

**November 2006**

## **THE KAHAWAI LEGAL CHALLENGE BACKGROUND**

- A High Court challenge of the Minister of Fisheries kahawai decisions.
- Fishing for food and fun is a national pastime and a heritage.
- This is a right we must protect for our children's sake!

### **THE OBJECTIVE**

The Legal Challenge seeks to clarify how the Minister of Fisheries should be making decisions in **all shared fisheries**, not just kahawai. The primary goal is to achieve a rapid rebuilding of kahawai stocks.

### **THIS IS A LANDMARK CASE**

For the first time, recreational fishing organisations have joined together to take legal action to protect the public's fishing rights. The NZ Big Game Fishing Council and the NZ Recreational Fishing Council, supported by option4 and Ngapuhi, have asked the High Court to rule on the nature and extent of recreational fishing interests when setting allowances for non-commercial fishing. The case will be heard in the Auckland High Court from November 6<sup>th</sup> 2006. Recreational fishers are being represented by Hesketh Henry Lawyers and barrister, Alan Galbraith QC.

### **WHY THE KAHAWAI DECISIONS ARE INEQUITABLE**

The kahawai fishery has gone from being an abundant "people's fish" to being exported for crayfish bait, fish meal and other low value products. As a result kahawai are now smaller and less available to traditional, customary and recreational fishermen fishing for food. The Challenge says that those who caused the depletion need to take the cuts to rebuild the fishery. Commercial fishers have lodged a counterclaim seeking to reduce the recreational allowance and increase their share.

### **HOW DID THIS HAPPEN?**

Kahawai were left out of the Quota Management System in 1986. Industrial scale targeting of kahawai schools by the purse seiner fleet, assisted by spotter planes, occurred as the fishing industry race to catch as much fish as possible for kahawai quotas were set. Despite a small reduction in purse seining, whole schools of kahawai were still being taken every set. It is estimated over forty million kahawai have been scooped out of the water.

### **WHAT ABOUT OTHER SPECIES**

A decision from the court is likely to influence future allocation and management decisions for snapper, terakihi, gunard, john dory, hapuku, crayfish, paua, blue cod, kingfish, shellfish and other important shared fisheries. It is also expected that the outcome of the case will be relevant to the forthcoming Shared Fisheries Review by the Ministry of Fisheries.

### **A HEROIC AND UNITED EFFORT**

Legal costs alone are estimated to exceed \$350,000. The NZBGFC and key option4 supporters have made sizeable donations. The public has donated and helped

distribute information as have a number of commercial and professional organisations and individuals. Website [www.kahawai.co.nz](http://www.kahawai.co.nz)

## **A TIMELINE**

### **2004**

**January:** Ministry of Fisheries issue proposals for the introduction of kahawai into the Quota Management System.

**April:** Submission from non-commercial fishers (NZBGFC, option4 and the NZ Angling and Casting Association) filed with Ministry of Fisheries regarding MFish proposals for the introduction of kahawai into the Quota Management System.

**August:** Minister issues his decision regarding the catch limits for kahawai.

**Sept:** Non-commercial fishers seek legal advice on Ministers decision.

### **2005**

**July:** Ministry of Fisheries release further proposals for the allocation of kahawai.

**August:** Submission filed with Ministry of Fisheries regarding MFish proposals for the allocation of kahawai challenging the Ministers kahawai decisions. Judicial review proceedings filed in High Court by the NZBGFC and NZRFC, challenging the Minister's kahawai decisions.

**Dec:** Commercial fishers file counterclaim challenging the Minister's 2005 kahawai decisions.

### **2006**

**May:** Adjournment requested

**June:** New hearing date set down for November 6<sup>th</sup> in Auckland High Court

## **RELATED ACTIVITY.**

### **Hokianga Accord**

Formed in 2005 the Hokianga Accord is a gathering of Maori and non-Maori people in the north determined to achieve the best fisheries management and marine protection outcomes for fishing and environmental interests. Ngapuhi acknowledge that most of their fishing to feed their families (whanau) rests in their recreational fishing interest. In addition, the realisation that Maori are not out to take all the fish from the rest of New Zealand has given non-Maori the assurance to continue to develop the relationship. The common goal is ***"More fish in the water"*** "Kia maha atu nga ika i roto te wai"

Recreational representatives and organisations including option4, the New Zealand Big Game Fishing Council and the New Zealand Recreational Fishing Council have also participated in the hui.

For more information on the Hokianga Accord please visit  
<http://www.HokiangaAccord.co.nz/>

**The next hui of the Hokianga Accord is on November 16<sup>th</sup> and 17<sup>th</sup> at Whakapoumahara Marae, Whananaki, Northland. Please check the Hokianga Accord website for further details.**

### **Shared Fisheries Policy**

The Ministry of Fisheries has initiated the Shared Fisheries Policy project in late 2005. This is the latest attempt to reform the law and define how much fish each sector can take. The non-commercial fishing sector, including tangata whenua, are determined to be fully involved to ensure the Policy addresses long-standing concerns over allocation and management in shared fisheries, where both commercial and non-commercial fishers have an interest.

More information on the Shared Fisheries Policy is available at  
[http://option4.co.nz/Fisheries\\_Mgmt/sharedfisheries.htm](http://option4.co.nz/Fisheries_Mgmt/sharedfisheries.htm)