

Kahawai Challenge Team

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Having had the benefit of six months' consideration of the High Court's decision of the Kahawai Legal Challenge, it has become obvious that the ruling offers the Minister of Fisheries far more protection from fishing industry claims than was first realised.

In March Justice Rhys Harrison agreed that the Ministry of Fisheries (MFish) had poorly advised their Minister, which led to flawed allocation decisions for kahawai. The Minister was directed to make fresh decisions taking into account the matters raised by the High Court.

To prevent any management changes until after the February 2008 Appeal Court hearing, industry supported by MFish, successfully applied to the High Court and obtained a stay. This means there will be no changes until after the Appeal Court decision has been delivered later next year.

The outcome of the judicial review of the Minister's 2004 and 2005 kahawai decisions was a 'win' for our fisheries as it confirmed that:

- a. Sustainability is the bottom line and must be the Minister's ultimate objective; and
- b. Every man, woman and child in Aotearoa has a well settled common law right to fish to provide for their needs.

Sustainability was always meant to be the bottom line. However, history has proven that previous Ministers have often been the losers in court battles against litigious corporate fishing interests who have other objectives.

The inability of scientists to develop adequate fish-counting techniques has added more uncertainty to the equation. Not that this problem is unique to New Zealand, it's a worldwide issue. What differentiates NZ is that fisheries in our quota system are run on a 'knife-edge,' with little margin for error if we make a mistake.

Moreover, there are different rights that need to be considered. Firstly there are customary rights that belong solely to tangata whenua. Next the non-commercial recreational right, the well settled right that Justice Harrison so clearly described in his judgment. Lastly there are the commercial rights, if any. The Court recognised that it was open for the Minister to make a zero allocation to commercial fishers with the unambiguous statement that, "*It would be open to him or her [the Minister] to set the TACC [total allowable commercial catch] at zero but not the allowance for recreational fishers*".

Sustainability is the first consideration followed by the mandatory need to consider the ability of people to provide for their social, economic and cultural wellbeing. Justice Harrison described wellbeing as "the state of people's health or physical welfare".

Whether the Minister chooses to stand for or behind the High Court judgment it appears to offer the best defence against those whose preference is pushing the balance of risk in favour of maximum current utilisation rather than sustaining our fisheries for the long term.

Legal costs are expected to be around \$80,000 to defend this historic win. Visit www.kahawai.co.nz or call 0800 KAHAWAI (0800 52 42 92) to find out how you can contribute to protecting your children's future right to 'fish for a feed'.