



AquacultureSA

Non-Profit Organisation 163-496

5 October 2017

The Phakisa Steering Committee
c/o Mr Andre Share
By email: Ashare@environment.gov.za

Dear Mr Share

Re: REQUEST FOR A FURTHER ESCALATION TO THE STEERING COMMITTEE OF AN IMPEDIMENT THAT IS PREVENTING THE IMPLEMENTATION OF AN ASPECT OF THE OPERATION PHAKISA PROCESS.

We wrote requesting an escalation to the Directors General of DEA and DAFF and to the Phakisa Office on 6 November 2015 regarding:

1. The refusal of officials in DEA to implement the trout mapping process that was agreed between the DEA, DAFF and representatives of the trout value chain at the Phakisa Ocean Labs conference that took place in July 2014.
2. The preparation of a draft listing notice that is framed in terms that also conflict with the agreement referred to above.

This resulted in a meeting between representatives of Aquaculture SA including members of the trout value chain and the Directors General of DEA and DAFF in Cape Town in early February 2016 where these officials were told to implement the process.

For a while this happened. The mapping process proceeded and was largely completed by agreement. A further impasse was encountered when trout fishing lawyer Ian Cox wrote in his personal capacity in January this year to DEA's Dr Preston advising that the proposed regulation of trout that had recently been published by DEA was unlawful.

There was nothing new in what Mr Cox said. Trout SA and FOSAF had written to DEA early in 2015 advising that a similar earlier proposal for the regulation of trout was unlawful. DEA chose to ignore these representations. The fact they did so was one of the issues that had been escalated previously in terms of the Phakisa process.

DEA sought legal opinion which apparently confirmed that they were indeed significant legal risks in adopting the proposed regulations.

DEA did not revert to us on ways to deal with this issue but instead chose to repudiate the agreement that was reached at Phakisa which was subsequently endorsed by government and included in the final lab report that was published on 14 September 2014. This repudiation was conveyed by Dr Preston to members of the trout value chain in the attached undated letter that was e mailed to stakeholders in the trout value chain on 10 July 2017. He advises in that letter that this decision has been endorsed by the DAFF and DEA Ministers respectively and by the relevant principal MEC's through the MINMEC process.

This came as a shock to us. This repudiation of what has been a three year process is made even more shocking by the fact that this was all done in secret while the process of implementing the agreement that was reached at Phakisa was ostensibly still underway.

This is not a small matter. This agreement was part of the public private partnership that is Operation Phakisa and which was intended to give effect to the NDP by unlocking some of the current obstacles to growing aquaculture and the value chains that it supports including the trout value chain. This agreement was and is recorded as an important successful outcome of the Phakisa process in the final Ocean Labs Report endorsed by government. We refer in particular to page 59 where it is stated that trout would not be listed as an invasive species where trout are already established.

This is not just a repudiation of this agreement. It is in truth a repudiation of the whole Phakisa process. We think it amounts to a breach of trust by government and represents a failure to honour the good governance principles enshrined in the National Environmental Management Act.

We are aware that officials in DEA believe that trout are invasive. We dispute this and are confident that we are correct in doing so. The agreement that was reached at Phakisa was seen as a way out of this impasse and the impediment it poses to growing trout-based aquaculture and indeed fresh water aquaculture in general. It was seen as an important win-win which, amongst other things, avoided this conflict through the compromise that trout would not be declared invasive in areas where they already occur outside certain protected areas but would require risk assessment outside such areas for new introductions.

The decision to once again insist that trout be declared invasive is not only wrong in law and science, but it also threatens the entire trout value chain including trout-based aquaculture.

What makes this even more troubling is that the AIS regulations that were promulgated in August 2014 are themselves of questionable legality and are failing. The reality is that they go too far and are beyond the resources and capacity available for their implementation. The draft report on the implementation of these regulations says as much and suggests that the number of invasive species be reduced.

It is difficult to see why DEA still insists on listing trout as invasive in these circumstances. The reality is that trout only survive in large parts of the country because many trout fisheries are constantly restocked with fish supplied by trout farms. This reality and the ongoing investment that must be

made in the trout fishery are what make the trout value chain what it is. It is impossible to reconcile this reality with the notion that trout are invasive in South Africa.

The agreement that was reached at Phakisa avoids these troubled waters and the destructive effects such disputes around the issues are and will continue to have, on the economy. It is a pragmatic measure that puts delivery first at a time when delivering positive boosts to the economy are sorely needed.

The detail of this agreement also provided important measures that would reduce the regulatory burden that everyone agrees is retarding the growth of South Africa's aquaculture sector and economic growth. Removing these impediments has been identified as necessary to provide much needed impetus to the aquaculture sector. It will also boost the downstream beneficial effects on the economies of those rural economies that are heavily dependent on trout-based tourism.

Thus it was agreed:

- Where trout occur they will not be listed as invasive (except in certain protected areas);
- Trout will be listed as invasive where they don't but could occur. New introductions would be possible but subject to risk assessment (balancing of factors);
- There was a need to regularise existing but "irregular" operators through registration under DAFF (this implied non-prosecution);
- Management of trout would preferably be by self-regulation under DAFF;
- All parties committed to ensuring an enabling environment for trout that promotes further development of the value chain in the context of a harmonised/rationalised/simplified regulatory framework (National and Provincial laws).

This would be an iterative process and the delineation of areas could change over time based on new knowledge/evidence through the weighing up of significant harm and benefits. The matrix for this is yet to be agreed or recorded in policy.

We also emphasise that thousands of hours have since been invested by the trout value chain and other stakeholders in good faith in making this agreement a reality. It is deeply worrying that officials within DEA and presumably DAFF can simply unilaterally renege on this agreement, without consultation with the trout value chain. This manifests a denial of the principles of participatory democracy and appropriate governance. It also results in an unfortunate breakdown of the trust that must exist between the public and private sectors if government is to function effectively especially if the NDP is to become a reality.

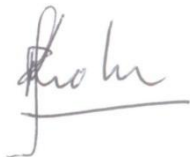
Dr Preston says that DEA and DAFF have taken this step because DEA was threatened with litigation. This is simply not true. Both Aquaculture SA and Trout SA have repeatedly affirmed their commitment to work with government to make the Phakisa agreement a reality. However it should go without saying that this must be done lawfully. Pointing out, that DEA's proposed regulation of trout is unlawful, is not a threat to litigate, it merely points to the factual situation. No such threat has been made. Instead, what should have happened is that DEA should have reassessed what it is doing and taken steps to remedy its proposals so that the agreement reached at Phakisa can be

implemented lawfully. Aquaculture SA and the trout value chain remain committed to discuss any such new proposals and to see that this is done.

This matter needs to be further escalated because it seems that the earlier intervention at Director General level has clearly failed. Moreover it appears that the DEA and DAFF ministers have already made up their minds by repudiating what was agreed at Phakisa. Accordingly, an intervention at that level will likely prove unsuccessful. We believe that this breakdown must be dealt with at a government level through the steering committee or such other governance structure as may be appropriate.

We ask that you take the steps necessary to initiate this request for a further intervention. We would also like an opportunity to address the steering committee or such other governance structure as may be appropriate as part of this process.

Yours faithfully



ROGER KROHN
Chairman
Aquaculture SA