

Engagement Protocol: Development of Aboriginal Cultural Fishing trial Local Management Plans (LMPs)

Background

The NSW Government, in conjunction with engaged local Aboriginal communities (Aboriginal communities), is trialling Local Management Plans (LMPs) for Aboriginal cultural fishing in pilot regions across NSW. The Aboriginal Fishing Advisory Council (AFAC) has supported exploring and conducting a number of pilot LMPs in coastal and inland NSW to assess whether the approach delivers on Aboriginal communities' expectations, and promote improved management of fisheries resources.

Purpose

LMPs will be trialled to determine their effectiveness in addressing the cultural fishing aspirations of Aboriginal communities, and whether or not they should be implemented more broadly across NSW. They are part of the NSW Government's broader investigations into protecting and promoting the continuation of Aboriginal cultural fishing.

Trial LMPs will establish a separate management framework to provide Aboriginal communities with access to local fisheries resources for cultural fishing purposes. The LMPs will recognise existing management arrangements which seek to maintain fisheries resources for the present and future needs of all fishing sectors.

LMPs are intended to be developed through respectful and meaningful negotiations between Aboriginal communities and the NSW Government.

The [Aboriginal Cultural Fishing Interim Access](#) Arrangement (Interim Access Arrangement) will remain in place during the trials to ensure broader community cultural fishing access continues to be supported. Authority to fish beyond what is provided for under the Interim Access Arrangement will also continue to be available under section 37 of the *Fisheries Management Act 1994* (the Act).

This Engagement Protocol seeks to establish the agreed principles for developing LMPs and engaging with Aboriginal communities, AFAC, the NSW Aboriginal Land Council (NSWALC) and NTSCORP Limited (NTSCORP).

Goal & Objectives

Goal

To assess the capacity of LMPs to deliver on Aboriginal communities' expectations, support Aboriginal cultural fishing, and promote improved management of fisheries resources.

Objectives

To engage Aboriginal communities in the development of trial LMPs and take part in the evaluation of their success, leading to active and ongoing involvement of the Aboriginal communities in the management of fisheries resources.

Principles for trial LMP negotiations

A set of eight principles has been developed to guide LMP negotiations. These principles are intended to help parties to an LMP negotiation understand their roles and responsibilities, the behaviours expected of them, and the desired outcomes of the process.

These principles, and any other relevant principles as negotiated with the Aboriginal communities, will be relied on to guide the negotiation process.

Negotiation principles:

1. Participation in trial LMP negotiations and discussions is voluntary. Parties must agree to participate and may withdraw from the negotiations at any time.
2. Discussions and negotiations must be conducted in good faith. Good faith negotiations – in the context of the LMP trials – means all parties must act honestly; each party must have regard to the legitimate interests of the other parties; and no party may act in a manner which is arbitrary, capricious, or intended to cause harm to the other parties.
3. Negotiations will be conducted transparently in terms of process, options, and information-sharing.
4. A shared understanding and good relationships between parties will be the foundation for success.
5. Agreements should be reached based on free, prior, and informed consent. This requires participants having the capacity, capability and advice to participate in trial LMPs.
6. The outcomes of an LMP should be equitable and accessible for all Aboriginal communities covered by the plan.
7. The parties involved should take a broad perspective of what the LMP objectives are and be flexible and adaptable in developing negotiated outcomes.
8. Outcomes should be solutions-focused and deliver social and cultural benefits for Aboriginal communities and greater certainty for the NSW Government.

Governance

LMP trials will be subject to community-led negotiation processes. However, it is recognised that a number of organisations have critical roles in providing expert advice, supporting Aboriginal communities, and providing input into the LMP process. These include:

- Any community negotiation teams (as established by the Aboriginal communities)
- AFAC
- NSWALC, and Local Aboriginal Land Councils (LALCs)
- NTSCORP
- NSW Government.

Protection and use of cultural information and knowledge

Culturally sensitive information will not be shared or published unless permission is granted by Aboriginal community members. Any information that is agreed to be shared or published will be in a format that is agreed to by the Aboriginal community members engaged in the development of the LMP.

General guiding principles:

1. Concerns associated with providing information to the Department of Primary Industries Fisheries (DPI Fisheries) will be identified, documented, and discussed with the Aboriginal communities involved before the commencement of any case studies or negotiations.
2. Discussions related to the development of trial LMPs will be framed around ensuring that Aboriginal peoples do not incriminate themselves. Any information sought from

Aboriginal communities during the LMP process will focus on identifying the fishing aspirations of Aboriginal communities and proposed future fishing activities.

3. DPI will not disclose any confidential or culturally sensitive information to any other party unless required by law.
4. Discussions related to the development of LMPs will not directly involve DPI Fisheries compliance staff, unless there is community agreement to include them in the development. Early engagement of compliance staff can be beneficial to building relationships between community and the compliance arm of the NSW DPI. It is also the case that compliance can validly assist the process through interpretation of the best way to go about activities in support of community aspirations.
5. All project staff must adhere to these principles.

Community and stakeholder roles

AFAC

The AFAC will have an advisory and review function in the design and implementation of the LMPs. This may include identifying trial locations as well as advising on the design, approach, implementation and evaluation of LMPs.

NSWALC

NSWALC may be involved in supporting LALCs through the LMP process, where requested by LALCs.

NTSCORP

NTSCORP may be requested by traditional owner groups to provide advice to traditional owners through the LMP process.

LMP Community negotiation teams (if and where applicable)

Local Aboriginal communities may wish to establish community negotiation teams. If established, negotiation teams are to actively take part in negotiations and to drive community input into trial LMPs. This may include:

- participating in LMP negotiations
- designing and making recommendations about the content of LMPs
- helping to establish contacts in Aboriginal communities
- helping to provide relevant information to members of the community they represent
- monitoring and evaluating outcomes of LMP.

Decision-making

Negotiations about the scope, design, and implementation of trial LMPs will take place between DPI Fisheries and the Aboriginal communities. Negotiations will be guided by Aboriginal community needs and expectations, with regard to the overall sustainable management of fisheries resources.

Aboriginal communities will determine the relevant decision-making processes and procedures.

Legal effect of trial LMPs

Finalised LMPs will be implemented and given legal effect under Ministerial Orders pursuant to section 37 (3) (b) of the Act. This will ensure that activities under LMPs are captured

under NSW fisheries legislation, and are provided with clear protection from prosecution for an offence against the Act, or its regulations.

Native title

Trial LMPs will not affect any native title rights. In line with section 287 of the Act, LMP arrangements made under the Act do not affect the operation of the *Native Title Act 1993* (Cth) or the *Native Title (New South Wales) Act 1994* in respect of the recognition of native title rights and interest within the meaning of the Commonwealth Act.

Scope of trial LMPs

Trial LMPs will cover matters including:

- areas of fishing and access
- fishing equipment to be used
- species of fish (including those of particular significance)
- agreed limits (if any)
- ongoing engagement arrangements
- community based management of cultural fishing, such as self-regulation principles and who the LMP applies to.

Selecting trial locations and extent

The following three locations have been selected for LMP trials on the advice of AFAC: Tweed, Moama and Port Macquarie.

The extent of a 'trial location' will be limited to geographical areas that encompass lands, waters, and culturally significant areas as agreed between the Aboriginal communities involved and DPI Fisheries.

Strategy, methodology and process

Parties to trial LMPs

LMP discussions and negotiations are intended to be held with as many members of the Aboriginal communities as possible. This is to ensure that finalised LMPs best reflect and represent the fishing aspirations and expectations of the Aboriginal communities.

Parties to the development of an LMP may include:

- NSW Government (including AFAC)
- members of local Aboriginal communities
- local Aboriginal organisations
- LALCs
- NSWALC
- NTSCORP
- any relevant Prescribed Body Corporate, Native Title holders or traditional owners.

AFAC will be engaged in matters of importance to Aboriginal communities, and will assist in getting communities involved in the process. Similarly, the NSWALC and NTSCORP will be directly engaged to provide advice on facilitating plans and community support.

Where possible, it is proposed that *negotiation teams* be formed (made up of representatives from the Aboriginal communities) that will meet with the NSW Government to negotiate their respective LMPs, and to agree on how to progress them. The process, including how community representatives will be selected, will be led by, and agreed within, each community and may vary by region.

Facilitation of meetings and negotiations

Where possible, LMP discussions will be facilitated by an independent facilitator. At a minimum, a facilitator will:

- be independent and have no real or perceived conflicts of interest
- have advanced negotiation and mediation skills and experience in facilitating complex negotiations within a set timeframe
- have an understanding of Aboriginal cultural fishing and marine-related issues (including fisheries resource management)
- have appropriate knowledge and understanding of Aboriginal cultural values and protocols.

Information and data

Printed materials will be organised for Aboriginal community members to assist in providing focused input for the development of plans. Ongoing communication over the phone with the relevant NSW DPI staff will also be available for interested community members to discuss points of view at any stage of the process.

Timeframes

LMPs in all pilot locations are intended to be developed in 2018, if supported by the Aboriginal communities.

Resourcing and community support

Costs associated with meetings will be covered by DPI, including:

- venue hire and catering
- community transport to meetings where needed (e.g. cost for Aboriginal communities to be transported to meetings)
- communications and promotion (e.g. costs of postage, printing and advertising).

Engagement and feedback

Identifying and contacting community members

AFAC members have identified initial contacts in the pilot locations.

Consultation with the broader community will be driven by advice from the Aboriginal communities.

Community meetings (Primary)

Where possible, the primary form of communication with Aboriginal communities will be through face-to-face meetings. This includes:

- an initial series of community meetings to explain the LMP concept, obtain feedback on appropriate consultative arrangements and whether community members would be interested in participating
- workshops to enable direct community input into the development of their respective LMP pilot trial.

The locations of the community meetings will be identified through consultation with various Aboriginal representative bodies, organisations and individuals.

Where possible a minimum of one month's notice will be provided for meetings.

Information brief

An information package will be made available to broadly explain and summarise the LMP concept.

Media

Notice of workshops and other consultation activities will be announced through relevant communication sources. This includes drawing on stakeholder networks and if necessary and where supported by key community contacts, any or all of: NSW DPI media releases; advertisements in local newspapers; LALC newsletters; and local radio.

Form and manner of feedback

Direct engagement and input into the LMP pilot trials will be through Aboriginal community workshops (using an independent facilitator where possible). LMP community negotiation teams (if implemented) will provide feedback which will be collated for consideration. Aboriginal people the plan relates to and their organisations as well as government agencies will also be provided opportunities to provide written.

Evaluation of trial LMPs

Trial LMPs will be monitored during their implementation, followed by an evaluation period of 12 to 24 months after implementation. Aboriginal communities will be involved in the monitoring and evaluation process of their LMPs. Measures of success will be developed in consultation with Aboriginal communities.

Review of this Engagement Protocol

This Engagement Protocol will be reviewed in line with the evaluation of the trial LMPs. Aboriginal communities will be involved in the review of this document.