Kahawai Legal Challenge from TRAION only came about after extensive process and consultation with the many hapu that makes up the iwi. Great care was taken to ensure opportunity for people to achieve understanding of the complex issues at stake. The process timeline is now online at <http://kahawai.co.nz/ngapuhi.htm> and will be updated as necessary.

We have certainly learnt the value of good process from working with tangata whenua on this issue. They have so much desire to ensure people have input.

Ngapuhi can be justifiably proud of their work and the commitment they have made to ensure “*more fish in the water/kia maha atu nga ika i roto te wai*” and a better quality non-commercial fishery for all.