[2019] IEHC 677

THE HIGH COURT
JUDICIAL REVIEW

[2019 No. 639 J.R.]

BETWEEN

IRISH COASTAL ENVIRONMENT GROUP COASTWATCH CLG

APPLICANT

AND

THE SEA FISHERIES PROTECTION AUTHORITY,
THE MINISTER FOR AGRICULTURE, FOOD AND THE MARINE,
IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

AND

SOUTH EAST REGIONAL INSHORE FISHERIES FORUM

NOTICE PARTY

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 18th day of September, 2019

1. This application concerns the legality of dredging for razor clams (*Ensis siliqua*) in Waterford estuary. What is before the court is a leave application alongside an injunction application on notice, with a complex legal and factual background.

Legislative background to the decisions at issue

2. Regulation 3 of the Razor Clam (Conservation of Stocks) Regulations 2015 (S.I. No. 206 of 2015) provides that: "*The master or person in charge of a sea-fishing boat fishing for razor clams within the internal waters or territorial seas shall: (1) not fish for or attempt to fish for razor clams outside of a classified production area; (2) not fish for or attempt to fish for razor clams in more than one class of classified production area on any one day."*

3. Regulation 2 of the regulations provides *inter alia* that: "'classified production area' *means an area classified by the Authority in accordance with Chapter II, Annex II of Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004*" and that "'Authority' *means the Sea-Fisheries Protection Authority."*

4. The European legislation referred to, regulation EC No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption, provides in art. 6 that: "*Member States shall ensure that the production and placing on the market of live bivalve molluscs, live echinoderms, live tunicates and live marine gastropods undergo official controls as described in Annex II."* Production in this context obviously means harvesting, or fishing.

5. Annex II paras. A 1 – 3 onwards provide that the competent authorities shall specify the production areas and then classify them on the basis of the "*level of faecal contamination*" (para. A 2) and the amount of E. coli detected in samples (see para. A 3 onwards).

6. The "*competent authority*" for the purposes of the EU regulation is the first-named respondent. This is clear from the European Communities (Hygiene of Fishery Products

and Fish Feed) Regulations 2006 (S.I. No. 335 of 2006). Regulation 3 provides that the Minister is to be the competent authority for the purposes, *inter alia*, of regulation 854/2004, but reg. 18 transfers that function to the Sea-Fisheries Protection Authority on the establishment day under s. 40 of the Sea-Fisheries and Maritime Jurisdiction Act 2006.

Facts as alleged by the applicant

7. The following is an outline of the facts as alleged by the applicant for the purposes of the leave application. While, very helpfully and at the court's request, some limited input has been made to these facts from the respondents, the following statement of facts should not be taken as necessarily being accepted by them or indeed by the court, as that must await consideration of the respondents' affidavits in due course.

8. On 21st August, 2009 the Marine Institute produced a document entitled "Interim Assessment (Regulation 31) of the Impact of Clam Fishing on the Conservation Status of Waterford Estuary SAC". That was in the context of a proposal for fishing for surf clam, primarily by box dredging. Regulation 31 refers to the European Communities (Natural Habitats) Regulations 1997 (S.I. No. 94 of 1997), implementing the Habitats Directive 92/43/EEC, which required an appropriate assessment for the carrying out of certain works. The 1997 regulations have now been replaced by the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011). The applicant contends that it is notable that this interim assessment did indicate that further assessments of impacts on the European site, which is part of the area concerned here, were required; and by analogy the applicant argues that similar points could be made in the present instance in relation to razor clams. The applicant also makes the point that the surf clam dredging considered in the 2009 assessment was apparently not within the special area of conservation (SAC) at Waterford estuary, whereas here part of the dredging operation is within the SAC and the remaining part is adjacent to it.

9. In April, 2011, what was described as version 1 of "Conservation Objectives - River Barrow and River Nore SAC" was published, and a further version was published on 19th July, 2011.

10. In July, 2015, the Marine Institute produced a draft art. 6.2 (Habitats Directive) risk assessment entitled "The Effects of Fisheries on Qualifying Interests in Special Areas of Conservation in Irish Coastal Waters, Version 2.0". I am told that the purpose of that document was to comply with the ongoing obligations under art. 6(2) of the Habitats Directive and the document was not produced in the context of a specific development consent. That document states at para. 13.1.5.1 that "*Razor clam beds may occur in …, River Barrow and Nore, …SA[C]. No surveys to identify the extent of these beds have been undertaken. No fisheries for razor clams occur in any of these sites and these areas are not classified for the production of razor clams."* It also states that razor clam fishing poses a high risk to *Zostera* (sea grasses) and the sedimentary communities "*where the fishery footprint is substantial"*. The point made by the applicant in relation to the activity we are dealing with here is that dredging is not just a matter of removing individual shellfish. It is, the applicant submits, a process of disturbing the whole seabed.

11. The risk assessment did envisage razor clam fishing to a limited extent by saying that "*any development of razor clam fishing or cockle fishing in sedimentary communities in SACs in the Reen Pt to Carnsore Pt region should be balanced with the capacity of these communities to recover from impacts caused by the fishery*". However, that appears to be something of a general statement covering a large geographical area. It is not altogether clear from the face of the document whether it is a draft or an adopted document, and if an adopted one, exactly when it was adopted.

12. On 9th February, 2016 the River Barrow and River Nore SAC was apparently designated. That includes much of Waterford estuary, and the boundary line of the SAC seems to include some but not all of the razor clam distribution in Harrylock Bay.

13. In 2016 the Marine Institute conducted an "Assessment of the Impacts of Hydraulic Dredging on Sedimentary Habitats in the Irish Sea", which stated that *"Preliminary findings, from multivariate statistical analysis of the seafloor faunal data, indicated significant differences in faunal communities in areas which had received <5hrs of fishing compared to areas which had received >5hrs of fishing in the previous 6 months. The preliminary findings of the study indicate that seafloor faunal communities are affected by fishing for razor clams and that this is related to the intensity of fishing effort these areas have received in previous months. The ecological significance of the changes, especially with respect to conservation objectives for sedimentary habitats and bird species using these habitats, needs to be assessed."* Reliance was placed on this document by the applicant on the basis that the 2015 risk assessment cannot be regarded as the final word on the question of risk.

14. On 16th March, 2018, a minute was prepared by Mr. Brian Nolan, Sea-Fisheries protection officer, to Mr. Michael O'Mahony, authority member, proposing a decision to classify the area as a fishing ground. This was not exhibited formally but was handed up to the court, although no doubt the authority will exhibit it in due course. This document is headed "Preliminary Classification of Harrylock Bay Razor Clam Fishery". The document in itself purports only to be a proposal for a decision and it remains to be seen precisely what legal form any subsequent decision in fact took. The minute went on to say "*it is suggested that transmission of the decision will be via the SFPA website on the classified shellfish production areas page and should also be communicated to the MSSC members*". MSSC refers to the Mollusc and Sea Fish Safety Committee, which is a forum of various interests that meets on a quarterly basis. The minute does not appear to define the areas concerned as required by Annex II of the regulation. There is a map included in it but that in itself is not a definition of an area, it is simply headed *"razor clam distribution within Harrylock Bay protection area".* Annex II, art. A 1 requires the competent authority to "*fix the location and boundaries of production and relaying areas that it classifies".* This document does not appear to have been published on the authority's website.

15. In December, 2018, the Marine Institute published a document "Protocols and Indicators for Opening a New Fishery for Bivalve Molluscs", Version 1.0. Page 3 notes the need for

fishery management plans incorporating environmental objectives, particularly regarding risks within European sites. Page 6 sets out at para. 3J that: "*when sampling for classification has been completed and the management plan has been published the SFPA will notify the NIFF [National Inshore Fisheries Forum] BWG [Bivalve Working Group] IMG [Inshore Management Group] and the laboratories responsible for biotoxin and microbiological sampling, that the site has been officially classified for the relevant species".*

16. On 25th July, 2019, a fishery management plan for Waterford estuary razor clams was drafted by the Marine Institute and the South-East Razor Clam Association. That stated that the Waterford estuary had been classified for the production of razor clams. Going back to the question about the lack of definition of the boundaries, one issue raised by the applicant was that the map of distribution of razor clams in this document is different to that in the earlier preliminary decision. The applicant wrote to Bord Iascaigh Mhara (BIM) stating that it had been made aware of the draft plan, but saying "*At no notice we found no appropriate assessment of this planned activity online and when we asked the SFPA yesterday they were no aware of any. It is our belief that this dredging would be illegal without full compliance with EU Article 6.3 [of the Habitats Directive]".* The applicant went on to say "*we also think that planning such a fishery without full public information and participation in the decision-making process is of high concern".*

17. This email described the plan as a draft, and again it is not altogether clear on its face what its precise status is. BIM replied to the applicant on 26th August, 2019 stating "*we included the prospect of a razor fishery in Waterford in the 2015 risk assessment. We categorised it as a low to moderate risk to fine sand habitats"*. Attached was material from Dr. Oliver Tully of the Marine Institute, noting that the risk assessment had stated that "*any development of razor clam fishing or cockle fishing in sedimentary communities in SACs in the Reen Pt to Carnsore Pt region should be balanced with the capacity of these communities to recover from impacts caused by the fishery. This risk is mitigated by the limits (TAC) set out in the management plan which limits outtakes to 10 to 15% of biomass annually".* Part of the applicant's complaint now is that in fact not everything was looked at in 2015. The authority has produced a code of practice for the monitoring of biotoxins, which apparently provides that if someone wants to fish in a classified area they have to submit samples which will then be analysed. If the samples pass muster the site is classified as open.

18. On 26th August, 2019, the authority website was amended to include a statement that Waterford harbour was "*open*" for *Ensis siliqua* until 30th September, 2019, although, somewhat contradictorily, it also allowed for further samples to be submitted until 14th October, 2019. Individual areas are only open for limited periods of time because there has to be ongoing monitoring. The nature of the website is a rolling live website rather than the publication of specific bulletins, so there was no specific notification of this decision, and interested parties would have to check the website on an ongoing basis to find out if there was going to be fishing in any given area.

Parties

19. When the *ex parte* application was originally made on 11th September, 2019, I directed that the injunction application should be on notice to the respondents and the proposed notice party. When the matter returned to court on 18th September, 2019, it emerged that the proposed notice party is not in fact a legal entity, so I will strike out the notice party without objection.

20. I have received helpful submissions from Mr. James Devlin S.C. (with Ms. Margaret Heavey B.L.) for the applicant. The respondents also appeared to assist the court and to make limited submissions on the question of the injunction and I received valuable assistance from Mr. Donnchadh McCarthy B.L. for the authority and from Mr. Fintan Valentine B.L. for the State respondents.

Extension of time

21. The apparent 2018 decision is not challenged in the statement of grounds as filed, although given the new information made available to him since that point, Mr. Devlin now applies for an amendment to include that decision. Obviously, on the face of things, the applicant is out of time to challenge that 2018 decision. What is now alleged is that the decision wasn't put on the authority's website, so it is contended that it cannot be said that it was notified to the applicant, or that the applicant was or should have been aware of it, even on the assumption that website publication is adequate promulgation. Subject to the applicant properly deposing to that particular matter, one can see a strong argument that time should be extended. One cannot have a situation where a party cannot challenge an unpublished decision that he or she didn't find out about until after the limitation period for judicial review. Having said that, the applicant needs to get its papers in order on this point, firstly by seeking to add *certiorari* of the (alleged) 2018 decision to relief 1, secondly, by seeking to add a ground as to the reason for the extension of time and thirdly, by explaining the application for an extension of time on affidavit.

Leave application

22. I now turn to the question of leave. It is clear from the previous paragraph and from what will follow that some rewording of the statement of grounds is required. As presented to the court, the statement runs to an intimidating 43 separate grounds, and a certain amount of rationalisation is going to be required.

Reliefs

23. I will deal first with the reliefs. The reliefs can be grouped under a number of sub-headings, as follows.

First set of reliefs - *certiorari*

24. It only emerged after the statement of grounds was filed that the decision to classify the area was apparently made in 2018, and apparently not published, and that a second decision in 2019 was one to declare the fishery open rather than to classify the area. As noted above, Mr. Devlin applied to amend relief 1 to include *certiorari* of the apparent decision of 2018, and that will require inclusion in a draft amended statement of grounds. Relief 1 also refers to the 2019 decision, declaring the fishery open, as having been made

on or about 30th August, 2019. That should be apparently referable to a decision of on or about 26th August, 2019. So again, some rewording is required in that context. I would suggest that for simplicity both *certiorari* claims should be included in relief 1, if necessary as sub-paragraphs.

Second set of reliefs – declarations

25. Reliefs 2 to 4 seek declarations relating to various alleged illegalities in the process and again these need rewording to the extent that they refer to decisions which authorise fishing as opposed to what appears to be the two separate decisions here, one in 2018 classifying the area and one in 2019 declaring the fishery open. I would also suggest for simplicity that the declarations be amalgamated as sub-paragraphs of relief 2.

Third set of reliefs - declaration regarding transposition

26. Relief 5 seeks a declaration that the directive was inadequately transposed. That warrants a distinct relief separately from declarations as to illegality in the process. In a compacted and amalgamated amended statement of grounds that would become relief 3.

Remaining reliefs

27. The remaining reliefs (which would need to be consequently renumbered) seek a stay, an extension of time, reliefs regarding costs and further and other reliefs.

Grounds

28. Some reconfiguration of the grounds is required, although I do not particularly blame the applicant in this regard. The real problem with over-lengthy grounds can be traced to the Rules of the Superior Courts (Judicial Review) 2011 (S.I. No. 691 of 2011), which required a full statement of facts in the statement of grounds but did not specifically provide for a separate heading for those facts in the form of the statement. That has led to an unhelpful diversity of approaches being adopted. Some practitioners take the approach of a separate heading and a separate numbering for facts, which is by far the better approach, then restarting at ground 1 under a new heading for "Legal Grounds". Others take the course of simply continuing the numbering of facts paragraphs into the legal grounds paragraphs, resulting in an excessive number of grounds giving the impression of an implausible number of alleged infirmities with decisions challenged. I would certainly encourage practitioners to take the former course and to provide the legal grounds with a separate heading and restart the numbering at a ground 1 rather than continuing the numbering in the section on facts, and certainly that is what the applicant should do here when producing the draft amended statement of grounds.

29. By way of postscript on this point, it may be helpful if I draw attention to a number of cases where comment has been made regarding the use of an excessive number of grounds. The leading authority is *Babington v. Minister for Justice, Equality and Law Reform* [2012] IESC 65 (Unreported, Supreme Court, 18th December, 2012) but see also *B.W. v. Refugee Appeals Tribunal and Others (No. 1)* [2015] IEHC 725 [2015] 11 JIC 1703 (Unreported, High Court, 27th November, 2015), para. 21, *RPS Consulting Engineers Ltd. v. Kildare County Council* [2016] IEHC 113 [2016] 2 JIC 1518 [2017] 3 I.R. 61, paras. 28-29, *S.A. v. Minister for Justice and Equality* [2016] IEHC 462 [2016] 7 JIC 2921 (Unreported, High Court, 29th July, 2016), para. 23, *O'Mahony v. An Bord*

Pleanála [2015] IEHC 757 [2015] 11 JIC 2706 (Unreported, High Court, 27th November, 2015), paras. 51-52, *North East Pylon Pressure Campaign Ltd v. An Bord Pleanála* [2016] IEHC 300 [2016] 5 JIC 1215 (Unreported, High Court, 12th May, 2016), paras. 40-41, *Dennigan & Company v. Rights Commissioner Jim O'Connell* [2016] IEHC 665 [2016] 4 JIC 2508 (Unreported, High Court, 25th April, 2016), para. 33, *McGinley v. Minister for Justice* [2017] IEHC 549 (Unreported, High Court, 28th September, 2017), para. 8. Also worth looking at are the comments, cited in Fordham's *Judicial Review* (Oxford, 2012) at para. 21.1.2, of Laws J. in *R. v Local Government Commission for England ex p. North Yorkshire County Council* (Unreported, High Court (Queen's Bench Division), 11th March, 1994); and of Keene J. in *R. v. London Docklands Development Corporation ex p. Frost* (1997) 73 P. & C.R. 199, 204: '*The approach of "never mind the quality, feel the width" has no application in these proceedings*'. Clark J., in *P.B.N. (DRC) v. Minister for Justice, Equality and Law Reform* [2013] IEHC 435 (Unreported, High Court, 16th September, 2013), noted at para. 55 that *"it is* "entirely counterproductive and unnecessary" *to include in one's grounds as many different, varying and wearying reformulations of the same point as can be conceived. As [MacMenamin J.] pointed out [in* Babington], *a good point does not gain force by repetition and a point actually reaching the requisite standard for a grant of leave can be lost in a fog of reformulations."* I also discussed this subject in *O.A.B. (Nigeria) v. Minister for Justice and Equality* [2018] IEHC 142 at para. 12, noting that the position adopted there seemed to be on the basis of throwing as much as you can on the wall and see what will stick, reminiscent of the forensic hoopla referred to by Cooke J. in *Lofinmakin (a minor) & Ors. v. Minister for Justice & Ors* [2011] IEHC 38 (Unreported, High Court, 1st February, 2011). *Wilson v. Security Associates Inc*. (No. 12 EDA 2016, Superior Court of Pennsylvania, 18th July, 2017) was another case in which 22 arguments were advanced, inspiring Platt J. *per curiam* at n. 20 to cite "*the well-known maxim that an appellate brief containing ten or twelve points raises a presumption that none of them have any merit*" (*United States v. Hart*, 693 F.2d 286 (3d Cir. 1982), *per* Aldisert J.). One does not even have to go that far in order to take the view that "*Scattershot argument is ineffective*" (Scalia J. and Bryan A. Garner, *Making Your Case: The Art of Persuading Judges* (St. Paul, 2008) p. 220): see *per* O'Donnell J. in *Y.Y. v. Minister for Justice and Equality* [2017] IESCDET 38 at para. 10 and Y*.Y. v. Minister for Justice and Equality* [2017] IESC 61 [2018] 1 I.L.R.M. 109 paras. 28, 59, 79, 82. W.B. Yeats made the point a century ago: '*Hammer your thoughts into unity*' was the phrase he used in "If I Were Four and Twenty", *Explorations* (London, 1960), Orig. in *Irish Statesman* (1919).

First set of issues - absence of an appropriate assessment contrary to the Habitats Directive

30. Ground 25 alleges that the authorisation of the fishery requires a screening assessment or an appropriate assessment under art. 6(3) of the Habitats Directive. Ground 26 makes the same point in terms of domestic legislation. Ground 29 seems to be a duplication of ground 25. Ground 31 looks at the lack of an appropriate assessment from the point of view of an obligation to remediate any historic decision that has an impact on a European site. Again, it needs rewording in the sense that it refers to "*a decision authorising fishing for razor clams*" as opposed to the two decisions made here in 2018 and 2019. Ground

36, insofar as it relates to the authority is a general complaint regarding the Habitats Directive and does not particularly add anything. So all of these grounds need to be amalgamated into a new ground 1, relating to the absence of an appropriate assessment.

Second set of issues - inadequacy of steps actually taken by both respondents in terms of compliance with the Habitats Directive

31. Ground 27 contends that the 2009 management plan is not an appropriate assessment screening. Ground 28 makes the complaint of a lack of reasons in public consultation and the thrust of the argument appears to be that this is non-compliant with the Habitats Directive. Ground 35 alleges that if the Minister exercised functions in relation to appropriate assessment he did not notify the public and ground 37 alleges that insofar as reliance is placed on the 2015 risk assessment there was a failure to take into account all relevant considerations and only relevant considerations. Again, all of these grounds need to be amalgamated, if necessary under sub-paragraphs, under a new ground 2, which deals with alleged inadequacy of the steps actually taken as amounting to compliance with the Habitats Directive.

Third issue - the absence of an appropriate assessment is in breach of the management plan

32. Ground 30 sets out this separate and discrete issue, which can become ground 3 in an amended statement of grounds.

Fourth set of issues – the Minister's failure to exercise his statutory powers

33. The essential complaint made in ground 32 (although currently not actually particularised) is that the Minister did not exercise his power to require submission of a plan under reg. 3 of the European Union (Birds and Natural Habitats) (Sea-fisheries) Regulations 2013 and the consequential provisions of those regulations. The other provision relied on is reg. 9(1)(c). Paragraphs (a) and (b) are consequential on reg. 3 but para. (c) is a separate power to issue a Fisheries Natura Declaration. Reliance is also placed on alleged breach of the corresponding provisions of the 2011 regulations. The specific provisions relied on should be stated expressly in the grounds. Ground 33 is linked in the sense it alleges that the Minister acted irrationally in requiring an appropriate assessment in other comparable cases. Ground 34 alleges that he failed to give reasons for not exercising his functions and ground 36 alleges a general breach of the Habitats Directive, which in the case of the Minister does not add a whole lot to the more specific grounds.

34. Again all of these complaints regarding the Minister's alleged failure to exercise his statutory powers need to be amalgamated into a new ground 4.

Fifth set of grounds - inadequate transposition

35. Grounds 38 to 41 claim inadequate transposition and again need to be amalgamated into a new ground 5 particularising why the transposition is alleged to be inadequate. Ground 42 is essentially comment on the facts and should be moved to the Facts section of the statement of grounds.

36. I should perhaps add by way of postscript that certain points that appeared to have arisen from oral submissions, particularly that there was no final adopted version of the 2018 decision, no individual promulgation of either decision (save on the rolling web page) and

that the geographical area concerned was not properly defined as required by annex II of the regulation, only seem to arise from generic language in the statement of grounds. That is an unsatisfactory situation and the applicant needs to clarify if it is pursuing any or all of these points and, if so, to do so clearly and expressly in a separate and discrete ground.

Final issue dealt with in grounds - stay

37. Ground 43 deals with the stay and this needs to be renumbered as the final ground in the amended statement of grounds.

Injunction

38. The injunction was not hotly contested on behalf of the respondents. Mr. McCarthy suggested there should be a lead-in time for any injunction, say for early next week, to allow vessels that are in the area to finish their operations. Mr. Valentine was neutral on the question. The basic test is that in *American Cyanamid v Ethicon Ltd.* [1975] AC 396 and *Campus Oil v Minister for Industry (No. 2)* [1983] I.R. 88, as explained and developed in *Okunade v. Minister for Justice and Equality* [2012] IESC 49 [2012] 3 I.R. 152 at 104 and *Dowling v. Minister for Finance* [2013] IESC 137 [2013] 4 I.R. 576, insofar as it relates to EU law. These decisions were recently considered by Simons J. in *Friends of the Irish Environment Ltd. v. Minister for Communications, Climate Action and Environment* [2019] IEHC 555 (Unreported, High Court, 23rd July, 2019), where at para. 55 he noted that "*some limited assessment should be made of the strength of the defence to the proceedings*" in the context of an EU law claim. Assessing the present case in *Okunade* terms, first of all it is clear that the case is arguable and I am satisfied to grant leave in principle, subject to seeing and approving a properly amended statement of grounds in line with the earlier part of this judgment and subject to a final decision on extension of time in the light of any further affidavit on that issue.

39. Secondly, the greatest risk of injustice would clearly come about if the injunction was refused, even allowing for giving all appropriate weight to the implementation of the authority's decisions. The material damage to the environment that would occur if the injunction was refused is the dominant reason as to why the balance of justice favours the grant of an injunction. The fact that some of the fishery is within the SAC and the rest of it is adjacent to one intensifies that conclusion, but the proximity of an SAC is not a necessary requirement for an injunction. Damages would not be an adequate remedy given that we are talking about a risk to the environment.

40. Finally, an assessment of the strengths and weaknesses both of the applicant's case and of the defence (insofar as it can be anticipated) does not indicate at this stage that an injunction should be refused. Obviously this is not a comment on the case ultimately and is simply an assessment for the purposes of the injunction, as required by the jurisprudence referred to above.

41. The test for an injunction in is manifestly satisfied here. Allowing continued fishing even for a few days would simply perpetuate the damage to the environment that is being challenged in the proceedings. For good measure, the association representing fishing

interests has been on at least informal notice of the proceedings for some days. Thus any injunction should have effect immediately.

Order

42. For those reasons the order will be as follows:

(i). that the proposed notice party be struck out of the proceedings with no order;

(ii). that the applicant have liberty to prepare a draft amended statement of grounds in the terms set out in the judgment and to file an affidavit regarding the issue of extension of time; subject to hearing counsel I would propose to allow one week for those steps to be taken;

(iii). in principle, I am minded to grant leave subject to firstly, approving the final form of the amended statement of grounds and secondly, being satisfied as to the extension of time in relation to the one particular relief to which that issue relates;

(iv). given that, one way or the other, most if not all of the reliefs sought are going to be the subject of a grant of leave, an injunction restraining implementation of the decision of the authority to open the fishery should be granted pending the final determination of the action, with immediate effect;

(v). because of the unusual complexity of the matter, the proceedings would benefit from some case management and I will hear counsel on that, and

(vi). as indicated above, in principle I would propose to adjourn the matter for one week to allow time for the draft amended statement of grounds and an affidavit regarding extension of time, although the amended statement of grounds should not be filed unless and until approved by the court; and the hearing in that regard should be on notice to the respondents in case they can assist the court further, particularly in relation to management of subsequent steps.

43. Finally, by way of postscript, given that a fairly total re-drafting of the pleadings is required, it could be confusing if the applicant was required to use the usual strike-through and underlining, so subject to any views of the respondents, the applicant can simply present the draft amended statement in the form of a clean copy.