



C/O 62 Roberts Road  
Pietermaritzburg 3201

23 July 2018.

The Deputy Director-General Environmental Programmes  
Per Email to: [NembaReqs@environment.gov.za](mailto:NembaReqs@environment.gov.za)

Attention: Dr Guy Preston

Dear Dr Preston

Re: Draft Amendments to the Alien and Invasive Species Lists and Regulations 2018 promulgated in terms of the National Environmental Management: Biodiversity Act, No. 10 of 2004 ("NEMBA").

As you will be aware FOSAF submitted comments and objections in submissions dated 18 March 2018 and 17 June 2018 respectively, to the Draft 2018 Alien and Invasive Species Regulations and Draft Alien and Invasive Species Regulations respectively in GN 115 and GN 112 in Gazette 41445 on 16 February 2018 (the "Draft 2018 Lists and Regulations") published by the Minister of Environmental Affairs ("the Minister"). This further submission is intended to supplement those submissions and will make reference to other submissions commenting and objecting to the proposed Draft 2018 Lists and Regulations.

FOSAF is aware of the many initial and further representations and submissions made to the Department of Environmental Affairs ("DEA") on behalf of various organisations and by individuals commenting upon and expressing objections to the proposed Draft 2018 Lists and Regulations. For the sake of brevity we will not repeat the lists of these parties including those that made additional submissions under the current extension notices.

FOSAF associates itself with and supports the gravamen of these objections, comments and submissions and again expresses its categorical opposition to the regulatory framework being proposed and the proposed amendments to the AIS lists.

As noted in all its submissions, FOSAF has repeatedly called on DEA to remedy its failure to engage in good faith with the trout value chain and other affected stakeholders in relation to the various earlier iterations of proposed regulatory aspects under NEMBA. We again emphasise that repeated and numerous requests for meetings and information relevant to and necessary in relation to both the proposed lists and regulations have repeatedly been ignored or rejected. This is unfortunate as such engagements could have provided appropriate opportunities for the sharing of ideas and the finding of workable solutions and would have avoided the situation that now pertains.

We again reiterate that the proposed Draft 2018 Lists and Regulations including the extension notices in both the Government Gazette and the Mail and Guardian, have been published prematurely and in breach of agreed processes and without lawful compliance with:

- the required consultation provisions, in that DEA unilaterally terminated and failed to properly continue with consultations already commenced and on-going;
- the statutory time and publication requirements provided for the publication of such notices for public consultation;
- the statutory duty to supply sufficient information, including amongst other things, convincing and proper evidence of significant harm and reasons for the proposed decisions to list the species proposed in the listings and to implement the proposed regulations, so that the public can be in a position to meaningfully object and/or comment thereon;
- a policy framework to guide decisions and implementation that has been adopted after a lawful public consultation process.

We reiterate that it is FOSAF's respectful view that the interpretations of the applicable definitions in NEMBA as applied to the proposed and existing regulatory framework by DEA are unlawful because DEA relies upon a bio-centric as opposed to an anthropo-centric approach. This results and will in the future continue to result in outcomes that breach the Constitution, NEMA and NEMBA.

In the period since FOSAF's first submission, and in response to the many objections and concerns raised by stakeholders, DEA purported to extend the time period for the making of objections and/or comments by publishing a notice in the City Press on 13th May 2018. This was again extended by way of further notices published in Gazette 41722 under GN 622 and the notice published in the Mail and Guardian newspaper on 22 June 2018 on the same day.

However, DEA once again failed to properly comply with the provisions and requirements of NEMBA in this regard. We have had sight of the submission/objection filed by Mr Ian Cox today which amongst other things, elaborates on the reasons why these notices are again defective. FOSAF aligns itself with such reasons and supports the conclusions reached thereon.

In addition the text of the gazetted Draft 2018 Lists and Regulations are problematic as there is no indication in the usual format and convention, of what text is being added to or removed from the existing Lists and Regulations. This failure to follow the simple age old convention regarding legislative amendment makes comparative reading of the Draft 2018 Lists and Regulations extremely confusing and unreasonably onerous.

A further consideration is that the newspaper notices do not publish the Draft 2018 Lists and Regulations but rather make a reference to the gazetted notices. This is a further lack of

compliance with the plain wording of Section 100 of NEMBA and compounds the failure by DEA in this regard.

These shortcomings do not enable sufficient consultation and are not in keeping with the spirit and intention of Section 100 of NEMBA, read in the context of the NEMA principles and the Constitution and are an abuse of the public's rights and accordingly unlawful.

Furthermore, DEA has also once again failed to supply sufficient information, to enable the public to meaningfully object and/or comment on the proposed lists and regulations. Our prior comments on the shortcomings and insufficiency of the information supplied by DEA are again applicable to the current extension notices. FOSAF once again emphasises that it is regrettable that none of the information made available by DEA comprises "sufficient information" as required by section 100 of NEMBA.

As noted in FOSAF's first and second submissions, FOSAF is of the respectful view that the Minister's proposed decisions to list trout and all the other species which the Minister intends listing, must be made by first applying NEMBA correctly (this is not possible without a properly publically consulted upon and promulgated policy) and then weighing up such proposed decisions holistically in the light of the NEMA principles and the Constitution.

To date, notwithstanding the purported extensions of the comment period and the purported provision of information by DEA, the Minister has wrongfully failed to disclose the decision making process and considerations used to arrive at: the proposed listings, the proposed amendments nor despite previous requests, the original earlier promulgated iterations of the Draft 2018 Lists and Regulations. FOSAF thus again respectfully draws attention to the fact that no sufficient information providing the basis upon how these decisions were made by the Minister and what factors the Minister intends relying upon in this regard, has been made available to the public. This lack of disclosure is highly regrettable and invalidates the consultation process.

FOSAF emphasises the fact that the defective SEIAS report has not been remedied nor has the correct information as required by the published guidelines in this regard and in addition, the SANBI AIS Status Report as well as DEA's responses thereto, have still not been made available as part of the information required to enable the public to meaningfully object and/or comment the Draft 2018 Lists and Regulations.

Accordingly FOSAF, other stakeholders and the public are denied the opportunity and cannot thus meaningfully comment on or adequately motivate objections to such matters due to the insufficiency of the information provided. This failure undermines the spirit and purpose of consultation as intended by section 100 of NEMBA, read in the context of the NEMA principles and the Constitution and is an abuse of the public's rights and is accordingly unlawful.

FOSAF again emphasises that these failures to follow the required due process and statutory requirements are highly regrettable. We trust the Minister will, as is her Constitutional duty, ensure that this does not happen again. It is also requested that the Minister will inquire into this sorry state of affairs and hold those responsible for the fruitless and wasteful expenditure thereby incurred accountable.

Many of the matters noted above are elaborated upon in further detail in the representations and submissions referred to above. In the interests of brevity, these detailed submissions are not repeated herein. It is accordingly requested that FOSAF's support for such elaborations are noted in support of its comments and objections to the Draft 2018 Lists and Regulations.

In the light of the manifold failings on the part of the DEA, the Minister is once again requested, notwithstanding her reply of 30 April 2018, to withdraw the Draft 2018 Lists and Regulations as has been previously requested, failing which FOSAF will proceed to approach the Courts for appropriate relief.

Kindly acknowledge receipt hereof.

Yours faithfully

A handwritten signature in black ink, appearing to be 'ILAN LAX', written over a horizontal line.

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ILAN LAX  
National Chairperson  
FOSAF