

SELLING A RAINBOW – BUYING AND SELLING CATCH HISTORY

With the big push by the Ministry of Fisheries to bring as many commercial species of fish and shellfish into the Quota Management System as possible, and the imminent introduction of most tuna species by 1 October 2004, people are now looking to both buy and sell catch history that one day may transform in quota rights. The question is – how do you buy, or sell, something that doesn't exist?

The trail from will-o'-the-wisp to substantial property right is not a simple one. Catch history is simply a record of what some fisherman caught, sometime, somewhere. Only once the Minister of Fisheries declares a stock will become part of the QMS, will the catch history mutate into something more substantial – Provisional Catch history (PCH). Even PCH is transferable only in certain circumstances, where the owner of the PCH is not able to receive quota himself, and for a limited period of time. And, as most fishers are aware, what you get in PCH may not be what you finally receive as quota, if you receive anything at all. This is especially so if the fishery is under threat and cuts in the Total Allowable Commercial Catch are likely to be made - not to mention a fisher's challenges to the amount of PCH he receives, other fisher's challenges to the amounts they receive, and 20% for Maori.

While some deals are concluded simply and without mishap through a handshake, we lawyers find that, for full protection of either or both parties, the sale and purchase of catch history is a challenging experience. "Time of payment" is always a big issue, and that means various types of securities may be involved - over boats, fishing contracts and other assets. And because no one is actually sure what the eventual allocation will be, the definition of what you are buying or selling must also be carefully considered.

A lot of these ramifications are not usually considered at the time of a deal and just as some lawyers have been involved in drawing up agreements, no doubt they will get more work at the end of the process, through litigation, cleaning up the misconceptions of the handshake deals. Accordingly, I believe employing a suitably experienced fisheries lawyer at the outset to help draft an agreement is a sensible long-term investment.