

Kahawai Challenge Team

Update #35, MAY 2008

A time for reflection

As summer fades and another ANZAC day passes it is timely to reflect on what the Kahawai Legal Challenge was about, what it sought to achieve and why the KLC team is sitting on the edge of their seats waiting for the Appeal Court to deliver its findings in relation to the commercial fishers' challenge against the 2007 High Court decision. The NZ Big Game and Recreational Fishing Councils, option4 and Ngapuhi are expecting the Appeal Court's judgment soon.

The Objective

Although the KLC sought to achieve a rapid rebuild of the kahawai fishery it was not just about kahawai. The objective was to seek High Court directions on how the Minister of Fisheries should make decisions on all fisheries of importance to non-commercial fishers, including snapper, blue cod, kingfish, crayfish, paua and scallops.

Significance of the Case

Kahawai is one of the last inshore fisheries to enter the Quota Management System and nationally significant due to its ecological value and universal distribution. After twenty years of mismanagement, continued depletion through industrial-scale purse seining and losing access to abundant schools of the "people's fish" amateur fishers of this country finally said *enough!*

2005 was the first time amateur fishing organisations joined together to take legal action to protect the public's right to fish. Legal proceedings were lodged with the High Court challenging the Minister's 2004 and 2005 kahawai management decisions. Sanford Ltd, Sealord Group Ltd and one other commercial fishing company lodged a counterclaim which sought to reduce the recreational kahawai allowance and increase their share.

Outcome

In late 2006 the High Court heard arguments from amateur and commercial fishers and also Crown Law, on behalf of the Minister and Ministry of Fisheries. Justice Harrison's judgment was released in March 2007 giving the amateur fishing organisations much hope in finally achieving sustainable fisheries management.

"On plain reading of s8 [section 8 of the Fisheries Act 1996] the bottom line is sustainability. That must be the Minister's ultimate objective. Without it, there will eventually be no utilisation."

The High Court also confirmed that the Minister could set commercial catch levels at zero but not the allowance for recreational fishers.

Within a month commercial fishers had appealed the High Court's decision. The appeal against some aspects of that judgment was heard in Wellington at the end of February 2008.

As judgment day approaches the KLC team continue to work with Ngapuhi, Ngati Whatua and other non-commercial fishing representatives through the Hokianga Accord to achieve the purpose of the Fisheries Act, as set out in section 8. That is, sustainable utilisation of fisheries to meet the needs of future generations, avoiding adverse environmental impacts and providing for people's wellbeing. Justice Harrison described wellbeing as, "the state of people's health or physical welfare".

And as the summer sun sets our responsibility to look after the environment, ensure sustainability and protect every New Zealander's common law right to fish does not diminish. It's a freedom that our forebears fought to protect.

Lest we forget.

Visit www.kahawai.co.nz.