

COMMENTS ON DEA's Press release of 7 March 2018

FOSAF responds to the DEA's media release as follows in red in the text:

"The Department of Environmental Affairs (DEA) has responded to stakeholder comments on the listing of rainbow trout and brown trout as invasive species." [DEA has responded inadequately and these responses do not cure the defects in the notices publishing the Draft AIS Lists and Regulations for comment]

"Following the amendment to the National Environmental Management: Biodiversity Act's Alien and Invasive Species Regulations to list Rainbow Trout and Brown Trout, there has been a petition against the listing of these species that is misleading stakeholders. The department has responded as below:" [There has been no petition, I am aware of. Interested parties have written in requesting information. There is also nothing misleading about these requests. The accusation that stakeholders have been misled is a boot that best fits the DEA]

"Trout are invasive in suitable waters in South Africa and there is no scientific evidence to the contrary."

[We respond as follows:

- There is no scientific evidence that trout are invasive where they occur or might occur in South Africa as legally defined.
- The science, such as it is, is based on a different definition of invasive to the one used in law. The application of a scientific definition is inconclusive because in many areas trout cannot establish in the wild as is required in terms of that definition.]

"The risk assessments for the species are clear, and they are on the basis of the decision to list the species." [The risk assessments in fact make it clear that trout are not invasive as the term is defined in NEMBA. There is in fact a great deal wrong with the risk assessments. Problems include inter alia:

1. They were not carried out by independent environmental assessment practitioners qualified and registered as such in terms of the Natural Scientific Professions Act, 2003 (Act No. 27 of 2003).
2. The persons who carried out the assessment were not independent but were informed by the conviction that operates at DEA that trout are invasive. They were produced during the 2014 consultation process to justify DEA's claim that trout are invasive.
3. The definition of invasive that was used is not the one used in NEMBA. The risk assessment only looks at impact on native species rather than if trout threaten existing ecosystems habitats or species.
4. No regard was had to the benefits that arise because of trout and the trout value chain. No socio economic impact assessment was undertaken and the NEMA principles were ignored.
5. They are desk top generalisations based on international studies often in cases where there is a risk of interbreeding with native strains of trout. There is no such risk in South Africa.
6. The distribution range as in where trout have established is mischaracterised being far greater than it actually is. The fact that trout have not invaded these areas should be proof that trout are not invasive as is the fact they cannot establish themselves in these areas. Trout were extensively stocked into South African waters by government the intention at the time being to stock trout wherever possible. They established in some areas but not in others. The risk of trout establishing where they have not already established is minimal if it exists at all.

7. There is no evidence proving that trout are invasive in South Africa and the risk assessments and the studies referred to in the risk assessments confirm this. The judgement that trout are invasive is an opinion of some scientists based on criteria that are not disclosed. Other scientists have a different view. It not a demonstrable fact.]

“Therefore the DEA, the Department of Agriculture, Forestry and Fisheries (DAFF), the Department of Water and Sanitation (DWS), provincial authorities, supported by national and international ichthyologists, as well as the Operation Phakisa: Oceans Economy secretariat, recommended that trout be listed as invasive species.” [I do not know if DEA has the support it claims but I do point out that DEA and the Phakisa office are acting unlawfully, DEA in its attempts to list trout as invasive in this way and the Phakisa Office in failing to apply its own dispute resolution procedures and deal with the complaint lodged by Trout SA last year¹. None of these other departments has consulted the value chain in relation to the lists or the regulations.]

“It should be noted that the decision to list a species, or change its listing, goes through a long process that involves various role players.” [DEA has not involved the trout value chain in its decision to list trout as invasive. The decision that was taken at the Phakisa Ocean labs Conference in July 2014 was that, save for certain protected areas, trout would not be declared invasive where they occur. DEA’s engagements with the trout value chain subsequent to that agreement have been directed at mapping the whereabouts of trout, DEA has not engaged with the trout value chain at all since reneging on that decision and deciding to list trout as invasive. The Phakisa office has also failed to engage with Trout SA and Aquaculture SA on this issue despite being obliged to do so in terms of its own procedures.]

It has been proposed that the two trout species be listed as Category 2 species. Category 2 means that the species can be utilised, with a permit. This category is there to recognise that there are invasive species that have value, and can be utilised under conditions. [NEMBA does not authorise the Minister to create this category 2. Chapter 5 of NEMBA obliges landowners to take steps to control (as in eradicate or prevent where eradication is not possible) listed invasive species. Permits for restricted activities may only be issued where the risk of harm is minimal.]

“For example, the forestry industry is not prevented from growing Category 2 pines, wattles or gums.” [This is a misleading example as these trees are exempt in plantations where they occur. This is not the same as trout.]

“Rather, areas are agreed upon where these Category 2 species may be grown, and they are given permits to conduct their work. The Department’s focus is to stop invasions of the species outside of the demarcated areas in which these Category 2 species may be utilised. There is no difference with respect to trout, or any other Category 2 species. Accusations that this categorisation of trout as Category 2 species will destroy the industry are untrue.” [DEA cannot make this statement as DEA has not done the required SEIA investigation or any other investigation for that matter on of the effect listing trout as invasive will have on the trout value chain. The fact is that the trout value chain

¹ http://www.durbanflytyers.co.za/Articles/171005_Escalation_Letter_Final.pdf

is concerned about the effects that the listing of trout will have and has explained these concerns only to have them dismissed out of hand by DEA.]

“In the case of fish species like trout, there is also a recognition that most invasions are a fait accompli. It is hugely expensive – and often highly improbable – to try to recover from such invasions in rivers. This is why the focus is on trying to contain the spread and allow catch-and-release in the area in which such species are caught.” [If the invasion is a fait accompli as DEA alleges then trout are not invasive as there is no risk of the spread that is required in terms of the definition of invasive. The listing of trout as invasive in these circumstances will result in fruitless and wasteful expenditure by DEA.]

“In these circumstances, it is intended that the following will happen:

- 1.1. Trout will be listed as Category 2 species. [This is not lawful]
- 1.2. Trout hatcheries will need to apply for permits. These are likely to be long-term permits (40 years is currently being considered), allowing hatcheries to breed, sell and distribute (live) trout. [Permits may only be issued for up to ten years in terms of the Draft AIS Regulations]
Those acquiring the live trout will have to have a permit for the trout. [Risk assessments will have to be carried out before permits can be issued]
We see no reason to inhibit the further growth of the hatchery industry in the demarcated areas (based on the work done by the specialists, with input from the industry), providing conditions are met. There can be concerns about water quality, for example, that would need to be addressed.” [There are no demarcated or prescribed areas and no details have been given about what conditions will have to be met. The threat of listing trout as invasive is already inhibiting the growth of the fresh water trout production industry.]
- 1.3. “Operation Phakisa has set transformation in the intended growth of the aquaculture industry in general, and for trout in particular.” [It is an abuse of process not to mention also being unlawful to list a species as invasive in order to aid transformation.]
- 1.4. As there is no intention to remove trout species from dams within the areas mapped by the authorities, scientists and industries as “trout waters”, the regulation of these will be done to reduce both administrative and regulatory burden. [This avoids the reality that trout do not breed in dams and must be regularly restocked. Trout will effectively be removed from dams if permits to stock are refused as is likely to be the case given what NEMBA says about permitting restricted activities.]
It is felt that a long-term permit might be the most efficient, and that these might even be able to be issued as through a self-administrative process with the industry. [There is no provision for this in the draft AIS Lists and Regulations and it is would be unlawful in terms of NEMBA]
Note that these dams include private instream dams, even though that water does not belong to the owner of the dam. However, it forbids the introduction of trout into waters outside of these demarcated areas (except were there to be a permit justified by a risk assessment considered by the Department). [This is misleading as no demarcated areas have been

prescribed. A proper application of NEMBA and the AIS Regulations will require a risk assessment to be undertaken in every case.]

- 1.5. A permit will also be required for the introduction of trout into rivers, streams, wetlands, natural lakes and other bodies. These waters do not belong to any individual, so they have no right to stock it with trout, should they so wish to do so – just as they cannot put poison or sewage or any other material into that water body. [Trout are not poison or sewerage and the idea that they might be speaks the truth to DEA’s real intentions and attitudes regarding trout.]
- 1.6. As experts in invasion biology, we are aware of the risks of other invasions – bass, carp and other invasive fish; extra-limital invasions such as by sharp-tooth catfish, and invasive pathogens. It is only through regulating such species that their spread into the so-called “trout waters” may be prevented. In other words, bass will destroy many trout waters, if their movement is not controlled.” [This is an irrational argument. It is no reason to list trout as invasive. It is in fact a good reason not to list trout as invasive.]
- 1.7. Thus, notwithstanding what has been portrayed by some sectors of the industry, there is no threat to responsible trout aquaculture, or to the “value chain”. There is no reason why a responsible trout hatchery in a demarcated area should be inhibited in any way to grow its business. The same is true of a farmer with a dam with live trout, in a demarcated area, provided s/he takes the necessary responsibility. The same is true of a fly-fisher in a river, providing that they do not stock the river without a permit to do so. If trout die off in any numbers in South Africa, it will be because of other invasive, or habitat destruction.” [This statement is vague and untrue. The claim that the trout value chain won’t be affected is not supported by any facts. No indication is given as to what responsible means or in relation to what it will apply. The reality is that the regulatory regime is a penal one that imposes a high degree of risk on anyone who stocks water with trout.]
- 1.8. It is the considered view of the Department and its partners (and the Senior Council who assessed the options for the Department) that the brown trout and rainbow trout are correctly listed as Category 2 invasive species. It is further our collective view that this listing poses no threat to trout aquaculture and the trout value-chain. Indeed, the invasive legislation – and its vigorous enforcement – is pivotal to sustaining these industries.” [This is the problem. DEA’s view is not a considered one. If it was DEA would be able to explain its reasoning in relation to its legal obligations under NEMBA. But it cannot do this. Although DEA has been invited to share the opinion upon which this approach is based it has failed to do so or to explain the approach.]

“Get both assessments here:

[Brown trout risk assessment](#)

[Rainbow trout risk assessment.](#)”

[As noted above these risk assessments are flawed.]