

Trout Wars

July 2018

by Ian Cox

A great deal has happened since the last time I wrote one of these updates. That was at the [beginning of May](#) and I must tell you that it feels like it was a lifetime ago.

Back then I reported that The Minister of Environmental Affairs (Minister) wrote on [30 April 2018](#) in response to [the letter of demand](#) addressed by a Consortium of interested and affected parties (the Consortium) promising to correct the errors in the notice publishing the 2018 Draft AIS Lists and Regulations for comment. I prophesied that this would not happen any time soon.

Well I was only half right. I was right in saying that the Minister would not be able to correct the errors we complained of any time soon. I was completely wrong in thinking that she would actually do so. It turns out that the Minister was not telling the truth when she promised to correct the errors in the original notice or that this would be addressed in a further notice to be published in the Government Gazette in due course.

The Consortium and I were startled to learn, that a notice was published in the City Press on Sunday 13 May 2018. It is important to note that this was not a notice issued by the Minister as is legally required. It was issued by the Directorate on behalf of DEA. It was also not published in the Gazette as the Minister had promised and as required by law.

It also did not contain the information that was promised. The notice instead referred to risk assessments and a Social and Economic Impact Assessment (“SEIAS) Report that were apparently to be found somewhere on DEA’s website. That took some doing but when I found them it turned out that the SEIAS report referred to a different set of draft regulations. Furthermore only ten so called “risk assessments” were made available despite the fact that well over 100 species being affected by the proposed listing.

Worse DEA did not even bother to advise the hundreds of people who objected to the original notice that was published incorrectly back in February.

Instead DEA purported to extend the period the Minister had given the public to make representations until 18 May 2018.

I have submitted my usual lengthy and detailed objection. You can read it by clicking [here](#). FOSAF has submitted a much shorter one that summarises the points made in my submission. You can access it by clicking [here](#). Trout SA made a similar submission. The Wildlife Producers Association also submitted its own objection.

FOSAF has consequently revived its application to declare the 2018 Draft AIS Lists and Regulations unlawful. Ilan Ix and I had consulted with counsel and were about to finalise the application papers



when the Minister published a further extension notice in the [Gazette on Friday 22 June 2018](#). It seems that DEA having strenuously defended the legality of the notice published in the City Press has now accepted that it was unlawful. But DEA won't publically admit this and is instead is pretending that the City Press notice never existed. This is probably why it has not acknowledged receipt of the objections filed in response to the City Press notice despite being asked to do so.

The further extension notice gives the public until 24 June within to object. It is not clear if this notice was published in a newspaper as is required.

I have written to DEA asking for details. I am not certain they will respond. Other requests for information about the 2018 Draft Lists and Regulations have been ignored. But DEA has sometimes responded so who knows?

What is clear is that this further extension notice still does not comply with the legal requirements for a proper notice. It still does not contain sufficient information and the information that DEA says is on its web site is not there, at least not at the time this article was written. The processes which gave rise to the lists are still irrational and fatally flawed.

It is becoming increasingly easy to conclude that DEA and the Minister think that while laws are instruments that government applies against the people these laws do not apply to government itself. DEA and the Minister are acting as if they are above the law.

So this will have to go back to court once we have filed a further round of objections and the consultation period has expired. FOSAF's work on finalising its application papers continues.

The consequences of the 2018 Draft AIS Lists and Regulations being made law are dire and not just for the Trout Value Chain. However the proposed law will hit the trout value chain particularly hard in that all trout aquaculture facilities will become unlawful overnight. Anyone who continues operating such a facility will be guilty of an offence and liable on conviction to a period of up to ten years in jail. The same will also be true of anyone who tries to stock their waters to trout. Billions of rands worth of value will be destroyed overnight. The economies of towns like Dullstroom Underberg and others that rely on trout based tourism will be decimated.

Sadly, however the fight to save trout from being declared invasive is looking increasingly like a tiny battle in what is a very large and serious war that government is waging on the Constitution and the rule of law and indeed the economy not to mention the health and wellbeing of South Africans.

You may recall that I made representations on proposed amendments to the NEMLA Bill at the end of April 2018. I reported on it in my Trout wars report for May 2018. The legal problems facing that proposed amendment are profound but this does not seem to worry Parliament's Portfolio Committee on the Environment. I have just learnt that it has approved the amendments we complained about. ([Click here for the Bill](#)) This is despite the fact that the Constitutional Court has already ruled that the warrantless search provisions, which the proposed amendments seek to extend, are unconstitutional.

These amendments are likely to be voted upon and become law during the next session of Parliament. The effect will be to give the Minister carte blanche not only to rule when a species must be listed as invasive but also to determine what must happen when a species is listed as invasive.

This in itself is an abdication by Parliament of its legislative power to the Executive and amounts to a breach of the doctrine of separation of powers. But again Parliament does not seem to care that it is betraying its core function by handing over its legislative role to the executive.

This is not an isolated case of centralising power in the executive. Remember a couple of years back when Zuma said how nice it would be to be able to rule as a dictator. Well it turns out that this is in fact ANC policy. I say so because ZUMA may be gone but Parliament is still busily engaged in enabling the executive to run the country like a dictatorship.

Thus we saw the Aquaculture Bill being tabled in parliament last week. This will make it a criminal offence to carry out any aquaculture activity without a licence issued by government. This applies to existing facilities as well as new ones. Aquaculture is defined broadly to include downstream food processing even when the product is sourced from abroad. The Department of Agriculture has already indicated in a draft [BBBEE Guideline](#) document published by the Department of Agriculture Fisheries and Forestry. (“DAFF”) that it intends adopting a race based approach to issuing licences. It is unlikely, therefore, that any white owned aquaculture facility will be licenced to operate.

A [Climate Change Bill](#) was recently circulated for comment. It purports to enable the country to plan and implement measures necessary to improve our resilience to the adverse effects of climate change. However its real purpose is to give government carte blanche to introduce a penal system of carbon rationing which will be used to enable government to rent out permits to politician and their friends. Again this rationing is likely to be race based.

The MEC for Finance in KwaZulu Natal published the KwaZulu-Natal Businesses Bill for comment. last year. This Bill, if made law. will make it a criminal offence to carry out any business in KZN without a licence issued by the provincial government.

I reported in the [February 2018 Bobbin](#) of a proposed new [Biodiversity Bill](#) that will effectively nationalise the country’s biological resources. Happily this Bill has met with some opposition in Government’s technical committees so hopefully it will not go any further in its current form. But don’t be surprised if this hope is misplaced. The drive to achieve centralised penal control over South Africa its people resources and the economy is Government’s central preoccupation these days. The consequent failing economy is not stopping government. It is likely that opposition within government ranks will not stop them either.

This is a short list of what is a very long list of laws of this nature.

Common features of all these proposed law are:

1. The centralisation of power in the national executive.
2. The destruction of human rights.
3. The replacement of a law based system of government with a power based system which will increasingly make human existence a criminal offence unless government says otherwise.

We should be successful in stopping the listing of trout as invasive, at least in the immediate term. But the bigger picture is bleak. South Africa seems to have a weakness for grandiose schemes that are ruinous of the economy and destructive of human rights and our health and wellbeing. Grand

Apartheid was one such scheme. Radical Economic Transformation is another as is the government's obsession with a centrally run state controlled economy.

The economy is in a very bad state. The country is running out of cash. Corruption is rife and crime is more likely to pay these days than honest dealing. The courts are the only institution of government that have not been captured by criminal elements in government but they will not hold out for long. The cancer has taken hold and it is spreading rapidly.

Government is not proposing or making laws that reverse these trends. It is encouraging them. Officials call this enabling legislation which is true if you are a politician or a civil servant. Unfortunately these laws cripple the rest of the country.

We will boil the frog the President once famously said. The trouble is not only so called white monopoly capital that is being boiled. The whole country is in the pot and the privileged elites that are South Africa's political classes and the civil service are stoking the fire.
