Submission on the rock lobster tagging draft fisheries notice

Via e-mail to: melissa.schubert@ecodev.vic.gov.au

21/4/17

Melissa Schubert
The Rock Lobster Fishery Manager
GPO Box 4509
Melbourne, 3001
Victoria

Re: Rock lobster tagging draft fisheries notice

Dear Melissa,

The SCUBA Divers Federation of Victoria (SDFV) is a peak body which represents the recreational fishers who scuba-dive for rock lobster, and we have participated as a key stakeholder member of the rock lobster tagging Working Group, as well as having a long history of involvement with the management of the Victorian rock lobster fishery. As always, we appreciate our continued involvement in the stakeholder consultation process and hope we can continue to make a valuable contribution.

The SDFV does not support the introduction of a rock lobster tagging trial at this time. We do not believe a sufficiently thorough and recent process has been followed to decide on tagging as the best method for recreational catch estimation. We urge a step back, and a formal consultative process be undertaken to evaluate rock lobster catch estimation methods.

When invited to participate in the Working Group mid-2016, we were surprised that tagging had been selected as the mechanism for recreational catch estimation without stakeholder consultation on other options, but we engaged in good faith. After several initial Working Group meetings, there followed a period (over Christmas/New Year) of several months with no Working Group meetings or communication. However in January, and with no notice to the Working Group members, a letter was sent from the Acting Executive Director of Fisheries to VRFish (of which SDFV is a member) seeking comment on six proposed fisheries regulation changes - these included what appeared to be a permanent rock lobster tagging scheme with significant elements at odds with the discussions of the Working Group. This letter is included with the submission as Appendix B. The Working Group expressed grave concerns at the idea that this sort of substantial regulation change would be considered without going through an RIS process.

Following a meeting with the Working Group and Executive Director of Fisheries Victoria to straighten things out, it was agreed that the mechanism for the trial would be by Fisheries Notice, not by regulation change. We thank you for this. Clarifications were made and communication issues addressed, and we took the opportunity to discuss why tagging had been selected. Subsequently at our request, a letter was provided by the Executive Director detailing how tagging was selected over other estimation methods. The letter is included with this submission as Appendix C. It does not appear that any scientific or formal process was followed to arrive at this conclusion, and as such we suggest the best course of action is to complete this before implementing a tagging trial.
Submission on the rock lobster tagging draft fisheries notice

However, subject to some minor changes to the draft Fisheries Notice, we are prepared to continue in our role on the rock lobster tagging Working Group and work co-operatively with the group to ensure the tagging trial provides a reliable estimate of the recreational catch, and is as practical as possible for the fishers it is imposed upon.

An SDFV-commented markup of the draft Fisheries Notice is included with this submission as Appendix A - we have gone to a good deal of effort to workshop changes which should for the most part be easily accepted by Fisheries Victoria and by the Working Group - minimising the burden on recreational fishers (and thus maximising accuracy and compliance).

It is particularly key to remember that any tag which is unaccounted for will be assumed to have to been used on a lobster. Thus even if no tags were reported, there would be a reasonable estimate of the recreational catch, albeit an over-estimate.

Our key issues with the draft Fisheries Notice (all of which are addressed by the suggested SDFV changes) are:

1. The notice should explicitly state this is a trial:
   a. In title/preamble
   b. Specify end date for trial (ie. 30th June 2020)
2. Penalties are excessively large for a trial (and compliance is already covered by existing tail clipping penalties). Ie.20 penalty units for failing to tag is a potential $3k fine.
3. Parameters of the trial should be established before and remain unchanged during the trial, and the CEO should not be able to request (as yet undefined) additional information (by a method or process yet undefined) about the taking of the rock lobster which is not directly related to the purpose of the trial. (That is, who, what, where, when, etc. are not necessary elements of a trial to estimate the recreational catch of rock lobster in Victoria.
4. Reporting requirements:
   a. We are happy to report a tag was used, and an east/west location, but strongly believe anything else is unnecessary (and will likely produce bogus data/dissuade reporting).
   b. This is especially the case for tag serial numbers
5. Transferrability of tags - this is a key issue for our members. To increase convenience, compliance and reporting, it is important that you can provide one of your tags to a mate you are fishing with.
   a. We suggest that whoever acquired the tag has the responsibility of reporting it. They may supervise a friend they are diving with who has no tags. (In the suggested SDFV changes of the draft Fisheries Notice, this is implemented exactly the same as fishing with a minor).

As the changes to the notice are likely to be significant, and this has become a charged issue, we would recommend that a final draft be formally issued for final consultation before being enacted.

As always, thank-you for the opportunity to formally comment. We look forward to workshopping changes to the Fisheries Notice in the next Working Group meeting.

Stephen Fordyce,

Chairperson, and
Vice-President – Statutory
SCUBA Divers Federation of Victoria, Inc.
Submission on the rock lobster tagging draft fisheries notice

Appendix A: SDFV suggested changes and comments on the draft fisheries notice.
I, Travis Dowling, Executive Director Fisheries, as delegate of the Minister for Agriculture and having undertaken consultation in accordance with Section 3A of the Fisheries Act 1995 (the Act), make the following Fisheries Notice under Section 152 of the Act:

Date: / /2017

Travis Dowling
Executive Director Fisheries

FISHERIES (ROCK LOBSTER TAGGING TRIAL NOTICE 2017

1. Title
This Notice may be cited as the Fisheries (Rock Lobster Tagging Trial) Notice 2017.

2. Objectives
The objectives of this Notice are to
(a) specify measures for the protection of rock lobster through the introduction of a trial tagging system to quantify the recreational take of rock lobster; and
(b) fix and enforce catch limits for rock lobster that are possessed by a fisher without the use of a rock lobster tag.

3. Authorising provision
This Notice is made under sections 68A and 152 of the Act.

4. Commencement
This Notice comes into operation on 1 July 2017.

5. Application
This notice does not apply to–
(a) a person acting under a Rock Lobster Fishery Access Licence; or
(b) an authorised officer or employee of the VFA in the execution of a power, function of duty under the Act.

6. Definitions
(1) In this Fisheries Notice:

“CEO” means the chief executive officer of the VFA;

“fishing season” means a period commencing on 16 November and ending on the following 15 September;

“rock lobster tag” means a tag issued by the VFA for attaching to rock lobster taken for non-commercial purposes;

“tag number” means the unique identification number stamped on or otherwise affixed to a rock lobster tag by the VFA;
“the Act” means the Fisheries Act 1995;
“unused rock lobster tag” means a tag that has not been attached to a rock lobster, and is not broken or otherwise damaged;
“use a tag” means attach the tag to a rock lobster in such a manner that the tag cannot be removed without being broken;
“VFA” means the Victorian Fisheries Authority.

(2) Despite sub-clause (1) the 2017/2018 fishing season means the period commencing on 1 July 2017 and ending on the 15 September 2018.

7. Issue and expiry of rock lobster tags

(1) The VFA may issue one or more rock lobster tags to a person if –

(a) the person applies for rock lobster tags in a form approved by the CEO and

(b) the total number of unused rock lobster tags in the person’s possession at any one time does not exceed 12; and

(c) the person has provided a report in accordance with clause 8(1) for all rock lobster tags previously issued to that person.

(2) Rock lobster tags remain the property of the VFA.

8. Reporting requirements

(1) For each rock lobster tag issued to a person, the person must report the following information to the VFA in the manner required by the CEO –

(a) the tag number;

(b) whether the tag was used, lost or not used;

(c) any other particulars regarding the taking of rock lobster by the person that the CEO requires.

(2) A report under sub-clause (1) must be made no later than midnight on 15 November to enable a person to be eligible to receive tags for the next fishing season.

Penalty: 20 penalty units.

9. Use of approved rock lobster tags

(1) A person must not take or attempt to take rock lobster unless –

(a) the person possess as least one unused rock lobster tag issued for the current fishing season; or

(b) the person is under the age of 18 years and is directly supervised by a person to whom paragraph (a) applies; or

(c) the person is directly supervised by a person to whom paragraph (a) applies.

Penalty: 21520 penalty units.

(2) A person who takes rock lobster must apply a rock lobster tag to the rock lobster –

(a) if the rock lobster is caught by any means from a boat, within 5 minutes after being brought to the boat or before the rock lobster is landed, whichever is sooner; or

(b) subject to sub-clause (3), if the rock lobster is caught by any means other than from a boat –

(i) within 5 minutes after being taken; or

(ii) before the rock lobster is put into any basket, bag or receptacle; or

Comment [SF2]: Form of issue of tags should be explicitly specified

Comment [SF3]: Manner of reporting for the trial should be explicitly specified

Comment [SF4]: The only relevance for this is for preventing transferrability of tags, which is a key onerous aspect of the trial.

Comment [SF5]: Any other reporting particulars should be explicitly stated. I.e. East/West is acceptable. Size estimate is not (contributes to bogus data)

Comment [SF6]: According to the original clause, a person who forgot to report could not fish for lobster at all in the next season.

Comment [SF7]: Changes to above clause (i.e. reporting for previous season must be done before new tags can be received) is incentive enough. Failure to report results in an overestimate (thus conservative) of catch.

Comment [SF8]: Key transferrability enabler.

Comment [SF9]: All penalty units changed from 20 to 0.5. It’s a trial – penalty units should be modest. All issues related to take of rock lobster are dealt with by existing (ie. tail clipping) regulation.
(iii) before the rock lobster enters any premises or vehicle; or
within 50 metres of the place where the rock lobster is landed – whichever is most practical.

Penalty: 200.5 penalty units.

(3) Sub-clause (2)(b)(i) or (ii) does not apply if the rock lobster is taken by a person engaged in underwater dive fishing until the rock lobster is landed.

Penalty: 20 penalty units.

(4) A person must not attach a rock lobster tag to a rock lobster unless the tag was issued by the VFA for use in the fishing season in which the rock lobster is taken.

Penalty: 200.5 penalty units.

(5) A rock lobster tag must be attached in such a manner that it cannot be removed without being broken.

Penalty: 200.5 penalty units.

(6) A person must not possess a rock lobster that does not have a tag attached unless –

(a) the rock lobster tag has been removed for the purposes of consuming the rock lobster and the removed rock lobster tag is in the person’s possession; or

(b) the rock lobster are accompanied by a rock lobster receipt or original rock lobster catch disposal record issued in respect of that rock lobster.

Penalty: 200.5 penalty units.

(7) A person must not sell, alter, deface, mutilate or reuse a rock lobster tag, except for removing to cook the lobster.

Penalty: 200.5 penalty units.

(8) A person issued with a rock lobster tag must not give, lend or transfer that rock lobster tag to any other person unless the other person –

(a) is under the age of 18 years and is directly supervised by the person; and or

(b) is directly supervised by the person.

Penalty: 200.5 penalty units.

(9) A person must not use or possess a rock lobster tag issued to another person unless the person –

(a) is under the age of 18 years and is directly supervised by the person; or, and

(b) is directly supervised by the person.

Penalty: 200.5 penalty units.

10. Tags not to be re used

(1) A person must not use a rock lobster tag that has previously been attached to a rock lobster or that is broken.

Penalty: 200.5 penalty units.
(2) This clause does not prevent a person from re-attaching a tag to the rock lobster if the tag falls off the rock lobster.

11. Production of Tags when required
An authorised officer may require a person to produce any unused tags in their possession for inspection.

Note: it is an offence under section 111(2)(i) of the Act to contravene or fail to comply with any lawful requirement of an authorised officer. A penalty of 20 penalty units applies.

12. Possession limit for rock lobster that does not have a tag attached

(1) For the purposes of the Act, the catch limit with respect to the possession of rock lobster anywhere in Victoria that does not have a rock lobster tag attached in accordance with clause 8 is zero.

Note: Regulation 324 of the Fisheries Regulations 2009 prescribes other catch limits with respect to rock lobster.

(2) Sub-clause (1) does not apply to a person –
(a) who possesses rock lobster in accordance with regulation 324 (2) of the Fisheries Regulations 2009; or
(b) if the rock lobster tag has been removed for the purposes of consuming the rock lobster and the removed rock lobster tag is in the person’s possession; or
(c) the rock lobster are accompanied by a rock lobster receipt or original rock lobster catch disposal record issued in respect of that rock lobster.

13. Application to fisheries reserves
For the purposes of section 152(4) of the Act, this notice applies to all fisheries reserves.

14. Revocation
Unless sooner revoked, this Notice will be revoked 12 months after it came into operation. The trial tagging system is to expire on 30th June 2020 (or sooner), and a thorough stakeholder consultation process will be undertaken prior to any subsequent fisheries notices or tagging schemes for the recreational rock lobster fishery.

Comment [SF14]: Key stakeholder reassurance - that the trial is actually for 3 years as promised, and we don’t end up with a situation similar to abalone.
Mr Rob Loats  
Chair, VRFish  
PO Box 538  
WILLIAMSTOWN Victoria 3016

Dear Mr Loats

Re: Fisheries Amendment Regulations 2017

Fisheries Victoria is proposing to amend the Fisheries Regulations 2009 and is seeking your comment on the proposed changes. The changes will:

- support implementation of the Government’s Target One Million election commitment to prohibit netting in river mouths of the Gippsland Lakes and implementation of the broader recommendations of Mr Craig Ingram’s report to Government;
- allow Wrasse (Ocean) Fishery Access Licences to be transferred;
- create a tagging scheme to quantify recreational take of rock lobster;
- reflect recent changes to the Traditional Owner Settlement Act 2010 (TOS Act);
- transfer relevant regulatory functions to the Victorian Fisheries Authority (VFA); and
- progress a number of administrative improvements.

A table is attached outlining the proposed amendments and the rationale for each change. I would welcome your consideration and feedback on any of these proposed changes.

If you would like to discuss the proposed amendments in more detail, please do not hesitate to contact me on (03) 8392 6846 or via email at: dallas.d’silva@ecodev.vic.gov.au. Please provide any feedback you may have by no later than 10 February 2017.

Yours sincerely,

Dallas D’Silva  
Acting Executive Director  
Fisheries Victoria  

17 / 1 / 2017
## SUMMARY OF PROPOSED CHANGES TO THE FISHERIES REGULATIONS 2009

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<tr>
<th>Proposal</th>
<th>Rationale</th>
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| 1.1 Expand the commercial equipment exclusion zones around river mouths, as per the boundaries outlined in Mr Craig Ingram’s report to Government. | - Delivers on the Target One Million election commitment to ban commercial netting in river mouths of the Gippsland Lakes.  
- Expected to provide benefits to recreational fishers through increased availability of fish stocks.  
- Local tourism, retailers and recreational bait and tackle businesses that support recreational fishers are also expected to benefit from increased patronage (and potential revenue increases), due to the potential increase in availability of fish stocks for recreational fishers. |
| 1.2 Prohibit the commercial landing and sale of Australian bass. | - Will assist in the recovery of this species and support re-stocking and habitat improvement projects.  
- Expected to provide benefits to recreational fishers through increased availability of bass. |
| 1.3 Require marking of either end of all mesh nets with a spherical orange buoy measuring no less than 250mm in diameter and require orange buoys no less than 150mm in diameter no greater than 100 meters apart along the length of all mesh nets. | - Ensures nets are clearly visible to other water users. This will improve boating safety on the Gippsland Lakes. |
| 1.4 Require EFAL and GLFAL holders to mark any pots, traps or nets set in the Gippsland Lakes with a white spherical float measuring no less than 250mm in diameter. | - Enables members of the public to distinguish between nets used by GLFAL holders and other commercial fishers in the Gippsland Lakes. |
| 2.1 Allow Wrasse (Ocean) Fishery Access licences to be transferred and leased. | - Enables licence holders to trade, sell or lease the licence and to engage persons who may operate the licence on their behalf.  
- Fees and levies for Wrasse (Ocean) Fishery Access licences will be adjusted to cover costs of management. This will result in a $40 pa increase for each licence holder. This change will be made as part of a separate regulatory change package that will amend the Fisheries (Fees, Levies and Royalties) Regulations 2008.  
- A management strategy will be developed in consultation with industry to coincide with the introduction of licence transferability. This strategy will include pre-determined management actions that will be undertaken in response to substantial increases in fishing catch and effort, to help manage any sustainability concerns. Licence holders will also be required to record and detail information on the location of catches to provide further information for the management of this fishery. These actions do not require regulatory amendments and will be managed administratively. |
| 3.1 Require application for rock lobster tags in the manner specified by the Secretary. | - Establishes the need for recreational fishers to obtain tags, regardless of whether they are exempt from the requirement to possess a Recreational Fishing Licence. |
| 3.2 Exempt commercial fishers and traditional owners operating in accordance with a Natural Resource Agreement, from the need to obtain tags. | - Ensures the tagging regime is restricted to recreational fishers. |
| 3.3 Establish that rock lobster tags are only valid for the year in which they were issued. | - Sets a time frame for the validity of tags. |
| 3.4 Create an offence to attempt to take rock lobster without having rock lobster tags in possession. | - Ensures fishers do not commence fishing without first obtaining tags. |
| 3.5 Create offence to be in possession of recreationally taken rock lobster unless tag attached. | - Ensures persons found with an untagged rock lobster can be prosecuted. |
| 3.6 Create offence for failing to attach a tag in the manner specified. | - Ensures tags are attached in a way that ensures they cannot be removed, tampered with or re-used. |
| 3.7 Create an offence to remove rock lobster from the point of landing unless a tag is attached. | - Ensures tags are attached to rock lobster. Creates the incentive to tag rock lobster. This regulation will be consistent with the current requirement for tail marking. |
| 3.8 Specify the required details that must be provided when reporting rock lobster tag use. | - Ensures that fishers provide correct information when reporting. |
| 3.9 Create an offence to alter, deface or reuse a rock lobster tag. | - Ensures tags are not altered or tampered with and that false tags are not used. |
| 3.10 Establish a maximum possession limit of 12 unused and unreported tags for an individual recreational fisher. | - The total number of tags available per year will not be limited, however limiting the 'batch size' enables the number of tags in circulation to be managed more effectively and efficiently. |
| 3.11 Create an offence to transfer a rock lobster tag to any other person, with the exception of children under the age of 18 who are under direct supervision of an adult who possess tags. | - Ensures tags are not redistributed between fishers and forces fishers to apply for tags (and subsequently complete the report requirement) in the following year. |
| 3.12 Specify that to be eligible for tags in each subsequent year, an individual must report against each tag assigned to them by a specified date after the conclusion of the previous 12-month period. | - Ensures that all tags distributed within each 12-month cycle can be accounted for (tags can be nominated as used, lost, damaged, or not used) thereby improving the accuracy of catch estimates. |
4. Transfer relevant regulatory functions to VFA

4.1 Make a number of amendments to transfer relevant regulatory functions to the VFA.

- All changes will align with the consequential amendments to the Fisheries Act 1995 and the objectives, powers and functions of the VFA (as set out in the VFA Act 2016).
- The proposed changes will substitute references to the “Secretary” with “Victorian Fisheries Authority”, for all regulatory functions that will be the responsibility of the VFA as of 1 July 2017.

5. Reflect recent changes to the TOS Act

5.1 Make a number of amendments to reflect recent changes to the TOS Act.

- As of 1 May 2017, traditional owner access to fish resources will be enlivened through Natural Resource Agreements (NRAs) rather than the Fisheries Regulations 2009.
- The Department of Justice and Regulation recently requested that the Fisheries Regulations 2009 be amended to align with these changes.
- The proposed changes will replace existing regulatory exemptions for traditional owners under the Fisheries Regulations 2009 with a broad exemption that “turns off” relevant regulatory offences where the traditional owner is acting in accordance with an NRA and on land subject to the NRA.

6. Administrative amendments

6.1 Revise the blacklip and greenlip abalone size limit zones to reflect revised boundaries for the western zone.

- Corrects a recent drafting error that inadvertently increased the minimum size limit for the take of abalone to 13cm between the mouth of the Hopkins River and Lorne. The change will correct the size limit in this area to 12cm.

6.2 Create a minimum size limit for the commercial take and possession of dusky flathead.

- Corrects a recent drafting error that inadvertently increased the minimum size limit of dusky flathead to 30cm for commercial fishers. The change will correct the size limit to 27cm.

6.3 Allow commercial abalone fishers to land catch at Point Roadknight.

- Administrative change that will enable commercial abalone fishers to land catch at an additional port. This will help reduce fishing costs.

6.4 Allow the Scallop Dive (Port Phillip Bay) licence holder to land catch at the Williamstown and Portarlington Boat Ramps.

- Administrative change that will enable the Scallop Dive (Port Phillip Bay) licence holder to land catch at additional ports. This will help reduce fishing costs.

6.5 Amend regulation 27 to read "eligibility" instead of "eligibilty".

- Administrative change to correct a spelling mistake.

6.6 Amend regulation 117 to allow recreational take of up to five gemfish per day.

- Reduces regulatory burden by allowing take of this species by recreational fishers.

6.7 Exempt authorised officers acting in the course of their duties from specified offences under the Act, if the action is reasonably necessary to avoid loss of human life, injury to any person, damage to property or for animal welfare.

- Enables enforcement officers to immediately dispatch fish for human safety or animal welfare reasons without the need to obtain a permit and without fear of prosecution. This is particularly important in emergency situations such as shark attack.

6.8 Define electric fishing reels as recreational fishing equipment.

- Authorises use of electric reels by recreational fishers.
Submission on the rock lobster tagging draft fisheries notice
Appendix C: 2/3/17 letter from Executive Director on the process of choosing tagging over other methods.
Mr Stephen Fordyce  
Chair  
SCUBA Divers Federation of Victoria  
GPO Box 1705  
MELBOURNE VIC 3001

Dear Mr Fordyce

ROCK LOBSTER TAGGING PROGRAM FOR RECREATIONAL FISHERS

Thank you for making the time to meet with us on 16 March 2017 and for your valuable contribution to the conversation. As we discussed on the night, the goal of the tagging program is to get a much better handle on how many lobsters recreational fishers catch to make sure we have a great fishery for the future.

The main outcomes from the meeting on 16 March 2017 were agreement from all participants of the need to obtain data on the annual recreational catch of rock lobster and the value this data will provide for stock assessments. I confirmed our intention to implement the tagging program as a three-year pilot. We also agreed to your request to go with a Fisheries Notice rather than regulations for the pilot.

There has been debate for over ten years on how we count rock lobster. We went with tags rather than these options as the best way forward:

1. **Phone survey:**
   - Using the current Recreational Fishing Licence (RFL) database, there is no current method for identifying rock lobster fishers from the broader list of RFL holders. Further, there is currently no way to identify those who fish for rock lobster but who are also exempt from the need to possess a RFL.

2. **Email survey:**
   - A number of years ago, Fisheries Victoria conducted a voluntary email survey of the RFL database that sought feedback from fishers on their catch of abalone, rock lobster and scallop. The survey did not produce any results that could be considered scientifically defensible.

3. **Separate rock lobster licence or a rock lobster endorsement on an RFL:**
   - The option of either a stand-alone rock lobster licence or the addition of species-specific endorsement will create more red tape with respect to licensing regulations. Neither option gives a direct rock lobster catch estimate; it simply provides a contact list identifying those fishers who may fish for rock lobster.
4. Rock lobster tag:
   - A tagging system, with reporting requirements, will provide clear and direct record of catch.
   - An online tagging scheme, once established, can be reasonably self-managed and easy for fishers whilst providing strong data.

Thanks again for the valuable contribution you and your members have made to this process so far. I look forward to working together to achieve a really good outcome from this program that will provide robust data and an improved relationship between all sectors utilising the rock lobster resource.

I have enclosed the Key Concept document for your reference and we have also written to VRFish and the Victorian Spearfishing Commission to provide this information. The draft Fisheries Notice will be distributed for consultation within the next few weeks and I look forward to working with you as the pilot program is implemented over the next three years.

Yours sincerely

Travis Dowling
Executive Director
Fisheries Victoria

2/1/03/17