

**IN THE HIGH COURT OF NEW ZEALAND  
WELLINGTON REGISTRY**

**I TE KŌTI MATUA O AOTEAROA  
TE WHANGANUI-A-TARA ROHE**

**CIV-2019-485-752  
[2021] NZHC 2468**

UNDER	the Judicial Review Procedure Act 2016
IN THE MATTER OF	an application for judicial review under sections 13 and 20 of the Fisheries Act 1996
BETWEEN	ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NEW ZEALAND INCORPORATED Applicant
AND	MINISTER OF FISHERIES First Respondent
	FISHERIES INSHORE NEW ZEALAND LIMITED Second Respondent
	TE OHU KAI MOANA TRUSTEE LIMITED Third Respondent

On the papers:

Counsel: S R Gepp for the Applicant  
N C Anderson and K F Gaskell for the First Respondent  
B A Scott and J Moran for the Second Respondent  
J P Ferguson for the Third Respondent

Minute: 20 September 2021

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**JUDGMENT OF GWYN J  
(Variation of stay judgment)**

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[1] On 16 June 2021 I gave judgment in this proceeding (the judgment).<sup>1</sup> The applicant in the substantive proceeding, Royal Forest and Bird Protection Society of New Zealand Incorporated (Forest & Bird), had originally sought orders setting aside the decisions of the first respondent, the Minister of Fisheries (the Minister), made under the Fisheries Act 1996 (the Act) relating to the total allowable catch (TAC) and consequentially the total allowable commercial catch (TACC) for East Coast tarakihi fish stocks (the 2019 Decision).

[2] The second respondent, Fisheries Inshore New Zealand Limited, has appealed the judgment and sought a stay of the judgment pending the outcome of the appeal. On 1 September 2021 I granted a stay of that part of the judgment which required the Minister to make a decision in relation to the TAC and TACC for East Coast tarakihi fish stocks with effect from 1 October 2021, until the Minister has received and considered the anticipated updated East Coast tarakihi stock assessment (the stay judgment).<sup>2</sup>

[3] In the stay judgment I invited counsel for the Minister to submit a memorandum as to the period that will be necessary for the Minister to consider that updated stock assessment.

[4] The memorandum filed on behalf of the Minister advises that the updated stock assessment is due to be completed in early November 2021, and it would be possible for the Minister to make decisions based on the updated assessment, following engagement with tangata whenua and consultation on options, as soon as July 2021.

[5] While acknowledging that this timeframe is possible, the memorandum notes that it would require that the East Coast tarakihi stock be considered on a different schedule from other stocks in the annual October sustainability round. It would also reduce the time available for the input and participation of tangata whenua in the

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<sup>1</sup> *Royal Forest and Bird Protection Society of New Zealand Inc v Minister of Fisheries* [2021] NZHC 1427.

<sup>2</sup> *Royal Forest and Bird Protection Society of New Zealand Inc v Minister of Fisheries* [2021] NZHC 2282.

decision-making process. Importantly, any new decision could in any event only be implemented from the start of the next fishing year on 1 October 2022.<sup>3</sup>

[6] Accordingly, counsel submits that a standalone process for East Coast tarakihi would not provide any discernible benefit. The Minister proposes that, instead, the Minister's decision in relation to the East Coast tarakihi stock be included as part of the October 2022 sustainability round, rather than a standalone, expedited process, with the Minister to make a decision to take effect from 1 October 2022.

[7] The second and third respondents support the Minister's proposal. Forest & Bird says that such an approach is at least implicitly inconsistent with the stay judgment, which granted a stay until the Minister had received and considered the updated stock assessment.

[8] I acknowledge Forest & Bird's submission that the Minister's proposed approach exceeds the period necessary for him to consider the updated stock assessment. However, in view of the fact that no new TAC/TACC decision for East Coast tarakihi could be brought into effect until 1 October 2022 in any event, and having regard to the advantages of including East Coast tarakihi in the established process and timetable for decision-making for October stocks, I agree to the Minister's proposal.

[9] Accordingly, the conclusion at [96] of the stay judgment is amended as follows:<sup>4</sup>

[96] I grant the application for a stay of that part of the judgment at [218] and [219], which required the Minister to make a decision in relation to the TAC and TACC for the East Coast tarakihi fish stocks with effect from 1 October 2021, until 1 October 2022, to enable the Minister to receive, consider and consult on the updated East Coast tarakihi stock assessment.

[10] The memorandum on behalf of the Minister also notes that the Minister is proceeding on the basis that the 2019 Decision is to continue in effect for the fishing year commencing 1 October 2021, pursuant to ss 13(1) and 20(1) of the Act. That

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<sup>3</sup> Fisheries Act 1996, s 13(6).

<sup>4</sup> *Royal Forest and Bird Protection Society of New Zealand Inc v Minister of Fisheries*, above n [2].

position is consistent with the judgment, which did not quash the 2019 Decision, but directed that it have continuing effect pending the decision to be taken by the Minister, with effect from 1 October 2021.<sup>5</sup> As a result of this judgment, the 2019 Decision continues in effect until 1 October 2022.

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**Gwyn J**

Solicitors:  
Royal Forest and Bird Protection Society, Peter Anderson  
Crown Law, Wellington  
Chapman Tripp, Wellington  
Kāhui Legal, Wellington

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<sup>5</sup> *Royal Forest and Bird Protection Society of New Zealand Inc v Minister of Fisheries*, above n 1, at [218].