

## **Kahawai Challenge Team**

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### **Supreme Court decision – a loss for non-commercial fishing interests**

The Supreme Court kahawai appeal brought by the New Zealand Big Game and Recreational Fishing Councils has been dismissed by a majority decision delivered on May 28<sup>th</sup>. Four of the five judges ruled in favour of the commercial fishers' arguments. Chief Justice Sian Elias dissented. She would have allowed the appeal and even suggested the majority decision was 'misconceived'.

On a bright note, the Court did not award costs against the unsuccessful appellants, which is a departure from their normal approach. This is good news given the current shortfall between the total costs of the Kahawai Legal Challenge and income donated by clubs, businesses and individuals.

A collective thank you goes to everyone who has donated or given their time, energy and resources to this worthy project. Please donate by visiting [www.kahawai.co.nz](http://www.kahawai.co.nz) or call Trish Rea on 0800 KAHAWAI (0800 52 42 92) for more information.

### **Court decision**

Both Councils have been well supported throughout the four-year Challenge by option4, Ngapuhi and Ngati Whatua, many other non-commercial fishing interest groups and individuals. All are disappointed at the outcome.

In particular, the Court's ruling that the Minister can make a policy decision and has the discretion, provided he is well informed and reasonable, to give priority to either commercial or non-commercial fishing interests.

It is difficult to fathom that any government policy would deny its own people access to important inshore fisheries in favour of exporting fish for minimal monetary returns.

Does a crayfish in Australia have more priority to our kahawai than a Kiwi who stands on the beach all day waiting to catch a fish for his kids' dinner?

Both interests must be considered when the Minister is setting the total allowable commercial catch (TACC) for a fish stock under section 21 of the Fisheries Act. The Court did acknowledge that there is provision for the Minister to set the TACC at zero but such decision would be subject to the test of reasonableness, which is a high hurdle in legal terms.

### **What now?**

Unaffected by the Supreme Court's decision is the earlier High Court ruling that the Minister failed to address Ministry proposals for regulations intended to reduce recreational catch of kahawai by twenty five percent.

Next year's review of kahawai stocks will need to incorporate these proposals. Earlier Ministerial advice meant a reduction in daily kahawai limits from 20 to a bag of three or four in some areas. Any such proposal will have a severe effect on people who fish to sustain their families.

Ultimately the ruling casts the weight of deciding who has priority squarely on the Minister's shoulders. This means Phil Heatley and future Ministers will continue to be subjected to lobbying and persuasion.

Well-meaning volunteers struggle to defend the public's non-commercial interests in conservation and fisheries when up against the might and resources of a powerful industry.

The public need and deserve abundant fisheries to provide for their social, economic and cultural well-being, especially in these difficult economic times. Let's hope the Minister is not deafened to these calls by industry lobbyists beating a path to his door.