

Kahawai Challenge Team

Update #38, July 2008

Kahawai Application made to the Supreme Court

On July 9th the Kahawai Legal Challenge team lodged an application with the Supreme Court challenging some aspects of the recently-released Appeal Court ruling. There is no automatic right to appeal so the Supreme Court's response, as to whether it will accept the application, is awaited with interest.

There is also no formal timeframe for the Court to decide, so work is continuing on developing the legal arguments in anticipation of a hearing. It will be the end of the legal process if the application is rejected.

Supreme Court Application

Any application to the Supreme Court has to be more specific than matters raised in the lower Courts. Eight main points relating to the Appeal Court decision have been identified as being errors of law. These issues will be supported by legal arguments if a hearing is granted.

Appeal Court Decision

The Appeal Court ruling was released on June 11th and all parties had until July 9th to lodge an application to appeal that judgment. The three Appeal Court judges agreed with some of the claims made by both the commercial appellants and amateur fishers, so it was a mixed result for both.

Moreover, the Appeal Court confirmed the findings of the High Court, that the Minister of Fisheries must first allow for the non-commercial fishing interests of Maori customary and recreational fishers and make an allowance for fishing-related mortality, before he sets the commercial catch limit in any fishery.

Interestingly, the Appeal Court did not agree that it was mandatory for the Minister to provide for the social, economic and cultural wellbeing of people when setting allowances. In summary they said:

"As with most aspects of the decision-making role played by the Minister, the consideration of the wellbeing factor requires a balance of competing interests, especially in the case of a shared fishery such as kahawai."

The commercial claim that the Minister should be required to monitor and assess the recreational kahawai catch was turned down by the Court.

The claim by non-commercial fishers that the Minister must have "particular regard" to the national significance of natural resources in the Hauraki Gulf Maritime Park, when setting allowances, was upheld by the Court.

A copy of the full Court decision is online, as is an overview of the decision from our legal team. Visit www.kahawai.co.nz.

Why the Challenge?

Even the Appeal Court judges mentioned the unusual feature of this case was that the Minister had not appealed against the 2007 High Court decision that went against him. It was commercial fishers who challenged the decision.

After serious discussions amongst the NZ Big Game and Recreational Fishing Councils, option4, Ngapuhi and other non-commercial fishing organisations, the KLC team decided that the principles upheld in the High Court ruling were far too precious to let go without mounting a defence.

Protecting our children's right to have access to abundant fisheries and a healthy marine environment has been arduous at times but made possible by those who believe in, and have supported, the Challenge. Thank you all.

You can contribute in a number of ways. Post a cheque to the 'Kahawai Challenge Fund', c/o NZ Fishing News, PO Box 12-965 Penrose, simply dial 0900 KAHAWAI for a quick \$20 donation (or two) or go online to www.kahawai.co.nz. We will keep you posted on further developments.