



**RESPONSE TO THE DRAFT TORRES STRAIT FISHERY
Quotas for Tropical Rock Lobster (Kaia)**
MANAGEMENT PLAN 2016

AFMA – TORRES STRAIT OFFICE

(This paper replaces our previous submission dated 20th August 2016)

Members of the Torres Strait Fisheries Association (TSFA) do not agree with the proposed plan on the grounds that some of its clauses may be contrary to the intent of the Torres Strait Treaty and the Torres Strait Fisheries Act 1984 and therefore detrimental to the long-term interests of Traditional Inhabitants. We have come to this conclusion after receiving a copy of "A fair share of the catch", a report prepared by a Torres Strait Fisheries Independent Advisory Panel in 2002 to inform the PZJA.

Our concerns are:

1. The plan takes away the TIB sector's capacity for future growth, grants it to the TVH sector, and then requires the TIB sector to buy it back but this can only happen if the TVH sector wishes to sell. (See the Legal Context, page 22 and 23, A fair share of the catch). This raises the possibility of Traditional Inhabitants claiming against the Commonwealth for breach of obligation under the Treaty.
 2. The plan gives entitlements to TVH licenses not allowed under the Act. The most powerful tool the PZJA has to carry out its obligation to retire TVH licenses as the TIB sector grows is the power to not renew a TVH license at the end of its one-year term without having to pay compensation. The plan appears to give the TVH sector immunity from this authority as it more or less guarantees an ongoing right to a share of the quota past the one-year term of the license. (This argument is supported by pages 22 and 23, A fair share of the catch)
 3. The plan, by implying that a TVH license will be renewed from year to year to carry its ongoing quota allocation, creates a legal liability for the Commonwealth to the detriment of the TIB sector. This situation is clearly against the intention of the Act. (See the bottom half of page 7, Appendix 1, A fair share of the catch)
 4. The Plan, by approving a secondary market for the trading of quota entitlements at prices in excess of the worth of that quota when valued only by reference to the remaining period of the 1 year for which the license can be issued under the Act, creates a legal liability for the Commonwealth to the detriment of the TIB sector. (See the bottom half of page 7, Appendix 1, A fair share of the catch)
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5. Any TVH operator not wanting to sell his quota can permanently block the TIB sector's aspiration for 100% ownership.
6. The plan, by providing a way for the TVH sector to block growth in the TIB sector by not selling quota, potentially paves the way for the Minister to make decisions that over-rule the "prima-facie priority ranking of community fishing ahead of commercial fishing. (See page 5, Appendix 1, A fair share of the catch) This would set a precedent totally unacceptable to Traditional Inhabitants.
7. Many fishermen do not agree with the way money received from the lease of finfish quota has been spent in the past. TSRA needs to improve its accountability by directing the funds towards a vision and strategies agreed to by the whole TIB sector, not just the finfish representatives.
8. Introducing an economic development contribution from the TVH sector, as proposed by the TSRA, is not necessarily a good thing if it ends up as just more revenue to be managed by the TSRA (See point 7 above). Our long-term vision is for the TRL fishery to be 100% operated by Traditional Inhabitants and this may be different from the concept of 100% ownership that the PZJA parties are working on. Rather than a financial contribution, the TVH operators should be required to contribute by helping train TSI divers or by some other type of partnership arrangement helpful to the cause.

It seems odd that this draft plan has been eleven years in the making and yet it appears to lack appreciation of the analysis expressed in a "Fair share of the catch" a report obtained by the PZJA fourteen years ago.

We are fishermen, not legal experts, and may have misinterpreted some of the finer points of discussion. We respectfully request TSRA to provide independent professional legal counsel to advise us on the concerns we have raised. Mr Stephen Skehill, the Special Counsel who contributed to "A fair share of the catch" would be ideal if he is available.

We have decided that it would be helpful for our members, and hopefully for AFMA and TSRA also, if we developed an outline of an alternative TRL management plan for consideration of the PZJA, one that gives the TIB fishermen's perspective and using "A fair share of the catch" as a reference guide. We aim to have this outline drafted in time to seek the TSRA's endorsement at its March 2017 meeting.

Yours Sincerely



Patrick Mills

PRESIDENT

20th October 2016