

## **Kahawai Challenge Team**

Update #26

August 2007

### **Minister accepts High Court kahawai decision**

A surprising revelation was made during the July stay application hearing in the Auckland High Court. Crown Law, representing the Minister and Ministry of Fisheries, advised that the Minister had accepted the High Court's judgment made in March 2007. This is welcome news for everyone supporting the Kahawai Legal Challenge.

In March, Justice Rhys Harrison found that the previous Minister's decisions for kahawai were flawed. The Minister was directed to make fresh decisions taking into account the matters raised by the High Court.

The outcome of the judicial review of the Minister's 2004 and 2005 kahawai decisions was a 'win' for our fisheries and all New Zealanders as it confirmed that sustainability is the bottom line and must be the Minister's ultimate objective.

### **July Hearing**

The most recent hearing occurred because the Ministry of Fisheries (MFish), supported by the fishing industry, applied to the High Court for a stay – to not implement the findings - of the High Court decision pending the outcome of the appeal scheduled for the 26<sup>th</sup> and 27<sup>th</sup> February 2008.

Crown Law accepted that the issues now before the Appeal Court were important, saying:

“... they go to the heart of decision-making regarding the setting of TAC's, TACC's and recreational allowances. They apply to all fisheries in which there is a recreational component, and to all fisheries in the Hauraki Gulf Marine Park regardless of whether there is a recreational component”.

### **Hearing Decision**

On July 11<sup>th</sup> the High Court ordered that further decision making on kahawai catch limits for recreational and commercial fishers will remain “frozen” until the outcome of the appeal. This means the kahawai total allowable catches (TACs), recreational allowances and total allowable commercial catches (TACCs) are not likely to change until late 2008 at the earliest.

### **March 2007 Decision**

March 21<sup>st</sup> 2007 will always be remembered as the day all New Zealanders received recognition of their non-commercial fishing rights.

The High Court confirmed that:

- every man, woman and child in this country has a well settled common law right to fish to provide for their needs; and
- this right is particularly valuable because of our close proximity to the sea and temperate climate, both factors that contribute to the popularity of fishing.

### ***The Minister's statutory obligations***

The Fisheries Act 1996 directs the Minister to provide for the sustainable utilisation of our fisheries.

First the Minister must set a total allowable catch limit (TAC). This is about sustainability of our fisheries.

Next when setting or varying the total allowable catch (TACC) the Minister has a statutory obligation to ‘allow for’:

- non-commercial (both customary and recreational) catch; and
- fish killed during the process of fishing known as ‘other mortality’. This rate varies depending on the particular fishery (snapper or crayfish) and/or fishing method.

This is about utilisation of our fisheries.

Once these non-commercial and mortality allowances have been set the total allowable commercial catch (TACC) can be established.

### ***Non-commercial fishing rights must be allowed for***

The decision of the High Court makes it clear that whilst it is open to the Minister to set the TACC at zero, not so the allowance for recreational fishers.

If non-commercial interests exist in a fishery then both customary and recreational interests ***must be*** provided for, before a TACC is set.

In summary, setting the TAC is about sustainability, and setting the TACC is about utilisation, namely, the use of the fish available ***after*** non-commercial fishing interests and mortality have been taken into account and ‘allowed for’.

Clearly the High Court agreed with submissions from the Kahawai Challenge legal team [Alan Galbraith QC, Lyn Stevens QC before him and Stuart Ryan from Hesketh Henry Lawyers] that the Minister was not fully or objectively informed by his Ministry of his obligations to ensure sustainable utilisation, and that the advice MFish gave him “screwed the scrum”.

### **Appeal Court Hearing**

Having achieved a great success in the first round before the High Court, the importance of the case before the Appeal Court gives added push to the fundraising efforts to meet the expected legal costs of defending the first High Court decision.

Around \$80,000 is required to meet the cost of legal representation in the Court of Appeal. If you want to protect this historic win and your children’s future right to ‘fish for a feed’ please do one of the following:

- Make a secure online donation at [www.kahawai.co.nz](http://www.kahawai.co.nz)
- Dial 0900 KAHAWAI (0900 52 42 92) and automatically donate \$20 via your phone account
- For larger amounts please contact 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.

To people who have already invested in your fishing future, well done. Thanks too for the great letters, the team appreciates your support and rousing sentiments. After achieving this much we have no plans to stop, your contributions will be put to good use.