

[SUBMISSION NO. 10]
KIMBERLEY PROFESSIONAL FISHERMEN'S ASSOCIATION

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The Secretary
Joint Standing Committee on Treaties
Parliament House
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Dear Sir/Madam

TIMOR SEA: TREATY SUBMISSION

The Kimberley Professional Fisherman's Association is totally opposed to the Timor Sea Treaty in its present form, which undermines the sustainability of marine resources on Australia's continental shelf and the management initiatives of both NT and WA Fisheries Departments who seek to protect them.

Agriculture Fisheries and Forestry-Australia (AFFA) and Department of Foreign Affairs & Trade (DFAT) have overridden State & Territory Fisheries Departments by allowing uncontrolled foreign exploitation of living resources within the gazetted boundaries of the Northern Demersal Scalefish Managed Fishery (NDSMF). Fishing effort within the NDSMF was heavily reduced in 1995 from approx 25 down to 11 licenses in the interest of long term sustainability of fish stocks. This was a responsible management decision following the "Offshore Constitutional Settlement" Agreements (OCS) whereby the States and Territories were handed control of all fishing activities (except for trawling, shark & tuna fisheries). The OCS arrangements required individual States to manage fish on an ecosystem basis rather than along political boundaries. Conservative gear and time restrictions placed on NDSMF Fishermen made single license operations unviable, resulting in license consolidation and subsequently a five boat fishery.

NDSMF Fishermen have been denied access to areas of Australia's continental shelf by the actions of Commonwealth Agencies under Treaties that have never been ratified by Indonesia. Indonesia's earlier invasion of East Timor was illegal and contrary to International Law. Australian Fishermen have been deprived of the right of comment and natural justice in the negotiation of all treaties, including the "Australia Indonesia Maritime Delimitation Treaty" (AIMDT).

2.

The Commonwealth continually exercises the power to override State Fisheries Laws and the O.C.S. agreements (1995) on matters of international importance. However under section 51 (38) of the constitution, Federal relations requires the concurrence of the Parliaments of the States concerned. State & Territory Fishery Managers should not support the Treaties, which are contradictory to the objectives of achieving optimum economic, social & other benefits and to enable the fair allocation of fish resources between users of those resources.

These Treaties are a threat to the sustainability, of the living resources of the oceanic shoals bioregion of Australia's Northern Continental shelf. They are the cause of expensive managerial and logistical nightmares that exist for Australian Government Agencies such as Customs, Defence Forces, Immigration, AFMA, NT & WA Fisheries Departments, Quarantine and Environmental groups. Hundreds of millions of dollars are being unnecessarily wasted on surveillance, apprehension & detention of illegal immigrants and fishermen.

Since the Introduction of the Provisional Fisheries Surveillance & Enforcement Line (PFSEL), there has been a huge influx of illegal fisherman & immigrants into recognised Australian waters despite Australia's over generous approach of conceding its water column. The PFSEL has done nothing to stem the flow of illegal fishing further into Australian Waters. These illegal vessels can now traverse the 100 nautical miles that separate our nations, under the cover of darkness to the Australian mainland at a casual 8 knots. The waters between the PFSEL & the Australian / Indonesian seabed boundary now harbour & facilitate the illegal immigration trade disguised as Indonesian fisherman where a fleet of more than 50 foreign fishing vessels operate. From 1988 to 1996 some 550 foreign fishing boats were apprehended south of the PFSEL. Of those 530 were Indonesian. In 1996 there were 106 boats apprehended and prosecuted. In the first eight months of 1997 41 boats were apprehended. The rate of incursion and apprehension since then has increased exponentially. It is clear these treaties are not working and must be revoked or changed.

Despite alarming reports by State Fisheries Departments of quarantine & health risks and uncontrolled and unlimited exploitation of fish resources by foreign vessels, the treaties were still signed by Australia. It has always been a concern of Fisheries Managers that the fish stocks were being overexploited by foreign vessels, negatively impacting on Australian fishermen and the economy. Aboriginal communities spanning the remote Northern coastline are gravely concerned at the amount of lost foreign fishing net washing up on our shores full of dead sharks, turtles, dugongs and dolphins. 75% of the waste fishing net drifting onto their shores was found to be lost or discarded foreign driftnet (See Perth Treaty of 1997)

Consultation processes concerning past treaties have been flawed. Fishing industry members including Christmas Islanders were not properly informed or consulted during the negotiations of the AIMDT and only after the signing of the treaties. Attorney Generals have explained that by reason of the practice of States in the negotiation of treaties, it was not open to hold extensive consultations prior to entry into a treaty because of confidentiality requirements and the fear of weakening a negotiating process. Does this mean the Australian Public will only be told, after the secret and unnecessary signing away of the Timor Oil Gap and its resources to another country?

All Australians should condemn and insist upon withdrawal from these flawed treaties, which are still not (Ratified by Indonesia) in force, The AFZ & EEZ must coincide under the framework of the 1982 United Nations Convention on Law of the Sea which Australia is a signatory to. This will remove the PFSEL.

3.

The AFZ will then encompass the whole of our continental shelf out to the 2500m deep Timor Trench, thereby returning management of all aquatic life on Australia's continental shelf to Australia and removing many of the problems that exist for other Australian agencies concerned with national security and safety.

Timor and adjacent Indonesian territory, are volcanic islands without a continental shelf, Australia is a continent and sits on a separate tectonic plate to Timor. The deep-sea 2500 meter Timor trench clearly delineates the two adjacent land masses. If the treaties aren't revoked, then Australia may well lose finite oil & gas resources as well as infinite (if properly managed) fish resources. Australia has withdrawn its membership from the International Court of Justice as East Timor is being backed by greedy foreign oil companies to lay claim to all oil rights in the Timor gap. Indonesia will then follow suite with Australia losing out for not fighting for its Sovereign Territory. If the correct framework (UNCLOS) guidelines are used & Australia fights for its legitimate continental boundaries, most of these problems will eventually disappear. Only then can State, Territory and Commonwealth departments, as well as other stakeholders, forge ahead with certainty and take total control of exploration & exploitation of the resources within the disputed areas in an ecologically sustainable manner without the need of negotiating with other countries.

Experts in International Law, boundaries and Treaties believe that all resources of Australia's continental shelf (out to 2500meter isobath) should belong to Australia and all Australians. Australian Fisheries Management Authorities haven't pushed the point that Australia's best interests are served by retaining ownership and management over all resources in the disputed areas. It is well known that Indonesia has a disgraceful history in fisheries management and is not interested or capable of managing fish resources responsibly or sustainably. Should the treaty be ratified, Australians will see the collapse of some of the most diverse coral reefs and renewable fisheries resources left in the world. The State and Territory Governments will still have to manage the sedentary species and biotic reef structures on the seabed after ratification of the Treaties. Australia should reconsider the Treaty with future generations of Australia in mind. Reckless Australian Governments would have traded off **infinite** seafood resources unnecessarily for finite oil, & gas deposits which will be exhausted in time. Please, it is not too late to act and get it right once and for all, as decisions made now will set ground rules for the Perth Treaty of 1997 ratification, which will result in more unnecessary losses of resources by Australia.

Yours sincerely

Adam Masters

Vice President