

Trout SA presentation on the Aquaculture Bill

Presented 24 July 2017
and revised thereafter.



How Agbiz and Agri SA represented us at NEDLAC

- **Agbiz** (the Agricultural business Chamber) represents the Agricultural Value Chain (Input suppliers, financiers, off-takers, Agribusinesses and agro-processors etc.)
- **Aqua SA** engages through **Agri SA**;
- Work closely with other organisations (such as Agri SA) through **Business Unity South Africa (BUSA)**;
- BUSA represents the interests of Organised Business at the National Economic Development and Labour Council (NEDLAC);
- Agbiz and Agri SA were the principle members of BUSA driving the engagements at NEDLAC on behalf of BUSA.

How the NEDLAC Process works

- NEDLAC is a statutory platform for social dialogue;
- Where Business, Organised Labour, Government and Community (Social Partners) meet to engage on key issues facing the economy;
- Draft legislation such as the Aquaculture Bill is sent to NEDLAC where social partners express their views on a line by line basis;
- The end product is a comprehensive report outlining areas of agreement and disagreement;
- Report is submitted to the relevant Minister and the Portfolio Committee for consideration.

BUSA mandate at NEDLAC

Compulsory licencing required in the Bill is a red flag for other industries

- BUSA is non-sector specific and looks at cross-cutting issues;
- Primarily concerned with creating an enabling policy and legislative environment for South African businesses;
- Compulsory licencing provision and duplication of permitting requirements are the key concerns;
- Over-regulation not conducive to an enabling environment;
- Fear that it could set a precedent for other industries;

“If it does not need to be regulated, then it must not be regulated”

Constraints in the Bill

1. Compulsory licensing

- Licensing only necessary where:
 - one allows an individual to exploit/extract a public resource; or
 - where one needs to protect the public from harm; or
 - Some other significant public interest basis.
- No public resource in aquaculture and the public harm element is controlled through existing laws & product safety standards.
- Emphasis on safety of the process & product, not qualities of who is producing it.

Constraints in the Bill

1. Compulsory licensing:

- A license fundamentally affects your right to take part in the industry, which is a limitation on constitutional rights;
- Criteria aimed at *who* may be part of the industry (fit and proper person), and not *how* he or she may take part as this is regulated by permits.
- Constrains the right to sell business as one can only sell it to an approved license holder – this can sterilize assets if you cannot legally use or sell it. This is a deprivation of property which affects your constitutional rights.
- This was an area of disagreement within NEDLAC and we are fully supported in this stance by BUSA.

Constraints in the Bill

2. Permitting

- ❖ Permits not aimed at *who* may take part in the industry, but rather *how* activities may be undertaken;
- ❖ Where there are interests worthy of protection, a permit can be justified;
- ❖ However, the nature & objective of the permit must be *proportional* to the harm being addressed and this should only take place where the activity is not already regulated elsewhere in another law;
- ❖ Risk of *duplication* is very prominent in the Bill as it looks at environmental concerns, biosecurity, water quality, etc.
- ❖ Stance adopted in Nedlac was a qualified disagreement;
- ❖ In favour of a 1-stop-shop approach, but cannot see how the permitting in this Bill can be achieved without amending or repealing certain provisions in NEMA, NEMBA, WATER ACT, etc.
- ❖ No guarantee that those departments will part with/delegate their mandates/competence – several alternatives available in law to achieve a 1-stop-shop but not followed in Bill.

Constraints in the Bill

3. Inclusion of the value chain

- As per the definitions, any activity along the value chain (feed production, food processing, retail, transport, etc.) is regarded as an 'aquaculture activity' and therefore requires a license.
- BUSA opposed the inclusion of “non-farming” value chain activities as 'aquaculture'.

4. No provision for Self-Regulation

- Phakisa required self-regulation as part of the mechanism of creating an enabling environment for growing aquaculture. The Bill does not provide for this.

Constraints in the Bill

5. Aquaculture regarded as a 'sibling' of agriculture, but not part of it.
 - Phakisa mandate to streamline and enable & grow aquaculture as an agricultural activity, however DAFF sees it as a separate 'sector'.
 - The Bill does the opposite by duplicating, over-regulation & excessive control rather an incentivising compliance.
 - Draconian inspection powers, excessive fines and penalties, perverse incentives.
 - This translates into parallel structures (veterinary services, labs, etc.) being created in the Bill.
 - There is no other logical basis - the sector is too small to be a stand alone and the costs of this are not justified

Enabling provisions of the Bill

1. Support services to the sector

- While the Bill makes provision for veterinary services, disease control compensation for destruction of diseased animals and other support services this **duplicates existing agricultural legislation**.

The better alternative would have been to amend definitions in Agricultural legislation to include aquaculture, however;

- Although industry has bigger concerns in the Bill, decided not to push this too hard at Nedlac.

2. Aquaculture Development Fund

While this appears to be a good thing there are governance issues and the dilution of mandate is problematic (used to administer the Act, fines to be paid in - a perverse incentive, no industry representation) - but intention enabling. However this duplicates the Agric. Dev. Fund.

Enabling provisions of the Bill

2. Recognized sector liaison forums

3. Certification support to promote exports

However this duplicates the existing legislation.

5. Intergovernmental authorisations committee;
and

6. Possibility of integrated authorisations

All permits should be integrated but will depend on willingness of other departments to delegate their functions. However this is also provided for in Cooperative governance framework.

Process and way forward

- NEDLAC process completed
 - Took 3x longer than normal Nedlac processes;
 - Multiple bilaterals;
 - Agreed to disagree and record reasons in report.
- Next steps: Bill to be submitted to Govt. Clusters, approved by Cabinet and then goes to Parliament
 - Ask for opportunity to make inputs to Portfolio Committee & possibly select committee in NCOP;
 - After Parliament, weigh up legal possibilities;
 - BUSA may take a back-seat but nothing stopping industry from continued engagements with DAFF.