

The Manager- Hauraki Gulf Forum  
c/-Auckland Council  
Private Bag 92300  
**Auckland 1142**

24 March 2011

**Attention:** Tim Higham

### **Fishing the Gulf - Decision-Making by the Minister of Fisheries**

1. I write on behalf of *New Zealand Sport Fishing Council Inc* (formerly New Zealand Big Game Fishing Council) and *option4* who represent non-commercial fishing interests.
2. At the meeting of the Hauraki Gulf Forum on 4 May 2009 the Forum received a presentation from non-commercial fishing interests. Questions arose at the meeting as to whether the Ministry of Fisheries intended to do anything different in the light of the court decisions on the kahawai stock. At the time representatives for the Minister of Fisheries suggested Forum members wait for the outcome of an appeal (then before the Supreme Court).
3. In the final outcome the decision of Supreme Court in *New Zealand Recreational Fishing Council Inc v Sanford Ltd*<sup>1</sup> did not disturb the Court of Appeal's earlier findings on the Hauraki Gulf Marine Park Act (HGMPA) that:<sup>2</sup>
  - The Minister of Fisheries has a legal duty to have “*regard to*” sections 7 and 8 HGMPA when setting the *total allowable catch* (TAC) (the Minister had met this duty for kahawai).
  - The Minister of Fisheries has a legal duty to have “*particular regard*” to sections 7 and 8 HGMPA when fixing the *total allowable commercial catch* (TACC) for KAH1. The Minister of Fisheries was found to have failed to have particular regard to sections 7 and 8 HGMPA in setting the TACC for kahawai and this decision was therefore unlawful.<sup>3</sup>
4. The Minister of Fisheries made fresh management decisions for kahawai in 2010. However many other fish stocks in the Hauraki have not had the principles of the Hauraki Gulf Marine Park Act applied to their management. This is because many fish stocks have not

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<sup>1</sup> [2009] 3 NZLR 438 (SC).

<sup>2</sup> *Sanford Ltd v New Zealand Recreational Fishing Council Inc* [2008] NZCA 160

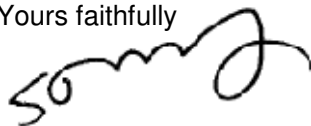
<sup>3</sup> when setting the total allowable commercial catch (TACC) the Minister is also required to make decisions which allow for non-commercial fishing interests-that is both recreational fishers and non-commercial customary Maori fishers.

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had fisheries decisions reviewed since 1986 i.e. prior to commencement of the Hauraki Gulf Marine Park Act. Of course the population of Auckland has grown considerably in the 25 years which has passed since introduction of the quota management system in 1986.

5. Following on from the court decisions in the kahawai case, the Forum released last year its own report "*Fishing the Gulf: Implementing the Hauraki Gulf Marine Park Act through Fisheries Management*".
6. In "*Fishing the Gulf*" it is noted:
  - a. There are a number of popular fishing stocks for which the biomass is currently described as "*unknown*".<sup>4</sup> In other words current catch levels in the Hauraki Gulf Marine Park are unsupported by reliable scientific assessments of sustainability (apart from estimates of catch per unit of effort).
  - b. *Fishing the Gulf* describes the trevally stock as being "*in decline*". Catch per unit effort is also described as declining for sand flounder.
7. Now there is finality to the kahawai litigation, New Zealand Sport Fishing Council and option4 wish to enquire through the Forum:
  - a. How does the Minister of Fisheries (as a forum member) intend to give effect to the Court of Appeal's direction to have regard/particular regard to the HGMPA when making fisheries management decisions for other fish stocks in the Hauraki Gulf Marine Park, and which have not been reviewed since entering the quota management system in 1986 (i.e. fish stocks other than kahawai)?
  - b. Whether the Ministry of Fisheries has any program to provide better scientific input to sustainability decisions for those fish stocks described as having "*unknown*" biomass in *Fishing the Gulf*?
  - c. Whether the Ministry of Fisheries has any prioritised action or review planned for trevally, described in *Fishing the Gulf* as being "*in decline*" in the Hauraki Gulf Marine Park? If the answer to this question is "no", then why not?<sup>5</sup>

Yours faithfully



**Stuart Ryan**  
Barrister

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<sup>4</sup> John dory, gurnard, flatfish (i.e. flounder), crayfish, kina, tarakihi, trevally, scallops, rig, and grey mullet.

<sup>5</sup> In the wider fishing management area FMA1 the TACC for trevally is consistently under-caught by commercial fishers (presently 57% caught). In other words commercial fishers are unable to catch their quota.