CONSORTIUM OF INTERESTED AND AFFECTED PARTIES

C/O: iancox@coxattorneys.co.za

13 March 2018

Honourable Dr. Edna Molewa

Minister of Environmental Affairs

PRETORIA

Per email:
GRamutshila@environment.gov.za;
bsobayeni@environment.gov.za;
iabader@environment.gov.za (CC)

Dear Honourable Minister Molewa,

RE: Formal demand for the withdrawal of notices GN 112 and 115

The purpose of this letter is to inform you, as the Minister of Environmental Affairs, that these notices are unlawful for the reasons set out below.

We request the following actions:

1. The urgent withdrawal of the Draft 2017 AIS Regulations and the Draft AIS Amendment Lists that were published for comment under GN 112 and 115 on Friday 16 February 2018. This is because they do not comply with section 100 of the National Environmental Management Biodiversity Act, 2004 ("NEMBA") and thus are unlawful; and

2. That you undertake that neither you nor your Department will take further steps to list species as invasive until:

2.1. The notices inviting the public to comment on the draft lists and regulations contain sufficient information to enable members of the public to submit meaningful representations or objections; and

2.2. That information explains:

2.2.1. by reference to the definition of invasive in NEMBA why the species proposed for listing are invasive as defined having regard:

- Firstly, to why, how and in what areas within South Africa, that alien species "threaten ecosystems, habitats or other species or have demonstrable potential to threaten ecosystems, habitats or other species";

- Secondly, on terms that are evidence (legal) rather than opinion based and that accordingly apply the concept of a **significant** threat in a manner that can be tested objectively in relation to facts and which is not based on expert opinion that does not speak objectively to the aforesaid facts;
- Thirdly, why, how and in what areas within South Africa, the presence of such alien species may result in economic harm, or harm to human health, or environmental harm, "environmental harm" being interpreted applying the definition of "environment" in the National Environmental Management Act, 1998("NEMA"); and not just as a harm to ecosystems, habitats or other species.

2.2.2. by reference to the principles set out in section 2 of NEMA (the NEMA Principles) and having regard to:

- Firstly, section 2(1)(c) of NEMA which states that these principles "apply throughout the Republic to the actions of all organs of state that may significantly affect the environment and serve as guidelines by reference to which any organ of state must exercise any function when taking any decision in terms of this Act or any statutory provision concerning the protection of the environment" why the species that have been identified as invasive by virtue of the definition of invasive set out in NEMBA must be listed as such;
- Secondly, section 2(2) of NEMA which states that: "Environmental management must place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interests equitably";
- Thirdly, having regard to the above, explain the need to list a species as invasive in relation to the balancing of risks and benefits. They must not speak to the generalised and vague terms characteristic of DEA's recent responding emails to members of the public. DEA must rather give the sort of detail that both the public, all spheres of government and organs of state reasonably require if there is to be a coordinated and integrated effort directed at controlling such species.

You are hereby informed that if you do not withdraw these notices and give these undertakings then it is likely that an urgent application will be brought for an interim interdict preventing you from proceeding further, pending a final interdict declaring the notices unlawful.

Please revert by no later than 17 March 2018.

This letter is written on behalf of a Consortium of interested and affected stakeholders (See list of organisations attached as annexure A).

The notices are unlawful due to numerous defects, including:

1. They do not contain any information reasonably necessary to enable members of the public to object or make representations in an informed manner to the substance of what is proposed as is required in terms of section 100(2)(b) of NEMBA.
2. That the notice was not published in a newspaper as is required in terms of section 100(1)(b) on 16 February 2018 but according to information supplied by DEA was only published 5 days later in the Star on 21 February.
3. The notice does not alert members of the public that they may ask you for permission to submit their representations orally in terms of section 100(3) of NEMBA.

4. The notice, by requiring objections to be submitted by 16h00 on the last day, does not comply with the 30 day notice period prescribed in section 100(2)(a) of NEMBA. The notice period is short by 8 hours or one third of a day.
5. No Socio-economic Impact Analysis (SEIA) was supplied despite this being part of the information reasonably required in order to make representations or objections.
6. We are aware that the department has failed to publish notices in compliance with section 100 of NEMBA[1]. This has not happened despite the constitutional obligation to do so in terms of section 155 of the Constitution.

The judgement of the full bench of the Gauteng Division (Pretoria) of the High Court of South Africa in *Kruger and Another v Minister of Water and Environmental Affairs and Others*[2] is authority for the proposition that these defects are sufficiently serious to render any subsequent law unlawful. You will recall that applications brought by your department to appeal this judgement were refused by both the Supreme Court of Appeal and also by the Constitutional Court.

Paragraph 34 of that judgement is of particular relevance:

> "However, what is disappointing in the present case is that, compliance in terms of sections 99 and 100 was not adhered to and no proactive steps were taken before the moratorium was imposed. The moratorium on domestic trade in rhino horns should be having a significant adverse impact on the employees and families of the rhino breeders like Hume and Kruger. The communities and business owners in the surrounding areas where rhino breeding operations are conducted could have been engaged due to possible loss of employment benefits occasioned by the moratorium. Secondly, the notice in the Gazette did not contain sufficient information to enable members of the public to submit meaningful representations and/or objectives. All of this has a significant bearing on the decision to impose the moratorium. On this finding alone, the moratorium ought to be set aside." (Emphasis added)

The draft lists, if made law, will declare a number of economically useful species invasive. The impact of this proposed listing on these species has not been addressed in the notices or provided in any consultation or response to stakeholder groups.

In the light of the above, kindly respond as requested by no later than 17 March 2018.

Yours Faithfully

pp **Consortium of Interested and Affected Parties**

[1] http://www.durbanflytyers.co.za/Articles/20171011_Letter_To_The_Minister_Final.pdf
[2] http://www.saflii.org/za/cases/ZAGPPHC/2015/1018.html

APPENDIX A

List of supporting organisations:

Aquaculture South Africa

Aquaculture Association of Southern Africa

Wildlife Producers Association

Trout South Africa

The Federation of Southern African Fly fishers

South African Fly Fishing Association

The Wild Trout Association

Blue Crane Tourism

Rhodes Tourist and Information Centre

Southern Drakensberg Tourism

Dabchick Wildlife Reserve (Pty) Ltd

Abalone Farmers' Association

Bivalve Shellfish Association of SA

Mpumalanga Tourism Association

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MINISTER
ENVIRONMENTAL AFFAIRS
REPUBLIC OF SOUTH AFRICA

Private Bag X447, Pretoria, 0001, Environment House, 473 Steve Biko Road, Tel: (012) 399 8743
Private Bag X9052, Cape Town, 8000, Tel: (021) 469 1500, Fax: (021) 465 3362

Ref: EDMS MCE170805

Ms Riette Symmonds
Consortium of Interested and Affected Parties

30 APRIL 2018

Email: iancox@coxattorneys.co.za

Dear Ms Symmonds

WITHDRAWAL OF ALIEN AND INVASIVE NOTICES GN112 AND GN115

The letter dated 13 March 2018 regarding the above-mentioned subject, has reference.

I do not respond to each and every allegation in the letter and the failure to do so must not be construed as an admission of correctness of the contents of any part of your letter under reply.

Before addressing the specific aspects of your letter, it is noted that the letter is written by a Consortium of Interested and Affected Parties, which are listed in an annexure to the letter. There is no indication from each of these organizations by their authorised representatives (who in turn should be mandated by its members), that they in fact are part of and support the contents of this letter and further it is not clear who represents this consortium and what authority or mandate they have been given by the Consortium to write such a letter.

After considering the various submissions made, I have decided to extend the comment period for the amendments to the Alien and Invasive Species Lists and Regulations. These proposed amendments are important and there is clearly a need to allow for additional time for members of the public to provide inputs on the proposals. I will therefore in due course publish a *Gazette* notice and a notice in a national newspaper, extending the period for e further 30 days. The Department will also make available on its website the Socio-economic Impact assessment; various risk assessments and other documents which provide the background and rationale for the proposed amendments. While I am of the view that not all of this information is strictly necessary to enable the public to comment, much of this information has already been sent to various organizations and individuals as per their request over the last few weeks.

There is no need to withdraw these notices. They are proposed amendments not final and your concerns detailed in paragraph 2.1 and 2.2.1 as well as paragraphs 1 and 2 on page 2 of your letter, would be addressed by simply extending the period and providing the above information.

WITHDRAWAL OF ALIEN AND INVASIVE NOTICES GN112 AND GN115

However the following should be noted:

(a) Section 100(3) is not preemptory and is a discretionary power, it states as follows:

"The Minister **may in appropriate circumstances** allow any interested person or community to present oral representations or objections to the Minister or a person designated by the Minister."

This section clearly allows the Minister to determine if such oral representations are necessary having regards to the circumstance and does not need to be stated in the notice.

(b) a Socio-economic Impact assessment is not required in terms of law to be made available during a public commenting process.

As regards the statements in paragraph 2.2.2 of the letter, it is evident from the risk assessments and other information that has already been released by the Department in media statements and other fora, why species are listed and that such listings are done with specific regard to their economic use and the impact on specific sectors. As such they are appropriately categorized and not just listed without specific management measures, which allow the species to continue to be utilised as an economic resource but managed responsibly by a permit or other measures. It is clear that listing invasive species fulfils a number of NEMA principles including the precautionary approach, protection of the environment for present and future generations, the environment held in trust, the polluter pays principles to name but a few, and to the extent that you are of the view these draft Lists and Regulations do not concur with any NEMA principles you are invited to make these comments which will be considered together with all other comments.

Yours sincerely

DR B E E MOLEWA, MP
MINISTER OF ENVIRONMENTAL AFFAIRS

DATE: 2018/04/30

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EXTENSION OF THE PUBLIC COMMENTING PERIOD FOR THE PROPOSED AMENDMENTS TO THE ALIEN AND INVASIVE SPECIES REGULATIONS AND SPECIES LISTS PUBLISHED ON 16 FEBRUARY 2018

On 16 February 2018, the Minister of Environmental Affairs, Dr. Bomo Edna Edith Molewa, published for public comment, in Government Notices 112 and 115 of *Government Gazette* 41445 in terms of the National Environmental Management: Biodiversity Act, 2004 (Act No.10 of 2004), the proposed amendments to the Alien and Invasive Species Regulations and the species Lists.

The period for which the public may submit comments on the proposed amendments is hereby extended to 18 June 2018. Any person who wants to submit comments on the proposed amendments may do so in writing on or before the last day. Comments submitted after this may not be considered.

All comments must be submitted to the Department:

- **By Post:** The Deputy Director-General: Environmental Programmes, Department of Environmental Affairs, Private Bag X4390, 8001, Attention: Ms. Nomahlubi Geja;
- **Hand-delivery:** The Deputy Director-General: Environmental Programmes, Department of Environmental Affairs, 14 Loop Street, Cape Town, Attention: Ms. Nomahlubi Geja; or
- **e-mail:** NembaRegs@environment.gov.za

The following information is available on the Department's website at www.environment.gov.za: proposed amendments, risk assessments related to the draft amendments referred to above, the socio-economic impact assessment, and other relevant information. If you require any other specific information about the proposed amendments, please contact the Department by email on NembaRegs@environment.gov.za. Enquiries may be directed to Ms. Nomahlubi Geja at 021 441-2791/2707.

environmental affairs
Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

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REPRESENTATIONS
SUBMITTED BY IAN COX 16 JUNE 2018

REGARDING

THE EXTENSION NOTICE PUBLISHED IN THE CITY PRESS NEWSPAPER ON 13 MAY 2018

AND

THE ADDITIONAL INFORMATION REFERRED TO THEREIN

ALL IN RELATION TO

THE PROPOSED AMENDMENTSTO TO THE DRAFT AMMENDMENTS TO THE ALIEN AND INVASIVE SPECIES LISTS AND REGULATIONS THAT WERE PUBLISHED IN GAZETTE 41445 UNDER NOTICE 112 AND 115 ON 16 FEBRUARY 2018

Glossary of Terms

1	2014 AIS Regulations	The AIS regulations published in Gazette 37885 under notice R598 on 1 August 2014
2	2014 AIS Lists	The AIS lists published in Gazette 37885 under notice 599 on 1 August 2014
3	2014 National AIS Strategy	2014 National Strategy for dealing with biological invasions in South Africa
4	2016 AIS Lists	The amended AIS lists published in Gazette 40166 under notice 864 on 29 July 2016.
5	2018 Draft AIS Lists	The draft AIS lists published in Gazette 41445 under notice 115 on 16 February 2018
6	2018 Draft AIS Regulations	The draft AIS regulations published in Gazette 41445 under notice 112 on 16 February 2018
7	2018 Draft AIS Lists and Regulations	The draft AIS lists and regulations published in Gazette 41445 under notices 112 and 115 on 16 February 2018
8	AIS	Alien and invasive species
9	Alien Species	Has the meaning defined in NEMBA, namely –"(a) a species that is not an indigenous species; or (b) an indigenous species translocated or intended to be translocated to a place outside its natural distribution range in nature, but not an indigenous species that has extended its natural distribution range by natural means of migration or dispersal without human intervention".
10	Anthropocentric Conservationist	"Anthropocentrism refers to a human-centered, or "anthropocentric," point of view. In philosophy, anthropocentrism can refer to the point of view that humans are the only, or primary, holders of moral standing. Anthropocentric value systems thus see nature in terms of its value to humans; while such a view might be seen most clearly in advocacy for the sustainable use of natural resources, even arguments that advocate for the preservation of nature on the grounds that pure nature enhances the human spirit must also be seen as anthropocentric. Alternative, non-anthropocentric or anti-anthropocentric views include ecocentrism, biocentrism, and similar framings."[1]
11	Biocentric	The view or belief that the rights and needs of humans are not more important than those of other living things. See https://en.oxforddictionaries.com/definition/biocentrism For broad analysis of the environmental ethics and the competing views that exist in this space see https://plato.stanford.edu/archives/fall2011/entries/ethics-environmental/ Where biocentrism is referred to in these terms: "Paul Taylor's version of this view (1981 and 1986), which we might call biocentrism, is a deontological example. He argues that each individual living thing in nature -- whether it is an animal, a plant, or a micro-organism -- is a "teleological-

[1] http://www.oxfordbibliographies.com/view/document/obo-9780199830060/obo-9780199830060-0073.xml

		center-of-life" having a good or well-being of its own which can be enhanced or damaged, and that all individuals who are teleological-centers-of life have equal intrinsic value (or what he calls "inherent worth") which entitles them to moral respect. Furthermore, Taylor maintains that the intrinsic value of wild living things generates a prima facie moral duty on our part to preserve or promote their goods as ends in themselves, and that any practices which treat those beings as mere means and thus display a lack of respect for them are intrinsically wrong."
12	Biotic Nativism	Nativism when used in its political sense described the policy of preferring Native inhabitants as opposed to immigrants. Biotic Nativism is its environmental counterpart. It describes the policy of preferring species that occur in an area without human intervention and are thus Native to that area over species that were introduced into an area as a result of human activity and are consequently called Alien. See for example: https://www.jstor.org/stable/30301628?read-now=1&loggedin=true&seq=1#page_scan_tab_contents
13	BMPs	Biodiversity Management Plan for Species
14	CARA	Conservation of Agricultural Resources Act, 1983
15	CBD	United Nations Convention on Biological Diversity
16	Chapter 4	Chapter 4 of NEMBA which deals inter alia with Threatened and Protected Species
17	Chapter 5	Chapter 4 of NEMBA which deals with Alien and Invasive species
18	CIB	DST-NRF Centre of Excellence for Invasion Biology
19	Consortium	The Consortium of 14 interested and affected parties who demanded .that the Minister withdraw the 2018 Draft AIS Lists and Regulations
20	Consortium's Demand Letter	The Consortium's letter of demand dated 13 March 2018 http://www.fosaf.org.za/documents/20180313-Letter-to-DEA-Minister-Molewa.pdf
21	Constitution	The Constitution of the Republic of South Africa
22	Constitutional Values	These are the values expressed in section 1of the Constitution, namely (a) Human dignity, the achievement of equality and the advancement of human rights and freedoms. (b) Non-racialism and non-sexism. (c) Supremacy of the constitution and the rule of law. (d) Universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness." See also Barkhuizen v Napier (CCT72/05) [2007] ZACC 5 http://www.saflii.org/za/cases/ZACC/2007/5.html
23	Control	Means control as defied in NEMBA, namely to combat or eradicate an Alien or invasive species; or 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;

24	DAFF	Department of Agriculture, Forestry and Fisheries
25	DAFF Minister	Minister of Agriculture, Forestry and Fisheries.
26	DEA	The Department of Environmental Affairs
27	DPME	The Department of Planning, Monitoring and Evaluation
28	Draft SANBI AIS Status Report	SANBI's draft report entitled "The status of biological invasions and their management in South Africa which was published for comment in 2017 http://www.sanbi.org/sites/default/files/documents/documents/national-status-report-biological-invasion-south-africa-draft-1-comment.pdf
29	Established or Establishment	NEMBA refers to an invasive species, with reference to the establishment of that species outside of its natural distribution range. This is the only time the word "establish" or any derivative thereof is used in NEMBA in relation to a species. NEMBA does not define what is meant by the terms "establishment" when used in this context. Ordinarily "establish" means "set up on a firm or permanent basis" I suggest that "establish" or "establishment" when used in with reference to Listed Invasive Species NEMBA has the same meaning. The Draft AIS National Status Report defines "establishment" as a "process that alien species form self -sustaining populations over a period of time corresponding to multiple generations without direct intervention by people, or despite human intervention "has become viable in the wild as in sustaining self-replacing populations over several life cycles and producing reproductive offspring without human intervention"[2]. I use the term in this sense.
30	Eradicate	Means to completely eradicate to the point that the species is no longer Established in South Africa.
31	Extension Notice	The notice published by DEA in the City Press on Sunday 13 May 2018, a copy of which is annexure "**A**" to this letter See also https://www.environment.gov.za/news/extensionofpubliccommentingperiod
32	FOSAF	Federation of Southern African Fly Fishers
33	FOSAF's Original Objection	http://www.durbanflytyers.co.za/Articles/180318_FOSAF_Objections_AIS.pdf
34	Gazette	The Government Gazette
35	Indigenous	Has the meaning defined in NEMBA as in "a species that occurs, or has historically occurred, naturally in a free state in nature within the borders of the Republic, but excludes a species that has been introduced in the Republic as a result of human activity."
36	ISSG	Invasive Species Specialist Group
37	IUCN	International Union for Conservation of Nature
38	Listed Invasive Species	Are species that the Minister has listed as Invasive in terms of section 70 of NEMBA

[2] The 2014 National AIS Strategy document defines an established invasive alien species as" those species that are present and reproducing outside their native range, and whose extent of distribution and invasiveness makes eradication impossible."

39	Malan en Seuns' Original Objection	http://www.durbanflytyers.co.za/Articles/Objection_Malan_en_Seuns.pdf
40	Martin Davies Original Objection	http://www.durbanflytyers.co.za/Articles/Davies_Objection.pdf
41	Minister	The Minister of Environmental Affairs
42	Minister's Letter	The letter addressed by the Minister to the Consortium dated 30 April 2018 https://otherhand991201715.files.wordpress.com/2018/04/ministers-response-to-lod.pdf
43	Native	A species is regarded as "indigenous" in terms of NEMBA if it either occurs or has occurred in South Africa in a free state of nature and was not introduced as a result of human activity. A species is "alien" in terms of NEMBA if it Is not indigenous or it is indigenous but has been translocated or intended to be translocated to a place outside its natural distribution range in nature otherwise than by natural means of migration or dispersal that takes place without human intervention. The element of Human intervention is, therefore, key to determining whether or not a species is either Indigenous or Alien. However the converse is not true. A species is not Alien because it is reintroduced into an area where it once occurred (at any time in history) even if its extirpation occurred without human intervention. A species that has been extinct for millennia would not be alien if, for example, scientists were able to reproduce specimens of that species and if they were then reintroduced into the area they once occurred. NEMBA does not define species that are neither Alien nor Indigenous The term "Native" is used in science for describing a species that is Indigenous but not Alien. The term is also used in the 2014 National AIS Strategy. This is the sense in which I use it in the memorandum.
44	Natural Distribution Range	See definition of Native. NEMBA only uses the term "natural distribution range" in relation to Alien and Invasive Species. Moreover the term "natural" is not used in its ordinary sense[3] when used in this context. The term "natural distribution range" is not defined in NEMBA but it intended to be used in an anthropogenic sense with reference as to whether or not a species occurs or originally occurred in an area as a result of human activity and was thus introduced. This is consistent with how the term alien is used in the CBD[4] A species is Alien if human activity is the reason for its present or original occurrence in an area. It is Native if this is not the case. The natural distribution zone of a species is thus where it has or does occur otherwise than as a result of human activity. I use the phrase "Natural Distribution Range" in this sense.

[3] As in "existing in or derived from nature; not made or caused by humankind."

[4] See, for example the definition of an alien species in COP 6 Version V1/23 as referring to "a species, subspecies or lower taxon, introduced outside its natural past or present distribution; includes any part, gametes, seeds, eggs, or propagules of such species that might survive and subsequently reproduce."

		The use of the phrase can be confusing as environmental officials also use it in a different sense when implementing the TOPS regulations in terms of part 2 of Chapter 4. Chapter 4 refers to species occurring "in the wild" in an area rather than being in their natural distribution ranges. This use of a different terminology is deliberate but sadly despite the care taken to separate the two concepts environmental; officials continue to try to manage threatened and protected species within so called historic natural distribution zones rather than trying to conserve them "in the wild" as is required by law. "
45	NEMA	The National Environmental Management Act, 1998
46	NEMA Principles	The environmental management principles listed in section 2 of NEMA
47	NEMBA	The National Environmental Management Biodiversity Act, 2004
48	NEMPAA	The National Environmental Management Protected Areas Act, 2003
49	NFFC's Objection	The objection of the Natal Fly Fishers Club to the 2018 Draft Lists and Regulations dated 16 March 2018 http://www.durbanflytyers.co.za/Articles/NFFC_Objection.pdf
50	Original Objection	http://www.durbanflytyers.co.za/Articles/Ian_Cox_Objection.pdf
51	Original Notices	The listing notice and Draft regulations published for comment on 16 February 2018 in Gazette 41145 under GN 115 and 112 respectively.
52	Phakisa Agreement	The Agreement reached at the Phakisa Ocean Labs conference for the oceans economy that took place in Durban in July 2014 and resulted in an agreement between DEA and representatives of the Trout Value Chain in terms of which: 1. That save for certain protected areas; Trout would not be listed as invasive where they occur. 2. That Trout would be listed as invasive in category 2 in areas in certain protected areas and in areas where they do not occur but might become Established if they were introduced. 3. That Trout would be managed as Aliens in areas where they occur and are not listed as invasive in terms of a self-regulated regime that would ensure that Trout produced by hatcheries are not introduced into areas where they do not occur but might become Established.
53	SAIAB	The South African Institute of Aquatic Biodiversity
54	SANBI	South African National Biodiversity Institute
55	SANBI National AIS Status Report	The final National AIS Status Report produced by SANBI in terms of Article 11 of the 2016 AIS Regulations which was sent to the Minister at the end of March 2018. This is a report that SANBI must prepare in terms of section 77 of NEMBA and section 11 of the 2014 AIS regulations (section 11(1)). The section reads: "The Institute or a body designated by the Institute must, for the purpose of reporting as contemplated in section 11(1)(a)(iii) of the Act, submit a report on the status of listed invasive species to the Minister within three years of the date on which these regulations come into effect, and at least every three years thereafter."

56	SEIAS	Social Economic Impact System developed and managed by the DPME
57	SEIAS Guidelines	SEIAS Guidelines Version May 2015 http://www.dpme.gov.za/keyfocusareas/Socio%20Economic%20Impact%20Assessment%20System/SEIAS%20Documents/SEIAS%20guidelines.pdf
58	The SEIAS Report	Socio-Economic Impact Assessment System Final Impact Assessment Template (Phase 2) Amendments To The Alien And Invasive Species Regulations, 2014 https://www.environment.gov.za/sites/default/files/docs/socio-economic_impactassessmentsystem.pdf
59	Specimen	Has the meaning defined in NEMBA, namely:-"(a) any living or dead animal, plant or other organism; (b) a seed, egg, gamete or propagule or part of an animal, plant or other organism capable of propagation or reproduction or in any way transferring genetic traits; (c) any derivative of any animal, plant or other organism; or (d) any goods which-(i) contain a derivative of an animal, plant or other organism; or (ii) from an accompanying document, from the packaging or mark or label, or from any other indications, appear to be or to contain a derivative of an animal, plant or other organism." Specimen must be read with the definition of "derivative" which is defined in NEMBA to mean "in relation to an animal, plant or other organism, means any part, tissue or extract of an animal, plant or other organism, whether fresh, preserved or processed, and includes any genetic material or chemical compound derived from such part, tissue or extract."
60	TOPS	Threatened or Protected Species
61	Trout	Rainbow trout (*Oncorhynchus mykiss*) and/or Brown Trout (*Salmo trutta*)
62	Trout SA's Original Objection	http://www.durbanflytyers.co.za/Articles/TSA_Objections_AIS_2018.pdf
63	Trout Value Chain	This term is used to define the down economic activity of people and businesses that benefit from the occurrence of Trout in South Africa. It includes those who engage in fishing and for Trout as well as trout fishing clubs and syndications and the sale of fishing equipment and guiding services, Trout Production and its related value streams and Trout related tourism.
64	In the Wild	NEMBA frequently refers to this term in Chapter 4 (TOPS) part 2 of Chapter 4 authorises the Minister list Indigenous species as being in need of protection when they face an extremely high risk of extinction "in the wild". "In the wild" is not to be confused with Natural Distribution Zones or with species being in a state of nature or indeed with Wilderness According to Eastern Cape Parks and Tourism Agency v Medbury (Pty) Ltd[5] many species that occur in protected areas are not wild in that they are now controlled and thus owned. However they may still exist "in the wild" as the term is used in NEMBA. It is difficult to say precisely what "in the wild" means physically. It is easier to define what is not "in the wild". Game animals,

[5] http://www.saflii.org/za/cases/ZASCA/2018/34.html

		may, for example, be farmed in the sense that the farmer managed and harvest his game as a renewable resource but nonetheless still be In the Wild. Being "in the wild" is ultimately dependant on whether the species has become Established. If it has it can be said to be "in the wild" even though it may be farmed. If the species is not Established and its continued occurrence requires ongoing husbandry, then it is not in "the wild" So "game" farmed on game ranches may sometimes be "in the wild" and sometimes it may not. I use the term in this sense of a species being Established.
65	Wilderness	Wilderness is defined in NEMPAA as "an area designated in terms of section[s] 22 or 26 for the purpose of retaining an intrinsically wild appearance and character or capable of being restored to such and which is undeveloped and roadless, without permanent improvements or human habitation". The IUCN define it differently as "usually large unmodified or slightly modified areas, retaining their natural character and influence, without permanent or significant human habitation, which are protected and managed so as to preserve their natural condition" The "Reconnaissance-Level Inventory of the Amount of Wilderness in the World[6]" identified wilderness biocentrically "undeveloped land still primarily shaped by the forces of nature" using Jet Navigation Charts (scale 1:2,000,000) and Operational Navigation Charts (scale 1:1,000,000) of the U. S. Defense Mapping Agency and excluding all areas showing roads, settlements, airports and other constructs as well as areas of agricultural development and logging and, all remaining wilderness areas with a surface area less than 400,000 hectares. There is no Wilderness in South Africa according to this map.
66	Wildlife Rancher's Association's Original Objection	http://www.durbanflytyers.co.za/Articles/WRSA_EC_Objections.pdf
77	WPA's Objection	The Objection of the Wildlife Producer's Association to the 2018 Draft Lists and Regulations dated 12 March 2018 http://www.durbanflytyers.co.za/Articles/WPA_Objection.pdf
78	Xplorer FlyFishing Original Objection	http://www.durbanflytyers.co.za/Articles/Jandi_(Xplorer)_Objection_Letter_To_DEA_March_19_2018.pdf

[6] J. Michael McCloskey, and Heather Spalding. "A Reconnaissance-Level Inventory of the Amount of Wilderness Remaining in the World." Ambio, vol. 18, no. 4, 1989, pp. 221–227. JSTOR, JSTOR, www.jstor.org/stable/4313570.

1. **Incorporation of my Original Objection and that of the Consortium**

1.1 A glossary of the abbreviations and definitions used in this memorandum is set out above.

1.2 This objection to the 2018 Draft Lists and Regulations that is submitted in response to the invitation contained in the Extension Notice must be read with and as being supplementary to my Original Objection

1.3 I also support the following objections and make common cause with them:

(a) CPS's Original Objection

(b) Durban Fly Tyers Original Objection

(c) FOSAF's Original Objection

(d) Martin Davies Original Objection

(e) Malan en Seuns' Original Objection

(f) NFFC's Original Objection

(g) Trout SA's Original Objection

(h) WPA's Original Objection

(i) Wildlife Rancher's Association's Original Objection.

(j) Xplorer FlyFishing Original Objection.

2. **Summary**

2.1 I do not think I criticise the Minister harshly when I say that she and her predecessors have failed abysmally in implementing Chapter 5.

(a) Part of the problem is likely to be a lack of any policy underlying the enactment and amendment of NEMBA itself.

(b) The ideological divide that exists between the Biocentric and often Biotic Nativist belief of environmental officials and the Anthropocentric Conservation that underpins the environmental right described in the Constitution is another part of the problem.

(c) There is also the natural inclination of officials everywhere to think that people exist to be governed rather than government existing for the people.

(d) The belief among most officials that greater command control measures will resolve administrative shortcoming/failures and allow for more effective implementation to overcome these problems.

(e) I think we are also seeing indications in DEA's repeated attempts to list Trout as invasive signs of the sort of personal animus officials sometimes display when they are thwarted or criticised. I fear that egotistical vanity is beginning to replace the serious business of Government.

2.2 There are probably other reasons as well but the fact remains that that DEA's attempts to regulate Listed Invasive Species in terms of Chapter 5 of NEMBA have failed utterly.

(a) Far too many species have been listed as invasive. South Africa only has the resources to Eradicate and Control a very small number of species.

(b) This is the clear message conveyed in the Draft SANBI AIS Status Report and is undoubtedly the message contained in the in the final SANBI AIS National Status Report that was sent to the Minister at the end of March 2018.It is a message that DEA and the Minister have chosen to ignore. Sadly DEA has refused to make the SANBI AIS National Status Report available thus depriving us of information that is essential to a response to the 2018 Draft AIS Lists and Regulations.

2.3 There has also been an egregious failure of due process and legitimate law making under NEMBA. The requirement of public participation prescribed in section 100 of NEMBA has been largely ignored with the result that no laws introduced under NEMBA are lawful[7].

2.4 The Extension Notice is an attempt to rectify the multitude of fatal defects that render the Original Notice unlawful and which resulted in the Consortium threatening legal proceedings[8] if the Minister went ahead and tried to promulgate the Draft 2018 AIS Lists and Regulations. But the attempt fails because the Extension Notice repeats and even adds to the many mistakes that rendered the Original Notices unlawful. In summary these failings include:

(a) This failing and the other failings highlighted in objection made by the Consortium and I to the Original Notices underscore the point that has been made many times before, namely that DEA treats the Constitution and the rule of law with contempt. The repeated failure of both the Minister and DEA to comply with section 100 of NEMBA is one obvious example of the contempt they have for the Constitution and the rule of law.

(b) There is, however, another problem. That is the Minister's failure to properly apply section 70 of NEMBA when deciding which species should be listed as invasive and where and how this should be done. The Minister has failed in this regard inter alia:

(i) The failure to have regard to the definition of invasive and to apply that definition purposively having regard to the anthropocentric nature of the environmental right, the NEMA Principles and NEMBA and in particular Chapter 5.

[7] See my letter to the Minister dated 11 October 2017
http://www.durbanflytyers.co.za/Articles/20171011_Letter_To_The_Minister_Final.pdf
[8] See Consortium's Demand Letter

(ii) The failure to consider either the Draft SANBI National AIS Report or the SANBI National AIS Report.

(iii) The failure to prepare a SEIAS report on the 2018 Draft AIS Lists and Regulations or alternatively to prepare one that complies with the SEIAS Guidelines.

(c) This is all made worse by the Minister's failure to require the listing of species as invasive to be supported by proper risk and benefit assessments coupled with her uncritical acceptance of some "risk assessments" that are obviously of poor quality and which inappropriately adopt the format required for determining if restricted activities in respect species that have already been listed as invasive should be permitted.

2.5 The failings listed in this objection and the Original notice make it reasonably likely, in my opinion, that those in DEA responsible for those laws could be personally obliged to pay the costs of a legal challenge against the Original Notices.

3. Introduction

3.1 I nearly missed the Extension Notice that purports to extend the deadline for submitting comments on the Draft 2018 AIS Lists and Regulations until 18 June 2018. This is because I watch the Gazette. No such notice was published in the Gazette despite the Minister promising that:

> "a notice extending the deadline would be published in the Gazette as well as a newspaper that distributes nationally"[9].

3.2 One would also have expected the Minister to write to those who made submissions in response to the Original Notices alerting them to the Extension Notice. This is especially so given that so many of those representations complained that the Original Notices did not contain sufficient information to enable members of the public to submit meaningful representations or objections.

(a) This failing and the other failings highlighted in objection made by the Consortium and I to the Original Notices underscore the point that has been made many times before, namely that DEA treats the Constitution and the rule of law with contempt.

(b) I suggest what is now a long history of repeated attempts to promulgate what are often unlawful laws by unlawful means:

(i) constitutes an egregious abuse of power by DEA, the Minister and the officials involved;

(ii) represents a clear and present danger to our democracy and the effective functioning of state institutions not to mention the rule of law; and

[9] See the Minister's Letter

(iii) is causing serious harm to the South African economy and the health and wellbeing of South Africans.

4. **Non-compliance with Section 100 of NEMBA: The giving of notice**

4.1 Section 100 of NEMBA requires the Minister to publish the required notice in the Gazette and in this case in a newspaper that is distributed nationally[10].

(a) The Extension Notice was published in a newspaper that is distributed nationally but was not:

(i) given by the Minister; nor

(ii) was it published in the Gazette

(b) This is despite both being peremptory requirements in terms of section 100 of NEMBA.

4.2 The failure to comply with these basic requirements is extraordinary. However the failure is particularly egregious given that the Minister promising that:

"I will therefore in due course publish a Gazette notice and a notice in a national newspaper, extending the period for a further 30 days."[11]

(a) Ms Nomahlubi Geja, a director in DEA's biosecurity unit, sought to justify the failure to publish the notice in a Gazette as promised on the basis that the Extension Notice refers to the Original Notice[12].

(i) The implication is that the publication of the Extension Notice in the Gazette is unnecessary.

(ii) But this is clearly not the case. Apart from the material defects in the Original Notice, a failure to publish the extension in the Gazette means that the public has not been properly notified of the extension of time within which to object.

(b) There is of course also the manifest discourtesy if not outright contempt for the Minister herself that arises from the fact that DEA thinks it can ignore the Minister's promises and statutory powers that have been delegated to her personally and act in its own name and of its own volition.

4.3 The simple and obvious truths are that the Extension Notice:

[10] Section 100(1) of NEMBA
[11] The Minister's Letter
[12] See the string of e mails that is annexed marked "**B**"

(a) Is not a notice contemplated by section 100 of NEMBA. It is an extra legal invention born of DEA's imagination. It is a desperate attempt to make the 2018 Draft Lists and Regulations law irrespective of whether this is lawful.

(b) Does not remedy the defects in the Original Notices. It in fact exacerbates those defects.

4.4 Any laws that result from a reliance on this Extension Notice will be clearly unlawful and liable to be set aside if challenged. Indeed I think that it is reasonably likely that those in DEA responsible for those laws will be obliged to pay the costs of that legal challenge personally.

5. **Non Compliance with Section 100: Insufficient Information – the "risk assessments"**

5.1 However, the procedural difficulties that arise in connection with what DEA is attempting do not end with the failure to publish the Extension Notice in the Gazette.

(a) The Original Notice did not comply with Section 100 of NEMBA inter alia in that it does not contain sufficient information in order to enable members of the public to submit meaningful representations or objections. The Extension Notice does not cure this defect. There is still no notice published in the Gazette and a newspaper that contains the information referred to in section 100(2)(b) of NEMBA.

(i) The Extension Notice does not cure this defect.

(ii) It is also defective in this regard in and of itself.

(b) The Extension Notice refers to additional information being available on DEA's web site without saying where one will find it. I was only able to find it because my frequent prior use of the DEA web site has given me a good idea where to look. However less informed members of the public will not be able to find it. I know this because I have been contacted by many of the few interested parties who are aware of the Extension Notice asking how they find the information on the DEA web site.

(c) The Extension Notice also says that:

> "The following information is available on the Department's website at www.environment.gov.za: proposed amendments, "risk assessments" related to the draft amendments referred to above, the socio-economic impact assessment, and other relevant information. "

However the DEA Web site does not contain "risk assessments" pertaining to the 79[13] amendments that are proposed. Many of these refer to multiple species[14] which makes

[13] The 2018 Draft AIS Lists propose the removal of 13 the existing listings and the insertion of amendment of another 66 listings.

[14] Some of these listings refer to multiple species such as, for example the listing of Cambomba Species, Cestrum Species (not specifically listed), Trachemys species, Chicla Species, Hypostomus species, Myleus species, Oreochromis

the list even larger. Two listing, that of *Giraffa camelopardalis* (Giraffe) and *Hippotragus niger* (Sable)[15] refer to sub species.

(i) But the website only lists ten "risk assessments".

(ii) Furthermore, one "risk assessment", namely that of Oreochromis Niloticus, only relates to one species amongst the many that have been listed.

5.2 It follows that the Extension Notice materially misrepresents the actual situation.

(a) The DEA website does not in fact contain "risk assessments" relating to the proposed amendments as promised.

(b) The Extension Notice is deficient in this regard.

(c) It follows that the members of the public still do not have sufficient information in order to comment on the proposed amendments.

6. **Non Compliance with Section 100: Insufficient Information – SANBI AIS National Status Report**

6.1 Both the Consortium and I complained in our original representations that the Minister acted prematurely in publishing the 2018 Draft AIS Lists and Regulations. We said that she should have waited for SANBI to finalise its AIS National Status Report claiming that the draft of this report indicated that it would contain information vital to just and rational law making regarding Alien and/or invasive species.

6.2 I have since ascertained that SANBI sent the final report to the Minister at the end of March 2018[16] but that the report has not yet been made public. I wrote to Ms Geja of DEA on 29 May 2018[17] asking for a copy of that report. She denied that it was final and stated:

> "It will be finalised once it has gone through the necessary departmental approval processes. The fact that the authors have submitted a report doesn't make it finalised without the necessary departmental authorisation and as such remains a draft until such authorisation is obtained. I, therefore, cannot give you the report at this moment. And I repeat that once it has been approved it shall be made available for public consumption and the public shall be made aware of this availability."[18]

6.3 DEA clearly misunderstands the status of the SANBI AIS National Status Report. It is not an internal departmental document as DEA seems to think.

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species (excluding *Oreochromis mossambicus* and *Oreochromis placidus*), Pseudocrenilabrus Species, Pterygoplichthys species (except *P. disjunctivus* Weber, 1991 already listed under 1b), Pygocentrus species, Schilbe species (except those that are indigenous to South Africa) and Serrasalmus species.

[15] *Giraffa camelopardalis* (Linnaeus, 1758) (all subspecies with the exception of Giraffa and *Hippotragus niger* Harris, 1838 - (all subspecies except of *H. n. niger*).

[16] See e mail from Dr Brian Van Wilgen which is copied in the string of e mails that is annexed marked "**B**".

[17] This e mail is also part of the string of e mails that is annexed marked "**B**".

[18] Nomahlubi Geja's e mail sent to me at 9.52am on 30 May 2018 which is part of the string of e mails that is annexed marked "**A**".

(a) Chapter 2 of NEMBA establishes SANBI as an independent scientific authority. It is not a branch of DEA, nor an organisation which needs DEA to regulate its actions and/or sanitise its formal reports, as DEA seems to think.

(b) SANBI is obliged to report regularly to the Minister the status of all Listed Invasive Species. This is in terms of section 11(1)(a) of NEMBA.

(c) This statutory reporting obligation is regulated by section 11 of the 2014 AIS Regulations which obliges SANBI:

> to submit a report on the status of Listed Invasive Species to the Minister within three years of the date on which these regulations come into effect, and at least every three years thereafter".

6.4 The SANBI AIS National Status Report should have been submitted to the Minister on 30 September 2017 and is thus considerably overdue. However SANBI has now concluded and signed off the report and therefore its report is final.

(a) Interested parties, including DEA had an opportunity to comment on the Draft SANBI AIS Status Report in 2017.

(b) DEA does not get a second bite at the cherry nor can it amend and/or sanitise in any way what is a final report by an independent authority.

6.5 It is clear from the Draft National AIS Status Report that the existing 2016 AIS Lists and 2014 AIS Regulations are hopelessly ineffective and that far too many species have been listed as invasive. It is likely that the SANBI AIS National Status Report will confirm this.

(a) The Minister cannot rationally proceed to make or amend laws regarding AIS species without considering that report.

(b) Members of the public cannot comment meaningfully on the 2018 Draft AIS Lists and Regulations without first having sight of that report.

(c) Any attempt to make law or to run a consultation process without having regard to that the SANBI AIS National Status Report will accordingly be unlawful.

7. Testing for invasiveness

7.1 NEMBA gives the Minister a discretion whether or not to list a species as invasive. This discretion is however limited by a number of factors including:

(a) The legal definition of invasive species in section 1 of NEMBA.

(b) The purpose of Chapter 5 of NEMBA and NEMBA itself judged not in isolation but having regard to:

(i) The Constitution and especially the Bill of Rights including the environmental right contained in section 24.

(ii) NEMA and the NEMA Principles.

(c) The Policy considerations aimed at ensuring effective laws and implementation contained in the SEIAS Guidelines

(d) The requirement of just decision making in terms of PAJA and the Constitution.

(e) The principles of cooperative and participatory government.

7.2 The Minister should not list a species as invasive merely because some people believe it to be so even if those people are "scientists" or have training in the sciences.

(a) The determination of invasiveness is not an exercise in science or in morality or indeed faith or ideology.

(b) It is a fundamentally practical step taken terms of NEMBA in order to enable the Eradication or Control of a species

7.3 The discretion to list species as invasive entrusted to the Minister in terms of Chapter 5 is an onerous and difficult one.

(a) Penal consequences flow from such a listing.

(b) The cost to the fiscus and the public of implementation the laws that are triggered when a species is listed as invasive are very high, even prohibitive. The economic consequences of a listing can be severe as can its adverse impacts on the economy and human health and wellbeing

7.4 Listing a species as invasive is not something the Minister should do lightly. The Minister must take particular care, and be able to demonstrate, that she has taken this care in the decision making process. Thus the Minister must:

(a) Firstly, identify the species as alien in the area where it will be listed as an invasive species. This means she must be satisfied that the area falls outside the Natural Distribution Zone of the species as in it occurs in that area only because of human activity.

(b) Secondly, determine if the species has become Established and has spread outside its Natural Distribution Range. The term "establish" is not the same as "occur". A species may occur outside its Natural Distribution Range but it only becomes Established when it occurs In the Wild .

(c) Thirdly, determine if it has it spread and become Established elsewhere. Spread also not defined in NEMBA but I suggest that it is used in the narrow sense of spread otherwise than as a result of human activity.

(d) Fourthly to assess the nature and extent of any ecological threat that has or may arise as a result of that Establishment and spread.

(i) "Threat" is not defined. It clearly does not mean any threat or impact on Native species as is sometimes postulated.

(ii) Ecological threats are not limited to threats that impact upon Native species or habitats or ecosystems that have not been altered even transformed as a result of human activity. One must not therefore look only at a historical notion of ecosystems, habitats or other species as they might once have existed in a state of Wilderness but rather these ecosystems, habitats or other species as they exist today. Historical impacts are not a threat if those impacts have run their course and a new ecological balance is achieved.

(iii) Threat does not mean any impact. The threat must be significant and it is not just species based. The target species must threaten or have demonstrable potential to threaten ecosystems, habitats or other species. One is looking at a probable extinction or extirpation. Habitats must be threatened with destruction. The threat in the case of ecosystems must be to its basic functioning and thus sustainability.

(e) Fifthly, to ascertain if this ecological threat either harms or may cause harm to:

(i) human health;

(ii) the economy; and/or

(iii) whether it may cause environmental harm. Environmental harm does not mean ecological impact. The term "environmental must be interpreted having regard to the definition of "environment" in NEMA. NEMA defines "environment as the influence the organic and non-organic properties that make up the world we live in contribute to our health and wellbeing. It is in truth a definition of ecosystem services. Thus when NEMBA talks of "environmental harm, it is referring to harm to the ecosystem services that we rely on for our health and wellbeing.

(f) Sixthly, to ascertain the extent to which anything can or should be done about this given that:

(i) the resources that are available to be applied to this task are finite; and

(ii) that the purpose of listing a species as invasive is to Eradicate that species or if that is not possible to Control it by a process of removal and prevention.

(g) Finally to do all of this through the holistic application of the NEMA Principles and through the application of due process required of cooperative and participatory government required in terms of the Constitution and sections 99 and 100 of NEMBA.

7.5 The Minister has failed to disclose any information indicating the application of any of the above considerations in arriving at the decisions being proposed in the Notices.

8. **The "Risk Assessments": General**

8.1 I deal with this in more detail later but the quality of the so called "risk assessments" is abysmal. They are not sufficient to inform the Minister in what is the onerous and potentially costly business of listing a species as invasive.

8.2 If they are indicative of the quality of DEA's so called science based approach to the management of Alien species and the Control of invasive ones, then the system is in need of a complete overhaul. If this is not done billions of rands of taxpayers money will be wasted and the billions more that will be removed from economy as a result the economic harm these measures are causing and will continue to cause.

8.3 The article "Down the Rabbit Hole[19], by Dr Andrew Mather[20] and I which was published in the June/July issue of Flyfishing observes that:

> "Government makes policy but its policy can only be implemented if sanctioned by law. This requires the approval of Parliament through legislation. Parliament normally delegates the power to make rules (sic regulations) dealing with the implementation of laws.
>
> NEMBA is an exception to this general rule as it was enacted without the benefit of a formally adopted policy. This hugely complicated the administration of NEMBA there is nothing outside NEMBA and its regulations to guide government and the public in the implementation of the law.
>
> This is especially so in the case of identifying invasive species. NEMBA does not say how this must be done and there are no regulations saying how this must be done either. This confusion is made worst by the fact that the interpretation of the definition of an invasive species is hotly disputed."

8.4 That article goes on to point out that DEA partly adopts the "risk assessment" process prescribed for the permitting of restricted activities. This inappropriate:

(a) The "risk assessment" process applies once a species has been listed as invasive. It was never intended to identify if a species should be listed as invasive.

(b) This may be why none of the "risk assessments" describe what it means for a species to be listed as invasive. They start from the assumption that the species is invasive and then try to consider how bad this invasiveness is.

(c) The "risk assessment" process is an inappropriate tool for determining if a species is invasive.

8.5 This misguided cart before horse approach allows DEA to avoid the dilemma of having to examine whether a species is invasive by avoiding examining that species against the legal test for invasiveness.

[19] http://issuu.com/sheenacarnie/docs/flyfishing_june_2018/10?e=5594529/61645683
[20] B.Sc (Civil Eng.), Hons. B.Comm (Business Management), PhD, FSAICE, MIMESA

(a) I am aware, for example, that DEA adopted a different definition in its 2014 AIS National Strategy. That strategy document defined an invasive species in terms that are incompatible with the legal definition in NEMBA 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."[21]

(b) I am also aware that the ISSG on which South Africans are prominently represented adopts a definition of invasive that is different to both the legal definition and the definition used in the CBD[22]. It defines and invasive species as:

> "Alien invasive species" means an alien species which becomes established in natural or semi-natural ecosystems or habitat, is an agent of change, and threatens native biological diversity." [23]

(c) The application of either of these definition or any of the other definitions of invasive used in science and the perspective (be it Anthropocentric Conservationist on the one hand or Biocentric and/or Biotic Nativist on the other), that is applied in the analysis, instead of the legal definition, will result in a materially different outcome in the assessment whether or not a species is invasive.

(i) The perspective required in terms of the Constitution and NEMA is Anthropocentric Conservationist:

(ii) NEMBA has elements in it that are Anthropocentric Conservationist and others that are Biocentric and Biotic Nativist. This is because it is a law that seeks to find middle ground between competing perspectives and values, viz. those that are set out in the Constitution and those that South Africa's environmental authorities responsible for biodiversity management believe in[24].

(iii) South Africa's environmental authorities who are responsible for biodiversity management are fundamentally Biocentric and Biotic Nativist in their outlook. Their approach is dictated by a desire to preserve species in in situ environments rather than to conserve biodiversity in order to benefit human health and wellbeing.

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[21] Page vi of the 2014 AIS Strategy

[22] The Biotic Nativist thinking embedded in the ISSG definition and which compromises biodiversity conservation in South Africa is absent from the CBD definition of invasive species which is "invasive alien species" means an alien species whose introduction and/ or spread threaten biological diversity. NEMBA does not define biodiversity or biodiversity conservation as something that applies to Native biodiversity but that is how DEA applies it

[23] Paragraph 3 of the IUCN Guidelines For The Prevention Of Biodiversity Loss Caused By Alien Invasive Species prepared by the ISSG

[24] This is dealt with in the representations both the Consortium and I made to the Portfolio Committee in respect of the 2017 NEMLA Bill and the representations I made on behalf of the Consortium and personally to Portfolio Committee on that Bill

(d) DEA has consequently declined to apply the legal definition of invasive species and has not made any attempt to do so to date. There are many examples of this.

(i) It is clear that the definition of invasive species applies territorially as within South Africa only. It is also clear that a species can only be listed as invasive in South Africa if it already occurs here[25]. Yet DEA seeks to list many species and sometimes even sub species as invasive even though they do not occur in South Africa. This is contrary to the definition of "invasive species" and the purpose of NEMBA and Chapter 5.

(ii) A species that occurs in South Africa may only be listed as invasive in this country in areas where it is not Indigenous but is Alien and is Established. Yet the Minister seeks to list species as invasive across South Africa despite even though they are Indigenous. The Minister also seeks to list Alien species as invasive in areas where they cannot occur, and/or where they are not Established and/or from which there is no appreciable risk of them spreading.

(iii) A species that occurs in South Africa can only be listed as invasive if the Minister can show that it threatens ecosystems habitats or species in South Africa or that there is a demonstrable significant threat that they may do so This ecological threat must also harms or pose a risk of harm to human health, the economy or the ecosystem services that are necessary for human health and wellbeing [26] There is no indication that this was done in any of the "risk assessments". The approach that has been adopted seems to be based upon an assumption that if an Alien species is can become Established, then it must be harmful and must therefore be listed as invasive. This is not a proper application of Chapter 5.

(e) The legal approach adopted elsewhere in the world, including for example, the European Union[27] is that, regardless of the various scientific opinions that may exist as to whether or not a species is invasive, it will only be listed as such and subject to the kind of controls contemplated by the CBD if it can be shown that it harms the ecosystem services that underpin human health and wellbeing.

(i) This ecosystem services approach does not discriminate against species, as DEA is wont to do, on the basis of whether they are native or Alien, nor does it

[25] The contrary interpretation that DEA seems to adopt not only ignores the meaning and purpose of the of the term occurrence and spread" but also ignores the purpose of listing a species as invasive as being to Eradicate and "Control" (as defined), not to mention the significant regulatory burden that is placed on the state and landowners when a species is listed as invasive.

[26] This, as I pointed out earlier, requires a principled approach of balancing ecological threats against the benefits the species affords which in turn must be evaluated by a holistic application of the NEMA Principles having regard in particular to section 2(2) of NEMA that requires environmental management (which includes law making such as this) to: "place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interests equitably.".

[27] Regulation (EU) No 1143/2014 of The European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species.

assume that only native biodiversity contributes beneficially to the ecosystem services that underpin human health and wellbeing human beings.

(ii) It adopts a perspective that sees human beings as part of nature rather than Alien to it. This approach aligns with the anthropocentric perspective of the environmental right in the Constitution.

(iii) The approach that is adopted in the "risk assessments" misaligns with this constitutionally required anthropocentric approach. It seeks to maintain the Biocentric approach that was applied by environmental officials before 1994 and at a time when South Africans did not have rights but rather had to rely on the extent to which they were privileged for their health and wellbeing.

8.6 Dr Mather and I also deal in our article with the worrying fact that DEA seeks to apply a higher standard to the public than that which it is prepared to comply with itself. This discrimination between state and the people is hallmark of oppressive regimes it should have no place in a rights based constitutional democracy such as South Africa. It is also incompatible with the careful considered approach that the Minister must adopt when listing a species as invasive.

(a) The general impression one has of the "risk assessments" is that they are of very poor quality. Dr Mather and I deal with this with regard to the so called Trout risk assessments but the problem is much more widespread. I understand that many of these "risk assessments" have been criticised before. Indeed it seems that they were shelved because of this and are only been resurrected now because DEA is desperate to see the proposed amendments become law.

(b) Examples of what is a general lack of quality include:

(i) A general sloppiness that happens when desk top cut and paste investigations are undertaken in a rush by people who perhaps lack the expertise for work of this nature or lack the fundamental understanding of what they are obliged to do. Fundamental mistakes abound. For example, the "risk assessment" for the Nile Tilapia refers to the distribution of Trout is a classic example of this. Another is the assumption that the Red Mulberry is Indigenous when it is not. The use of temperature modelling as the sole means to determine Establishment or spread is a third.

(ii) The fact that these "risk assessments" are produced anonymously is probably a major contributing cause to their poor quality. Investigations that Dr Mather and I carried out on the Trout "risk assessments" revealed that they were prepared by individuals who were unsuitable for this task. Officials and consultants who are prepared to own their work and bear the consequences of poor work are far more likely to exercise care than those who work under the protective cloak of anonymity.

(iii) A lack of local objectively sourced and reliable local data. The "risk assessments" largely rely on studies from other countries; even countries that exist on the

other side of the species geographic boundaries.to try and justify listing a species as invasive in this country. This is inappropriate. If there is no data locally then the first point of call is to engage researchers to undertake this research in a professional and transparent manner. It is inappropriate to use Eurocentric research in an African context.

(iv) An over reliance on desktop studies based on crude computer modelling often using foreign and inadequate data some of which is obtained from observations taken in unrealistic laboratory conditions. Again the "risk assessment" of the Nile Tilapia has been heavily criticised on this account with Nicholas James pointing out that the Nile Tilapia cannot become Established at the low temperature conditions achieved in laboratory testing and that this and habitat constraints severely limit its potential distribution range to a much smaller area than the "risk assessment" suggests.

(v) The reversing of the onus as a result of the assumption that a species is invasive if an official thinks it is so unless one can prove conclusively to the satisfaction of what is often a prejudiced official that it not. .

(vi) A general tendency to empathise risks, assume worst case scenarios are the norm.

(vii) None of the risk assessments indicate how or what DEA intends doing to eradicate and control the species it intends listing as invasive. Neither is there any additional information supplied in this regard. One would think that this is also important and relevant information to be supplied in terms of section 100 of NEMBA.

9. **The "Risk Assessments": Some specific observations**

9.1 <u>The North American Signal Crayfish</u>

(a) Four American crayfish species are listed in the 2016 AIS Lists as prohibited Aliens. These are:

(i) *Orconectes limosus* (Rafinesque, 1817) or North American spiny cheek crayfish

(ii) *Orconectes rusticus* (Girard, 1852) or the Rusty crayfish

(iii) *Pacifastacus leniusculus* (Dana, 1852) or The North American signal crayfish; and

(iv) *Procambarus clarkii* (Girard, 1852) or the Red swamp crayfish.

(b) The Minister proposes amending this listing removing the Red swamp crayfish from the listings altogether and by relisting the other 3 crayfish species listed above as invasive under category 1a.

(i) This will make it obligatory to Eradicate the 3 species if they are listed as invasive.

(ii) However the Red swamp crayfish which has been Established in South Africa for some years will become an unregulated Alien thus making it legal to import this species into South Africa and freely use Specimens here.

(c) This is perplexing as recent research published by Dr Anna Nunes of the CIB confirms that the Red swamp crayfish has become Established[28] in the Dullstroom area and recommends that it be Eradicated on this account. It is odd that the Minister wants to delist this species given DEA's professed science based approach and the fact that of this contrary recommendation.

(d) Dr Nunes' research identifies four crayfish introductions into South Africa,[29] two of which have become Established. The North American spiny cheek crayfish, the Rusty crayfish, and the Red swamp crayfish are not listed as amongst these four species.

(e) Again one can only wonder by what process of departmental byzantine discombobulation the one species that could perhaps be justifiably listed as invasive is removed from the listings altogether, but species that do not even occur in South Africa are targeted for compulsory eradication?

(i) It suggests that DEA has no intention of controlling invasive crayfish populations but wants a tool that enables them to exercise power over landowners through the vile and unconstitutional masquerade that are DEA's so called "routine inspections[30]".

(ii) There is also the possibility of withholding permission landowners require on a range of other matters on the basis that the imagined and non-existent threat of a listed crayfish species has not been adequately researched. One can't help noticing that the area concerned lies within the Trout waters of Mpumalanga. Officials in the MTPA have proved to be fundamentally opposed to Trout and aquaculture. Perhaps this listing is nothing more than an additional weapon intended to enable them to carry on defending their prejudices.

(f) The idea that the North American signal crayfish has Established in South Africa is based on this vague and contradictory statement:

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[28] Of course Established is not in itself a basis for listing a species as invasive under NEMBA.

[29] The Red swamp crayfish, the Australian, red claw crayfish, the Common yabby and the Smooth marron. The Red swamp crayfish and the Common yabby have become Established in South Africa.

[30] Section 31K of NEMA allows DEA to conduct routine inspections of property without obtaining a search warrant in order to ascertain if its permitting regulations are complied with. Officials may question landowners and other people in the course of these inspections and seize any property which the official believes may be evidence of a commission of a crime. It is a criminal offence to obstruct an official in carrying out such an inspection. The Constitutional Court has ruled that similar provisions in other laws are unconstitutional but DEA despite overwhelming evidence pointing to the illegality of these provisions refuses to amend the law and is indeed attempting to increase its powers to carry out these warrantless searches.

"*Pasifastacus leniusculus* is not known to occur in South Africa but it has been sighted during compliance inspections by the Competent Authority of the Department of Environmental Affairs, Directorate Biosecurity."

This begs a number of obvious but unanswered questions such as:

(i) Who observed the Specimen?

(ii) Was that person qualified to tell the difference between it and crayfish species that have become Established?

(iii) Was it observed In the Wild or in an aquaculture or laboratory facility?

(iv) Why was a Specimen not captured so that it can be properly identified?

(v) How can landowners take steps to Eradicate it if DEA cannot even say where they have been found?

(g) Then there is the fact that DEA seeks to list 3 new crayfish species as invasive but has only undertaken a "risk assessment" on one of them. I asked DEA when the "risk assessment" was produced and who the author of the "risk assessment" was. I also asked if it had been approved by DEA and if so when and how this took place. DEA has not supplied me any of this information at the time this objection was submitted. It is also notable that DEA refused to furnish me with any "risk assessment" or other information concerning the proposed AIS listings when I asked for detailed information about why species listed in the 2014 Draft AIS Lists must be listed as invasive.

(h) If the species occurs in South Africa then DEA should be able to say where it has Established and speak to the ecological threats and harm that Establishment is likely to cause to human health and wellbeing in this country. Species are listed as invasive so we can Control them. That is not possible if we do not even know if they occur here or if that is the case where they may be and whether they have become Established.

(i) The purpose of listing a species as invasive is to manage its Eradication and Control. However the "risk assessment" reveals that there are no known strategies for that can achieve this. The "risk assessment" also does not reveal what DEA intends doing to Eradicate and Control the Specimens it has cited. Neither is there any additional information supplied in this regard

(j) The species has been listed as a prohibited Alien.

(i) That is the appropriate step to take in respect of a potentially harmful species that has not Established itself in South Africa and which has not yet been shown to be invasive as defined.

(ii) "Prohibited Alien" is also the appropriate home for the other two American crayfish the Minister wants to list under category 1a

(iii) The Minister also needs to consider if *Cherax tenuimanus* (Smith, 1912) or the Hairy marron which also does not occur here should be moved to the Prohibited Alien species register.

(k) The Minister also needs to consider promulgating regulations under Part 1 of Chapter 5 which can be deployed for the appropriate management of Alien species presently held in captivity South Africa and which needs to be prevented from escaping into the Wild. It is inappropriate and unwieldy to try and manage these species as invasive.

(l) The Minister also needs to employ an appropriately qualified team whose starting point is the law rather than private agendas of environmental officials to look into the risks and benefits of the Red swamp crayfish and determine if it should be listed as invasive and if so what steps land owners should take to achieve this. I say this because it looks like a case may be made out to actually list this species as invasive.

9.2 Tilapia

(a) Nile Tilapia were listed as invasive in the 2014 AIS Lists It is not clear if this was informed by a "risk assessment". No "risk assessment" was made public at the time and DEA refused to make any additional information regarding the basis of the listing public at the time claiming that it was beyond their means to do so.

(b) The 2018 Draft AIS List seek to amend this 2014 listing of the Nile Tilapia by replacing it with a more general listing that seeks to list all Tilapia species as invasive other than *Oreochromis mossambicus* and *Oreochromis placidus*. This is despite the fact that:

(i) most of the 38 "species"[31] of the Genus do not occur and have not Established in South Africa; and

(ii) the proposed listing is only supported by an incomplete "risk assessment" for the Nile Tilapia.

(c) Nile Tilapia is Alien to South Africa and has become Established here. However these introductions are largely the result of the fact that we share river systems with countries that have encouraged the introduction of the Nile Tilapia into their countries as an important aquaculture species. The extent of these introductions is likely to increase as our neighbours grow their aquaculture industries. Moreover there is nothing we can practically and effectively do to stop these introductions into river systems we share with our neighbours.

(d) South Africa also wants to grow its aquaculture industry and Tilapia based aquaculture is an obvious way of doing this. However tilapia farming is only economically viable if one farms using the Nile Tilapia and in areas where the Nile Tilapia has already become Established. The slower growth rates of the Indigenous Mossambicus Tilapia rule it out as an economically viable aquaculture species. Furthermore environmental authorities are

[31] I use this term here in its taxonomic sense and not as species is defined in NEMBA

hampering attempts to ameliorate this through the selective breeding an aquaculture strain of the Mossambicus Tilapia by treating them as "mutant" fish[32]

(e) A proper "risk assessment" must consider the manner and extent of the Control which is envisaged as well as the cost of doing so. After all effective implementation of laws is the bedrock of effective government not to mention being a SEIAS requirement. This "risk assessment" ignores these requirements suggesting that someone else other than SAIAB is responsible for work.

(f) But this important work has not been done. Indeed it seems that SAIAB ducked all the hard questions, if SAIAB indeed produced the "risk assessment".

(g) The "risk assessment" is incomplete in a number of important respects. However the only ecological "threat" it identifies is the fact that the Nile Tilapia interbreeds (hybridises) with the Indigenous Mossambicus Tilapia. Environmentalists, especially those in South Africa, like to emphasise the importance of protecting the racial purity of species as a necessary component of conserving biodiversity. Thus a great deal of emphasis is placed in this "risk assessment" of the risk of hybridisation. This is also a feature in the 9 others that were made available by DEA..

(h) There is a tendency to assume that the mere fact of hybridisation is a bad thing. Environmental officials and scientists in South Africa assume that the mere possibility of hybridisation threatens biodiversity. However this assumption is not legally and ethically justifiable.

(i) There is no generally acceptable scientific definition of the term "species". The ordinary meaning of the term describes a kind of animal, plant or other organism that can interbreed and produce viable offspring. This is also the essence of the definition in NEMBA which defines a species as:

> "a kind of animal, plant or other organism that does not normally interbreed with individuals of another kind, and includes any sub-species, cultivar, variety, geographic race, strain, hybrid or geographically separate population."

(ii) Science and law contemplate further divisions within species. These are variously called sub species and geographic races. Geneticists also differentiate between species on the basis of strains, cultivars or clades.

(iii) Conflicts arise between the taxonomic identification of species and the ordinary or legal use of the term because taxonomists sometimes identify what are two

[32] Letter from Mr Andre Hoffman to Mr Nic James of Rivendel hatchery dated 2 November 2015 in which Mr Hoffman wrote: "Aquaculture poses a threat to South Africa's biodiversity and many mistakes were made previously and we should learn from these mistakes! That is the reason why we from the MTPA will not allow any Oreochromis mossambicus hybrids, colour mutants and O. niloticus in the Mpumalanga Province, not even in closed systems. To our knowledge, O. mossambicus in the rivers of the Mpumalanga Province is relatively clean and no hybrids do occur and we would like to keep it like that."

sub species or genetic races as being different species even though they are capable of interbreeding and producing viable offspring.

(iv) Thus the Nile Tilapia and Mossambicus Tilapia are regarded as different species by taxonomists even though they readily interbreed. In truth, however, the two so called "species" can be more accurately described in law and in plain English as being of different geographic races.

(v) Taxonomists have sought to defend their defence of the racial purity of what are in truth different geographic racial groups by suggesting that different geographic races can be distinguished as separate species because they do not normally interbreed. However this begs the question what is normal.

(vi) One has to be careful here. The term normal is often used to justify discriminatory behaviour. It has been suggested, for example, that inter racial mixing, homosexuality or trans-genderism are not normal. Apartheid was justified on the basis it was required to protect racial and cultural norms.

(vii) Normal is not something that one finds in nature. The planet does not discriminate. Organisms exist in a place or they don't. Species come and go each impacting on the environment they find themselves in and being in impacted upon by that environment. Earth is not a closed system. Earth as a planet in turn impacts upon and is impacted by the wider galactic and inter-galactic existence we call the universe.

(viii) It is normal in nature if it exists. Normal is essentially a human value judgment. It is a matter of opinion.

(ix) The idea of people and our impacts being abnormal and therefor unnatural and the idea that racial purity is a good thing are both human inventions that are better located in the ideological space rather than science.

(i) I do not see how one can legally and ethically justify the prevention of what is essentially racial mixing in the name of biodiversity conservation or preservation. This question is particularly relevant given South Africa's history of racial discrimination

(i) Is the pursuit of racial purity that DEA has embarked on truthfully biodiversity conservation or is it something else?

(ii) There is no hard science that I am aware of that justifies the claim that racial mixing is "unnatural" or bad for biodiversity or harmful to human health and wellbeing. Such ideas derive from the idea that every species has a place where it belongs and that racial differences are a kind of passport that define that right to belong. This thinking is foundational to the xenophobia and bigotry that underpin racism and the pseudo-science that was scientific racism.

(iii) South Africa has only recently emerged from our own apartheid experiment in apartheid based scientific racism. We are a country that seeks a non-racial future where South Africa's people are united in our diversity. Laws that seek to enforce racial purity for its own sake are fundamentally misaligned with this constitutional ethos.

(iv) I think the idea that hybridisation or what is in essence inter-racial mixing is inherently bad is both legally and morally indefensible.

(j) The Tilapia industry has, incorrectly I believe, accepted that the Nile Tilapia is invasive as a practical reality of doing business. But as I have already pointed out:

(i) There is also no practical basis for listing the Nile Tilapia as invasive given that its introduction into areas where it has become established in this country are the result of factors that lie beyond South Africa's borders and thus beyond our ability to practically exercise Control. Listing Nile Tilapia as invasive serves only as a stick which environmental officials can use to beat South Africans with.

(ii) The important place the Nile Tilapia plays in the aquaculture industry and the role it can play in contributing to food security and poverty alleviation are all compelling reasons why the Nile Tilapia is not invasive as the term is applied in law and should not be listed as invasive.

(k) I asked DEA when the "risk assessment" was produced and who the author of the "risk assessment" was. I also asked if it had been approved by DEA and if so when and how this took place. DEA has not supplied me any of this information at the time this objection was submitted.

(l) The "risk assessment" is based upon the theoretical rather than actual potential distribution range of the Nile Tilapia. The actual potential distribution range is limited. South Africa is not able to practically manage Nile Tilapia in these areas (where it does already occur) not just because of the enormous cost that eradication entails but also because it will require our neighbours to try and Eradicate the Nile Tilapia from their river systems as well. That is not going to happen because our neighbours encourage the use of Nile Tilapia in aquaculture.

9.3 <u>Trout</u>

(a) This is a new listing and is yet another, of what have been many attempts by DEA, to list Trout as invasive. These repeated attempts speak to DEA's irrational desire to list trout as invasive despite the fact that they are not and regardless of harmful consequences that will flow from doing so.

(b) DEA's repeated attempts to list Trout as invasive speak more to the arrogant desire of environmental officials to get there way than to science or indeed protecting human health and wellbeing. This preoccupation with winning at all costs is proving unhealthy for DEA and indeed the health and wellbeing of South Africans.

(c) Quite frankly our environmental officials should have better things to do. The limited resources available for biodiversity conservation are better deployed elsewhere

(d) Many interested parties and I have already commented on the Trout "risk assessments". Those comments are still pertinent as is the article "Down the rabbit hole" written by written by Dr Andrew Mather and myself.

(e) A "risk assessment" should consider the cost of the Control measures that must be implemented once a species has been listed as invasive. This is also a SEIAS requirement. The Trout "risk assessments" do not do this. They instead misleadingly suggest that:

> "No mitigating measures addressing introductions of non-target species likely to be pursued."

But NEMBA requires Listed Invasive Species to be controlled. If no measures are likely to be pursued, then the species should not be listed as invasive even if it passes (which is not the case with Trout) the legal test for invasiveness.

9.4 Giant African snail

(a) I asked DEA when the "risk assessment" was produced and who the author of the "risk assessment" was. I also asked if it had been approved by DEA and if so when and how this took place. DEA has not supplied me any of this information at the time this "risk assessment" was submitted. It is also notable that DEA refused to furnish me with any "risk assessment" or other information concerning the proposed AIS listings when I asked for detailed information about why species listed in the 2014 Draft AIS Lists must be listed as invasive.

(b) The Giant African snail is a prohibited Alien and any Specimens that occur in South Africa should accordingly be destroyed.

(c) It is not clear if the snail has Established in South Africa. It is also not clear that it is ecologically threatening even though it may be harmful to human health and wellbeing.

(i) A significant ecological threat as well as harm or the potential to cause harm to human health and wellbeing must be proven before a species can be listed as invasive.

(ii) This does not seem to be the case with the Giant African snail

(iii) Further investigation is required but this may be a case where the eradication of an Alien species may be justified not because it is invasive but because of the harm it causes to human health and wellbeing. However an appropriate regulatory regime for Alien species that harm human health and wellbeing would need to be put in place before steps can be taken in that regard.

9.5 The Madagascar red fody

(a) I asked DEA when the "risk assessment" was produced and who the author of the "risk assessment" was. I also asked if it had been approved by DEA and if so when and how this took place. DEA has not supplied me any of this information at the time this "objection was submitted. It is also notable that DEA refused to furnish me with any "risk assessment" or other information concerning the proposed AIS listings when I asked for detailed information about why species listed in the 2014 Draft AIS Lists must be listed as invasive.

(b) The Madagascar red fody is presently listed as an invasive species even though it does not occur in South Africa and consequently has not Established here.

(c) As I have already said, there is no basis in law to list a species as invasive that does not occur in South Africa and which consequently has not Established here. This alone means that it cannot be listed as invasive.

(d) It is not clear why it is listed in the 2018 Draft AIS Lists as the reference to the Madagascar red fody does not appear to make any change to the listing.

(e) There is no evidence that the Madagascar red fody poses an ecological threat in South Africa.

(f) There is however a potential for harm to human health and wellbeing because of its crop predating tendencies causes ecological damage and makes it harmful to the economy.

(g) This would seem to justify its listing as a prohibited Alien species rather than an invasive one.

9.6 <u>The Australian Carpet Snake</u>

(a) The Australian Carpet snake is presently listed as an invasive species in category 2. The 2018 Draft AIS Lists contemplate listing the species as invasive on exactly the same basis. It is not clear if the listing is being amended and if so in what manner and for what purpose.

(b) I asked DEA when the "risk assessment" was produced and who the author of the "risk assessment" was. I also asked if it had been approved by DEA and if so when and how this took place. DEA has not supplied me any of this information at the time this objection was submitted. It is also notable that DEA refused to furnish me with any "risk assessment" or other information concerning the proposed AIS listings when I asked for detailed information about why species listed in the 2014 Draft AIS Lists must be listed as invasive.

(c) The quality of this "risk assessment" is abysmally poor even when measured against the poor quality that characterises these "risk assessments" generally. It does not even say if the Australian carpet snake occurs in South Africa. I had to make my own enquiries to find out if that was the case. My source who is a snake expert told me that they are rare in South Africa and highly domesticated. He went on to say that:

(i) There have been no incidences that he is aware of where the species has become Established though he postulated that this may be possible if a breeding pair escaped together.

(ii) He could see no ecological threat in the unlikely event the species does become Established. It does not breed with Indigenous pythons which are different species. It would Establish as an urban dweller if it became Established at all. Its tendency to prey on pets and birds might make it a pest but this does not make it an ecological threat.

(iii) He laughed at the idea that the species harmed human health and wellbeing pointing out that its people friendly nature is why it is popular in the pet trade. Likewise he considered the harm to human health, the economy or ecosystem services in the unlikely event the species was to become Established or even spread to be non-existent,

(d) The cut and paste foreign sourced desk top produced "risk assessment" does not contradict what he said. It is a rather overblown attempt to conflate this unremarkable state of affairs to a point where some sort of threat may exist. It fails even in this attempt,

(e) The "risk assessment" cannot establish an ecological threat or even that the species has Established in South Africa. The claim that it may harm human health is also speculative. The species is after all a household pet in many parts of the world.

(f) A proper "risk assessment" must also consider the cost of controlling an invasive species. After all effective implementation of laws is the bedrock of effective government not to mention being a SEIAS requirement. But this "risk assessment" describes the cost of controlling the Australian Carpet snake as unknown.

(g) The "risk assessment" can be far more appropriately deployed to demonstrate why the Australian Carpet snake should not be listed as invasive.

(h) The Australian Carpet snake should be delisted as an invasive species.

9.7 <u>The White Mulberry</u>

(a) The White Mulberry is presently listed in category 3 on terms that exclude sterile cultivars or hybrids as well as the fruit of the white mulberry if used for human consumption.

(b) The existing listing is technically objectionable because:

(i) NEMBA allows the Minister to list a species and to differentiate when doing so by category area or by people or a class of people. She is not authorised to list in terms of use as she has done by not listing the species in relation to the consumption of its fruit. That sort of thing should be dealt with by exempting restricted activities from the need for a permit.

(ii) The differentiation between sterile cultivars and hybrids is inherently impractical, not to mention irrational. Who can tell the difference and do the resources exist that are necessary to enable the public to tell the difference? The Draft SANBI AIS National Status Report suggests not.

(c) The proposed amended listing drops the impractical sorting out of sterile cultivars and hybrids which in and of itself is probably sensible. However inexplicably the unlawful attempt to exclude an activity related to and Listed Invasive Species is retained. This is surprising because DEA sought the advice of senior council on a similar issue when its attempt to control Trout as Aliens was challenged. It is seems that DEA does not or will learn from its mistakes.

(d) The effect of listing the White Mulberry as invasive under category 3 means that all restricted activities pertaining to the White Mulberry other than possession[33] are unlawful unless authorised by permit. The broad reach of the definition of the term "specimen" in NEMBA as including any part or extract from the specimen means that it is illegal to pick the fruit or leaves of a fecund White Mulberry lawfully in your possession or use or consume any part of the specimen, even to make mulberry jam. The listing of sterile cultivars will extend the scope of this pernicious and irrational regime.

(e) This of course all ignores the important question whether the White Mulberry can be legitimately listed as an invasive species under NEMBA at all. I say not!

(f) I asked DEA when the "risk assessment" was produced and who the author of the "risk assessment" was. I also asked if it had been approved by DEA and if so when and how this took place. DEA has not supplied me any of this information at the time this objection was submitted. It is also notable that DEA refused to furnish me with any "risk assessment" or other information concerning the proposed AIS listings when I asked for detailed information about why species listed in the 2014 Draft AIS Lists must be listed as invasive.

(g) The White Mulberry is an economically useful species that does not harm human health or the economy

(h) The species is described as an ecological threat because:

(i) It is claimed in the "risk assessment" that Specimens hybridise with the "native" *Morus rubra* (Red Mulberry). But the Red Mulberry is not Indigenous to South Africa as is claimed in the "risk assessment". The Red Mulberry is native to North America.

(ii) It is also claimed that its ability to hybridise with other Mulberries increases the ecological threat but this claim is unsubstantiated.

[33] As in: "Having in possession or exercising physical control over any specimen of a Listed Invasive Species".

(iii) The claim is made in the Black Mulberry "risk assessment" that the White Mulberry can hybridise with Indigenous species but the "risk assessment" does not in fact say this. It in fact says that there is no evidence of the White Mulberry Hybridising with the *Morus mesozygia* (African Mulberry) which it seems, while Native in parts of Africa, it is not Indigenous. It has apparently Established in KwaZulu-Natal where it is Alien. So the claim is incorrect.

(iv) Finally it is pointed out that the White Mulberry is listed as a pest under CARA. But this does not make it invasive. CARA does not define what an invasive species is or when a species is weedy or constitutes nuisance or a pest. CARA gives the DAFF Minister an unfettered discretion to make those deductions One must bear in mind that CARA is pre-constitutional legislation and the CARA listings were made at a time when law makers did not have to justify their opinions against the higher standards of the Constitution. Furthermore CARA allows the propagation and use of nuisance or weedy species notwithstanding their listing as a pest under CARA.

(v) The fact that a species is listed under CARA does not mean it can be legitimately listed as invasive under NEMBA or that it could still be legitimately listed under CARA today. Government is now held to a much higher standard than was previously the case under the Apartheid regime. Having said this, it seems that a species can be listed as "weedy" under CARA if the DAFF Minister is satisfied that the species can establish and spread In the Wild. But as I have already shown this single attribute is only one of the requirements that must be Established in order to legitimately list a species as invasive. It does not in and of itself justify a listing as invasive. .

(i) The nature of this so called threat is highly speculative. The "risk assessment" does not say that the fact that the species has Established in South Africa is a threat. It says that it may be a threat. The severity of this speculative threat is accordingly unknown.

(j) A proper "risk assessment" must also consider the cost of controlling an invasive species. After all effective implementation of laws is the bedrock of effective government not to mention being a SEIAS requirement. But this "risk assessment" describes the cost of controlling the White Mulberry as unknown.

(k) The "risk assessment" does not make out a basis for listing the White Mulberry as invasive.

(l) It seems that the Minister has listed the White Mulberry as invasive just because it has become Established and because it also spreads. While DEA adopted this definition of invasive in its 2014 National AIS Strategy, this is neither a lawful nor an appropriate basis for listing a species as invasive.

(m) The current listing of the White Mulberry as invasive is unlawful one this basis alone. The amendment does not cure this illegality.

9.8 The Black Mulberry

(a) The proposed listing of the black mulberry is a new listing.

(b) I asked DEA when the "risk assessment" was produced and who the author of the "risk assessment" was. I also asked if it had been approved by DEA and if so when and how this took place. DEA has not supplied me any of this information at the time this objection was submitted.

(c) Much of what I say regarding the White Mulberry "risk assessment" applies to the Black Mulberry as well.

(d) It is important to note that like the White Mulberry the existence of a threat has not been Established and the cost of controlling the Black Mulberry were it to be listed as invasive is also unknown.

(e) The "risk assessment" does not make out a basis for listing the Black Mulberry as invasive under NEMBA.

9.9 Cestrum Species

(a) A number of Cestrum species are already listed individually as invasive. It is not clear if this listing is intended to replace these individual listings though as I have already said, it is inappropriate to list a species as invasive if does not occur in South Africa and has not Established here.

(b) Again I asked DEA when the "risk assessment" was produced and who the author of the "risk assessment" was. I also asked if it had been approved by DEA and if so when and how this took place. DEA has not supplied me any of this information at the time this objection was submitted.[34] It is also notable that DEA refused to furnish me with any "risk assessment" or other information concerning the proposed AIS listings when I asked for detailed information about why species listed in the 2014 Draft AIS Lists must be listed as invasive.

10. **The "SEAS Report"**

10.1 The SEIAS report provided by DEA is not a report that applies to the 2018 AIS Draft Lists and Regulations. It refers to some earlier measure (very likely DEA's 17 January 2017 draft regulations[35]) that were in contemplation at the time DEA was still looking at ways of regulating Trout as aliens and on the basis that Trout would not be declared invasive outside certain protected areas in areas where they already occur[36].

[34] See note **Error! Bookmark not defined.**

[35] http://www.durbanflytyers.co.za/Articles/20170117_DEA_Proposed_Regulations_for_Brown_Trout_and_Rainbow_Trout.pdf

[36] This was the gist of the win-win compromise that is the Phakisa Agreement,

(a) This is apparent because at page 17 the report says the following about Trout:

"Trout will be treated as an Alien species and listed as invasive in certain areas. Trout has been listed as category 2 and subject to a permit only in demarcated orange areas as per the electronic map as defined in the Regulations.".

(b) The listing of Trout and the regulatory regime that is contained in the 2018 Draft Lists and Regulations is an entirely different scheme to that contemplated in the SEIAS Report.

10.2 The SEIAS Guidelines sets out important rules that must be followed in the process of developing a SEIAS Report. For example:

(a) SEIAS aims

(i) To minimise unintended consequences from policy initiatives, regulations[37] and legislation, including unnecessary costs from implementation and compliance as well as from unanticipated outcomes.

(ii) To anticipate implementation risks and encourage measures to mitigate them."[38]

(b) SEIAS aims to achieve this through a cost benefit analysis that seeks to: "Avoid bad law making that arises:

(i) Through inefficient implementation mechanisms;

(ii) Where stakeholders face an excessive cost from complying with the regulation;

(iii) By over or underestimating the benefits associated with the new rule's aims; and/or

(iv) Underestimating the risks involved in other words, by overestimating the likelihood of success in achieving the anticipated benefits."[39]

(c) This analysis must also support the core national priorities. by requiring that that new rules be measured in terms of their impact on:

(i) "Social cohesion and security (safety, food, financial, energy and etc.)

(ii) Economic inclusion,

(iii) Economic growth; and

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[37] The term regulations must be interpreted broadly to include associated regulatory instruments such as in this case the power of the Minister to list species as invasive. This is underscored at page 8 of the SEIAS Guidelines which emphasise that they apply inter alia to: "Subordinate legislation that can have a significant impact on society; significant regulations, legislations and policy proposals; and major amendments of existing legislation, regulations, policies and plans that have country coverage with high impacts.

[38] Paragraph 3 of the SEIAS Guidelines

[39] Paragraph 3.1 of the SEIAS Guidelines

(iv) Environmental sustainability."[40]

(d) "Departments must publish the draft final assessment with the policies, legislations or regulations when it goes for public comments and consultation, unless it can provide sound reasons not to, which will generally relate to security and confidentiality."[41]

10.3 DEA did not comply with any of the above in preparing the SEIAS report.

(a) Stakeholders were never given an opportunity to comment on drafts of the SEIAS report nor was there any engagement with stakeholders regarding what are the material and far reaching amendments contained in the 2018 Draft AIS lists and Regulations. The first time stakeholders in the Trout Value Chain, agriculture and the aquaculture and game ranching industries would have seen the SEIAS Report would be if they happened across the Extension Notice and had the technical smarts to find the SEIAS Report on DEA's web site.

(b) Economic impacts are described in general terms and using vague and unsubstantiated generalisations that make no attempt to drill down and examine the socio economic impacts that will result from .the proposals contained in the 2018 Draft AIS lists and Regulations.

(c) No attempt has been made to understand the theory of change as it applies in the context of a SEIAS. This may be because DEA deems it unnecessary to conduct a similar exercise to a SEIAS when the Minister must decide whether or not to list a species as invasive.

(d) DEA simply does not understand the relationship that exists between good law making and effective laws. Indeed the pitfalls that are described in the SEIAS Guidelines to a very large extent describe what DEA has done both in framing the 2018 Draft AIS lists and Regulations and in trying to undertake a SEIAS.

(i) DEA's analysis of the problems which the SEIAS Report says 2018 Draft AIS Lists and Regulations seek to address bears no relationship to what they actually say.

(ii) The purported benefits of the 2018 Draft AIS Lists and Regulations are generalised pipe dreams that do not connect with reality,

(iii) The SEIAS is informed entirely within the bubble of DEA's thinking and beliefs and makes no attempt to engage with the real world

10.4 DEA alleges that it consulted with aquaculture and the Trout Value Chain when preparing the 2018 Draft AIS Lists and Regulations but this is not true.

(a) DEA's consultations with the Trout Value Chain focussed on implementing the Phakisa Agreement Consultations with Aquaculture have been in connection with the

[40] Paragraph 3.2 of the SEIAS Guidelines
[41] Paragraph 4.2, point 5, of the SEIAS Guidelines

Aquaculture Development Bill (where the consultations have been with DAF rather than DEA) and not the 2018 Draft AIS Lists and Regulations.

(b) The Tilapia farming industry does not support 2018 Draft AIS Lists and Regulations although they accept that the Nile Tilapia is invasive in terms of science because they hybridise with native Tilapia species. However the tilapia farming industry opposes listing the Nile Tilapia as invasive or controlling them as an invasive species. It points out that:

(i) The benefits of farming Nile Tilapia far outweigh what is a limited ecological threat.

(ii) This ecological threat cannot be practically addressed because apart from the inherently difficulty in controlling any aquatic species that has become Established, we share rivers with neighbouring in which the Nile Tilapia have Established. Those neighbouring countries regard the Nile Tilapia as a useful species and have no intention of controlling them as invasive.

10.5 DEA has, by its own admission, failed to consult with agriculture despite the fact that its proposed listing of rye and conch grass will have a very serious impact on the dairy and livestock industries.

10.6 It alleges that it has consulted with municipalities but DEA does not consult individually with Municipalities on law-making related to Chapter 5 outside the process prescribed in section 100. Consultations that take place with SALGA or in Mintech committees that are attended by municipal officials are not the same as consulting with municipalities. The AIS Lists and Regulations present an insurmountable problem for municipalities as they do not have the capacity or resources to carry out the functions DEA is seeking to impose on them. This is true, even of large and well resource municipalities like eThekwini whose resources are already stretched dealing with 27 invasive plant species let alone the hundreds more DEA that expects it to regulate.

11. Conclusion

11.1 I can now understand why DEA is so reluctant to provide the information the public is legally entitled to in order to consult and why its Draft Biodiversity Bill seeks to dilute this right to participate in law making.

11.2 The few "risk assessments" that DEA has supplied are of a poor quality and lacking in the information the Minister is required to consider in order to list a species as invasive on terms that are legally defensible.

11.3 Realising this illuminates the fact that DEA has been deceiving the public these past ten or so years by assuring us that the Minister only lists a species as invasive based on proper science and careful research. This is simply not true if these "risk assessments" are indicative of the standard that has been applied in identifying species as invasive.

11.4 DEA claims its approach is science based but this is patently not the case. We are instead seeing an attempt by officials within DEA to implement NEMBA and especially the AIS provisions contained in

Chapter 5 in accordance with their beliefs and desires. Worse still they are doing this even when it is obviously unlawful and directly in conflict with Constitutional Values.

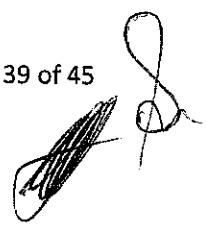
11.5 It is no wonder that DEA's attempts to implement NEMBA are proving to be a catastrophic failure.

11.6 Its willingness to press ahead with this failing strategy regardless of law or decency is deeply concerning, given that so many institutions of state are in imminent danger of collapse.

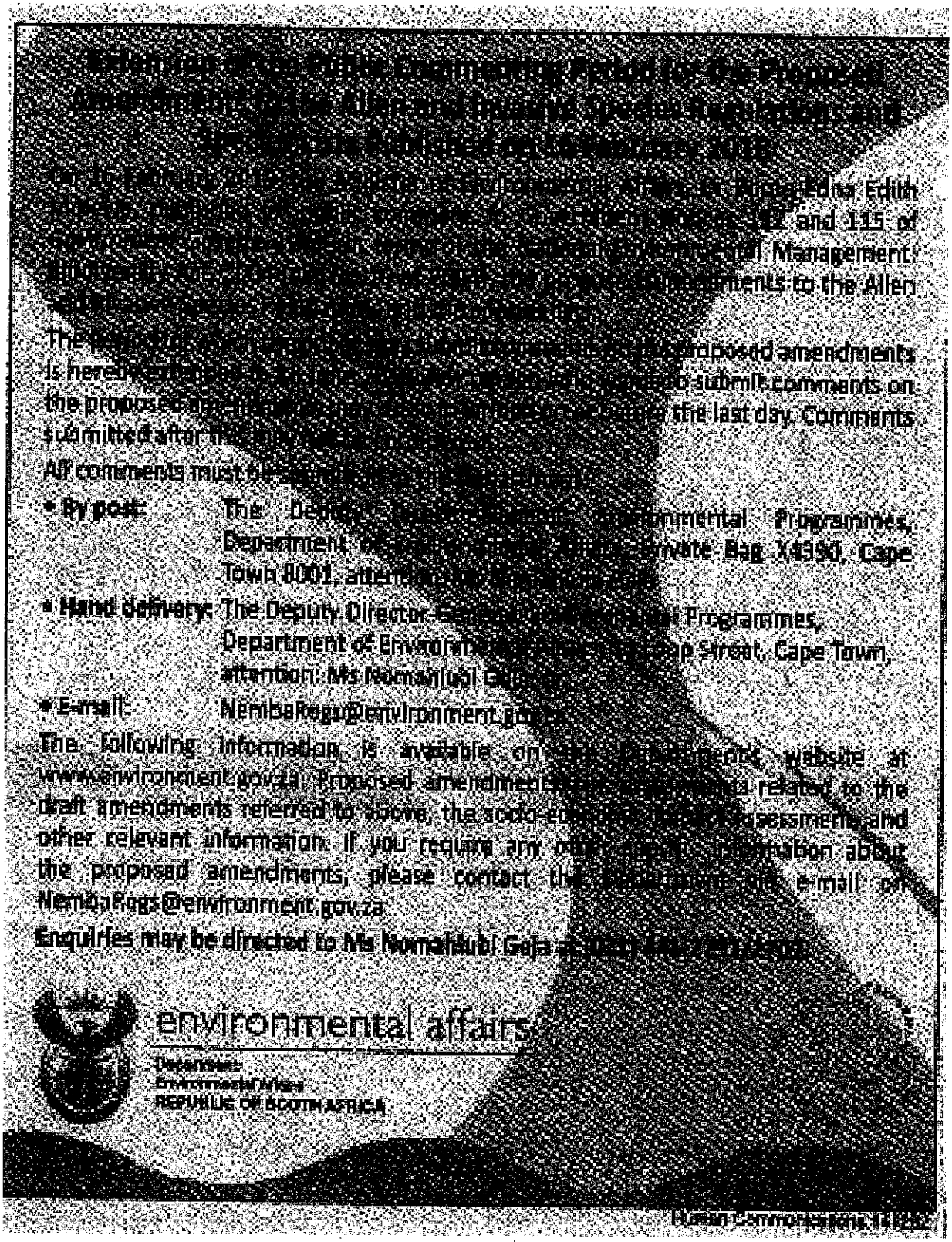
11.7 DEA's unlawful and misdirected attempts at biodiversity conservation through the AIS regulation is causing economic harm and is compromising the health and wellbeing of South Africans. This is especially true of poor rural communities whose livelihoods are dependent on the continued success of industries and value chains that depend on the Establishment of the species being listed by DEA as invasive.

11.8 As noted in my Original Objection, the Minster and DEA need to put a halt to any further law making under NEMBA and immediately embark on a policy making process that will result in a law that has public support and that can work.

Signed I. A. Cox - 16 June 2018



Annexure "A"



Notice and Order: Public Comment Period for the Proposed Amendments to the Alien and Invasive Species Regulations, and the Draft Alien and Invasive Species Lists, 2016

In terms of section [illegible] Edith [illegible] and 115 of [illegible] Management; [illegible] ments to the Allen [illegible]

The [illegible] proposed amendments is hereby [illegible] submit comments on the proposed [illegible] the last day. Comments submitted after [illegible]

All comments must be [illegible]

- **By post:** The [illegible] Programmes, Department of [illegible] Private Bag X4390, Cape Town 8001, attention: [illegible]
- **Hand delivery:** The Deputy Director-[illegible] Programmes, Department of Environ[illegible] ape Street, Cape Town, attention: Ms Nomahlubi [illegible]
- **E-mail:** NemaRegs@environment.gov.za

The following information is available on the Department's website at www.environment.gov.za: Proposed amendments [illegible] related to the draft amendments referred to above, the socio-economic [illegible] assessments and other relevant information. If you require any other [illegible] information about the proposed amendments, please contact the [illegible] e-mail on NemaRegs@environment.gov.za

Enquiries may be directed to Ms Nomahlubi Gqba at [illegible]

environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

Human Communications [illegible]

Annexure "B"

From: Ian Cox
Sent: 30 May 2018 10:23 AM
To: Nemba AISRegulations
Subject: RE: Readvertising of the 2108 Draft AIS Regulations

Dear Nomahlubi
That isn't what the law says.
Kind regards
Ian

IAN COX – 082 574 3722
23 Jan Hofmeyr Road, Westville, 3629
PO Box 855, Gillitts, 3603
Fax: 086 505 6690
www.coxattorneys.co.za
email: iancox@coxattorneys.co.za

COX ATTORNEYS

Simplicity in law

The contents of this e mail are deemed to be confidential. Its transmission does not amount to a waiver by either the sender or intended recipient of any right to confidentiality or privilege that reposes in its contents.

From: Nemba AISRegulations [mailto:NembaRegs@environment.gov.za]
Sent: 30 May 2018 10:05 AM
To: Ian Cox
Cc: Nicolette Vink; Radia Razack; Heinrich Muller; Guy Preston; 'gpreston@mweb.co.za (gpreston@mweb.co.za)'
Subject: RE: Readvertising of the 2108 Draft AIS Regulations

Good morning Mr Cox

Like I said in my previous email, the report is not yet finalised. It will be finalised once it has gone through the necessary departmental approval processes. The fact that the authors have submitted a report doesn't make it finalised without the necessary departmental authorisation and as such remains a draft until such authorisation is obtained. I, therefore, cannot give you the report at this moment. And I repeat that once it has been approved it shall be made available for public consumption and the public shall be made aware of this availability

Regards

Nomahlubi

From: Ian Cox [mailto:iancox@coxattorneys.co.za]
Sent: Wednesday, 30 May 2018 09:59
To: Nemba AISRegulations
Subject: RE: Readvertising of the 2108 Draft AIS Regulations

Dear Nomahlubi
Thank you for your e mail.
I got my information from one of the authors of the report so I think it is pretty reliable. His e mail is copied below.
I repeat my call for a copy of this report.

Kind regards
Ian

From: Van Wilgen, BW, Prof [bvanwilgen@sun.ac.za] [mailto:bvanwilgen@sun.ac.za]
Sent: 22 May 2018 09:24 AM
To: Ian Cox
Subject: RE: AIS Report

Dear Ian

The final report was delivered to the minister of environmental affairs at the end of March in both pdf and printed format. SANBI have not released the report yet as DEA requested that they (DEA) first be given time to study the report, and to prepare a response, before it is released to the public. We have not been informed when that will be.

The correct citation for the report is: Van Wilgen, B.W. & Wilson, J.R. (Eds.) 2018. The status of biological invasions and their management in South Africa in 2017. South African National Biodiversity Institute, Kirstenbosch and DST-NRF Centre of Excellence for Invasion Biology, Stellenbosch.

Regards
Brian

Prof. Brian W. van Wilgen
Centre for Invasion Biology
Department of Botany and Zoology
Stellenbosch University
South Africa

Postal address: Private Bag X1, Matieland, 7602
Physical address: Room 2038A, Natural Sciences Building, Merriman Street

Phone (+27) 021 808 2832 (Mathilda van der Vyver)
Phone (+27) 021 808 2835 (direct line)
Cell (+27) 082 454 9726
Email: bvanwilgen@sun.ac.za
www.sun.ac.za/cib

C·I·B
DST-NRF Centre of Excellence for Invasion Biology

UNIVERSITEIT STELLENBOSCH UNIVERSITY
UNIVESITHI STELLENBOSCH
100 1918 2018

DST-NRF CENTRE OF EXCELLENCE FOR INVASION BIOLOGY
Faculty of Science Stellenbosch University Private Bag X1 Matieland 7602 South Africa
t +27 (0)21 808 2832 www.sun.ac.za/cib
Room 2039 2nd Floor Natural Sciences Bdg. Main Campus

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COX ATTORNEYS

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From: Nemba AISRegulations [mailto:NembaRegs@environment.gov.za]
Sent: 30 May 2018 09:52 AM
To: Ian Cox
Cc: Nicolette Vink; Radia Razack; Guy Preston; 'gpreston@mweb.co.za (gpreston@mweb.co.za)'; Heinrich Muller
Subject: RE: Readvertising of the 2108 Draft AIS Regulations

Good morning Mr Cox

The extension was not published in the Gazette because we are extending the same information that was Gazetted recently. Hence if you read the newspaper advert it refers to the same Gazette numbers.

The risk assessments are published in the departmental website as indicated in the newspaper advert

I am not sure where you got your information from but the Status report is not yet finalised, it is still in draft form and only available for internal consumption at the moment. As soon as it has been finalised, it shall be made available for public consumption and the public shall be made aware of such.

I trust I have responded to all your questions.

Regards

Nomahlubi

From: Ian Cox [mailto:iancox@coxattorneys.co.za]
Sent: Monday, 28 May 2018 21:38
To: Nemba AISRegulations
Subject: Readvertising of the 2108 Draft AIS Regulations

Dear Nomahlubi
Please advise when the extension notice was published in the Gazette.
Please supply me with risk assessments for all the species listed in the notice.
Please supply me with a copy of this report which I understand SANBI has now finalized. Van Wilgen, B.W. & Wilson, J.R. (Eds.) 2018. The status of biological invasions and their management in South Africa in 2017. South African National Biodiversity Institute, Kirstenbosch and DST-NRF Centre of Excellence for Invasion Biology, Stellenbosch.
Thank you
Kind regards
Ian Cox

IAN COX – 082 574 3722
23 Jan Hofmeyr Road, Westville, 3629
PO Box 855, Gillitts, 3603
Fax: 086 505 6690
www.coxattorneys.co.za
email: iancox@coxattorneys.co.za

COX ATTORNEYS

Simplicity in law

The contents of this e mail are deemed to be confidential. Its transmission does not amount to a waiver by either the sender or intended recipient of any right to confidentiality or privilege that reposes in its contents.
Yours faithfully

Yours Sincerely
Sent electronically and therefore unsigned
Ian Cox

THE FEDERATION OF SOUTHERN AFRICAN FLYFISHERS 249

C/O 62 Roberts Road
Pietermaritzburg 3201

17 June 2018.

The Deputy Director-General Environmental Programmes
Per Email to: 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").

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.

FOSAF PATRONS: The Hon Mr Justice C G Hoexter, The Hon Mr Justice M E Kumleben, R C M Laubscher, T T Mboweni, President C M Ramaphosa, Lord R Renwick.

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 fist 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 anthropo-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 adequate 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 Minster 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

ILAN LAX
National Chairperson
FOSAF

...dna Edith
...2 and 115 of
...l Management:
...ments to the Alien

...roposed amendments
... 2018. Any person who
...ay do so in writing on or
...be considered.

All comments must be

- **By post:** The ... ...mental Programmes, Department ... Private Bag X4390, Cape Town 8001, for ... ...bi Geja
- **Via hand-delivery:** The Deputy Dire... ...mental Programmes, Department of Envi... ...t Loop Street, Cape Town 8000, for atten... ...i Geja; or
- **By e-mail:** NembaRegs@environme...

The following information is available on ...ment's website at www.environment.gov.za: Proposed amendment... ...ments related to the draft amendments referred to above, the sc... ...ct assessment, and other relevant information. If you require ... information about the proposed amendments, please contact ... e-mail on NembaRegs@environment.gov.za

Enquiries may be directed to Ms. Nomahlubi Geja at ...

environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

THE FEDERATION OF SOUTHERN AFRICAN FLYFISHERS

FOSAF

C/O 62 Roberts Road
Pietermaritzburg 3201

23 July 2018.

The Deputy Director-General Environmental Programmes
Per Email to: 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").

As you will be aware FOSAF submitted comments and objections in submissions dated 18 March 2018 and 17 June 2018 respectively, 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 those submissions and will make reference to other submissions commenting and objecting to the proposed Draft 2018 Lists and Regulations.

FOSAF is aware of the many initial and further 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 brevity we will not repeat the lists of these parties including those that made additional submissions under the current extension notices.

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 all its submissions, FOSAF has repeatedly called on DEA to remedy its failure to engage in good faith with the trout value chain and other affected stakeholders in relation to the various earlier iterations of proposed regulatory aspects under NEMBA. We again emphasise that repeated and numerous requests for meetings and information relevant to 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.

FOSAF PATRONS: The Hon Mr Justice C G Hoexter, The Hon Mr Justice M E Kumleben, R C M Laubscher, T T Mboweni, President C M Ramaphosa, Lord R Renwick.

We again reiterate that the proposed Draft 2018 Lists and Regulations including the extension notices in both the Government Gazette and the Mail and Guardian, have been published prematurely and 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 and on-going;

- 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 and proper evidence of significant harm and reasons for the proposed 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 policy framework to guide decisions and implementation that has been adopted after a lawful public consultation process.

We reiterate that 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 anthropo-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. This was again extended by way of further notices published in Gazette 41722 under GN 622 and the notice published in the Mail and Guardian newspaper on 22 June 2018 on the same day.

However, DEA once again failed to properly comply with the provisions and requirements of NEMBA in this regard. We have had sight of the submission/objection filed by Mr Ian Cox today which amongst other things, elaborates on the reasons why these notices are again defective. FOSAF aligns itself with such reasons and supports the conclusions reached thereon.

In addition the text of the gazetted Draft 2018 Lists and Regulations are problematic as there is no indication in the usual format and convention, of what text is being added to or removed from the existing Lists and Regulations. This failure to follow the simple age old convention regarding legislative amendment makes comparative reading of the Draft 2018 Lists and Regulations extremely confusing and unreasonably onerous.

A further consideration is that the newspaper notices do not publish the Draft 2018 Lists and Regulations but rather make a reference to the gazetted notices. This is a further lack of

compliance with the plain wording of Section 100 of NEMBA and compounds the failure by DEA in this regard.

These shortcomings do not enable sufficient consultation and are not in keeping with the spirit and intention of Section 100 of NEMBA, read in the context of the NEMA principles and the Constitution and are an abuse of the public's rights and accordingly unlawful.

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. Our prior comments on the shortcomings and insufficiency of the information supplied by DEA are again applicable to the current extension notices. FOSAF once again emphasises that it is regrettable that none of the information made available by DEA comprises "sufficient information" as required by section 100 of NEMBA.

As noted in FOSAF's first and second submissions, 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 extensions 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 again 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. This lack of disclosure is highly regrettable and invalidates the consultation process.

FOSAF emphasises the fact that the defective SEIAS report has not been remedied nor has the correct information as required by the published guidelines in this regard and in addition, the SANBI AIS Status Report as well as DEA's responses thereto, have still not been made available as part of the information required to enable the public to meaningfully object and/or comment 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 spirit and purpose of consultation as intended by section 100 of NEMBA, read in the context of the NEMA principles and the Constitution and is an abuse of the public's rights and is accordingly unlawful.

FOSAF again emphasises that these failures to follow the required due process and statutory requirements are highly regrettable. We trust the Minister will, as is her Constitutional duty, ensure that this does not happen again. It is also requested 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 Minster 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

ILAN LAX
National Chairperson
FOSAF

REPRESENTATIONS
SUBMITTED BY IAN COX 23 JULY 2018

REGARDING

THE SECONDEXTENSION NOTICE PUBLISHED IN THE GAZETTE No 41722 ON 22 JUNE 2018 UNDER NOTICE GN 622 AND IN THE MAIL AND GUARDIAN NEWSPAPER ON THE SAME DAY

AND

THE ADDITIONAL INFORMATION REFERRED TO THEREIN

ALL IN RELATION TO

THE PROPOSED AMENDMENTSTO TO THE DRAFT AMMENDMENTS TO THE ALIEN AND INVASIVE SPECIES LISTS AND REGULATIONS THAT WERE PUBLISHED IN GAZETTE 41445 UNDER NOTICE 112 AND 115 ON 16 FEBRUARY 2018

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Glossary of Terms

1	Second Extension Notice	The Notice published in Gazette 41722 on 22 June 2018 under GN 622 and the notice published in the Mail and Guardian Newspaper on the same day a copy of which is attached to this Third Objection marked "**A**".
2	Second Objection	The objection that I submitted in June 2018 to the Extension Notice,
3	Third Objection	The objection set out in this memorandum.

1. **Incorporation of the Original Objection, and the Second Objection**

1.1 A glossary of the abbreviations and definitions used in this memorandum is set out in the Second Objection but is further supplemented by the glossary set out above.

1.2 This Third Objection must be read with and as being supplementary to the Original Objection and the Second Objection.

2. **The public be damned**

2.1 This is the second attempt to rectify the manifest and material failings in the Original Notice. It is the third time the public is being asked to make representations about what is a fatally flawed process.

2.2 This is bad enough in itself, but what makes it even worse is that the Minister and DEA did not see it as being necessary to advise members of the public who had taken the trouble to submit representations regarding the Original notice and/or the Extension Notice of this further process. This is despite the fact that these Extension Notices might impact on their submissions they have made.

2.3 The Minister and DEA, have negated the right these proactive members of the public have to make representations by denying them this simple yet vital courtesy. This is not just rude. It suggests a general contempt for the rights of people who have taken the trouble to exercise their rights to participate in government consultation processes. It undermines the Constitution and its values and indeed democracy itself.

2.4 This taint of contempt for legal process, the Constitution, peoples rights and the rule of law is inherent in everything the Minister and DEA is doing not only in trying to make the 2018 Draft Lists and Regulations law but in law making under NEMBA in general.

2.5 The Second Extension notice does not alter this, nor does it cure the manifest and material defects in the process itself. This is an unlawful process and the Minister and DEA should withdraw it.

3. **The Notice in the Gazette**

3.1 The Second Extension Notice published in the Gazette is not a notice contemplated in section 100 of NEMBA. It is a notice that purports to extend the time within which the public may submit representations or object to the 2018 Dradt AIS Lists and Regulations referred to in the Original Notice that was published back in February.

3.2 That original notice is still the notice required in term of section 100 of NEMBA. That section requires a notice to be published in the gazette and in at least one newspaper that is distributed nationally.

(a) It does not speak of multiple notices published over months with the intention of curing defects in the earlier notices as an when these are brought to the attention of the Minister and DEA.

(b) It also requires the notice to be published in a newspaper and not just a reference to it,

3.3 It seems the DEA and the Minister now concedes that that the Original Notice was defective. Why else this elaborate and time and money wasting supplementary process aimed at addressing some of the many defects in the Original Notice?

3.4 The fact the Original Notice was defective means that that the Minister and DEA must start again de novo. This is because neither the Extension Notice nor the Second Extension notices are notices as contemplated in section 100 of NEMBA. Neither can cure, or in fact do cure, the manifest and material defects inherent in the Original Notice.

3.5 There is also the fact that the Minister has yet to publish a valid notice in a newspaper. The publication of extension notices does not cure this material defect..

3.6 The process that the Minister and DEA have adopted is still fatally defective for want of proper compliance with section 100 of NEMBA.

4. **Lack of sufficient information**

4.1 The lack of sufficient information in the notice is one of these manifest and material defects. I have dealt with this in at some length in both the Original Objection and the Second Objection and do not, therefore, need to repeat myself here. Suffice it to say:

(a) The Original Notice did not refer to any information at all outside that which was contained in the 2018 Draft AIS Lists and Regulations themselves. It was manifestly and materially defective on this ground alone.

(b) The Second Notice (which was not really a notice as it was published late and only in a newspaper) referred to certain information being available on DEA's website without specifying where it could be found.

(i) It required one to read the Original Notice and the Extension Notice together which is not what section 100 of NEMBA requires.

(ii) Enquiries had to be made with DEA where one could find that information.

(iii) The information was only available to those members of the public with access to the internet and who also had the skills necessary to search DEA's website in order to find that information.

(iv) The information was deficient both in its range and scope and in and of itself.

(c) The Second Extension Notice was published in the Gazette and in a slightly different form in a newspaper also requires the public to read the notice in conjunction with the defective Original Notice. It thus suffers from the same

defects as the Extension Notice. Like the Second Extension Notice it refers to additional information being available on DEA's website.

(i) This general reference to additional information is vague and unhelpful. It does not cure the failure to refer to the sufficient information that is required in terms of section 100 of NEMBA.

(ii) I dealt with this failure extensively in the Second Objection. In this case it is made worse by the fact that the information is even more difficult to find that was the case with regard to the Second Extension Notice This is because the only document that seems to be relevant is a in a document that refers to the Extension Notice. This adds a new level of confusion to what is already a confused situation.

4.2 The purpose of the section 100 process is to better enable the public to engage with the Minister and DEA around the process of promulgating proposed AIS lists and regulations. This process is part of participatory government which in turn underpins our democracy and ensures human dignity.

(a) The Minster and DEA are meant to make it easier for the public to engage with them rather trying to make it more difficult as seems to be the case.

(b) The purpose of publishing notices under section 100 is to engage with the public and not just those, who like me, the Minster and DEA are used to dealing with because we have objected before.

(c) DEA should not be fobbing off the public as it is doing. The aim should be to encourage the public to make representations and objections. This process which is now in its third iteration is deeply discouraging. Members of the public could be forgiven for thinking that DEA and the Minister do not care about them or their rights but are instead hell bent on making these proposals law come what may.

(d) This approach raises important questions:

(i) Why bother making representations if government doesn't bother to listen or engage with you?

(ii) Why hold the law in respect when government treats our laws and the rule of law with contempt?

(iii) Why trust a government which habitually conducts itself in ways which are untrustworthy and often unlawful?

4.3 Ms Nomahlubi Geja wrote to Mr Ilan Lax of FOSAF on 3 July 2017 saying:

"What happens during the public comment stage is that:

1. We acknowledge receipt of inputs/comments/submission

2. Collate all comments received and group them according to the relevant group of 'experts' needed to objectively provide us with recommendations on how to address submissions received (this process also includes provincial departments)
3. We collate all the recommendations received and make final proposal on how the submissions should be dealt with
4. We then forward these to the Minister via the relevant departmental approval processes
5. The Minister makes the final decision
6. We then inform each person that provided inputs on what the department's final decision is in relation to their comments/submission (at which stage they are welcome to raise objections if any. Any objections received at this stage are sent to the Minister and if there are any changes she wants to make to her previous decision she then does so)
7. Submissions received together with department's decision get submitted to NCOP for approval
8. After NCOP approval we then Gazette the department's final decision."

But the report back to the public she speaks of does not happen as a general rule. I have never personally received any feedback of the type described on submissions I have made regarding earlier versions of the AIS regulations[1] or other draft laws I have commented on. It seems that DEA is also ignoring its own internal processes and thus ignoring the public.

4.4 What is sorely lacking in all of this is any indication of the Minister's thinking. The public needs to know why a species is being listed as invasive, what the threat and risk harm is that will be addressed by listing the species as invasive and how the Minister weighed up the benefits risks and costs of the proposed law and how DEA intends to implement the proposed law. This must be done in a way that the ordinary member of the public who is likely to be affected by the law can understand what the context for the proposed law/regulatory measure is, what considerations the Minister took in account, and the reasons for the proposed law/regulatory measure. This information is necessary so that the public has some context and substance within which to consider and make representations on the proposed law. This has not been done. The Minister and DEA have still failed to provide the information required in terms of section 100 of NEMBA.

5. The Notice in the Mail and Guardian

5.1 DEA and the Minister have to be complimented in a way. This Second Extension notice is the first time they have complied with the requirement contained in section 100 of NEMBA that the section 100 notice must give the public 30 (thirty) days within which to make objections or representations on a proposed law. Every other law made under NEMBA

[1] FOSAF did receive a letter commenting on some of the objection it submitted to the draft 204 AIS Lists and Regulations. Other objector did not.

these past 10 (ten) or so years that must be subjected to the section 100 process is unlawful on this account[2].

5.2 However the Minister and DEA overlooked the fact that section 100 makes the publication in a national newspaper a minimum requirement, The section says at least 1 (one) national newspaper.

(a) The Mail and Guardian is a national newspaper but it only has a circulation of some 30 000[3] (thirty thousand) and a readership in the order of 550 000 (five hundred and fifty thousand)[4] This does not compare well with The City Press, for example which has a current circulation of some 58 000 (fifty eight thousand) but a readership of the 1 700 000[5] (one million seven hundred thousand).

(b) The court remarked in the Rhino Horn Moratorium Case[6] of the importance of reaching the public likely to be affected by this proposed law. The Court held:

> 'In at least one newspaper,' must be guided by the members of the public likely to be affected by the exercise of the power. Seen in the light of the diversity of the South African population and the historical background and many languages, to allow proper public participation and to submit meaningful representations or objections, especially in the present case, where the moratorium has substantial consequences, one would have expected the Minister to be more proactive and go beyond the minimum requirement. That, however, did not happen, and worse, there has not been compliance with the minimum requirement by notice of the proposed moratorium 'in at least one national newspaper'[7].

(c) The same considerations apply in this case. Publishing the notice in the Mail and Guardian alone does not suffice. The Minister should have published the notice in more than one newspaper that distributes nationally.

6. Conclusion

6.1 The Minister and DEA have failed to comply with section 100 of NEMBA in publishing the Draft 2018 AIS lists and notices for comment. These failings are material and affect all three attempts by the Minister and DEA to do this.

6.2 The process is unlawful and should be stopped.

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[2] See my letter to the Minister dated 11 October 2017 http://www.durbanflytyers.co.za/Articles/20171011_Letter_To_The_Minister_Final.pdf

[3] See http://www.marklives.com/2017/05/abc-analysis-q1-2017-the-biggest-circulating-newspapers-in-sa/

[4] http://serve.mg.co.za/content/documents/2016/02/23/mg-combined-rate-card-2016.pdf

[5] https://www.media24.com/newspapers/city-press/

[6] Kruger and Another v Minister of Water and Environmental Affairs and Others (57221/12) [2015] ZAGPPHC 1018 - http://www.saflii.org/za/cases/ZAGPPHC/2015/1018.html

[7] Paragraph 19 of the judgement

6.3 The fact that the Minister and DEA are persisting with what is an obviously unlawful process raises serious questions about the integrity of the motives underlying this attempt.

(a) Is this really about biodiversity conservation or is it more about bringing the use of biological resources under the permitting control of DEA and thus the government?

(b) I think that the dots join in ways that make the latter scenario the more likely one.

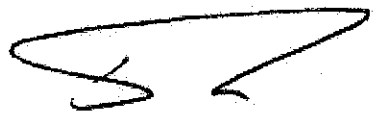
(i) This may well be why the Minister is reluctant to remedy the defects in earlier laws made under NEMBA despite being constitutionally obliged to do so.

(ii) It may also explain the fact that The Minister and DEA seem hell bent on advancing this process despite it being obviously unlawful.

(iii) It may also explain why the Minister and DEA cannot provide the public with sufficient information and give reasons why all of this is necessary.

(iv) It probably also explains the contempt for the Constitution and the rule of law that is apparent in the actions of the Minister and DEA.

6.4 These attempts to make the 2018 Draft AIS Lists and Regulations law cannot be rationally explained if the Minister and DEA support and are dedicated to the protection of the Constitution, human rights and the rule of law. What is happening can be rationally explained if their intention is undermine the Constitution, human right and the rule of law and to replace a system of democratic government with a system government where all rights and power are concentrated in an executive government that the former president had in mind when he spoke of how nice it would be if he could rule as dictator does.



Signed I. A. Cox - 23 July 2018

Annexure "A" M&G Notice

Extension of the Public Commenting Period for the Proposed Amendments to the Alien and Invasive Species Regulations and Species Lists Published on 16 February 2018

On 16 February 2018, the Minister of Environmental Affairs, Dr Bomo Edna Edith Molewa, published for public comment, in Government Notices 112 and 115 of Government Gazette 41405 in terms of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004), the proposed amendments to the Alien and Invasive Species Regulations and the Species Lists.

The period for which the public may submit comments on the proposed amendments is hereby extended for 30 calendar days until Monday, 23 July 2018. Any person who wants to submit comments on the proposed amendments may do so in writing on or before the last day. Comments submitted after this may not be considered.

All comments must be submitted to the Department:

- **By post:** The Deputy Director-General: Environmental Programmes, Department of Environmental Affairs, Private Bag X4390, Cape Town 8001, for attention: Ms. Nomahlubi Geja
- **Via hand-delivery:** The Deputy Director-General: Environmental Programmes, Department of Environmental Affairs, 14 Loop Street, Cape Town 8000, for attention: Ms. Nomahlubi Geja; or
- **By e-mail:** NembaRegs@environment.gov.za

The following information is available on the Department's website at www.environment.gov.za: Proposed amendments, risk assessments related to the draft amendments referred to above, the socio-economic impact assessment, and other relevant information. If you require any other specific information about the proposed amendments, please contact the Department by e-mail on NembaRegs@environment.gov.za

Enquiries may be directed to Ms. Nomahlubi Geja at (021) 441-2791/2707.

environmental affairs

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