

## **Kahawai Challenge Team**

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### **More fish in the water or corporate profits?**

It has been interesting to read the different reactions to the Supreme Court's judgment of the kahawai appeal brought by the New Zealand Big Game and Recreational Fishing Councils. The Court released its decision on 28 May 2009, with a majority of the judges (four to one) disallowing the appeal by recreational fishers.

A variety of fishing industry representatives have been celebrating their success, while some Ministry of Fisheries staff seem to think next year's review of kahawai stocks will be relatively straightforward. Added to this have been various interpretations by non-commercial fishers.

### **Supreme Court judgment**

Clarification was sought from the Courts as to how the Minister of Fisheries ought to 'allow for' non-commercial fishing interests when setting the total allowable commercial catch (TACC) for a fishery.

In the Court's opinion, ultimate discretion rests with the Minister as to the level of total allowable catch (TAC) and how he apportions the catching rights.

When setting the TAC, the Minister may choose to maintain stock size above the level that can produce maximum sustainable yield. For most fisheries, management at a level above MSY equals greater numbers and larger, older fish.

This means the Minister has the flexibility to leave more fish in the water.

Both the minority and majority decisions of the Court were clear that the TAC must be set first, and is concerned with ensuring sustainability of the fisheries resource.

When setting the TACC, the Minister may also decide to favour non-commercial interests when setting allowances, but in doing so, he must keep commercial interests in mind.

The Court did not agree with arguments from non-commercial fishers, that the utilisation aspect of the purpose – the need to manage fisheries sustainably to enable people to provide for their social, economic and cultural well-being - expressly guides all decision-making under the Act.

However, an assessment of the 'three well-beings' would seem to be necessary if the Minister was to be properly informed. In this regard the majority decision also held that "the notion of people providing for their wellbeing, and in particular their social wellbeing, is an important element of recreational interests".

### **Positive outcomes**

The Supreme Court has provided a binding ruling on how the relevant provisions of the Fisheries Act should be applied. This clarification will assist all fishing interests.

The Kahawai Challenge proceedings was the first time recreational fishers have fully engaged in the legal process to help define their rights and fight for their interests. The needs and aspirations of thousands of amateur and sustenance fishers were put clearly before the High Court, Court of Appeal, and finally the Supreme Court.

Non-commercial fishers, both Māori and non-Māori, have learnt some important lessons about the judicial system and decision-making processes, which will be put to good use in the future.

Next year's review of kahawai management will be a good indication of where the Minister of Fisheries' priorities lie. Either with the people who want more fish in the water and a few fish to feed their whānau, or corporates seeking to make a quick buck from our precious fisheries.

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