

## **Kahawai Challenge Team**

Update #42, November 2008

### **Anticipation builds as Supreme Court hearing nears**

The Supreme Court has allowed the Kahawai Legal Challenge team's leave application to challenge some aspects of the 2008 Appeal Court's kahawai decision. A date for the hearing before the Supreme Court has now been set for Thursday 12 February 2009.

Both the New Zealand Big Game Fishing Council and the New Zealand Recreational Fishing Council are pleased with the successful outcome of the application. option4, Ngapuhi and Ngati Whatua have all confirmed their support and are standing-by to assist.

The specific question from the Supreme Court, to be addressed by the legal team is:

“Did the Minister of Fisheries, when setting the total allowable commercial catch for Kahawai under s21 of the Fisheries Act 1996 in 2004 and 2005, act in accordance with statutory requirements?”

This question offers significant opportunity to consider what those statutory requirements are.

Section 21 of the Fisheries Act sets out the matters that need to be taken into account when the Minister is setting or varying a total allowable commercial catch for a fishery.

Section 21 (1) states –

*“In setting or varying any total allowable commercial catch for any quota management stock, the Minister shall have regard to the total allowable catch [TAC] for that stock and shall **allow for** –*

*(a) the following non-commercial fishing interests in that stock, namely –*

- i. Maori customary non-commercial fishing interests; and*
- ii. recreational interests; and*

*(b) all other mortality to that stock caused by fishing.*

When the High Court considered this decision-making process Justice Harrison agreed that a total allowable commercial catch (TACC) could not be set without the Minister first allowing for these non-commercial interests, both customary and recreational. The Court went onto say that *“It would be open to him or her [the Minister] to set the TACC at zero but not the allowance for recreational fishers. In that sense non-commercial interests, both Maori and recreational, must be provided for where they exist”*.

In June 2008 the Appeal Court said that, *“Essentially the difference between the total allowances made for those factors [customary, recreational and other mortality] and the TAC is the TACC”*.

So both Courts have confirmed the Minister's obligation to ‘allow for’ all New Zealander's non-commercial fishing interests. Determining the nature and the extent of those interests is an important exercise, given that it is not just about fishermen and how much they catch. There is a wider community interest in having abundant and diverse fisheries living in a healthy marine environment.

In addition, the outcome of these proceedings are likely to be an important precedent for all important near shore fish stocks, such as snapper, crayfish and paua, not just kahawai.

There is a lot of work to be done prior to the hearing. The legal team are doing the long hours now to develop the best possible arguments to put before the five Supreme Court judges. Roll on 12 February 2009.

If you value your fishing please assist the team by posting a cheque to the 'Kahawai Challenge Fund', c/o NZ Fishing News, PO Box 12-965 Penrose, or simply dialling 0900 KAHAWAI for a quick \$20 donation (or two) or visit [www.kahawai.co.nz](http://www.kahawai.co.nz).