

The Kahawai Legal Challenge – what was that about?

Kahawai schools were prolific in coastal waters around New Zealand, but by the 1990s they had been fished out. In many areas stocks of the “people’s fish” failed to rebuild. Kahawai was the last major inshore species to be introduced into the Quota Management System. Both inadequate advice from officials and the fisheries Minister’s 2004 management decisions were the catalyst for unprecedented public opposition. The 4-year Kahawai Legal Challenge started in the High Court and ended in the Supreme Court in 2009.

The unofficial policy of decreasing recreational allowances and commercial quota by the same proportion – treating recreational fishers as if they were quota holders – was a bridge too far for many people. It was unjust that public catch was being sacrificed as a result of commercial overexploitation by industrial harvesting, mostly purse seining.

The Supreme Court decision has been a game-changer, primarily in respect of the Minister’s obligations when considering recreational interests and allowances. In 2012 management objectives have not been determined in many fisheries because officials are still deciding how to set stock targets and how to ‘allow for’ recreational interests, as per the Court’s ruling.

Highs and lows of Court action

In 2006 the Kahawai Legal Challenge team argued in Court that recreational fishing interests consisted of much more than just recent catch history. Specifically, that the Minister must consider people’s broad social, economic and cultural wellbeing. The 2007 High Court decision was a comprehensive win. Full costs were awarded against the Crown, which they promptly paid.

Sanford and Sealord appealed. The hearing was held in Wellington, in February 2008. This time the Crown switched sides and supported the NZ Sport Fishing Council and recreational fishers. The June 2008 Court of Appeal decision overturned some of the earlier ruling, but was largely a no-result.

Recreational fishers successfully appealed and the Supreme Court hearing was held in February 2009. Interestingly, the Crown switched sides again and this time opposed the public’s interest.

In May 2009 the majority decision of the Supreme Court dismissed the appeal. However, in a reserved decision the Chief Justice gave a dissenting opinion in support of recreational fishers. The majority decision clarified public rights, ruling that:

1. The allowance for recreational fishing was not proportional – a Minister could provide more fish for the public and was not constrained by notions that commercial and recreational fishers had some sort of fixed shares in a Total Allowable Catch.
2. Recreational fishers had a right to quality fishing; providing for people’s social wellbeing was an important part of their ‘interests,’ and any allowance had to be reasonable.
3. The Minister could manage a stock at high abundance if he/she chose; indeed in the subsequent Court-ordered review the Minister chose to manage Kahawai stocks at more than 50% virgin biomass, to better provide for recreational fishing interests.

The Legal Challenge clearly proved that recreational fishers were able to foot-it with commercial interests when pushed. Fishing groups rallied wide support and combined resources to challenge the Minister’s decisions. Lessons were learnt; importantly we need to have a strong support base and adequate resources available to both secure the gains that have been made and strengthen our voice in RESEARCH, ADVOCACY and EDUCATION.

You can work TOGETHER with LegaSea and make it happen. Your contribution to LegaSea ensures the NZSFC is prepared for future management challenges to your rights and those of one million New Zealanders who class themselves as recreational fishers.