

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO:

In the matter between:

THE FEDERATION OF SOUTHERN AFRICAN

FLY FISHERS

Applicant

and

THE MINISTER OF ENVIRONMENT, FORESTRY

AND FISHERIES

Respondent

APPLICANT'S FOUNDING AFFIDAVIT

I, the undersigned,

ALAN LAX

do hereby make oath and state:

1. I am an adult male and the National Chairperson of the Applicant.
2. Save where the context indicates the contrary, or where otherwise stated, the facts deposed to in this affidavit are within my personal knowledge and belief and are both true and correct.
3. Although I am a practising attorney, submissions of law are made on the advice of the applicant's legal representatives.



4. I am duly authorised to bring this application on behalf of the Applicant as is apparent from the FOSAF Round Robin Email Resolution that is annexed to this affidavit marked "A".
5. The Applicant has agreed with its legal team that the Applicant's attorneys and counsel will charge a fee only in the event that the Applicant is awarded a costs order in terms of section 32(3)(a) of the National Environmental Management Act, 1998 (Act 107 of 1998) as requested in the notice of motion. This litigation is brought in the public interest and the Applicant does not have the financial resources to litigate at the level required by this application without seeking an order in terms of section 32(3)(a).

THE PARTIES

6. The Applicant is the **Federation of Southern African Fly Fishers** (hereinafter "FOSAF"), a South African based, duly constituted voluntary association of fly fishers that was established in 1986 to represent the interests of Southern Africa's fly-fishing community and amongst other things, to represent that part of its community which has interests in the trout value chain in South Africa.
 - 6.1 The Applicant is a registered non-profit organisation.
 - 6.2 The Applicant is constituted as an entity separate from its members, with perpetual succession and the capacity to sue and be sued in its own name.
 - 7.3 The Applicant has its Secretariat situated at 24 Muswell Hill Estate, 9 Troon Terrace, Chase Valley, Pietermaritzburg, KwaZulu Natal, 3201, with a postal address at P.O. Box 11434 Dorpspruit, KwaZulu Natal, 3206, South Africa.
7. The Respondent is the **Minister of Environment, Forestry, Fisheries** c/o The Director-General, Department of Environmental Affairs, Environment House, 473 Steve Biko, Arcadia, Pretoria, 001, Gauteng (Erf 1563 Arcadia Extension 6, Corner Soutpansberg and Steve Biko Roads, Pretoria).

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- 7.1 The Respondent is cited in her official capacity as the Cabinet Member accountable to Parliament for the **Department of Environment, Forestry and Fisheries** (hereinafter the “DEFF”), and therefore the executive authority liable to be cited in this application under section 2 of the State Liability Act, 20 of 1957.
- 7.2 The Respondent is the Cabinet Member responsible for national environmental management. The DEFF administers the National Environmental Management Act, 107 of 1998 (“NEMA”), and the National Environmental Management: Biodiversity Act, No. 10 of 2004 (“NEMBA”).

LOCUS STANDI

8. The Applicant is a not for profit voluntary association representing the interests of the fly-fishing community in South Africa.
9. The Applicant represents a group of persons who have legal standing under section 32(1) of NEMBA to seek appropriate relief in respect of any breach or threatened breach of any provision of NEMA, including any provision of a specific environmental management Act, such as NEMBA.

BACKGROUND

10. Neither Rainbow Trout or Brown Trout have hitherto been listed as invasive species in South Africa.
11. The draft 2018 AIS Lists and Regulations and the 2020 AIS Lists and Regulations introduce trout to the list of invasive species.
12. The Applicant has challenged the legality of the public participation process that is required to lawfully promulgate the draft 2018 AIS Lists and Regulations in this Honourable Court under Case number 62486/2018. An application has just been made to set this matter down for hearing.
13. This application is necessary to prevent the harm that will be caused to recreational fly fishers, the trout value chain, the tilapia value chain and other interested parties



such as game farmers who farm animals that are now listed as invasive, as well as the public at large.

SUMMARY OF RELIEF SOUGHT

14. This is an application for an interdict preventing the implementation of Government Notice 1003 published in Government Gazette No, 41445 on 18 September 2020, the "2020 AIS Lists" and Government Notice R. 1020 published in Government Gazette No. 43735 on 25 September 2020, the "2020 AIS Regulations", until the matter that is to be heard by this Honourable Court under case number 62486/2018 is finally determined.
15. This application is thus for an interim interdict.
16. A copy of the 2020 AIS Lists is annexed hereto marked "B". A copy of the 2020 AIS Regulations is annexed hereto marked "C".
17. This application is necessary because the Respondent has failed, alternatively, refused to withdraw the 2020 AIS Lists and the 2020 AIS Regulations despite being requested by the Applicant's attorneys in an email dated 23 September 2020 and a subsequent communication dated 29 September 2020. Copies of these communications to the Respondent are annexed to this affidavit marked "D" and "E". The Respondent's acknowledgements of receipt of annexures "D" and "E" dated 24 September 2020 and 30 September 2020, are annexed hereto marked "F" and "G".
18. Unless the relief the Applicant seeks in this interim interdict application is granted, the effect of the Respondent's Notices 1003 and R. 1020 is that with effect from 19 October 2020:
 - 18.1 the existing 2014 Alien and Invasive Species ("AIS") lists read with the 2016 amendments thereto published under Notice 864 on 29 July 2016 in Government Gazette 40166 (the existing AIS Lists) will be repealed; and
 - 18.2 the existing AIS Lists will be replaced with the 2020 AIS Lists;

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and with effect from 25 October 2020:

18.3 the existing 2014 AIS Regulations will be repealed; and

18.4 the existing AIS Regulations will be replaced with the 2020 AIS Regulations.

19. The Applicant seeks to prevent this because:

19.1 Section 100 of National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004) ("NEMBA") prescribes a public participation process that must be followed before the Respondent can publish any AIS lists and/or regulations, including the 2020 AIS Lists and AIS Regulations.

19.2 the legality of the public participation process that is required in order to lawfully promulgate the 2020 AIS Lists and AIS Regulations is disputed by the Applicant and other interested parties. Moreover, this dispute which concerns the publication of the proposed 2018 AIS Lists and AIS Regulations is the subject of litigation between the Applicant and the Respondent in this Honourable Court under case number 62486/2018;

19.3 A finding in favour of the Applicant in that matter would result in the 2020 AIS Lists and 2020 AIS Regulations being set aside as unlawful based, inter alia, on the finding of a full bench of this Honourable Court in *Kruger and Another v Minister of Water And Environmental Affairs and Others* (57221/12) [2015] ZAGPPHC 1018.

THE IMPUGNED PUBLIC PARTICIPATION PROCESS

20. The application papers under Case number 62486/2018 which also include the parties' Heads of Arguments and the Applicant's Practice Note are voluminous. I shall nevertheless cause a paginated set of these application papers to be filed evenly with this application and a copy of the index thereof to be served on the Respondent. I nonetheless annex the Applicants Practice Note to this Affidavit marked "H" as I believe it succinctly sets out the issues in dispute between the parties.



21. The main issue to be decided in that application is whether the Respondent failed to comply with the requirements and procedures prescribed in section 100 of NEMBA.
22. Section 100 of NEMBA deals with public participation that must be followed when the Respondent seeks to publish regulations or AIS lists such as the 2020 AIS Lists. It reads as follows:

100. Public participation

- (1) *The Minister must give notice of the proposed exercise of the power referred to in section 99-*
- (a) *in the Gazette; and*
 - (b) *in at least one newspaper distributed nationally, or if the exercise of the power may affect only a specific area, in at least one newspaper distributed in that area.*
- (2) *The notice must-*
- (a) *invite members of the public to submit to the Minister, within 30 days of publication of the notice in the Gazette, written representations on, or objections to, the proposed exercise of the power; and*
 - (b) *contain sufficient information to enable members of the public to submit meaningful representations or objections.*
- (3) *The Minister may in appropriate circumstances allow any interested person or community to present oral representations or objections to the Minister or a person delegated by the Minister.*
- (4) *The Minister must give due consideration to all representations or objections received or presented before exercising the power.*

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23. It is common cause between the parties that the Respondent published the notices set out in the table below during the public participation process that preceded the publication of the 2020 AIS lists and AIS Regulations:

	DATE	GAZETTING AND PUBLICATION OF NOTICES AND EXTENSIONS	REFERENCE
2	16 Feb 2018	Publication of Draft Alien and Invasive Species Regulations ("the AIS Regulations") in terms of section 97(1) of NEMBA in Government Gazette GN 112	Annexure D1, Bundle page 59
2	16 Feb 2018	Publication of draft amendments to the AIS lists in Government Gazette GN 115	Annexure D2, Bundle page 86
3	21 Feb 2018	Publication in <i>The Star</i> newspaper of a notice referring to the AIS Notices inviting the public to submit recommendations and/or objections to the proposed amendments by 19 March 2018.	Annexure F, page 129
4	13 May 2018	Publication of a notice in the <i>City Press</i> purporting to extend, until 18 June 2018, the period in which the public could submit comments on the proposed amendments to the Notices.	Annexure N, page 203
5	22 June 2018	The Respondent published in GN 616, (the Extension Notice) a purported extension to the time within which the	Annexure D3, page 105

		public could make representations, to 23 July 2018.	
6	22 June 2018	The Respondent published a notice in the <i>Mail & Guardian</i> newspaper, purportedly extending the period for submissions to 23 July 2018	Annexure Q, page 253

24. These multiple notices were published by the Respondent because:

24.1 The notice setting out the proposed amendments to the existing AIS lists that is described in 2 of the table set out above, did not comply with section 100(2)(b) of NEMBA because insufficient information was provided to enable members of the public to submit meaningful representations or objections.

24.2 The notice in a newspaper that described in 3 of the table set out above, did not comply with section 100(1)(b) of NEMBA because:

24.2.1 The Star newspaper which is the newspaper in which a notice was published is not distributed nationally as is required; and

24.2.2 It was only published on 21 February 2018 which is 5 days after the 30 days referred to in section 100(2)(a) of NEMBA had begun to run;

24.3 The notice that the Respondent subsequently published in the City Press newspaper on 13 May 2018 that purported to extend the period within which the public could make representations or objections until 18 June 2018 (see the notice numbered 4 in the table above) conflicted with the notices that were published in the Government Gazette that are numbered 1 and 2 in the table above. This is because those two notices (1 and 2) still said that the 30 day period began to run from 16 February 2018.

- 24.4 The notice published by the Respondent in the Government Gazette that purported to extend the period the public had to make representations to the original notices published on 16 February 2018 that are numbered 1 and 2 in the table above was not a proper notice as contemplated in section 100 of NEMBA because:
- 24.4.1 They are not the notices contemplated Section 100(1)(a) of NEMBA.
- 24.4.2 Section 100 of NEMBA does not authorise the Respondent to issue such extension notices; and
- 24.4.3 These notices do not, in any event, contain the sufficient information required in terms of section 100(2)(b) of NEMBA.
- 24.5 The accompanying notice published by the Respondent in the nationally distributed *Mail & Guardian* newspaper did not comply with section 100(1)(b) of NEMBA because of the Mail and Guardian's very limited circulation.
25. The Respondent avers that whatever failure there may have been to provide the sufficient information required in terms of Section 100(2)(a) of NEMBA in the notices that are numbered 1 and 2 in the table above is cured:
- 25.1 by the invitation contained in the both these notices and the notices that are numbered 5 and 6 to contact the designated official in DEFF for further information; and
- 25.2 further information regarding certain risks assessments, including risk assessments prepared in respect of Rainbow and Brown Trout that are referred to in the notices that are numbered 5 and 6 above as being available on the DEFF web site.
26. The Applicant contends that none of the above cures the inherrent illegality and insufficiency of the above-mentioned notices.

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27. The Respondent also contends that, to the extent that there was non-compliance with the requirements of section 100 of NEMBA, the notices referred to in the table above were nevertheless valid by virtue of the provisions of section 47A(1) of NEMA. Section 47A(1) of NEMA states:

47A. Regulations, legal documents and steps valid under certain circumstances

- (1) *A regulation or notice, or an authorisation, permit or other document, made or issued in terms of this Act or a specific environmental management Act-*
- (a) *but which does not comply with any procedural requirement of the relevant Act, is nevertheless valid if the non-compliance is not material and does not prejudice any person;*
- (b) *may be amended or replaced without following a procedural requirement of the relevant Act if-*
- (i) *the purpose is to correct an error; and*
- (ii) *the correction does not change the rights and duties of any person materially.*
- (2) *The failure to take any steps in terms of this Act or a specific environmental management Act as a prerequisite for any decision or action does not invalidate the decision or action if the failure-*

28. The Applicant contends that this section does not help the Respondent because the issues of non-compliance are material.
29. The Respondent also alleges that the Applicant lacks the necessary *locus standi* to bring the application both as representing the community who have interests in the trout value chain in South Africa and the public interest in terms of section 2(1) of NEMA.

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30. The Applicant disputes this and claims that the application is brought in the wider public interest of defending the right enjoyed by the public to require the Respondent to comply with section 100 of NEMBA.
31. The Applicant points out that it is neither an angling club nor is it a commercial business. The applicant is a voluntary association of fly fishers representing the interests of the South African fly fishing community, including that part of its community which has interests in the trout value chain in South Africa.
32. This is clear from the aims and objectives set out in clause 3 of the Applicant's Constitution, namely :
- 32.1 Clause 3.1: "To promote the sport of flyfishing and the interests of amateur flyfishers throughout Southern Africa."
 - 32.2 Clause 3.2: "To unite flyfishers of Southern Africa in the belief that in unity is strength."
 - 32.3 Clause 3.3: To provide flyfishers and flyfishing with a platform for negotiation and representation with higher authorities.
 - 32.4 Clause 3.4: "To promote conservation and research into marine and fresh water ecology. To promote, guide and encourage the angler to perform a monitoring role to aid the professional conservationist."
 - 32.5 Clause 3.5: "To provide guidance and assistance when requested on matters of general and/or particular flyfishing importance."
 - 32.6 Clause 3.6: "To strive on behalf of its members for improved facilities for flyfishing."
 - 32.7 Clause 3.7: "To form a common body with which all spheres of government, provincial, regional and municipal can liaise in matters of law and policy for mutual benefit."



- 32.8 Clause 3.8: "At least 85% of the activities of FOSAF in fulfillment of the above aims and objectives, measured either in cost or time spent, will be carried out for the benefit of persons in the Republic."
33. The Applicant seeks an order in its application before this Honourable Court under Case No. 62486/2018 :
- 33.1 Declaring that the Respondent failed to comply with section 100 of the NEMBA in publishing certain draft regulations and amending lists in Government Gazette, No 41445 on 16 February 2018 ("the Notices");
- 33.2 Declaring that the Respondent failed to comply with section 100(2)(b) of NEMBA in publishing a notice in the Government Gazette, No 41722 on 22 June 2018, GN 616, ("the Extension Notice");
- 33.3 Declaring that the publication of the Notices and the Extension Notice to be unlawful and of no force and effect;
- 33.4 Declaring that the Respondent's purported extension of the period for submitting written representations in The Star newspaper on 21 February 2018, to be a contravention of section 100 of NEMBA and accordingly to be unlawful;
- 33.5 Declaring that the publication of a Notice in a newspaper or newspapers as required by section 100 of NEMBA after the 30 day period has begun to run, is not an irregularity that can be condoned in terms of section 47A of the National Environmental Management Act, 1998 ("NEMA").

REASONABLE APPREHENSION OF HARM.

34. The harm that will result if the 2020 AIS Lists and 2020 AIS Regulations become law on 19 October 2020 will be considerable to the general public, the trout value chain, the tilapia value chain and game industry, as well as the trout anglers whose interests the Applicant represents.



35. Listing a species as invasive imposes very serious consequences. A species can only be listed as invasive if the Respondent is reasonably satisfied that the species has spread outside of its natural distribution range (as in where it occurs naturally) and that spread:
- 35.1 threatens ecosystems, habitats or other species or has a demonstrable potential to threaten ecosystems, habitats or other species; and
 - 35.2 may result in economic or environmental harm or harm to human health.
36. It is important to note that the term environmental harm must be interpreted according to the definition of "environment" contained in NEMA as in the impact the biophysical has on "the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being."
37. I say so because one of the difficulties the Applicant has with the public participation process that is the subject of the litigation in case number 62486/2018 is that the Respondent has not yet provided any explanation as to how the species that are to be listed as invasive, are invasive based on this definition.
38. It may be that the Applicant is relying on the definitions of invasive that were used in:
- 38.1 DEFF's 2014 report entitled "A national strategy for dealing with biological invasions in South Africa" which defines invasive species as:

"Alien species that sustain self-replacing populations over several life cycles, produce reproductive offspring, often in very large numbers at considerable distances from the parent and/or site of introduction, and have the potential to spread over long distances";

or
 - 38.2 The 2018 SANBI AIS Status Report published in terms of section of the 2014 AIS regulations that defines invasive species as:



38.2.1 *the phenomenon of transporting organisms, through intentional or accidental human activity, to areas outside of their natural range; and to the fate of such organisms in their new ranges, including their ability to survive, establish, reproduce, disperse, spread, proliferate, and influence invaded ecosystems in many ways (Richardson et al. 2011*

39. These definitions are not compatible with the NEMBA definition, but the Applicant despite having interacted with the Respondent since before the unlawful 2013 AIS list was promulgated, has still not received any explanation as to which definition is being applied or on what basis.

40. The problem with the multiple definitions of invasiveness that exist in science in addition to the legal definition set out in NEMBA is dealt with in detail on pages 219 to 226 of annexure "O" of the Applicant's founding affidavit under Case No. 62486/2018, to which this Honourable Court is respectfully referred.

41. In addition, the Respondent has not provided any information on what considerations were taken into account in arriving at the intention to propose the listings that are contained in the contested notices.

42. Listing a species as invasive is not an academic issue. The consequences are manifold.

43. Section 73(2) of NEMBA states that:

A person who is the owner of land on which a listed invasive species occurs must-

(a) *notify any relevant competent authority, in writing, of the listed invasive species occurring on that land;*

(b) *take steps to control and eradicate the listed invasive species and to prevent it from spreading*

44. Control is defined in relation to an alien or invasive species, as:

(a) to combat or eradicate an alien or invasive species;

- (b) where such eradication is not possible, to prevent, as far as may be practicable, the recurrence, re-establishment, re-growth, multiplication, propagation, regeneration or spreading of an alien or invasive species;
45. None of the above is compatible with the beneficial use of the species that have been listed as invasive, especially where recurrence, re-establishment, re-growth, multiplication, propagation, regeneration are essential to sustain that beneficial use.
46. NEMBA is also penal law. It makes it a criminal offence to carry out any restricted activity in respect of a Listed Invasive Species, without a permit issued by the Respondent in terms of chapter 7 of NEMBA. The penalty for non-compliance is severe. Not only:
- 46.1 Is it a criminal offence that in terms of section 102(1) carries a "fine not exceeding R10 million, or an imprisonment for a period not exceeding ten years, or to both such a fine and such imprisonment".
- 46.2 Non-compliance also prejudices your chances of obtaining a permit in the future.
47. The list of restricted activities is very broad. Restricted activities are defined in NEMBA to include:
- (i) *importing into the Republic, including introducing from the sea, any specimen of an alien or listed invasive species;*
 - (ii) *having in possession or exercising physical control over any specimen of an alien or listed invasive species;*
 - (iii) *growing, breeding or in any other way propagating any specimen of an alien or listed invasive species, or causing it to multiply;*
 - (iv) *conveying, moving or otherwise translocating any specimen of an alien or listed invasive species;*



(v) *selling or otherwise trading in, buying, receiving, giving, donating or accepting as a gift, or in any way acquiring or disposing of any specimen of an alien or listed invasive species; or.....*

48. The circumstances where a permit may be issued in respect of a listed invasive species are limited. This is not surprising given the overriding purpose of eradication or control.

49. The requirements for the issue of those permits are also stringent. The additional requirements set out in section 90 of NEMBA that apply in addition to the normal permitting conditions applicable in terms of sections 89 and 90 are as follows:

An issuing authority may issue a permit for a restricted activity involving a specimen of an alien species or of a listed invasive species only if-

(a) *adequate procedures have been followed by the applicant to assess the risks and potential impacts associated with the restricted activity;*

(b) *the relevant species has been found to have negligible or no invasive potential;*

(c) *the benefits of allowing the activity are significantly greater than the costs associated with preventing or remedying any resultant damage to the environment or biodiversity; and*

(d) *it is satisfied that adequate measures have been taken by the applicant to prevent the escape and spread of the species.*

50. The process is also a time consuming one that cannot reasonably be complied with before the 2020 AIS lists and 2020 AIS Regulations come into force on 19 October 2020 and the 25 October 2020 respectively. Thus for example, in terms of section 20 (Consideration of application) of the 2014 AIS Regulations that currently apply:

(1) *The issuing authority must, on receipt of an application for a permit-*



- (a) *request, within 30 working days of receipt of the application and the risk assessment report, such further information as the issuing authority may require;*
 - (b) *notify any province that may be adversely affected by the proposed activity, of the application;*
 - (c) *have regard to the contents of the risk assessment report accompanying the application;*
 - (d) *consider the application and any objections that have been lodged with regard thereto by an MEC for Environmental Affairs;*
 - (e) *conduct such inspections as may be appropriate; and*
 - (f) *reach a decision in accordance with regulation 21*
51. The permitting process does not take a short time. A risk assessment report must be obtained. This an expensive and time consuming process beyond the reach of many people. Section 21 of the 2014 AIS Regulations then requires that a decision on an application for a permit to be made within 60 (sixty) days of receipt thereof. After receipt of the application for a permit, which, the Respondent has 30 (thirty) days to request further information from the permit applicant, if deemed appropriate. Accordingly the permitting process can and most likely will take longer than the sixty 60 days provided for. This means that most people requiring a permit once the Lists and Regulations come into operation will be unable to expeditiously or cost effectively apply for and obtain a permit before 19 October 2020.
52. The 2014 AIS regulations will remain in force and be applicable to the 2020 AIS lists with effect from 19 October 2020 until repealed on 25 October 2020. No transitional arrangements are provided for. Thus nobody could reasonably be in a position to comply with this new permitting regime. This means that restricted activities falling foul of the 2020 Lists and Regulations will become unlawful with effect from 19 October 2020.

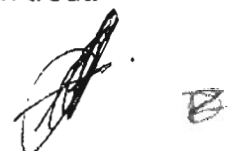


53. Even if one assumes that the relevant restricted activity is capable of being authorised by a permit, it is clear that the permit will not be issued before the particular restricted activity becomes a criminal offence, which will happen on 19 October 2020 if the Respondent is not interdicted.
54. 26 (twenty six) new species or subspecies have been included in the 2020 AIS Lists as invasive. These include species that have been lawfully utilised in this country for leisure or business purposes such as:
- 54.1 The Indian bison or Gaur (*Bos frontalis* Lambert, 1804) which is sustainably hunted in the Eastern Cape;
 - 54.2 All subspecies of the Sable (*Hippotragus niger* Harris, 1838) except *H. n. niger*;
 - 54.3 All subspecies of Giraffe (*Giraffa camelopardalis* (Linnaeus, 1758); except *Giraffa*;
 - 54.4 African sharptooth catfish (*Clarias gariepinus* (Burchell, 1822.) which is a widely used aquaculture species and which is also targeted by subsistence and recreational anglers.; and
 - 54.5 Trout as in Rainbow Trout (*Oncorhynchus mykiss* (Walbaum, 1792); and Brown Trout (*Salmo trutta* (Linnaeus, 1758) which support very large leisure and food production value chains.
55. The listing of these species will make all restricted activities illegal without a permit.
56. As a result:
- 56.1 Property owners who own farms or otherwise utilise Indian bison or Gaur, Sable other than *H. n. niger*, or Giraffe other than *Giraffa* on their properties will be guilty of a criminal offence that in terms of section 102(1) carries a “fine not exceeding R10 million, or an imprisonment for a period not exceeding ten years, or to both such a fine and such imprisonment”.


- 56.2 Trout farmers who have built up extensive trout farming facilities all over South Africa both for stocking South Africa's trout fishing waters and for food production, will all likewise be committing a criminal offence and subject to the same penalties as those described above.
- 56.3 The same is true of property owners and fly fishing clubs and syndicates who stock rivers and dams with trout.
57. The social and economic impact of this will be immense, especially to the trout value chain and the many people whose livelihoods are dependent thereon.

THE TROUT VALUE CHAIN

58. Much of the averments made regarding the trout value chain and the game industry are within my personal knowledge. I have, for example, served on both the boards of Ezemvelo KZN Wildlife (2005 to 2009) and on the board of the iSimangiliso Wetland Park (2007 to 2015). I have also been national chairman of FOSAF since 2007. I also have served on the executive of Aquaculture SA since its inception. As such, I have attended most of the key meetings concerning trout and the trout value chain these past approximately 20 years. I was a participant in the Phakisa Ocean Lab process that took place in Durban in July and August 2018. I headed the negotiations that resulted in some of the outcomes noted at para 91 hereof.
59. The "**trout value chain**" is a term which describes the very extensive social and economic value chain that has developed around trout fishing since 1891 when the Natal Colonial Government (as it was then known) invested in what was the first successful stocking of trout into South African waters.
60. The extensive network of trout hatcheries that were run by provincial conservation authorities in the Western Cape, the Eastern Cape, KwaZulu-Natal and Mpumalanga undertook an extensive stocking program for over a century in which trout were stocked into almost all rivers and dams where they could survive.
61. In some cases, trout became viable in that no further stocking was necessary, but in many other cases, the existence of trout and the value chains trout supported were only possible through regular restocking of these waters with trout.



62. These government-run trout farming and stocking operations were supplemented starting in the late 1940's with an increasing number of privately owned trout hatcheries. These private trout farms not only sold (and still sell) trout for the stocking of trout waters, but they are also the foundation of what has become a growing food production business as well as the production of trout eggs for local use and export.
63. The provincial governments have largely terminated their trout production but the private sector continues to support and grow what are extensive value chains in aquaculture as well as in the tourism and leisure sectors.
64. Aquaculture was identified as a strategic development initiative at the Phakisa Ocean Labs workshop that took place in July and August 2014.
65. The subsequent Operation Phakisa Report that was published on 19 September 2014 (but which relied on 2012 data) identified for food production purposes, three freshwater aquaculture species, namely Trout with an annual production of 1428 tonnes, Catfish with an annual production of 160 Tonnes, and Tilapia with an annual production of 234 tonnes. At that time trout accounted for 76% of total freshwater aquaculture production and 34% of total marine and freshwater aquaculture production (4360 tonnes) of which 3592 tonnes were attributable to marine aquaculture.
66. According to the Aquaculture yearbook 2016, published by the Department of Agriculture Forestry and Fisheries, total aquaculture production in 2015 amounted to 5418 tonnes. The number of freshwater species had grown to 13 species but trout aquaculture had grown to 82% of freshwater aquaculture production or 1497 tonnes.
67. The Aquaculture yearbook, 2016 records the existence of 38 trout farms in South Africa in 2015.
68. More official figures are not available but the accredited aquaculture commodity forum, Aquaculture SA's Nigel Dorward reported to the Portfolio Committee on

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Environmental Affairs in April 2018 that aquaculture trout production accounted for the following in 2016.

- 68.1 1700 mt (metric tonnes) table trout RSA produced;
 - 68.2 2000 mt table trout imported for local processing;
 - 68.3 200 mt live trout for stocking of angling facilities;
 - 68.4 90 million fertilised trout ova for export;
 - 68.5 800 000 trout fingerlings for on-growing and restocking;
69. He went on to report that the Trout Value Chain at that time was estimated to account for:
- 69.1 An annual turnover of R1.2 billion in respect of food production;
 - 69.2 An annual turnover of R1.8 billion concerning tackle sales, guiding, and trout based tourism; and
 - 69.3 A trout based, embedded investment through the tourism sector in villages, lodges, hotels, restaurants, angling syndicates of R7.5 billion.
70. Much of this leisure-based value chain depends on the ability of trout farms to provide eggs and trout for stocking purposes. This is because most of the trout waters that sustain recreational trout fishing and the numerous tourism venues, syndicates, and clubs that cater to the recreational trout angler are only sustainable because of constant restocking with trout.
71. The trout value chain is unique in this way as it is the only recreational sector that invests heavily in the regeneration of its fishery.
72. This assessment by Aquaculture South Africa is corroborated by the economist Dr. Cobus Venter's investigations. He estimated in April 2014 that the recreational trout angling spent 1.1 billion rands in 2013 and contributed 1.8 billion rands to GDP and sustained 13 thousand people in employment. A copy of his report is annexed marked "I".



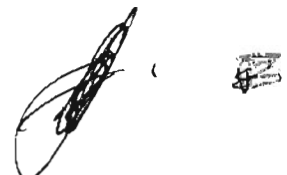
73. This estimate is corroborated by data out of KZN Tourism which estimated that 4% of KwaZulu-Natal's 4 billion rand annual tourism revenues were fly fishing related. According to KZN Tourism's Karin Kohler, the vast majority of that can be ascribed to trout fishing.
74. The so-called "Trout Triangle" that is the trout fishing area comprising Dullstroom, Machadodorp, Belfast and Waterval Boven is an important trout tourism area as is evidenced by:
- 74.1 The 2008 draft Emakhazeni Responsible Tourism Plan: and
 - 74.2 The Situational Analysis of Dullstroom & Sakhelwe, Emakhazeni Health Sub-District, Nkangala, Mpumalanga that was prepared in 2011.

In the interests of keep these papers as brief as possible, copies of these reports can be made available if required.

75. This value chain is largely dependent on the stocking of dams but sometimes rivers as well with trout. While stocking is not generally required in rivers where trout occur, it is vital in the case of dams. This is because trout do not normally breed in dams.
76. Trout which have a life span at best of around five years, will die out in most dams where they presently occur if these dams are not constantly restocked. In addition, predation and fishing pressure as well as droughts and high temperatures also increase the need for regular restocking. Many existing tourism venues will thus cease to be viable if this stocking were to stop.
77. The tourism and leisure sector includes trout areas such as Dullstroom, Belfast, Machadodorp, Laersdrif, Sabie, Pilgrims Rest, Graskop, Lydenburg, Wakkerstroom, Rhodes, Barkley East, Lady Grey, Ugie, Elliot, Maclear, Indwe, Stutterheim, Somerset East, Underberg, Himeville, Matatiele, Kokstad, Hogsback, Winterton, Rosetta, Nottingham Road, Mooi River, Boston, Bulwer, Clarens, Ficksburg, Fouriesburg, Phutaditjaba, Fika Patso, Magoebaskloof, Haenerstburg, Magaliesburg, Broederstroom, Muldersdrif, Franchoek, Stellenbosch, Du Toits Kloof, Ceres, Worcester, Tulbagh, Porterville, any many other places. The

economic situation is particularly dire at the moment in these areas because of the lockdown, brought on by the state of disaster.

78. With these sectors opening up, many trout fishing venues need to restock their waters to attract guests which they will not be able to lawfully do once the 2020 AIS Lists and 2020 AIS Regulations become law.
79. Furthermore, trout spawn at the beginning of winter and grow to a size when the stocking is viable over winter and into spring. A great deal of stocking therefor takes place in October and November. This will not be legally possible come 19 October 2020
80. This situation will be further compounded in that trout farms will be left with millions of fish they cannot lawfully farm (breed and grow) or sell. It will not suffice for farms to kill all their current fish stocks for food as the market relies on a continuous and reliable supply which will no longer be available. The market will need look to Lesotho and further abroad for supplies of table trout.
81. Moreover, trout farms manage the growth of table trout so that they can supply trout throughout the year. Their production facilities will not cope with the additional load.
82. Trout farmed for stocking are in the main too small to be killed and sold as food.
83. The millions of rands that is invested in current trout production will be lost. Trout farms will close down and the supply of trout that underpins the multi-billion rand investment and revenue flows in the trout leisure and tourism sector will cease and be lost.
84. Neither the trout farming sector nor the trout leisure sector will be able to withstand this, especially given the current economic situation.
85. In regard to the Game Farming Industry the animals listed as invasive such as Sable and Indian Bison were brought lawfully into South Africa and are being farmed. They were accordingly listed incorrectly as prohibited aliens with no reasons being given in the 2014 AIS or 2020 AIS List especially since they may not be invasive as the term is defined in NEMBA.



86. Numerous other species or subspecies that are already listed as invasive have had the terms of their listings changed in the 2020 AIS Lists.
87. Several species are no longer listed at all. For example the aquaculture species the Red swamp crayfish (*Procambarus clarkia* (Girard 1852) which was listed as a prohibited alien in terms of Notice 4 to the original 2014 AIS lists is no longer listed at all.

BALANCE OF CONVENIENCE

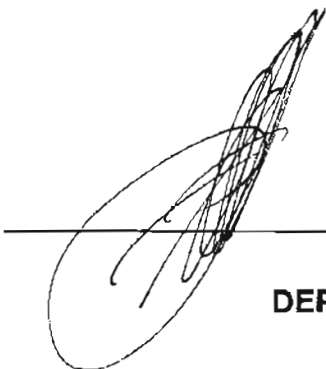
88. The balance of convenience overwhelmingly favors the withdrawal or cessation of the implementation of the 2020 AIS Lists and 2020 AIS Regulations until the matter that has been brought in this Honorable Court under case number 62486/2018 has been finally determined.
89. The new listings of species that are utilised and which support important value chains in the game, tilapia and trout sectors will have significantly adverse if not fatal consequences for these value chains and the health and wellbeing of thousands of South Africans who depend for their livelihoods on the existence of these value chains.
90. Trout have existed without any obvious problems in South Africa for nearly one hundred and thirty years. It is unlikely that they can be invasive as defined in NEMBA, given that much of the trout fishery is sustained through expensive restocking. It is hard to see, for example how a trout in a dam that cannot breed or establish, can be invasive. It is also hard to see what harm they do given the obvious benefit the trout value chain has brought to those areas where trout occur.
91. It is also hard to see how the listing of trout as invasive species can be justified given that the Phakisa Ocean Lab report lists the already restrictive legislation as inhibiting the growth of trout based aquaculture and the decision recorded in that report was that trout should be exempt from being listed as invasive species where they already occur.

A handwritten signature, possibly 'E', is written in the bottom right corner of the page. The signature is written in dark ink and consists of a large, stylized loop followed by a smaller mark.

URGENCY

92. I respectfully submit that this matter is urgent for the reasons set out above. I say so particularly as the considerable harm this application seeks to avoid will be unavoidable if a decision in this matter is delayed beyond 18 October 2020.

WHEREFORE I respectfully pray that this Honourable Court grant the relief set out in the Notice of Motion.



DEPONENT

I HEREBY CERTIFY that the deponent has acknowledged that he knows and understands the contents of this affidavit that he does not have any objection to taking the oath, and that he considers it to be binding on his conscience which was sworn to and signed before me at Pietermaritzburg on this the 1st day of October 2020, and that the administering oath complied with the regulations contained in Government Gazette Notice No.1258 dated 21st July 1972 (as amended).



COMMISSIONER OF OATHS

Full Names:

Capacity:

Area:

Adress:

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 COMMISSIONER OF OATHS
 PRACTICING ATTORNEY
 200 HOUSEN HAFEEJEE ST.
 PIETERMARITZBURG