

## Trout Wars Update March 2018

By Ian Cox

Last month we were all in a tizz over the new Draft Biodiversity Bill. It has got a lot of people in a tizz to be honest. I fly up to Pretoria next week to speak to a wide range of interest groups who are becoming increasingly worried about the extent to which the environmental movement in government is playing Trojan horse to the nationalization of all property rights.

Turns out Dr Gup Preston was not kidding when he said I must be in control!

Things changed on the weekend after 16 March 2018 when news began to filter in about new proposed amendment to the AIS Lists and Regulations that would result in trout being listed as invasive. My gazette alert which tells me about these things inexplicably did not work so I only learnt about the new Draft Regulations the on Monday 19 March and of the proposal to list trout in category 2 later that day.

It has been hectically busy since then as those who do Facebook will know.

The short story is that DEA wants to list trout as a category 2 invasive country wide. Category 2 is an unlawful DEA Invasive (NEMBA does not allow one to categorize invasive species in this way) that DEA thinks allows it to list useful species as invasive and then manage that use by permitting restricted activities. The Listing notice exempts dead trout and the possession of live trout as well as catch and release. But stocking and the sale of live trout will need a permit as will the importation and sale of eggs. If the law is applied properly, applications will need to be accompanied by a risk assessment and will not be granted in many areas where trout presently occur. This is not an imaginary risk. Authorities in Mpumalanga have already refused a permit to stock water in that province's scheduled trout waters.

Permits are also likely to be issued with increasingly strict conditions. It is a various serious criminal offence to breach any condition in the slightest degree. You could go to jail for up to ten years and that will increase to 20 if the Biodiversity Bill becomes law. A conviction will also result in the withdrawal of your permit and if you are a trout farm, the aquaculture license that DAFF says you must have in order to lawfully farm fish. It is becoming increasingly clear that government wants to regulate economic activity on the basis that it is a criminal offence unless they say otherwise. Government wants the right to sell the privilege of engaging in business to South Africans. It is called the rentmeetser or parasitic state.

As you can imagine, DEA and its officials and state employed scientist are active and energetic voorloper of this new order. Dr Preston is a passionate and driven leader of the invasive strategy they are deploying to achieve it. The invasive strategy mimics the behavior of the invasives species that DEA hates so much. First they do not obey the rules. The ends justify the means. Second it is a process, a creeping revolution if you like rather than a sudden one. Slowly one takes ground by deal making and the abuse of power. Having taken that ground you defend it abusing the rule of law if needs be. In fact law is an irritation that for these people. They believe in government by official dictat and control. This is the essence of DEA's science based approach.



People in trout value chain had high hopes that Cyril Ramaphosa would stop all this nonsense and it seems he wants to. His idea of a property revolution is similar to that of Maggie Thatcher. He wants to broaden the base of people privately owning property as a wealth creating tool. However it is dawning on all of us just how weak his position is. One of my politically connected mates was asked what Cyril (he is Cyril to fellow trout anglers) must do given that David Mabuza is his deputy. He said "hire a food taster". He was only half joking. So no immediate help from Cyril. He is conflicted in any event. We are going to have to fight this one on our own.

It is clear that we cannot allow this draft to become law. That will be the beginning of the end of the trout value chain. We have to stop this before it becomes law. Government is not going to step in like the last time. Attempts to deal with this at Phakisa have stalled. What a disappointment that process has turned out to be. The enabling business friendly approach that was promised is in fact directed at enabling government to take control of the oceans economy.

We can win this fight. We must win this fight. But we cannot win this fight without fighting. The time for jaw jaw has past.

Fortunately we have good ground on which to fight. DEA has failed as usual to follow due process. We can interdict the process on that ground and set the draft notice aside because proper process was not followed. A big part of this is DEA's failure to say why it is necessary to list trout and a bunch of other species and how they arrived at this assessment. They can't say trout are not invasive as the term is defined in law. DEA are trying to impose an extra-legal definition of invasive that accords with the biocentric preservationist beliefs of its officials and government's rentmeester agenda rather than serving the people of South Africa.

The additional information they have sent to those people who wrote in asking for more information demonstrates that they have not applied the definition of invasive set out in NEMBA or applied the NEMA principles. Other factors which they are not prepared to share with the public have dictated the decision making process. It is hard to say what precisely what these factors are but I suspect it is a combination of politics and the and the belief that one treats people as enemies of nature and protects biodiversity by confining species to homelands demarcated by where they existed hundreds of years ago. So Verwoerd's homeland policy is not entirely dead.

I have put it to Trout SA and FOSAF that they cannot allow the Draft AIS Lists and Regulations to become law. The leadership I have spoken to agree with this.

Assisted by invaluable advice from fellow fly fishing lawyers like Frik Van Schalkwyk of the Jacaranda Fly Fishing Club, I have suggested that grounds exist to set aside the notices on the ground that they are defective and to interdict any law making pending this decision. I think the merits of this case are very strong indeed. Again there is broad support for this.

A letter placing government on terms has been drafted and is being discussed amongst stakeholder groups. There is already broad support within these groups for this approach but we need expressions of good intent to be firmed up with a promise of action. That letter must go out in their name rather than by me operating on a wing and a prayer.

I have spoken at length with Ilan who is working hard behind the scenes in this regard to affirm the solid and broad constituency we need to win this fight. This will take a week or so.

FOSAF needs our support.

Fund raising will be required for this effort. Lawyers are expensive. Let me hasten to point out that I will not be part of that team. I am far too close to the action to act professionally in this cause. I am not involved in the fund raising side of things at all.

It is just about trout anymore either as the recent vote in parliament to rewrite the Bill Of Rights to effectively take away the property right. Many are saying that this is not going to happen. Don't kid yourself. It has been part of the government's plan for some years now. This is not just a case of a single law. A whole raft of laws are in the pipeline that will place the economy and all resources in the hands of the state on terms where to use those resources without permission will be a criminal offence.

And don't kid yourself, it all property rights and with that that human rights as well. We are facing a future where dignity is a privilege dependent on whether one has the right dompas. You will go to jail without it. The future does not look good unless we are prepared to fight for a good future. That is not looking so good at the moment.

But let me also sound a note of warning. We cannot fight to defend the past. Transformation is the bedrock of the new Constitutional order. Our case is a constitutional one. The trout value chain and indeed recreational fishing needs to transform. I often think that half our battle is that a significant part of the recreational fishing industry would rather form an unholy alliance with DEA than confront the realities of transformation. See [A fake sense of belonging](#) for more on this. They are being played for fools. Minorities whose sense of place is informed by a sense that the privileges they once enjoyed are rights are going to find life in South Africa bloody dangerous which ever way this goes.

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