



Supreme Court of New Zealand

28 May 2009

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

NZ Recreational Fishing Council Inc and NZ Big Game Fishing Council Inc v Sanford Ltd and Ors and the Minister of Fisheries and Anor
(SC 40/2008) [2009] NZSC 54

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.

A majority of the Supreme Court has dismissed an appeal brought by two associations of recreational fishers against decisions of the Minister of Fisheries in the administration of kahawai fisheries. Kahawai is a species which is subject to the quota management system. The New Zealand Recreational Fishing Council Inc and the New Zealand Big Game Fishing Council Inc had sought judicial review of decisions made in 2004 and 2005 by the Minister of Fisheries setting the total allowable catch and the total allowable commercial catch for kahawai in several quota management areas, one of which includes the Hauraki Gulf Marine Park. The Minister and commercial fishing interests opposed the appeal.

Under fisheries legislation the Minister of Fisheries must set the total allowable catch for species subject to quota management at a level which ensures the continuing sustainability of the fish stock in the area concerned.

The majority judgment outlines the basis on which the Minister must make an allowance allocating part of the total allowable catch for a species to recreational fishing interests, in the course of deciding what portion of the total allowable catch is to be the total allowable catch for commercial interests. The legislation does not give recreational fishers any priority over commercial fishers in this exercise but the allowance for recreational fishing must be a reasonable one in all the circumstances. The commercial fishers' interests which will be affected must, however, also be kept in mind. Within these parameters the Minister is able to make policy choices in deciding how much of the total allowable catch is to be allocated to the competing fishing interests.

The Chief Justice dissented, saying that the Fisheries Act did not contemplate specific allocations of parts of the fish resource among the interested groups. The Minister should simply deduct his or her estimate of the catch of non-commercial fishing interests, and other fish mortality, from the total allowable catch and then set the total allowable commercial catch from the balance of the total allowable catch, according to what is thought appropriate.

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