



C/O 62 Roberts Road  
Pietermaritzburg 3201

18 March 2018

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

FOSAF noted with serious dismay the fact that the Minister of Environmental Affairs ("the Minister") published 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").

As noted in the letter to the Minister by the Consortium of Interested and Affected Parties, it is FOSAF's respectful view that the Draft 2018 Lists and Regulations are fatally defective, amongst other things because of noncompliance with the peremptory requirements of section 100 of NEMBA. In the circumstances the notices will be challenged in court if the Minister does not withdraw them. FOSAF is a party to the letter to the Minister and associates itself with and supports the views expressed therein.

FOSAF is aware of the many representations and submissions made to the Department of Environmental Affairs ("DEA") on behalf of various organisations and individuals expressing objections and opposition to the Draft 2018 Lists and Regulations. Amongst such representations and submissions we have read, we refer specifically to those made by:

The Natal Flyfishers Club;  
The Durban Fly Tyers Club;  
Wildlife Producers Association;  
Mr Ian Cox; and  
WRSa Eastern Cape.

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

FOSAF wishes it to be placed on record that contrary to your and the DEA's characterisation of our organisation as "anti-regulation", nothing could be further from the truth.

FOSAF's constitution includes objectives that encourage the organisation and its members to, amongst other things:

- provide flyfishers and flyfishing with a platform for negotiation and representation with higher authorities.
- promote conservation and research into marine and fresh water ecology.
- promote, guide and encourage the angler to perform a monitoring role to aid the professional conservationist.

FOSAF's on-going commitment to work with the DEA in good faith and its enormous and continued investment of resources, time and energy in the mapping process and the other engagements required following on the matters agreed to between DEA, DAFF and representatives of the trout value chain at the Phakisa Ocean Labs Conference that took place in July 2014 in Durban, manifest our on-going desire and commitment to find workable regulatory solutions. Kindly therefore desist from making such false and misleading allegations.

FOSAF has repeatedly called on the DEA to remedy its failure to engage in good faith with the trout value chain in relation to the proposed regulatory aspects. Requests for meetings and information in relation to such matters 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. 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 consultations already commenced;
- the notices are not properly in line with the required legal time and publication requirements;
- the duty to supply sufficient information, including convincing evidence of significant harm and reasons for the decisions to list the species proposed in the listings to enable the public to object and/or comment thereon and to the proposed regulations;
- a suitable policy framework having 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 the DEA relies upon a bio-centric as opposed to an anthro-centric approach. This results in outcomes that breach the Constitution, NEMA and NEMBA.

As regards trout and all the other species which the Minister intends listing, FOSAF is of the respectful view that the Minister's decisions must be made by first applying NEMBA correctly and then weighing up such proposed decisions holistically in the light of the NEMA principles. We do not believe that trout can be lawfully listed as invasive if the Minister had followed such a decision making process. The same can be said of a number of other species proposed for listing. Our views in this regard are supported by the fact that no 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.

FOSAF also notes that the publication of Draft 2018 Lists and Regulations are premature because the overdue SANBI assessment of the AIS framework should be considered by the DEA and especially the Minister before any changes are considered. In addition, the assessment and its recommendations are a relevant and key part of the information required to be made available to the public to enable informed objection and/or comment.

Accordingly FOSAF and the public are denied the opportunity and cannot thus 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.

The matters noted above are all elaborated upon in the representations and submissions referred to above and in the interests of brevity, it is requested that such elaborations are noted as if also made by FOSAF in support of its objections to the Draft 2018 Lists and Regulations.

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