

(Native Title Claim Group)

Fishing Indigenous Land Use Area Agreement Template

The Honourable [insert name] Attorney-General

and

**The Honourable [insert name] Minister for
Agriculture Food and Fisheries**

and

**Insert Claim Group name or if no Claim Group then
Aboriginal Corporation on its own behalf and on
behalf of the Traditional Owner**

and

Aboriginal Legal Rights Movement Inc

and

Seafood Council (SA) Ltd

and

South Australian Fishing Industry Council



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AGREEMENT BETWEEN:

The Honourable [insert name] Attorney General for the State of South Australia of 45 Pirie Street, Adelaide (5000) South Australia (“the Attorney General”)

AND

The Honourable [insert name] Minister for Agriculture Food and Fisheries for the State of South Australia of 91-97 Grenfell Street, Adelaide (5000) South Australia (“the Minister”) for and on behalf of the State of South Australia

AND

*[insert claim group name or if no claim group then Aboriginal corporation on its own behalf and on behalf of the **Traditional Owner**]*

AND

Aboriginal Legal Rights Movement Inc ABN 32 942 723 464, an incorporated association incorporated under the Associations Incorporation Act No 30 of 1985 (SA), of Level 4, 345 King William Street, Adelaide, South Australia 5000 (**ALRM**)

AND

Seafood Council (SA) Ltd Level 1 16 Unley Road, Unley, South Australia, 5061. (SCSA)

AND

South Australian Fishing Industry Council, 60 London Road, MILE END S.A (SAFIC)

Summary of the Arrangements

Any rights of *[insert claim group name or if no claim group then the **Traditional Owner**]* over the aquatic resources of the water, which are specified in this Indigenous Land Use Agreement (ILUA), will be recognised by the registration of this ILUA under the *Native Title Act 1993* (Cth). Access to the water of the estate of South Australia by the *[insert claim group name or if no claim group then the **Traditional Owner**]* for the purposes of exercising certain rights are subject to the terms of this ILUA which directs and has subject to it an Aboriginal Traditional Fishing Management Plan implemented under the *Fisheries Act 1982*(SA).

This ILUA is an area agreement pursuant to sections 24CA to 24CL of the *Native Title Act 1993* (Cth) and regulation 7 of the *Native Title (Indigenous Land Use Agreements) Regulations 1999* (Cth) and is intended to be registered on the register.

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(Note: It is suggested that a recognition Statement will be agreed between the Parties to a claim. A suggested form of words follows :)	30

1. Recitals

- 1.1 The ***[insert claim group name or if no claim group then the Traditional owner and the name of the representative corporation or named applicants in the native title claim]*** assert traditional ownership of and native title rights and interests in the waters encompassed by the ILUA area.
- 1.2 At the date of execution of this ILUA no native title determination application has been lodged on behalf of ***[insert name of the Traditional Owner]***

or
- 1.2 At the date of execution of this ILUA ***[insert claim group name]*** have lodged a native title claim ***[insert claim number and name]*** on behalf of the ***[insert the Traditional Owner]***. This claim has not been determined.
- 1.3 The ***[insert the Traditional Owner]*** have established ***[insert aboriginal corporation]*** and have authorised ***[insert aboriginal corporation]*** to manage on their behalf all matters relating to their asserted traditional ownership of and native title rights and interests in the waters in the ILUA area.
- 1.4 ***[Insert Aboriginal corporation]*** has consulted with the ***[insert the Traditional Owner]*** and the ***[insert the Traditional Owner]*** have consented to and authorised ***[insert the Aboriginal corporation]*** to enter into this ILUA on behalf of the ***[insert the Traditional Owner]***.
- 1.5 ***[Insert the Aboriginal corporation]*** enters into this ILUA in the performance of its function of managing the asserted traditional ownership of and native title rights and interests of the ***[insert the Traditional Owner]*** in the waters in the ILUA area and all matters relating to them.
- 1.6 ALRM is the representative Aboriginal/Torres Strait Islander body for the ILUA area pursuant to the Native Title Act.
- 1.7 Before signing this ILUA and pursuant to Section 203 BH (2) of the Native Title Act, ALRM has, as far as practicable, consulted with and had regard to the interests of the ***[insert the Traditional Owner]*** and other persons (if any) who hold or may hold native title in relation to waters in the ILUA area.
- 1.8 Recognising the special cultural significance in accessing the aquatic resources of the water specified in this ILUA to the ***[insert the Traditional Owner]*** and in addition to implementing and managing the rights recognised in this ILUA, the State will adopt a management plan.
- 1.9 A copy of the management plan is annexed as Schedule 3 to this ILUA. In the event that the management plan is terminated, the ILUA will continue to operate until terminated pursuant to the provisions of this ILUA.
- 1.10 The parties to the ILUA acknowledge the ***[insert the Traditional Owner]*** assertion in paragraph 1.1 hereof and in furtherance of their mutual respect include a statement of recognition which is contained in Schedule 2.

2. Definitions and procedural matters

In this Agreement the definitions that are contained in the *Fisheries Act 1982 (SA)*, the *Native Title Act 1993 (Cth)*, and the *Aboriginal Heritage Act 1988 (SA)* apply unless otherwise indicated.

2.1 Definitions

Subject to any contrary intention indicated by subject or context, in the interpretation of this Agreement (inclusive of the Recitals), the following terms and expressions have the below meanings:

- 2.1.1 **Aboriginal Traditional Fishing** is fishing and using aquatic resources in accordance with relevant Indigenous laws and customs for the purpose of satisfying the personal, domestic or non-commercial communal needs of the *[insert the Traditional Owner]*.
- 2.1.2 **Alternative Future Act** (**Note:** this is a concept that may be used to modify the application of the Future Act regime under the NTA. It can be defined by the by the Parties to suit each individual ILUA area but if the future act that it applies to is a grant of freehold over waters then the grant should be expressed to be subject to Aboriginal Traditional Fishing rights so that these rights would not be extinguished by the grant of freehold. See also clause 24)
- 2.1.3 **Aquaculture Act 2001 (SA)** includes a reference to any Act that repeals and replaces that Act.
- 2.1.4 **Aquatic Plant** means an aquatic plant of any species, and includes the reproductive products and parts of an aquatic plant.
- 2.1.5 **Aquatic Resources** means fish or aquatic plants.
- 2.1.6 **Community Catch** means a component of Aboriginal Traditional Fishing that may be managed separately from the other cultural fishing activities specified in clause 14 (Note: Community Catch can be defined more precisely in each ILUA, depending on what fishing activities constitute Aboriginal Traditional Fishing).
- 2.1.7 *[Insert Aboriginal corporation]* means the *[insert Aboriginal corporation]* a body corporate constituted in accordance with the Aboriginal Councils and Associations Act (Cth) which represents the *[insert the Traditional Owner]*.
- 2.1.8 **Director** means the Director of Fisheries for South Australia or any person acting in that position or exercising, pursuant to delegation, any of the powers, authorities, duties or functions of the Director.

- 2.1.9 **Ecologically Sustainable Development** means using; conserving and enhancing the community's resources so that the ecological processes, upon which life depends, are maintained, and the total quality of life, now and in the future can be increased. In relation to fishing means that:
- (a) fishing operations should safeguard the structure, productivity, function and diversity of the ecosystem (including habitat and associated dependent and ecologically related species); and
 - (b) a fishery must be conducted in a manner that does not lead to over-fishing, or for those stocks that are over-fished, the fishery must be conducted in a manner that leads to their recovery.
- 2.1.10 **Fish** means an aquatic animal other than an aquatic bird, mammal, reptile or amphibian and includes the reproductive products and parts of a fish.
- 2.1.11 **Fisheries Act 1982 (SA)** includes a reference to any Act that repeals and replaces that Act.
- 2.1.12 **Future Act** has the meaning given to it by the NTA but excludes any such act that is the compulsory acquisition of the whole or any part of native title rights and interests.
- 2.1.13 **ILUA** means this Indigenous Land Use Agreement and any subsequent amendments thereto.
- 2.1.14 **ILUA Area** means the geographical area as defined in clause 4 in relation to which this ILUA applies.
- 2.1.15 **Inter-tidal zone** means the area between the mean high water mark and the mean low water mark and includes the seabed and the sub-soil
- 2.1.16 **Minister** means the Minister administering the *Fisheries Act 1982 (SA)* from time to time.
- 2.1.17 **Management Plan** means the Aboriginal Traditional Fishing Management Plan made pursuant to the *Fisheries Act 1982 (SA)* and this ILUA that regulates the **[insert the Traditional Owner]** Aboriginal Traditional Fishing rights in the water of the ILUA area.
- 2.1.18 **Marine Protected Area** means an aquatic zone declared under legislation for the preservation of marine habitat.
- 2.1.19 **Named Applicants** means the persons whose names appear as the applicants in relation to **[insert the Traditional Owner]** native title claim number **[insert the claim number]** (**Note this only to be used where a native title claim has been lodged**).
- 2.1.20 **Native title claim** means a native title claim under the *Native Title Act 1993 (Cth)*.

- 2.1.21 **Native Title Claim Group** has the meaning given to it in the NTA and the composition of the group is defined in Schedule A of the Form 1 in respect of the *[insert the claim number and name]*. (Note this only to be used where a native title claim has been lodged).
- 2.1.22 **Native title rights and interests** has the meaning given to it in the NTA.
- 2.1.23 **Non-extinguishment principle** has the meaning given to it in the NTA.
- 2.1.24 **NTA** means the *Native Title Act 1993(Commonwealth) as amended*.
- 2.1.25 **Parties** means *[insert the Aboriginal corporation representing the Traditional Owner]* the Minister for Agriculture Food and Fisheries the Attorney General, both for the State of South Australia and ALRM, the South Australian Fishing Industry Council and the Seafood Council of South Australia and/or representative fishing licence holders.
- 2.1.26 **PIRSA** means the Department of Primary Industries and Resources and is used to include any future name of this Department.
- 2.1.27 **Register** means the Register of Indigenous Land Use Agreements established and maintained under part 8A NTA.
- 2.1.28 **Registrar** means the Native Title Registrar under the NTA
- 2.1.29 **Registration** means registration of this agreement on the Register under section 24CK of the NTA.
- 2.1.30 **Registration Date** means the date upon which this Agreement is entered on the Register.
- 2.1.31 **Regulations** means regulations proclaimed pursuant to the *Fisheries Act 1982 (SA)* relevant to the management of the aquatic resources of the ILUA area.
- 2.1.32 **Special Areas of Significance** means those parts of the land and water or land and adjacent water within the ILUA area that have traditional, cultural, historic or community significance to the *[insert the Traditional Owner]* and over which associated uses and practices may be observed or undertaken by them.
- 2.1.33 **Take** has the meaning given to it in the *Fisheries Act 1982 (SA)*.
- 2.1.34 **The State** means the Crown in the right of the State of South Australia and any of its Ministers, agencies, instrumentalities, employees, agents or statutory corporations formed by or pursuant to legislation enacted by the Parliament of South Australia.
- 2.1.35 . *[Traditional Owner]* means the Aboriginal persons who assert traditional ownership and native title rights and interests in relation to the water within the ILUA area.

2.1.36 **Water** means sea, a river, a lake, a tidal inlet, a bay, an estuary, or a harbour within the ILUA area and includes the inter-tidal zone (**Note. The definition may be expanded to include “waters” as defined in section 253 of the NTA where the ILUA area includes the sub-soil and the seabed**).

2.2 Interpretation

Subject to any contrary intention indicated by subject or context, the following rules of construction should be used in the interpretation of this Agreement:

2.2.1 Words denoting the singular or plural include the plural and singular respectively unless the contrary is expressly intended to give effect to the expression in context.

2.2.2 Headings are for convenience only and shall not affect interpretation.

2.2.3 Words denoting individuals shall include corporations and vice versa.

2.2.4 A reference to an item of legislation or regulation shall be deemed to include any amendments made to that item and all statutory provisions substituted for that item after the date of this Agreement.

2.2.5 A reference to a corporation, organisation or other body (whether or not incorporated) is:

- (a) If that corporation, organisation or other body is replaced by another corporation, organisation or other body, deemed to refer to that other corporation, organisation or other body; and
- (b) if that corporation, organisation or other body ceases to exist, deemed to refer to the corporation, organisation or other body which most clearly or substantially fulfils the same purposes or objects as the first mentioned corporation, organisation or other body.

2.2.6 The Parties agree that the summary of arrangements, all headings and any explanatory notes are for information purposes only and do not form part of the ILUA.

3. Commencement

3.1 This ILUA will come into operation on execution but will cease to be operating if it is not registered pursuant to Part 2 Division 3 subdivision C of the NTA within twelve (12) months of execution or such further time as the parties agree.

4. The ILUA Area

4.1 The ILUA area is the area of water described and indicated in Schedule 1 to

this ILUA and includes the water (**Note: Here describe the water in detail for example how far it might extend seaward from the high or low water mark**)

- 4.2 For the purpose of section 23CG of the NTA and the Native Title (Indigenous Land Use Agreements) Regulations 1999, the area of waters to which this ILUA applies is the ILUA area.

5. Authority to enter ILUA

- 5.1 ***[Insert the Aboriginal corporation]*** represents and warrants to the other parties to this ILUA that:

- (a) the ***[insert the Traditional owner]*** have established ***[insert the Aboriginal corporation]*** and have authorised ***[insert the Aboriginal corporation]*** to manage all matters relating to their asserted traditional ownership, native title and heritage in relation to the waters in the ILUA area, on behalf of the ***[Insert the Traditional owner]***.
- (b) ***[Insert the Aboriginal corporation]*** has consulted with the ***[insert the Traditional owner]*** and the ***[insert the Traditional owner]*** have consented to and authorised ***[insert the Aboriginal corporation]*** to enter into this ILUA on behalf of the ***[insert the Traditional owner]***;
- (c) ***[Insert the Aboriginal corporation]***
 - (i) enters into this ILUA in the performance of its functions of managing the asserted traditional ownership, native title and heritage in relation to the waters in the ILUA area and all matters relating to them; and
 - (ii) by signing this ILUA confirms that ***[insert the Aboriginal corporation]*** has been authorised by the ***[insert the Traditional owner]*** to enter into this ILUA on behalf of the ***[insert the Traditional owner]***.

- 5.2 ***[Insert Aboriginal corporation]*** represents and, in accordance with Aboriginal tradition, has the authority to speak for, and is authorised to enter into this ILUA on behalf of, the traditional owners and other Aboriginal People who, in accordance with Aboriginal tradition, have the authority to speak for the Water in the ILUA area.

5.3 Other Warranties

Each party represents and warrants to the other parties to this ILUA that:

- (a) it has the power to enter into this ILUA and perform its obligations under it; and
- (b) the persons who have executed this ILUA on its behalf have the necessary authority to do so.

6. ILUA binds the *[insert the Traditional Owner]*

- 6.1 Pursuant to Section 24EA of the NTA, once registered, this ILUA binds the *[insert the Traditional Owner]* and all persons holding native title over the ILUA area.

7. Conditions for Operation of the ILUA

The Minister agrees to enter into this ILUA on the basis that:

- 7.1 *[Where no claim insert the Traditional Owner]* will not lodge any native title claim endorsed by *[insert Aboriginal corporation]* over the ILUA area

Note: The first version of 7.1 is to be used where no claim has been lodged, the second where a claim is lodged.

- 7.1 Within four weeks of the registration of this ILUA the Named Applicants will lodge an amended Form 1 with the Federal Court of Australia, to withdraw that portion of the *[insert native title claim name and number]* that covers the ILUA area and pertains to native title rights claimed with respect to aquatic resources.

(Note: The ILUA may cover other traditional rights and interests in water and if so will not be confined to traditional rights to use aquatic resources. If this is the case this clause may need to be amended to reflect the extent of the rights and interests over which the claim is to be withdrawn. See also clause 20).

- 7.1.1 *[Insert the native title claim number and name]* will not be withdrawn if *[insert the Traditional Owner]* indicate that they will be seeking to obtain a determination of native title by consent and all relevant parties to the claim indicate that they will consider a consent determination subject to being satisfied that the legal requirements for consent determination under the NTA have been met.

- 7.1.2 Should no consent determination be made in relation to *[insert the native title claim number and name]* pursuant to clause 7.1.2 then the Named Applicants will lodge an amended Form 1 with the Federal Court of Australia, to withdraw that portion of the *[insert native title claim name and number]* that covers the ILUA area and pertains to native title rights claimed with respect to aquatic resources.

- 7.2 *[Insert the Traditional Owner]* agree not to take fish for the purpose of trade or business in the course of Aboriginal Traditional Fishing.

- 7.3 **[South Australian Fishing Industry Council and the Seafood Council of South Australia and/or representative fishing licence holders]** or the State of South Australia will not lodge an application (non-claimant application) for a determination of native title pursuant to s61 (1) of the NTA over the water of the ILUA area.

8. Term of ILUA

8.1 This ILUA commences in accordance with clause 3 and continues until terminated:

8.1.1 in accordance with clause 18 of this ILUA or

8.1.2 by operation of law or

8.1.3 by agreement of the parties.

9. Certification and Authorisation

9.1 ALRM undertakes that it will use its best endeavours to certify that:

(a) as required by subsection 203BH(2) of the NTA, it has, as far as practicable and having regard to the subject matter of this Agreement, consulted with and had regard to the interests of persons who hold or may hold native title in the ILUA Area

(b) as required by subsection 203BE(5) of the NTA, it is of the opinion that:

(i) all reasonable efforts have been made to ensure that all persons who hold or may hold native title in the ILUA Area have been identified prior to the execution of this Agreement and

(ii) all persons so identified have authorised the making of this Agreement.

10. Registration of ILUA

10.1 The State agrees to apply for registration of this ILUA and to do all things (including the payment of any fees levied by the National Native Title Tribunal) to obtain such registration pursuant to Section 24CG of the NTA.

10.2 The *[insert the Traditional Owner]* agree to do all things necessary to support and implement the application for registration of the ILUA.

11. Removal from Register

11.1 All of the parties may request the Registrar pursuant to section 199C(1)(c)(ii) of the NTA to remove the details of this ILUA from the register by advising the registrar in writing that they wish to terminate this ILUA.

11.2 The parties acknowledge that the Registrar is required to remove the details of this ILUA from the register in the circumstances set out in sections 199C(1)(b), (c)(i) and (c)(iii) of the NTA.

11.3 Upon details of this ILUA being removed from the register the provisions of

clause 22.1 cease to apply to any future act done after that removal.

12. Acknowledgement of principles

12.1.1 The parties acknowledge that the relevant terms of this ILUA are governed by the principle of Ecologically Sustainable Development.

12.1.2 The parties acknowledge that insofar as the ILUA is inconsistent with native title rights exercisable under section 211 of the NTA then the ILUA will prevail.

13. Traditional rights and interests of *[insert the Traditional Owner]* in the aquatic resources of the water of the ILUA area

13.1 The Parties agree that all the traditional rights and interests of the *[insert the Traditional Owner]* to take aquatic resources in the ILUA area are contained in clause 14 of this ILUA and are called Aboriginal Traditional Fishing rights. These rights constitute all traditional fishing rights that may be exercised by the *[insert the Traditional Owner]* over the ILUA area and must be exercised in accordance with the Management Plan.

13.2 The State agrees to implement the management plan under the Fisheries Act 1982 (SA) in accordance with the terms of the ILUA.

14. Aboriginal Traditional Fishing Rights of the *[insert the Traditional Owner]*

14.1 The Aboriginal Traditional Fishing rights of the *[insert the Traditional Owner]* are (**Note: The list may include any of the following**):

14.1.1 Specified fishing activities (for example net fishing and fishing in the inter-tidal zone)

14.1.2 Special Occasion Fishing, meaning fishing using particular methods for limited periods (eg 1-3 days) on a specified number of occasions (eg 12 per annum) for cultural purposes. This would be regulated under the Management Plan and by issuing exemptions under the Fisheries Act (1982).

14.1.3 Cultural Camp Fishing, meaning fishing for unpredictable special community gatherings. This fishing would be authorised upon application, regulated by the Management Plan and by issuing exemptions under the Fisheries Act (1982).

14.1.4 Fishing in defined Areas

14.1.5 Particular Methods of Fishing including the right to use traditional and non-traditional methods of fishing

14.1.6 Community catch

14.1.7 Restricted Access to Special Areas of Significance as defined in a

Schedule.

14.1.8 The right to take culturally important species to be specified in a Schedule

14.1.9 The right to take all other culturally important species that are currently unregulated without restriction as to method or quantity. These rights may be subject to regulation in accordance with clause 15.5. of this ILUA should the species become subject to general management controls.

14.2 The rights of a member of the ***[insert the Traditional Owners]*** under this clause extend to a person who:

14.2.1 is a spouse of a member of the ***[insert the Traditional Owners]*** or

14.2.2 is with the ***[Traditional Owners]*** while participating or assisting in, observing or recording traditional activities

14.2.3 is ***[Note: Other options for inclusion in the group as defined by the traditional laws and customs of the Traditional Owners may be added here]***.

15. The Management Plan

15.1 The State must implement a management plan to regulate the exercise of Aboriginal Traditional Fishing rights contained in clause 14 of this ILUA. The management plan must:

15.1.1 be developed in collaboration with the ***[insert the Traditional Owners]*** and representatives of both SAFIC and the Seafood Council

15.1.2 allow the ***[insert the Traditional Owners]*** to be represented in all decision-making processes established in the plan

15.1.3 provide a regime for monitoring catch and for ensuring compliance with catch limits. In doing so:

(a) All methods devised for monitoring and enforcement of the management plan shall take into account the communal nature of Aboriginal Traditional Fishing and respect the ***[insert the Traditional Owners]*** system of law and custom

(b) the management plan should only provide for prosecution of individuals for breach of the management plan after all other methods for enforcement provided by the management plan have failed.

15.1.4 include a detailed process that incorporates the suspension provisions contained in clause 16

15.1.5 include a process for the Minister to notify the ***[insert the Traditional***

Owners] of an intention to terminate the management plan in accordance with clause 16.1.1 of the ILUA and must provide a reasonable opportunity for the **[insert the Traditional Owners]** to respond to the proposal to terminate the management plan before a decision is made

15.1.6 contain a list of Special Areas of Significance as specified in a Schedule

15.1.7 establish input and output controls that regulate the community catch referred to in clause 14, having regard to:

- (i) biological status of culturally important species or ecologically-related species
- (ii) cultural needs of the **[insert the Traditional Owner]** and
- (iii) (allocation of access to) aquatic resources and impacts on other fishing sectors.

15.2 Any costs associated with the administration and enforcement of the management plan shall be borne by the State.

15.3 The initial management plan contained in Schedule **[]** to this ILUA will remain in place for **[a period to be specified]** and will be reviewed by the State in collaboration with the **[Traditional Owners]** before the end of its period. Any subsequent plan shall be for a similar period or other such period as the parties may agree.

15.4 After the expiration of the term of the initial management plan the State will ensure that a management plan, which complies with the terms of the ILUA, is in place for a consecutive term. There will be consecutive management plans in place for the duration of the ILUA. Each management plan:

15.4.1 Shall be in place for a period **[agreed between the parties]**

15.4.2 Shall be reviewed at the mid-term point of the period of the plan and again before the expiration of the term of the plan by the State in collaboration with the **[insert the Traditional Owners]**.

15.4.3 Will only be altered within its term

- (a) by consent of the **[insert the Traditional Owners]** after consultation with all the parties or
- (b) with respect to output or input controls if the State can show through scientific data a fish stock is over-exploited.

15.5 If a species specified in Schedule 5 is unregulated and is to be made subject to management controls after the execution of this ILUA, the State must when determining the management controls that are to apply:

15.5.1 take into account the importance of that species to the **[insert the Traditional Owners]**

15.5.2 apply management controls to all affected sectors.

15.6 The State will fund an anthropological study to report on the historical and current traditional fishing practices of the **[Traditional Owners]**. The study is to remain the property of the **[Traditional Owners]**. The consent of the **[Traditional Owners]** shall be obtained regarding the experts and informants who are to undertake the study.

15.6.1 A summary of the relevant parts of the study shall be included in the Management Plan to provide a guide to its provisions.

15.6.2 The implementation of the Management Plan is not dependent upon the completion of the study. The study is to be included upon its completion.

(Note: A study will only be undertaken if requested by the **[Traditional Owners]**).

16. Termination of the Management Plan

16.1 The management plan may only be terminated by agreement between the State and the **[insert the Traditional Owners]** or where there has been a fundamental breach of the plan and the State elects to terminate it under clause 16.2 . For the purpose of this clause a fundamental breach is:

- (a) a failure by the **[insert the Traditional Owners]** to comply the requirements of the plan such that the plan cannot be effectively administered and is
 - (b) not constituted by the fact that an individual breach is prosecuted under the Fisheries Act 1982 (SA).
- 16.2 Where there is a fundamental breach of the plan the State may elect to terminate or suspend the operation of the plan.
- 16.3 If the State elects to suspend the operation of the plan it must only do so after full consultation with the (**insert the Traditional owners**) about the matters that have lead to a fundamental breach in accordance with the process contained in the management plan and after giving notice to the (**insert the Traditional owners**) as provided in the plan.
- 16.4 Should the State suspend the operation of the plan the period of suspension shall be for a period of 6 months from the time the notice is served upon the (**insert the Traditional owners**).
- 16.5 During the period of the suspension of the plan
 - 16.5.1 (**insert the Traditional owners**) shall not exercise any Aboriginal Traditional Fishing rights or other traditional rights and interests whether under section 211 of the NTA or otherwise
 - 16.5.2 An action group comprising not more than 2 representatives from each of the parties will be convened and will meet on a regular basis throughout the period of the suspension and use all reasonable endeavours to address the issues that have lead to a fundamental breach of the plan.
- 16.6 At the end of the period of suspension the action group may recommend to the State that either
 - 16.6.1 Aboriginal Traditional Fishing be resumed in accordance with the plan or
 - 16.6.2 the operation of the management plan be terminated and the ILUA terminated in accordance with clauses 16.1,16.2 and 18.1.2 of this ILUA or
 - 16.6.3 the management plan be suspended for a further period of 6 months during which time the action group will make a further attempt to resolve the issues and clause 16.5 and 16.6 will apply.

17. Effect of Termination of Management Plan

- 17.1 A management plan and this ILUA operate concurrently. However the termination of a management plan will not operate to terminate this ILUA except as provided by this ILUA and corresponding provisions in the management plan.

18. Termination of the ILUA

18.1 This ILUA may be terminated by the State if:

18.1.1 There is a breach of clause 7 of this ILUA

18.1.2 The Management plan is terminated by reason of non-compliance with the plan (or the instruments that implement the plan) and such that clause 16.1 and 16.2 of this ILUA is invoked.

18.2 This ILUA may be terminated by the *[insert the Traditional Owners]* if the State

18.2.1 fails to implement a management plan that complies with the ILUA within 6 months of registration, or such other time as the parties may agree or

18.2.2 amends the management plan to a material degree during its term without the adequate collaboration of the *[insert the Traditional Owner]*

18.2.3 fails to review and implement successive management plans or amends a management plan otherwise than in accordance with clause 15.4 of the ILUA during its term except where the management plan has been suspended in accordance with clause 16.2

18.2.4 suspends the operation of the management plan in accordance with clause 16 for a consecutive period of 2 calendar years

18.3 This ILUA may be terminated by agreement of the Parties.

19. Effect of termination of ILUA

19.1 The termination of this ILUA will operate to terminate a management plan.

20. Other Rights and Interests

Note: There may be rights and interests in water or waters that the claim group may wish to have recognised in addition to Aboriginal Traditional Fishing rights. Consideration will need to be given to the effect of a breach of this clause by either the claim group or the State and how its breach will affect the operation of the ILUA.

21. Commercial Access

Note This clause is open to drafting in individual ILUAs. Once the agreement with respect to commercial access is included the balance of the document will require further drafting to ensure consistency of operation. In particular consideration must be given to those clauses that relate to termination of the ILUA and withdrawal of Claim. It will also be necessary to consider the severability of the clauses dealing with Aboriginal Traditional Fishing and those dealing with commercial access.

Commercial Access will be a component of most ILUAs either as compensation for

undertakings given by the Traditional Owners pursuant to clause 7 in recognition of past injustices or compensation for suppression or extinguishment of native title rights.

The Broad agreement that has been reached at Peak Body level is that the State, SAFIC and the Seafood Council accept the participation of Traditional Owners in commercial fishing on the basis that:

- (a) The State will provide and/or facilitate access into the commercial sector by the Traditional Owners and to this end will make reasonable efforts and financial commitments to assist and enable the Traditional Owners to acquire commercial fishing licences and/or interests in a licence on the market overt in agreed fisheries, and to acquire or lease plant and equipment necessary to the commercial operation of the licence.
- (b) The acquisition and operation of any commercial fishing licence by the Traditional Owners with the assistance of the of State will be in accordance with the Fisheries Act (1982) SA, relevant policy and fishery management principles.

The State, SAFIC and the Seafood Council accept the participation of the Traditional Owners in Aquaculture on the basis that:

- (c) The State will provide and/or facilitate access into the commercial sector by the Traditional Owners and will endeavour with reasonable effort, and financial commitment to grant or acquire commercial aquaculture leases and licences on the market overt to be transferred to the Traditional Owners.
- (d) The supply of any licence by the State to the Traditional Owners will be in accordance with the Aquaculture Act, relevant policy and fishery management principles.

The State SAFIC and the Seafood Council agree to negotiate provision and/or facilitate such assistance and expertise as may be reasonable to assist the sustainable development of any commercial access, as negotiated, within an agreed timeframe. (Such assistance may be provided by way of employment, training and/or mentoring.)

22. Fishing Rights of the *[insert the Traditional Owner]*

- 22.1 Nothing in this ILUA prevents the *[insert the Traditional Owner]* from exercising their recreational, commercial or other fishing rights in accordance with any authority issued under the Fisheries Act.
- 22.2 The *[insert the Traditional Owner]* acknowledge the Aboriginal Traditional Fishing rights contained in clause 14 are separate and distinct from fishing rights referred to in clause 20.

23. Fishing Closures

23.1 This ILUA or the Management Plan may require the State to alter fishing closures and closures imposed to effect a marine protected area.

24. Alternative Future Act (and Aboriginal Heritage) Process

(Note: Refer back to the definition of “Alternative Future Act” The parties may wish to change or modify the application of the Future Act regime in the NTA to the ILUA area. Each ILUA Area may be defined differently. It is possible that the definition of ‘water” may be expanded to mean “waters “ which would include the sub-soil and the seabed under water and may lead to wider application of the Future Act scheme of the NTA unless modified by the ILUA)

25. Native Title Act Statements

25.1 Future Acts

The parties

- (a) agree to the validation of all future acts done by the State that have already been done invalidly within the ILUA area before the registration date
- (b) consent, subject to clause 24, to the State doing each future act within the ILUA area during the period commencing on the registration date and continuing thereafter for the remainder of the term. Such consent does not imply permission by the traditional owners to do an act which in whole or part may affect Aboriginal heritage and that would otherwise amount to a contravention of the Aboriginal Heritage Act.

(**Note:** Clause 25.1(b) is linked to any alternative future act scheme that may be contained in the ILUA. If there is no alternative future act scheme it will not be applicable. This also applies to any references to 25.1(b) in clause 26 and the whole of clause 27)

25.2 No right to negotiate procedures

The parties agree that the right to negotiate procedure (Part 2 of Division 3, Subdivision P of the NTA) is not intended to apply to the doing of any future act by the State within the ILUA area during the period commencing on the registration date and continuing thereafter for the remainder of the term.

(for the purposes of this clause the **right to negotiate procedure** means the procedures described in Part 2, Division 3, Subdivision P of the Native Title Act 1993 (Cth) and includes any alternative provisions having effect in South Australia instead of that subdivision)

(**Note:** The parties may or may not agree to this clause and in any event it may not be applicable in every case.)

26. Limited Extinguishment

- 26.1 Subject to clause 26.2, the non-extinguishment principle applies to
- 26.1.1 the exercise of all native title rights in the ILUA area
 - 26.1.2 each validated future act referred to in clause 25.1(a) and
 - 26.1.3 each future act referred to in clause 25.1(b), done by the State within the ILUA area.
- 26.2 The **[insert Traditional Owners]** surrender to the State all of their native title rights and interests in relation to the water or waters within the ILUA area, as referred to in Schedule 5 in respect of which the State
- (a) has done or does any validated future act referred to in clause 25.1(a) or
 - (b) does any future act referred to in clause 25.1(b),
- where the relevant validated future act or future act is:
- (c) any facility for services to the public as provided for by section 24KA of the NTA;
 - (d) any public work; and
 - (e) any grant of a freehold or leasehold interest in waters including any easement.
- 26.3 The surrender of native title rights and interests pursuant to clause 26.2 extinguishes the surrendered native title rights and interests.
- 26.4 The extinguishment of native title rights and interests pursuant to clause 26.3 takes effect in respect of:
- (a) any surrender of those rights and interests referred to in clause 26.2(a), upon the registration date; and
 - (b) any surrender of those rights and interests referred to in clause 26.1(b), when the State undertakes the relevant act referred to in clause 26.2(c),(d) or (e) or when a plan or other instrument under the Real Property Act 1886 giving effect to that act is lodged with the Registrar General, whichever is the earlier.

(Note: The parties may or may not agree to this clause and in any event it may not be applicable in every case. However it has been agreed that the non-extinguishment principle applies to the exercise of native title rights within the ILUA Area.)

27. Consent Conditional on Compliance with Clause 24

27.1 The consent of the parties in clause 25.1(b) in relation to the doing of any future act is conditional on the State complying with the provisions of clause 24 which is applicable to the relevant future act.

28. Other Native Title Holders

28.1 The parties acknowledge and agree that this ILUA is binding pursuant to section 24EA(1)(b) of the Native Title Act 1993 (Cth) on all persons holding native title in relation to any of the waters in the ILUA area who are not members of the *[insert Traditional Owners]* in the same way as the native title group (as defined in section 24CD(2) or (3) of the Native Title Act).

29. Acknowledgment that Compensation is Final

29.1 *[insert Traditional Owners]* acknowledge and agree that, subject to clause 31:

29.1.1 any amounts payable and any benefits provided under this ILUA to *[insert Traditional Owners]* are in full and final satisfaction of any compensation rights or entitlement to which the *[insert Traditional Owners]* would be entitled whether under the NTA, common law, equity, any other statute or otherwise in respect of any act done by the State prior to or pursuant to this ILUA; and

29.1.2 for the purposes of section 24EB of the NTA, those amounts and benefits are compensation provided for by this ILUA; and (Note this clause will only be applicable when future acts are dealt with in the ILUA)

29.1.3 the *[insert Traditional Owners]* do not have any entitlement to any compensation other than for the amounts payable and benefits provided under this ILUA.

30. Exception

30.1 The provisions of clause 29 do not apply to any compensation to which the *[insert Traditional Owners]* would be entitled against any other party to this ILUA arising by reason of any breach of this ILUA by that party.

31. Sharing

31.1 *[insert Traditional Owners]* agree that the amounts payable and the benefits provided under this ILUA to *[insert Traditional Owners]* are held on behalf of all members of the *[insert traditional Owners]* and all persons (if any) who hold native title in relation to the whole or any portion of the ILUA area.

32. Application Survival

32.1 The provisions of clauses 29, 30 and 31 survive the removal of the details of this ILUA from the register for whatever reason and the termination of this agreement and remain in those circumstances binding on:

32.2 all persons bound by this ILUA; and

32.3 all persons entitled to any of the benefits under this ILUA.

33. Advisory Bodies under Fisheries Act

33.1 The State undertakes to include a representative of the ***[insert the Traditional Owner]*** and a representative of SAFIC and the Seafood Council in any advisory body established under the *Fisheries Act 1982* (SA) that relates to Aboriginal Traditional Fishing.

34. Fees

34.1 Subject to 34.2 when issuing any fishing authority under the *Fisheries Act (1982)* to any member of ***[Traditional Owner]*** for non-commercial fishing activities the State will:

34.1.1 exempt that person from any fees associated with the authority and

34.1.2 subject to suspension or cancellations will issue the authority in perpetuity.

34.2 Clause 34.1 only applies to the extent that an authority relates to fishing activity in the ILUA area.

35. Marine Protected Areas

35.1 The State must consult with ***[insert the Traditional Owner]*** when it proposes to create a marine protected area within the ILUA area whether or not there is a consultation period allowed by the *Fisheries Act 1982* (SA) or the *National Parks and Wildlife Act* (SA) *or any other relevant legislation*.

35.2 The State must consult with the ***[insert the Traditional Owner]*** at the earliest time possible in relation to the future management of any marine protected area that is proclaimed within the ILUA area and must take into account the provisions of this ILUA.

36. Aboriginal Heritage and Aboriginal Traditional Fishing Rights Protection.

36.1 The State respects and acknowledges the need to take such measures as are practicable for the protection and preservation of Aboriginal sites, objects and remains in accordance with Aboriginal heritage legislation and for the protection of Aboriginal Traditional Fishing rights under the *Fisheries Act 1982*(SA)

36.2 The Parties agree that the State shall consider the ***[insert the Traditional Owner]*** cultural and communal requirements when administering the *Fisheries Act 1982* (SA).

37. Fisheries Officers – *Fisheries Act 1982 (SA)*

37.1 ***[Insert Aboriginal corporation]*** may nominate any ***[insert the Traditional Owner]*** person or persons to be considered for a position as an officer authorised pursuant to the *Fisheries Act 1982 (SA)*.

37.2 The State will implement a Sea Ranger program, to train and engage members of the ***[insert the Traditional Owner]*** as liaison officers between PIRSA Fisheries and the ***[insert the Traditional Owner]*** in relation to the administration and implementation of Aboriginal Traditional Fishing under this ILUA and the management plan.

38. Employment

30.1 The Parties agree that the Minister shall, where appropriate, and in accordance with the Office of the Commissioner for Public Employment of South Australia guidelines, give preference to ***[insert the Traditional Owner]*** during selection processes for the appointment of staff to work in relation to management of Aboriginal Traditional Fishing under the management plan.

39. Notices

39.1 Any notice required to be given in accordance with this ILUA must be in writing and be sent by pre-paid post or facsimile transmission.

39.2 Schedule ***[insert number]*** will contain the parties contact details for notices.

39.3 Any notice required to be given in accordance with this ILUA may be given by electronic transmission to any electronic address provided by a Party for that purpose in substitution for the requirement that notice be given in writing and sent by pre-paid post or facsimile transmission.

39.4 A party may change its contact details for notices by notifying the other parties in writing.

40. Dispute resolution

40.1 The Parties will make every effort to ensure that disputes do not arise in carrying out the terms of this ILUA.

40.2 In this clause parties means disputing parties.

40.3 If a dispute arises in relation to this ILUA the parties will:

40.3.1 make every reasonable effort to resolve the dispute without recourse to court proceedings

40.3.2 give notice of the reasons for dispute to the other Parties, as soon as possible

- 40.3.3 as quickly as possible nominate representatives who will negotiate in good faith with a view to resolving the dispute.
- 40.4 If the Parties are unable to resolve the dispute quickly the Parties will agree to request the President of the Law Society to appoint a mediator.
- 40.5 The mediator appointed will have regard to the following:
 - 40.5.1 the principle of ecologically sustainable development
 - 40.5.2 the preservation of the rights and interests of the ***[insert the Traditional Owner]***
 - 40.5.3 the preservation of the ***[insert the Traditional Owner]*** way of life, culture and tradition
 - 40.5.4 the interests, proposals, opinions and wishes of the ***[insert the Traditional Owner]*** in relation to the management and use of the aquatic resources of the ILUA area
 - 40.5.5 the growth and development of ***[insert the Traditional Owner]*** social, cultural and economic structures
 - 40.5.6 freedom of access to the water of the ILUA area by the ***[insert the Traditional Owner]*** and their freedom to undertake cultural and communal activities in accordance with their tradition except where otherwise provided by the ILUA
 - 40.5.7 the relevant management of aquatic resources pursuant to the *Fisheries Act 1982* (SA), this Agreement and the Management Plan
 - 40.5.8 the responsibilities of the Minister in relation to the management of aquatic resources
 - 40.5.9 the interests of commercial fishers.
- 40.6 Each Party shall bear its own costs for mediation or other proceedings to resolve any dispute arising out of this ILUA. The State will pay the costs of a mediator.
- 40.7 Any information or documents exchanged and any offers of settlement made pursuant to this clause in an attempt to settle a dispute between the Parties is provided on a without prejudice basis.

41. Operation of ILUA

- 41.1 No Party will institute a challenge, nor support a challenge to, the validity of any provision of this ILUA.
- 41.2 If a Federal or State superior court finally determines any provision of this ILUA to be invalid or unenforceable:
 - 41.2.1 The Parties will make best efforts to amend this ILUA to remedy or

replace the provision.

41.2.2 the provision will be severed from this ILUA to the extent of the invalidity or unenforceability and

41.2.3 the remainder of this ILUA will be construed, to the extent possible, to give effect to the intent of the Parties.

41.3 A breach of this ILUA by a Party does not relieve any Party from its obligations under this ILUA.

41.4 The Parties shall do all acts, matters and things and sign all documents and shall cause to be done all acts necessary to give full effect to the terms of this ILUA.

42. General

42.1 If a provision of this ILUA is capable of an interpretation which would render it unenforceable, then that provision shall be interpreted, so far as is possible, to be limited and read down such that its meaning does not render it unenforceable.

42.2 Relationship between the Parties

42.2.1 The relationship between the parties is that of independent contractors.

42.2.2 The parties are not partners, joint venturers or (subject to 42.2.3) principal and agent.

42.2.3 ***[Insert Aboriginal corporation]*** represents and warrants that it is an agent of the ***[insert the Traditional Owner]***

42.3 Jurisdiction

42.3.1 Each Party submits to the non-exclusive jurisdiction of courts of the State of South Australia in connection with matters concerning this ILUA or matters in connection with or arising out of this ILUA.

42.3.2 The Parties agree that they will not institute any proceedings in connection with this ILUA or matters in connection with or arising out of this ILUA other than in a court in the State of South Australia or in the Adelaide registry of the Federal Court of Australia.

42.4 Severability

42.4.1 Each word, phrase, sentence, paragraph and clause (provision) of this ILUA is severable and if a court determines that a provision is unenforceable, illegal or void the court may sever that provision, which

becomes inoperative and such severance will not affect the other provisions of this ILUA.

42.5 Entire Agreement

42.5.1 This Agreement contains the entire agreement between all the Parties with respect to its subject matter and supersedes all prior agreements, negotiations and understandings between the Parties on that subject matter.

42.6 Amendment

42.6.1 The Parties may amend or vary this Agreement at any time by agreement in writing. No amendment or variation is of any force unless agreed in writing and signed by each Party.

42.7 Waiver

42.7.1 A waiver by a Party of a provision of this Agreement is not binding unless made in writing. A waiver relates only to the specific matter, non-compliance or breach in respect of which it is given and does not apply to any subsequent or other matter, non-compliance or breach.

42.8 Execution of Agreement and Other Documents

42.8.1 Each Party agrees to:

- (a) sign and deliver such agreements and documents and do such further acts and things as are reasonably required to give full effect to each provision of this Agreement; and
- (b) refrain from taking any action which is or is likely to be inconsistent with the proper fulfilment of its undertakings under each provision of this Agreement.

42.8.2 This Agreement may be signed in separate counterparts.

42.9 Minister's Discretion

42.9.1 Nothing in this ILUA fetters the discretion of any Minister of the Crown in the right of South Australia.

42.10 Successors and Assigns

42.10.1 This Agreement is binding on and enures to the benefit of the Parties and their successors and assigns.

EXECUTED BY THE PARTIES

Schedule 1 - ILUA Area Plan

Schedule 2 - Recognition Statement

Schedule 3 - Management Plan

Schedule 4 - Parties contact details for Notices

Schedule 5 - Culturally important species

Schedule 6- Native Title Claim Group

SCHEDULE 2 – RECOGNITION STATEMENT

(Note: It is suggested that a recognition Statement will be agreed between the Parties to a claim. A suggested form of words follows :)

The State of South Australia and SAFIC and the Seafood Council, which are Parties to this Indigenous Land Use Agreement (ILUA), recognise that the ***[insert the Traditional Owner]*** are the Traditional Owners of the sea resources defined in this ILUA.

Importantly, the Parties acknowledge that the ***[insert the Traditional Owner]*** laws, customs and culture originate from and are associated with, the take and use of fish and other resources from the defined water for the practice and pursuit of their cultural, spiritual, ceremonial, educational, physical and economic needs.

Acknowledgement of the Past

In recognising the ***[insert the Traditional Owner]*** history all the Parties commit to work co-operatively to assist in the preservation and protection of ***[insert the Traditional Owner]*** country and heritage. The Parties acknowledge the importance to the whole community in recognising and assisting the ***[insert the Traditional Owner]*** to preserve their culture which thereby enriches the heritage of all people who inhabit the area. Consequently, the Parties will act to redress past inequities suffered by the ***[insert the Traditional Owner]*** and work to enhance the ***[insert the Traditional Owner]*** physical and spiritual well being.

The Parties to this ILUA acknowledge that, as a consequence of colonisation and dispossession, the ***[insert the Traditional Owner]*** have suffered economic, spiritual, cultural and physical loss.