



A Submission in relation to the Regulatory Impact Statement Fisheries (Recreational Abalone) Regulations 2004

Preamble

This is a submission from the SCUBA Divers Federation of Victoria (SDFV) in relation to the Regulatory Impact Statement Fisheries (Abalone) Regulations 2004 released for public comment by the Department of Primary Industries.

The SDFV is an affiliation of recreational SCUBA diving clubs and the peak body representing the interests of recreational divers throughout Victoria. As such, the SDFV represents the major recreational fisher group affected by the Proposed Regulations.

The SDFV has received considerable negative reaction to these new regulations from the stakeholder community. There has also been significant complaint as to the general process and behaviour Fisheries Victoria has demonstrated in bringing these regulations to a RIS. The SDFV holds concern that the process has weakened and belittled stakeholder faith in their long-time support and advocacy in the participative consultation that underpins Victoria's co-management regime. It is important that these messages are delivered to the architects of the regulations proposed in this RIS.

This submission is provide in three parts:

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| Part 1 | A summary of our view of the proposed Regulations | <i>page 2</i> |
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Finally, we reiterate our faith in fisheries co-management, and we conclude our submission with yet another open invitation for Fisheries Victoria to embrace participative consultation, and engage recreational stakeholder groups in open, honest dialogue, on this or any other matter.

Yours sincerely,

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SCUBA Divers Federation of Victoria.

22 October, 2004



Part 2: General Summary of Position

Proposed New Regulation	SDFV Position
<p>4.1 Reduced Abalone Bag and possession limits in Central Victorian Waters.</p> <p><i>Interpretation:</i> Max. possession of 4 per fisher taken in Central Victorian Waters, being defined as all marine waters, including Port Phillip Bay, between the mouth of the Aire River (near Cape Otway) and Arch Rock in Venus Bay. The existing 10 fish bag/possession limit remains for all other areas.</p> <p><i>The recreational catch of 4 fish per day may include up to two Greenlip abalone provided the Greenlip is not taken from Port Phillip Bay (as a consequence of proposed new regulation 4.3).</i></p> <div style="border: 1px solid black; padding: 5px; text-align: center;"> <p><i>No similar or analogous restrictions on the commercial sector.</i></p> </div>	<p>Not acceptable and not supported</p> <ul style="list-style-type: none"> • The basis of the proposed 60% reduction in the daily bag/possession is NOT sufficiently established. • The claimed stock protection imperative is nonsensical, given commercial fishing activities are not constrained. • The proposed regulation unnecessarily applies to all of the Central Victorian Waters area, not just the inner reefs. • The new bag/possession limits is mere pandering to the demands of the commercial sector and are designed to force recreational fishers from the fishery. • The primary beneficiary of the regulation is the commercial fishery, not the recreational fishery.
<p>4.2 Introduction of Closed Fishing Season for Abalone.</p> <p><i>Interpretation:</i> Access to the recreational fishery in Central Victorian Waters is to be reduced from year-round to 30 days only, the days to be determined and published by Fisheries management.</p> <div style="border: 1px solid black; padding: 5px; text-align: center;"> <p><i>No similar or analogous restrictions on the commercial sector.</i></p> </div>	<p>Not acceptable and not supported</p> <ul style="list-style-type: none"> • The basis of the 97% reduction in access to the fishery is NOT established or articulated at all. • The claimed stock protection imperative is nonsensical, given commercial fishing activities in the specified areas are not constrained. • The measure may be counter-productive to the stock protection imperative in that it will promote a concentration of fishing effort over a short period. • Closure of the fishery to non-commercial fishers is mere pandering to the demands of the commercial sector and is designed to force recreational fishers from the fishery. • The primary beneficiary of the regulation is the commercial fishery, not the recreational fishery.
<p>4.3 Greenlip Abalone Closure for Port Phillip Bay.</p> <p><i>Interpretation:</i> Prohibition of both non-commercial fishers and commercial fishers to take greenlip abalone in Port Phillip Bay.</p>	<p>Acceptable</p> <ul style="list-style-type: none"> • Note that accepting this regulation is a concession by the recreational sector, since the Victorian Abalone Management Plan prescribes that recreational fishing of greenlip should continue, and there is no evidence presented in the RIS as to new stock pressures in Port Phillip Bay from recreational fishers.



General Summary of Position (cont.)

Proposed New Regulation	SDFV Position
<p>4.4 Removal of Closed Season for Greenlip Abalone.</p> <p><i>Interpretation:</i> The existing closed season for recreational greenlip abalone fishing (from 1 October and 31 March) is to be removed. This is on the basis that the recreational access is restricted as per Proposals 4.2 & 4.3</p> <p>The existing closed season will be retained for commercial fishers in waters other than Port Phillip Bay.</p>	<p>Supported (conditionally), and closed session for commercial sector extend to all year.</p> <ul style="list-style-type: none"> • This is largely consequential, given the proposed closed season for Central Victorian Waters, although the RIS obscenely promotes the removal as a significant beneficial concession to recreational fishers. • To be consistent with <i>intent and the logic used in the RIS</i>, the closed season for commercial fishing of greenlip should be extended to all year, until the VAMP requirements are implemented. Yet. Commercial fishers are further favoured by retaining <i>status quo</i>.
<p>4.5 Removal of Requirement to Cut the Meat of Recreationally Caught Abalone.</p> <p><i>Interpretation:</i> The existing regulation which requires that the meat of recreationally-caught abalone be cut is to be removed.</p>	<p>Supported (and welcomed)</p> <ul style="list-style-type: none"> • The RIS states the requirement has been unsuccessful as a management tool, and hence an unnecessary regulation. • The (previously ignored) overriding health issue can now be graciously accommodated.
<p>4.6 Removal of Abalone Boat/Vehicle</p> <p><i>Interpretation:</i> The existing regulation that prescribes a boat and/or vehicle limit of 50 abalone is to be removed.</p>	<p>Supported, but removal should not be conditional.</p> <ul style="list-style-type: none"> • RIS states existing regulation is unsuccessful as a management tool, and under the proposed new bag/possession limits, will be unnecessary. The RIS is silent on whether the regulation will be removed if the new bag/possession limits are not implemented. • If the regulation is not enforceable, the SDFV agrees that it should be removed. • The SDFV does not support removal on the basis of 'concession' for acquiescence to the introduction of draconian bag/possession limits.



General Summary of Position (cont.)

Proposed New Regulation	SDFV Position
<p>4.7 Amendment of Intertidal Shellfish Protection Regulations</p> <p><i>Interpretation:</i> The existing prohibition of collection of abalone from intertidal waters (from high water mark to a water depth of 2 meters) of Port Phillip Bay and the central Victorian coast from Thompson Creek at Breamlea to Arch Rock in Venus Bay will be amended to allow collection consistent with the proposed new regulations specified in Sections 4.1 & 4.2.</p>	<p>Not Supported.</p> <p>Ban commercial fishers from same area (i.e. less than 2 meters).</p> <ul style="list-style-type: none"> • This regulation is inconsistent with the claimed inner-reef stock protection imperative. • The intertidal zone is protected from non-commercial fishing, and thus will be exposed to intense and concentrated pressure during the 30 nominated days. • The Commercial fishers remain exempt from the prohibition on fishing abalone in intertidal zone waters, and when fishing conditions allow, can deplete reef areas much more efficiently than occasional recreational fishers. • The SDFV strongly advocates that if the inner-reef stock protection imperative is <i>bona fidi</i>, the intertidal waters should be protected from commercial fishing.
<p>4.8 Amendment to commercial Abalone Reporting Arrangements.</p> <p><i>Interpretation:</i> As a matter of administrative convenience, the RIS proposes changes to procedural arrangements to the commercial fishery and ‘other proposed miscellaneous amendments’ The changes are not articulated, but the proposed textual changes to specific clauses of the existing Fishing Regulation 1998 are provided in <i>Appendix 2</i> of the RIS document.</p>	<p>Not supported (as a matter of principle)</p> <ul style="list-style-type: none"> • Cannot be supported due to lack of any detail. Reference to Appendix 2 does not provide any guidance as to the reasons for the changes. • The RIS provides no detail as to the basis of the proposed changes, (or even what actual changes are), other than to provide an assurance that the changes do not provided any significant new regulatory burden or business costs. FV is in no position to expect the community to ‘trust them’. • The proposed regulations (what ever they may be) therefore DO NOT fulfil the requirements of the Subordinate Legislation Act 1994 as claimed in the Executive Summary (<i>page iii</i>).
<p>Amendment of the Victorian Abalone Fishery Plan (VAMP)</p> <p><i>Interpretation</i> Amend sections in the VAMP in relation to recreational regulations so that future changes to the recreational regulations will not need future changes to the VAMP.</p>	<p>Not Supported.</p> <ul style="list-style-type: none"> • Contrary to requirement of the Fisheries Act, in that the proposed change will mean the VAMP may NOT reflect and detail current management regulations. • Same rationale used for the proposed change is not applied to commercial regulation.



Part 2: Detailed comments of the RIS rationale

Proposed Regulations 4.1 & 4.2

The SDFV has interpreted the basis of the RIS to be that an abundance of abalone stocks on *some* in-shore reefs in Central Victorian Waters *appears* to have declined substantially. The most likely reason for the apparent decline is held in the RIS to be increased fishing pressure from recreational fishers and a 'significant' level of illegal fishing arising from fish thieves posing as genuine recreational fishers in the area. Over-laid on this is the apparent failure to effectively curb the activities of this type of fish thief through the current enforcement regime. The 'FV solution', therefore, is to simply restrict recreational access to the resource by reducing the bag/possession limit and closing the recreational fishery for all but 30 days per year. This will deny those fish thieves who choose to abuse the recreational regulations the opportunity to do so, except for 30 days per year. The loss of harvesting rights of the (legitimate) recreational fisher is held to be unavoidable, since the proposed solution approach is the only way FV can think of to reduce this type of modus operandi of abalone thieves, given the current regulatory regime. The RIS holds that the upside is that this approach should alleviate the non-commercial fishing pressure on in-shore reefs (to a degree), and thus may arrest the apparent decline of abalone stocks on in-shore reefs.

It is self-evident that the Proposed Regulations 4.1 & 4.2 will result in a significant reduction in recreational fishing effort for abalone. This may have stock protection outcomes, but only on the recreational catch (and perhaps on a particular type of illegal catch) and only to the extent that participation levels are reduced. However, the restrictions are to be applied to a sector that takes only a miniscule proportion of the resource compared to the commercial sector, which is not affected at all by the proposals. The claimed stock protection outcome is therefore very dubious, but the intention that the minor shareholding is to be made smaller is clear. This is a severe challenge to notions or expectations of equity. Given the community property basis of the fishery, in our view, the test to be applied is whether the basis for the 'FV solution' is sufficiently well founded, and whether the outcomes of the 'FV solution' are in best interests of the fishery, as community property. This includes tests of the soundness of evidence underpinning the need for such changes, as well as tests of fairness in relation to those advantaged and disadvantaged by the changes.

In relation to the claimed stock protection imperative:-

First, we find the convenient construction in the RIS of the 'demarcation' of shallow reefs (less than 5 metres) being served-up as the purvey of recreational (and illegal fishers), while commercial fishing occurs in mainly deeper reefs (5-20metres), thereby establishing the in-shore reef depletion as a non-commercial issue, as simply **dishonest**. Commercial fishing in waters less than 5 metres is known to occur to a great degree through the Central Victorian Waters. Recreational fishers often encounter commercial fishers on the same reef systems. Indeed, we suspect that the reason the RIS is silent in terms of providing stock and catch information is that an indication of the vast tonnage of abalone that is commercially fished in the area from shallow reefs would significantly weaken any case for new regulations based on stock protection arguments. The commercial sector already takes more than 95% of the catch from the area. We thus find it bizarre that a stock imperative argument can be mounted on the logical basis of trying to protect less than 5% of the stock, while, at the same time, allowing unrestricted commercial access to that same 5% stock (or less) that the proposed regulations are designed to protect. Given the ridiculousness of the stock imperative argument, we have little option but to suspect that such approach in rationale underpins a more sinister agenda to discourage, or extinguish, recreational fishing for abalone. If we accept such an agenda exists, the dishonest logical construction in the RIS makes some sense.



Second, we are astounded, no dumfounded, at the sheer audacity to which the proponents of the 'FV solution' are prepared to misuse and abuse scientific information. It has the character of political spin (and it is coming from public-servant managers of commonly-owned fish). It is accepted as axiomatic that increased human population density exerts increased pressure on fish resources. However, the principle claim in the RIS in relation to apparent *reduction* in the abundance of abalone on inner reefs is based on the statement: "*Recent scientific surveys (late summer and autumn 2004) of shallow reefs from Cape Otway to Phillip Island have confirmed that on average the abundance of legal size abalone is less than half that of deeper offshore reefs where mainly commercial fishing occur. The distribution of abalone on inshore reefs is also much more patchy, with many reefs having no legal size abalone*" (page 2).

While we don't doubt the observation, we object to the subjective and broad generalisations conclusions drawn, and the subsequent liberal use of such unfounded conclusions as 'scientific' evidence substantiating a case of stock depletion caused by non-commercial fishing pressure. In relation to mention of the 'scientific surveys', we humbly point out the RIS does not indicate:-

- the purpose of the surveys,
- reference to any previous surveys,
- scale of survey (number of reefs, etc.),
- benchmark level of abundance,
- benchmark measures of fish distribution as a function of reef habitat.
- a measure of change in abundance of a given reef.

The RIS claims a *decline* in inshore abalone abundance. Evidence-based opinion would require at least some measure of rate of change of the level of abalone stocks in inner reefs, not a single 'snap-shot' comparison of some inner reefs to some outer reefs. We acknowledge that proponents of the 'FV solution', in their zealous pursuit to remove recreational fishers from the fishery, might not recognise or understand the need for concepts of proof, and seize on the simple 'snap-shot' difference to further their cause. In this way, it comes as no surprise to us that the proponents would be happy to then rely on occasional anecdotal observation, viz: "*This assessment has been supported by observation from recreational divers and regionally based Fisheries Officers*" (page 2), as sufficient 'proof'.

We ponder whether proponents of the 'FV solution' would similarly advocate a 60% reduction in fishing effort and 92% reduction in fishery access for the commercial fishery if a 'scientific' survey found *some* reefs in deeper waters (in depths similar to where commercial abalone fishers fish) which had abalone in abundance less than some arbitrary commercial benchmark level. We think not. We think the commercial fishers would raise hell all the way to the Minister's office, screaming total bureaucratic incompetence. And we would agree with them. We submit that the logic is no different in the case of this RIS, and we invite the proponents of the 'FV solution' to explain otherwise.

In relation to the fish thieves problems:-

There are a number of problems in the RIS in relation to the logic of argument of tackling fish thieves who masquerade as recreational fishers and abuse the existing catch limits to accumulate abalone for illegal sale. There are two principle deficiencies:-

1. The RIS is silent in terms of dimension and scale of the problem. Without a notion on the extent of illegal fishers, and the numbers of fish involved, compared with either the size of the recreational catch or the commercial catch, it is not possible to conclude reasonableness (of the proposed regulations).
2. The RIS is silent in terms of why there is failure to catch and prosecute illegal fishers, post-collection. If detection and prosecution fails now, for whatever reason, it will fail in the future, since these regulations do not address post-collection issues. Admittedly, the absolute number of



failures in detection and prosecution might be less, since the regulations attempt to restrict the opportunity, but nevertheless, the *character* of the failure remains unchanged.

How can the scale of the matter of illegal accumulation for illegal sale be known as 'significant' and still remain? If it is illegal, and it is known, why is it not prosecuted? Surely the community has a right to conclude enforcement incompetence, or reluctance to prosecute. Enforcement incompetence is outside the purvey of the SDFV to comment on, but we can see how the proposed new regulations would help mask enforcement inefficiency. The failure or reluctance to prosecute is another matter. Does it not occur to the proponents of the 'FV solution' that the proposed new regulations do not address the existing failure of the current regulations, they merely reduce the opportunity for them to fail. Perhaps it is the nature and character of the post-collection issues that should be better analysed.

In relation to the claimed benefit:-

The SDFV admits to having great difficulty in accepting the logic of the RIS in relation to benefits of the Proposed Regulations 4.1 & 4.2.

If we suspend all reality, and accept, *for the moment*, the view of the proponents of the 'FV solution' that there is both an inner-reef stock protection imperative and a need to curb a particular type of abalone thief, we do not understand why recreational fishers need to be subjected to reduced access to *all reefs*. The RIS does establish clearly (one of the few things it does do), that the deeper reefs have sufficient abundance of abalone to support a very healthy commercial abalone fishery. Therefore, there is no stock reason to limit recreational access to these fish. Further, the RIS argues that the type of illegal fisher, which is the target of the proposed new regulations, operates from shore in shallow reefs. So, in terms of addressing the stated problem, the proposed regulations are excessive in their effect on restriction recreational fishing from all reefs in the area. A consequence of restricting access of recreational abalone fishers to all reefs in Central Victorian Waters is to confer stock benefits to the commercial sector. We assume that FV would not introduce regulations simply for management convenience, (it is said that this is against the Fisheries Act), so we are left to conclude that it is the intention of the proponents of the 'FV solution' to actually introduce recreational abalone fishing regulations that *solely* benefit the commercial sector.

We acknowledge and appreciate that the RIS does identify the commercial sector as beneficiaries of the proposed recreational regulations, but we fail to see how the recreational fishery will ever benefit from these proposed regulations. Given the commercial sector takes about 500-600 tonnes from the area every year, any stock level improvements arising from the recreational fishers being restricted from taking their historical 3-20 tonnes will never be seen. The 'recovery' of inner reefs is fanciful, since there is no prohibition as to where commercial fishers might fish.

Proposed Regulations 4.3

The SDFV can not find any logic to this proposed regulation, other than under the implication of 'equity' to both the commercial and recreational sector. That is, the RIS makes much of the Victorian Abalone Management Plan, (VAMP) and the requirement to introduce a zero TAC for greenlip on the commercial sector. FV's bureaucratic inefficiency notwithstanding, (since VAMP has been around for more than 2.5 years now), the 'raft' of regulation changes for recreational abalone is a convenient way to bring in an effective zero TAC. Oh, and by the way, for fairness, the proponents of the 'FV solution' will also bring in a ban on recreational catch of greenlip in Port Phillip Bay. Seems only fair, since the commercials have to have a TAC of zero. We can only ponder as to the fate of greenlip stocks in Port Phillip Bay under FV's care had there not been proposed recreational regulations!



We say, however, that the proponents of the 'FV solution' have conveniently forgotten to observe that the VAMP establishes no change in the management arrangements for recreational greenlip abalone. The RIS does not articulate any new or increased threats to greenlip abalone. The commercial catch is said to be about 1% of the total catch, so this puts it at about 6 tonne in the region. This is against about 1-2 tonne for recreational fishers, given the existing possession limit is 2 fish. If the RIS was meant to imply a stock issue with greenlip abalone, then it has originated from fishing pressure from the commercial sector, and since it is to now have no take, the stocks should be able to sustain what little recreational fishing there is.

Nevertheless, while the RIS does not provide regional catch information, we acknowledge that the greenlip abalone catch in Port Phillip Bay may be disproportional higher than represented by the above total fishery statistics. In this context, the SDFV does see the merit in banning greenlip abalone catch from Port Phillip Bay for all sectors as a stock protection measure.

Proposed Regulations 4.4

We understand this proposal is consequential of Proposal 4.1 & 4.2. If Proposals 4.1 & 4.2 are implemented, the removal of the existing closed season for greenlip abalone makes some sense. However, the existing closed season was through summer, therefore naturally reducing recreational fishing pressure. The new proposed regulation of 30 days recreational fishing only may be during summer, and presumably, this will increase pressure on greenlip abalone stock, relative to the existing closed season.

We take the opportunity to point out the inconsistency of the 'proponents of the FV solution', yet again. In Proposal 4.3, the logic used was the VAMP, and the requirement of a zero commercial TAC, and in a single stroke, there is a ban on commercial catch of greenlip abalone from Port Phillip Bay. However, in Proposal 4.4, the existing closed season on greenlip abalone applies to the commercial sector is argued as remaining until a zero TAC can be introduced for the commercial taking of greenlip abalone outside Port Phillip Bay. Why not introduce a commercial TAC for greenlip for all waters now, in this 'raft' of recreational regulations, if only for administrative convenience (if not fairness!). As a result of the proposals, recreational fishers will be restricted to a 30 days total to take greenlip abalone, yet commercial fishers can take greenlip abalone for six months of the year, still! But the VAMP said the commercial fishery were to have the cut, not the recreational fishers. We think the proponents of the 'FV solution' are demonstrating their arrogant disregard of the VAMP, and are showing-off their subservience to the commercial sector, again!

A full year closure of the commercial fishery to greenlip abalone should apply.

Proposed Regulations 4.5

The SDFV is glad that the meat spoilage and health issues raised 3 years ago with FV have finally gained some recognition. We note that the proponents of the 'FV solution' imply the removal of the existing regulation is conditional on implementing Proposals 4.1 & 4.2. We suggest that the admission that the intention of the regulation does not work, and that there is a potential health risk when following the requirements of the regulation, are sufficient grounds for the community to accept the unconditional removal of the regulation, immediately.



Proposed Regulations 4.6

Ditto. If it doesn't work, lose it. – We support the removal of the boat/vehicle limit.

Proposed Regulations 4.7

We say, the logic is dumb, given the argued stock protection imperative. Current regulation will protect intertidal waters better, particularly given that Proposed Regulation 4.2 will concentrate fishing for abalone in intertidal waters over 30 days. We conclude, then, that the stock protection imperative is somewhat of a construction.

Again, we say it, but we doubt the proponents of the 'FV solution' will want to listen: *If* there is a real stock protection imperative for abalone in intertidal waters, how about banning everyone? Currently, the commercial sector is exempt from the intertidal Shellfish Protection regulation, and they can fish abalone in waters less than two metres. Ban everyone, and perhaps non-commercial stakeholders may start to drop their belief that everything FV does in abalone management is to the tune of the commercial fishers.



Part 3: Our view on process and consultation

In our view, Fisheries Victoria (FV) has shown very little, if any, willingness to engage in meaningful dialogue and discussion with the stakeholders – recreational abalone fishers – as to the actual need for the proposed regulations, and how best to achieve them.

The SDFV notes that the catch and access reductions proposed in this RIS are similar in character to those proposed by FV in the Regulatory Impact Statement Abalone Regulations 1999. FV carried out the 1999 process in isolation from dialogue and interaction with the principal stakeholder group. That RIS caused much unnecessary friction with the stakeholder groups, and did nothing but confirm long-held beliefs that the Department was incapable of progressing beyond entrenched and historical behaviour. The 1999 RIS was precipitated by circumstances which the then Director of Fisheries acknowledged was “probably an over-reaction to claims made by sections of the commercial fishery”. Given the similar lack of honest dialogue with the stakeholder group about the imperatives and *need* for such draconian and regressive recreational regulations in this current RIS, we have little option but to assume similar drivers.

Since the 1999 RIS, the Victorian Abalone Management Plan has been prepared and established under a co-management regime of co-operation and stakeholder involvement. The recreational sector participated in the process on a *bona fide* good-will basis. Implementation of the VAMP has seen ample evidence of FV, generally and, genuinely, engaging with the commercial sector in a productive and collaborative manner. We don't understand why FV has not taken the same approach with the recreational sector, and we are left to question what, if anything, has progressed since the 1999 RIS.

In terms of stakeholder engagement, we flatly reject (and strongly object to) the claim in this RIS that there has been consultation. At best, the SDFV, through the recreational fisher peak body, VRFish, received a briefing to herald in these new regulations. The common view at that briefing from stakeholder groups wider than just the recreational sector was that the ‘package’ was not right, and that a stakeholder workshop should be convened to go through the issues. At a subsequent meeting, held at our request to try and fathom the actual logic and principles behind the regressive regulations, the Departmental view was that a significant reduction in the recreational bag limit was a given, and not negotiable, and that they saw no point of having a stakeholders workshop. We accept that we were told what was going to happen, but we think it wrong and misleading to claim stakeholder *consultation* in this RIS.

That aside, the sheer arrogance and isolation of approach has done nothing but to cement commonly held views that FV has no intention of adopting co-operative and collaborative engagement with recreational fishers. This does nothing but perpetuate the community distrust in dealing with the Department.