



Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

11 APRIL 2024

## **MEDIA RELEASE**

**SEAFOOD NEW ZEALAND LIMITED v ROYAL FOREST & BIRD PROTECTION SOCIETY OF NEW ZEALAND INCORPORATED AND OTHERS**

(SC 99/2023)

**Hearing in the Supreme Court Tuesday 23 April – Wednesday 24 April 2024**

## **CASE HISTORY SYNOPSIS**

This synopsis is provided to assist in understanding the history of the case and the issues to be heard by the Court. It does not represent the views of the panel that will hear the appeal in the Supreme Court.

### **Background**

This appeal concerns the exercise of the power under s 13 of the Fisheries Act 1996 for the Minister of Oceans and Fisheries to set a total allowable catch (TAC) and total allowable commercial catch in respect of fish stocks that are subject to the quota management system. The proceedings arise from the Minister's 2019 decision setting a TAC for the East Coast tarakihi stock, which represents the majority of the tarakihi catch in New Zealand. Royal Forest & Bird successfully challenged that decision in judicial review proceedings in the High Court, to which Fisheries Inshore New Zealand Ltd (now Seafood New Zealand Ltd) and Te Ohu Kai Moana Trustee Ltd were joined as respondents.

The dispute centres on what considerations the Minister should and should not have taken into account when setting the TAC. That question turns on the interpretation of s 13(2)(b) and (3)—specifically, whether the Minister may take into account social, cultural and economic considerations when determining a “period appropriate to the stock”—within which stock levels should increase to a level capable of producing the maximum sustainable yield—under s 13(2)(b)(ii), or may only consider scientific factors; whether that determination is separate from the Minister's determination of the “way and ... rate” of restoring stock levels under s 13(2)(b)(i); and whether an industry rebuild plan (IRP) is a relevant consideration in determining the appropriate period under s 13(2)(b)(ii). There is a further question regarding whether the Harvest Strategy Standard (HSS), a document produced by Fisheries New Zealand, was an implicit mandatory relevant consideration, specifically in respect of a default probability threshold for rebuilding fish stocks.

On 16 June 2021, the High Court upheld four of Royal Forest & Bird's causes of action, including those which give rise to the issues in this appeal.

On 10 August 2023, a majority of the Court of Appeal upheld the High Court’s decision, holding that ss 13(2)(b)(i) and (ii) involve distinct determinations, the latter of which (concerning the “period appropriate to the stock”) must be made by reference only to the scientific factors specified in sub-paragraph (ii); that the IRP was an irrelevant consideration under s 13(2)(b)(ii); and that the HSS set a default probability threshold of 70 per cent which was an implicit mandatory consideration for the Minister under s 13(2)(b)(ii).

### **This appeal**

The approved question on appeal to the Supreme Court is whether the Court of Appeal was correct to dismiss the appeal brought by Fisheries Inshore New Zealand Ltd.

The issues on appeal are substantially the same as those in the Court of Appeal:

- (a) Whether the Minister’s determination of the “period appropriate to the stock” under s 13(2)(b)(ii) is separate to the “way and ... rate” determination under s 13(2)(b)(i), and whether the Minister may take into account social, cultural and economic factors when making the former determination;
- (b) Whether the IRP was an irrelevant consideration; and
- (c) Whether the HSS set a default probability threshold constituting a mandatory relevant consideration for the Minister to take into account when setting the TAC.

### **Viewing of hearing**

This hearing of the appeal will be live-streamed. Details about access to the live-stream and the conditions of access will be posted on the [Courts of New Zealand website](#) shortly before the hearing. No recording is permitted.

### **The panel**

The Hon Justice Kós	The Hon Justice Glazebrook	The Rt Hon Chief Justice Winkelmann	The Hon Justice Williams	The Hon Justice Miller
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Judges as seen from the public gallery

### **Counsel**

- Seafood New Zealand Limited (Appellant): *B A Scott and A Kraack*
- Royal Forest & Bird Protection Society Incorporated (First Respondent): *S R Gepp and M C Wright*
- Minister for Oceans and Fisheries (Second Respondent): *N C Anderson and K F Gaskell*
- Te Ohu Kai Moana Trustee Limited (Third Respondent): *J P Ferguson*

### **Sitting hours**

Court will begin at 10:00am and conclude at 4:00pm with adjournments taken from 11:30am to 11:45am and from 1:00pm to 2:15pm. There is no afternoon adjournment.

## Enquiries

Any enquiries about the hearing should be directed via email to [supremecourt@justice.govt.nz](mailto:supremecourt@justice.govt.nz). While attending the hearing, enquiries can also be directed to the Court Registry, which is located outside the main courtroom in the Supreme Court foyer.

Contact person:

Sue Leaupepe, Supreme Court Registrar (04) 914 3613

Court of Appeal decision: [\[2023\] NZCA 359](#) (10 August 2023)

Supreme Court leave decision: [\[2023\] NZSC 154](#) (23 November 2023)



