

Another NEM:BA update

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By Ian Cox



I know precious few of you guys read the Bobbin but I think government might be. Why? because the Department of Environmental Affairs' Biosecurity Unit have just given proof to what I surmised last month by publishing their latest proposal for trout. I said that they had to bully this through at all costs and this is precisely what they are trying to do. Version five of their cunning plan for trout was announced to the press on Monday 19 May 2014. It is an extraordinary document both given its content and the attack it launches on trout fisherman and the trout industry. Check it out on the DEA website by clicking [here](#).

This announcement was accompanied by a media campaign launched on television, radio and in the press that had DEA's Dr Guy Preston who heads up the Biosecurity Unit in the DEA telling the public that the trout industry and the jobs it creates are important to him and that nothing will change. This is what he told John Maythem of Cape Talk Radio the other day.

There is scientific evidence that trout have outcompeted indigenous species in catchments where they have been introduced.

The aim of the regulations is to stop introductions into to new areas.

We are not concerned about redressing existing areas. We encourage fly fishing and aquaculture in those areas.

We need to ensure they are not introduced into areas in which they do not occur.

He has said much the same to other reporters prompting Business day to carry an article the other day saying that trout have won. A reporter from the Cape Times who attended the press conference was left thinking that trout were no longer invasive. If only!

The truth is very different. This is what is they were not telling the public.

SPECIES	COMMON NAME	CATEGORY / AREA	SCOPE OF EXEMPTION FROM THE PROVISIONS OF SECTION 71(3) / PROHIBITION IN TERMS OF SECTION 71A(1)
<p><i>Oncorhynchus mykiss</i> (Walbaum, 1792)</p>	<p>Rainbow trout</p>	<p>a. 2* for fresh-water aquaculture facilities for rainbow trout.</p> <p>b. 2 in National Parks, Provincial Reserves, Mountain Catchment Areas and Forestry Reserves specified in terms of the Protected Areas Act.</p> <p>c. 2 for release in rivers, wetlands, lakes and estuaries.</p> <p>d. Not listed for discrete catchment systems in which it occurs (including for release in dams), excluding (a), (b) and (c).</p> <p>e. Not listed for salt-water aquaculture facilities.</p>	<p><u>Exemptions:</u></p> <p>a. Rainbow trout are exempted for a period of two years from the date upon which this notice takes effect, from requiring a Permit for any restricted activity in terms of the Act or Alien and Invasive Species Regulations, 2014, provided a person is in possession of a valid Provincial Permit issued in terms of Provincial legislation where required for rainbow trout.</p> <p>b. Catch and release of rainbow trout is exempted in discrete catchment systems in which it occurs.</p> <p><u>Prohibitions:</u></p> <p>c. The transfer or release of a specimen of rainbow trout from one discrete catchment system in which it occurs, to another discrete catchment system in which it does not occur; or, from within a part of a discrete catchment system where it does occur to another part where it does not occur as a result of a natural or artificial barrier, is prohibited.</p> <p>d. Release into a discrete catchment system from a salt-water aquaculture facility is prohibited.</p>
<p>The proposed controls for the brown trout are the same, except that the provisions for salt-water aquaculture facilities do not apply.</p>			

* A Category 2 listing means that a Permit must be obtained to authorise activities involving the listed species. Where trout is listed in Category 2, a Permit will be required for certain activities, involving live trout, including importing, breeding, selling and buying, etc. NOTE: Those with existing Permits from a Province do not have to apply for a Permit for a period of two years.

In other words it is proposed that trout be listed as invasive in protected areas (i.e. nature reserves) rivers, lakes, trout hatcheries and trout farms. They won't be listed in dams that are not any of the above provided you already have a permit entitling you to stock that dam with trout and your dam is not a lake or part of a river or in a listed area.

So when is a dam not a lake? Confused? You have every right to be. The ordinary meaning of the word "lake" includes a dam which is in fact an artificial lake.

What is absolutely clear is that there is no correlation between what the DEA's Biosecurity Unit is telling the public and what they actually intend doing. What we are witnessing is a deliberate state funded campaign by government officials to mislead the public.

The DEA's Biosecurity Unit say that they want to protect the industry but they have made trout invasive in trout hatcheries and trout farms. We all know that without constant restocking from most of South Africa's trout waters would cease to exist. It would be logical therefore that wattle, gum and pine trees also be declared invasive in the plantations and breeding facilities where they exist. After all they are also listed as invasive and their impacts on biodiversity are considerably worse than trout.

Not so they are specifically not listed as invasive in plantations. The functional equivalent of that is not to list trout where they already occur which is what the FOSAF has been asking for years.

You can imagine what the outcry would be if the DEA's Biosecurity Unit tried to do to the timber industry what it proposes to do to the trout industry. The industry would point out as we have done that what is proposed will destroy the industry and the thousands of jobs it creates and everyone would agree.

So why is it any different in the case of trout? Are trout jobs expendable? Why is it acceptable to list trout in areas where they support economic activity and are socially beneficial but it is not acceptable in the case of species that actually caused massive harm to Biodiversity? The answer is that the DEA's Biosecurity Unit know they can't get away with listing wattle gum and pine trees as invasive as they have propose doing with trout. But they think they can get away with it with trout and they will say and do almost anything to make this happen.

There is some urgency in all of this. The Minister of Environmental Affairs should have promulgated a national list of invasive species back in 2006. It is patently obvious that what the NEM:BA required was that those species that offered no economic or social benefits and which posed a real threat to human health and wellbeing be listed quickly so that government could bend itself to the task of getting rid of them. But the officials such as those in the Biosecurity Unit want more. Instead of applying the law they delayed the implementation of this law in an attempt to widen their regulatory reach. This has been criticised and they have been taken to

court. The case has been argued and based on what happened in court it is not going to go well for the DEA. Its lawyers had no cogent arguments to meet the charge that they should have promulgated lists of invasive species years ago.

We need to see what the judge rules but I think it fair to say that the DEA expect to be forced to pass these laws soon. There is no doubt that they want trout to be included. That is why they are crisscrossing the country misleading and confusing the public in a desperate attempt to persuade them that those objecting to what they are trying to do are anti-regulation and that this law is good for trout fishing. They are doing this because they know that if they do not succeed now there is every chance they will not succeed in the future.

It has to be said that the arguments they advance for listing trout in their press release are farcical. In fact as countless people have observed this is all so irrational it is scarcely believable. But strange though it may be it is happening.

The DEA's Biosecurity Unit say that the trout industry is anti-regulation and that most of the industry knows that trout are invasive. That is not true. The DEA's Biosecurity Unit is misleading the public and the trout industry what the legal meaning of invasive is and have been doing so for many years. They apply the scientific definition forgetting that if you apply that definition in law you will have to get rid of our timber industry along with trout. They fail to understand no matter what the science says, a species is not invasive in law unless it can be shown that it harms the health and wellbeing of South Africans.

That is the foundation on which the invasive species provisions of the NEM:BA are built. And no that does not mean that the NEM:BA is anti-rhino. That rather sorry attempt at argument by emotion laded analogy merely demonstrates how little the DEA's Biosecurity Unit understands the NEM:BA and indeed the economic importance of Rhino to the hunting industry or the importance that is placed on cultural and psychological issues in the matrix of issues that are described as "wellbeing". In fact is as good an illustration as one can hope to get of the level of confusion that exists in the DEA's Biosecurity Unit.

This confusion extends to the idea that if you are against them you are automatically anti regulation. It is absolute nonsense to say that the trout industry or those opposing the listing of trout as invasive are anti-regulation. The trout industry has been regulated for over a hundred years because trout fisherman, trout hatcheries the trout hospitality business know that trout need to be regulated in order to protect that value chain. But the regulation must be there to protect trout as a valuable part of South Africa's economy, not to create uncertainty and fear by imposing regulations whose purpose is control trout by combating or eradicating them, or if that is not possible by preventing their spread, propagation or regrowth.

The extent of the DEA's Biosecurity Unit's desperation to have trout listed as invasive is also evident in the idea that trout must be listed as invasive to protect them against bass. They have adopted similar divide and rule tactics with bass telling them that listing bass as invasive will protect bass fisherman from the calls by subsistence fisherman to share in South Africa's bass fishery. Just how low can you go! So according the DEA's Biosecurity Unit one lists something as invasive in order to protect it from others! But there is absolutely nothing in the NEM:BA that

provides for this. In fact the opposite is true the NEM:BA is all about how we must get rid of invasive species. And let's face it, the NEM:BA would be a very odd law if it said anything else.

Simple common sense tells us that the sermon the DEA's Biosecurity Unit is preaching is nonsense. We have been taught from an early age that invasive species are nasty and must be eradicated. Periodically officials from the Biosecurity Unit report in the press about their success or lack thereof in the fight to eradicate invasive species. You never hear them tell you how they have helped build an industry around the propagation of an invasive species. Heads would roll if they did.

I have also written and spoken at length on why this is nonsense and why DEA is legally required control combat or eradicate trout if they are declared invasive or that is not possible to prevent their spread, regrowth or propagation. I do not propose to repeat myself here. If you want a quick viva buy the June July issue of the SA Fly Fishing magazine. Suffice it to say the repeated use of words like eradication in the NEM:BA in connection to invasive species is wholly incompatible with what Dr Preston is promising. I leave you to decide if what the DEA says in its press release is a convincing counter argument.

The problem with what the DEA's Biosecurity unit is trying to do is that it is not guided by any principle or policy. There are also no measurable norms and standards in place against which their actions can be objectively measured. They are making it up as they go along. That inevitably creates a great deal of confusion and invites the kind of legal difficulties which have seen the DEA fail in four attempts to list and regulate invasive species.

Organisations like FOSAF and Trout SA have consistently called for a principled approach to trout. They are against introducing trout into areas where they do not already exist unless this is supported by a risk and benefit assessment. They support the regulation of the industry areas where trout exist to minimise impacts on biodiversity. This is not because trout are invasive but rather because FOSAF and Trout SA believe that sustainable use of a resource requires that one minimise impacts on biodiversity. One can see this in the industry which increasingly only stocks female fish into South Africa's trout waters. Much more could be achieved to protect aquatic biodiversity if the DEA accepted that South Africa's trout streams need to be managed to improve the trout fishing rather than to destroy it. The DEA's Biosecurity unit say they lack the resources to eradicate trout from rivers but won't let the industry do anything to improve these fisheries. The impact of a degraded fishery containing large numbers of stunted underfed trout is greater than a managed fishery containing fewer but larger trout.

The DEA seems to have forgotten that we are a constitutional democracy and that in democracies such as ours human rights are sacrosanct. Human rights are protected by legislative process that is objectively measured in terms of policies and norms and standards that have been determined with the participation of the public. Clear and fair processes that are managed with integrity build trust. What the DEA's Biosecurity Unit is doing destroys trust and crates confusion. Worse still it is hugely destructive of biodiversity. No one is going to cooperate with a department who they distrust. But building trust is central to the protection of Biodiversity. That is one of the pillars on which the U.N. Convention on Biological Diversity is built.

What Dr Preston told John Maythem of Cape talk radio is pretty close to what organisations like FOSAF and Trout SA have been saying for years but it is not what is proposed in the press release that his Biosecurity Unit issued on Monday, 19 July 2014. So the double talk? Why can the DEA's Biosecurity Unit not accept that the possibility that trout may out compete other species in some areas does not make them invasive? Why can't they embrace the industry as has been done in Australia and New Zealand? A friend of mine wrote telling me that the Australian Government is celebrating 140 years of trout. Would it not be wonderful if our government did the same on the 125th anniversary of the introduction of trout into this country? That is next year. Just think what could be achieved if the role trout play in rural job creation was acknowledged? Remember it was a trout fishing trip that broke the ice between Roelf Meyer and Cyril Ramaphosa thus easing the birth of the Constitution we now take for granted. And it was not the privileged white guy who was the trout fisherman. It was Cyril.

There is no rational answer to these questions which is a very good reason to stop the DEA's Biosecurity unit from getting away with what they are trying to do.

FOSAF is will be writing to trout fisherman asking the t they write to the DEA opposing what is proposed. You will receive your e mail soon or you can access it at www.foasf.org.za be sure to respond.
