



C/O 62 Roberts Road
Pietermaritzburg 3201

17 June 2018.

The Deputy Director-General Environmental Programmes
Per Email to: 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 a submission dated 18 March 2018 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 that submission and will make reference to other submissions commenting and objecting to the proposed Draft 2018 Lists and Regulations.

FOSAF is aware of the many 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 completeness we repeat some of the submissions we are aware of and have read. We refer specifically to those made by:

- The Natal Flyfishers Club;
- The Durban Fly Tyers Club;
- Wildlife Producers Association;
- Mr Ian Cox;
- Wildlife Rancher's Association;
- WRSA Eastern Cape;
- Cape Piscatorial Society;
- Mr Martin Davies;
- Malan en Seuns;
- Trout SA; and
- Xplorer FlyFishing.

In addition, FOSAF is aware of further representations and submissions made to DEA thereafter and we refer specifically to those made by:

- Wildlife Rancher's Association dated 7 June 2018;
- Mr Ian Cox dated 16 June 2018 and
- Trout SA dated 17 June 2018.

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 our first submission, FOSAF has repeatedly called on DEA to remedy its failure to engage in good faith with the trout value chain and other stakeholders in relation to the various earlier iterations of proposed regulatory aspects under NEMBA. Numerous requests for meetings and information relevant 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 Draft 2018 Lists and Regulations have been published 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;
- 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 evidence of significant harm and reasons for the 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 suitable policy framework to guide decisions and implementation that has been adopted after a lawful public consultation process.

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 anthro-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. However, DEA once again failed to properly comply with the provisions and requirements of NEMBA in this regard. DEA also failed to honour the undertaking made in the letter addressed by the Minister to the Consortium of Interested and Affected Parties (of which

FOSAF is a party) dated 30 April 2018, to publish a notice extending the comment and objection period in the Gazette. This has resulted in a process that despite these further efforts by DEA, remains unlawful and reflects DEA's apparent inability or unwillingness to follow the plain language of NEMBA.

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. While certain "risk assessments" have been made available on the DEA website these are difficult to locate but can eventually be accessed. Unfortunately these documents are not fit for purpose, appropriate to the statutory requirements and do not explain or justify the Minister's proposed decisions in any manner whatsoever. The "risk assessments" are only in respect of a few of the many species proposed for listing and therefore do not adequately cover the listings being proposed by the Minister. The many shortcomings of these "risk assessments" are enumerated in some detail in Mr Cox's submissions and we will not repeat these matters here in the interests of brevity. Accordingly, FOSAF regrets that it is of the respectful view that all these documents do not comprise "sufficient information" as required by section 100 of NEMBA.

As noted in FOSAF's first submission, 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 extension 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 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.

In addition to the "risk assessments", DEA has also made a "SEIAS report" available which purports to relate to the proposed Draft 2018 Lists and Regulations. This report is defective on numerous respects. In the interests of brevity, we note two key flaws: Firstly, that the report does not comply with the guidelines published for such reports; and Secondly, it appears to relate to a different possibly earlier iteration of the lists and regulations, but clearly from a proper reading of the report it does not relate to the Draft 2018 Lists and Regulations. The detail of the many shortcomings in the SEIAS report provided are enumerated in some detail in Mr Cox's submissions as well as in those of the Wildlife Producers Association. In the interests of brevity, we will not repeat these matters here. FOSAF associates itself with these concerns.

FOSAF again draws attention to the fact that the publication of Draft 2018 Lists and Regulations are premature because the overdue SANBI AIS Status Report, which is presently with the DEA, should have been fully considered by the DEA and more particularly the Minister. The contents of this report should have informed any proposed changes to the

prevailing framework and lists as well as the Draft 2018 Lists and Regulations. This should have happened before these documents were published for public consultation.

In addition, the SANBI AIS Status Report, its findings and recommendations and more pertinently, DEA's responses thereto, are all relevant and key elements of the information required to be made available to the public to enable informed and meaningful objection and/or comment to 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 purpose of consultation as intended by section 100 of NEMBA and is an abuse of the public's rights and is accordingly unlawful.

FOSAF finds these failures to follow the required due process and statutory requirements regrettable. We trust the Minister will ensure this does not happen again. It is also hoped 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.

ILAN LAX
National Chairperson
FOSAF