SOUTH AUSTRALIA’S ILUA PROCESS

AN APPROACH TO ALLOCATION

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WHY AN ILUA BASED APPROACH?

The South Australian Government sought an alternative approach to litigation for resolution of Native Title interests.

The ILUA approach has offered outcomes for Aboriginal interests and Industry through certainty and security for all parties.

The Indigenous Land Use Agreement (ILUA) approach facilitates negotiated outcomes between peak bodies and ultimately the Native Title claimant body and interested / affected enterprise(s).
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WHAT DOES AN ILUA BASED APPROACH OFFER?

The principles for sharing access relies upon a number of key considerations that the ILUA based approach offers, these include:

- A negotiation process
- Clearly defined users
- A willing partner
A negotiation process

Traditional involvement in fisheries management has seen Industry’s views compromised by the “consultative” approach.

The consultative approach often fails to achieve “consensus” between competing user groups and does not bind agencies to comply with agreed arrangements.

This management approach is endemic within fisheries institutions in Australia.

The ILUA approach seeks to achieve certainty and lasting outcomes that meet the needs of all parties through negotiated agreement.
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Clearly defines users

In South Australia users, other than commercial fishers, are not able to be accurately identified, measured and controlled in their level of effort, catch and impact on our fishery resources.

The ILUA process provides a clearly defined user group which can:
• engage in self management;
• be effectively monitored;
• recognise their role; and
• reward involvement in effectively managing their agreed share.
A willing partner

Fisheries management is undertaken in an environment of competition between user groups.

The ILUA process achieves lasting outcomes as:
- it requires parties to acknowledge the rights of all users;
- it reaches agreement that will be binding.

Co-management in fisheries often fails to achieve co-operation between the various parties. The ILUA process truly delivers an environment of co-operation.
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THE ILUA PROCESS

The ILUA process in South Australia is highly structured with independent facilitators.

The process for each sector of interest flows through the

• **Main Table**

  Key forum for the peak bodies – Aboriginal, Industry and Government.

  Sets strategic framework, policy direction and negotiation timetables
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*Fisheries & Aquaculture Side Table (FAST)*

The FAST has identified and developed key issue for all parties.

Developed an agreed understanding of the principles that define the key issues.

The key principles form a final agreed “FAST Template” that sets the framework of any subsequent claim specific negotiation.
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**National Indigenous Fishing Technical Working Group (NIFTWG)**

NIFTWG principles are contained within the “Template” issues and represent a commitment by stakeholders to:

- Recognise customary fishing as a sector in its own right;
- Integrate and protect customary fishing within the fisheries management framework;
- Provide assistance strategies to engage Indigenous people in fisheries related businesses; and
- Expedite processes to increase Indigenous involvement in fisheries management and vocational training.
To facilitate Industry recognition an “Issues for Consultation Fishing & Aquaculture” booklet was produced and provided to all commercial licence holders and marine based aquaculture operators.

A comprehensive series of port meetings around the State presented key issues and provided for discussion to clarify issues and address fisher concerns.

Fisher input was sought prior to finalisation and endorsement of the issues and principles in the “Template”.

Industry Engagement
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Key ILUA issues

• Recognition
• Traditional Fishing - Definition
• Traditional Fishing - Quantum
• Traditional Fishing - Methods
• Traditional Fishing - Who
• Traditional Fishing - Protection Of Culturally Important Areas
• Traditional Fishing - Management Of Traditional Fishing
• Traditional Fishing - Species
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Key ILUA issues (continued)

• Marine Protected Areas
• New and Developing Fisheries
• Commercial Access - Aquaculture
  • Current Legal Parameters
  • Aboriginal Aspirations
• Commercial Access - Wild Catch Fisheries
  • Current Legal Parameters
  • Aboriginal Aspirations
• Commercial Access - Charter Boat Licences
  • Current Legal Parameters
  • Aboriginal Aspirations
Key ILUA issues (continued)

- Partnerships
- Sustainability
- Resolution of Native Title
- Consent Determination
- Inter-tidal Zones
- Draft Indigenous Traditional Fishing Management Plan
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Claim / Area agreements

Under the FAST ILUA framework there will be a number of specific agreements based upon individual claims for determination of Native Title or for combined regional claims.

The first of the ILUA specific negotiations is with the Narungga community on Yorke Peninsula.

The ILUA process has been effective in working towards resolution of the needs of the Narungga Community within a framework of resource sustainability.
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In addition to the registered ILUA, fishery access will also be prescribed in a fishery management plan defining operational arrangements negotiated between the parties.

The Plan could contain provisions for special access arrangements to areas or fishing devices that other stakeholders may not otherwise have access to, due to temporal or spatial closures.
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Certainty

An ILUA is ultimately registered by the Federal Court through the National Native Title Tribunal, making it a binding agreement.

The agreement will be periodically reviewed.

A core component of the template ILUA will be the requirement to amend any Native Title claim to remove the threat of litigation for resolution of rights that are the subject of the ILUA.
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ALLOCATION

In South Australia there is one component of the stock exploitation triangle that is measured and monitored – the commercial fisheries.

ILUAs will bring a further level of certainty into the fishery management process with Indigenous fisheries progressively being undertaken in an environment of catch reporting.

A discrete allocation or share for the Indigenous sector will enhance their security and ensure better recognition of their rights.
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ACKNOWLEDGEMENTS

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