

between: **New Zealand Big Game Fishing Council Inc**
Second Appellant

and: **The New Zealand Recreational Fishing Council
Inc**
First Appellant

and: **Sanford Limited, Sealord Group Limited, and
Pelagic & Tuna New Zealand Limited**
First Respondents

and: **Minister of Fisheries**
Second Respondent

and: **The Chief Executive of the Ministry of Fisheries**
Third Respondent

Memorandum of counsel for first respondents in response to
applicants application to file reply submissions

Dated: 4 September 2008

Chapman Tripp *Barristers & Solicitors*

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Reference: B A Scott/G T Carter

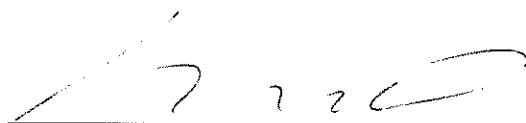
May it please the Court:

- 1 The first respondent has been served with a copy of reply submissions filed on behalf of the appellants. The submissions also contain an (informal) application for leave to file the same.
- 2 The first respondents oppose the application for leave to file reply submissions on the following grounds:
 - 2.1 The Supreme Court Rules 2004 do not make provision for the filing of reply submissions in the context of a leave application. While it is accepted that rule 20(5) provides the Court with jurisdiction to allow for reply submissions (whether on its own notion or by application), the appropriate course was for the appellants to apply for leave first, rather than filing the reply submissions and informally seeking leave in the body of that submission;
 - 2.2 The application seems to suggest that reply submissions can be justified in part on the basis that the New Zealand Recreational Fishing Council Inc. have only just been joined as a further appellant in this appeal (see para 3). However, the joinder application was expressly made on the basis that the New Zealand Recreational Fishing Council Inc wished to appeal "on the same basis" as that contained in the New Zealand Big Game Fishing Council's notice of application and the legal submissions that had already been filed (see para (e) of application for leave to extend time to appeal, dated 22 August 2008). The first respondents consented to the joinder in part on the basis that no further grounds for appeal or submissions were going to be advanced by the additional appellant;
 - 2.3 The submissions also suggest that reply submissions can be justified on the basis that "*some factual context may assist in illustrating the relevance and importance of the legal issues advanced in the application for leave*" (see para 5). However, the Rules require such factual matters to be identified in the succinct narrative of facts in the appellants' initial written submission (see rule 20(2)(a)). In fact the primary factual matter now advanced was developed by the appellants in their earlier legal submissions (see paragraph 12 and the end of paragraph 34). In that sense, the reply submission is simply trying to elaborate on what has already been covered more generally in the earlier submissions;
 - 2.4 Finally, the factual matters put forward by the appellants as uncontested facts, are not accepted. In particular it is, with respect, misleading to suggest that it is "*uncontested*" that 7 out of 8 recreational fishing boats surveyed in the Hauraki Gulf during 2004

did not catch a single kahawai (see para 6). This ignores the fact that most recreational fishers' fishing from boats in the Hauraki Gulf are not targeting kahawai. Rather they target species such as snapper, which are caught using a completely different method and gear (kahawai are generally targeted by trolling or spinning on the surface, whereas snapper are generally targeted by bottom fishing using a line and baited hook). It is therefore unsurprising that most did not catch any kahawai when they were not attempting to do so.

- 3 The first respondents, therefore, oppose the application for leave by the appellants to file their reply submissions.

Dated 4 September 2008



BA Scott / GT Carter
Counsel for the respondents