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## **MOTIVATION FOR THE EXCLUSION OF GILLNETS FROM THE VANDERKLOOF EXPERIMENTAL AND SMALL-SCALE COMMERCIAL FISHERY.**

### **INTRODUCTION**

In response to SACRAA and SASACC's objections (at the March 26 meeting) to the use of gillnets in either the experimental fishery or the small-scale fishery, the Rural Fisheries Programme requested that SASACC provide a motivational document for consideration by the committee. It was recommended that this document contain additional information that could assist the committee in making an informed decision about the use of gillnets. Our initial objection to the use of nets and the reasoning behind this was detailed in a letter to Mr Thinus Jonker (DALRRD) dated 27 February, which was forwarded to the committee as well prior to the March 26 meeting. This letter is attached as Appendix 1 for convenient reference.

The additional data from other recent studies that show the susceptibility of Largemouth Yellowfish (LM) to gillnets is unfortunately not available at this time. The data is still in its raw form and is being analysed as part of a bigger project. As such data ownership and intellectual property rights preclude the sharing of the data at this time. Nevertheless, SASACC would like to bring the following recent developments to the attention of the committee for their consideration.

Once again we would like to state categorically that we will work with the FMP Committee to ensure the successful implementation of the experimental and small-scale fishery provided that all activities adhere to legal requirements and are conducted within the legislative framework.

### **EXPERIMENTAL PERMIT**

The experimental permit in itself may be problematic. Dr Cockroft from DAFF is still waiting for advice in this regard from their legal department, but the experimental permits Prof Sauer referred to at the March 26 meeting were all issued for marine fisheries under some provision in the Marine Living Resources Act. Clearly this won't be applicable to the freshwater scenario. In addition DAFF do not enforce any legislation applicable to freshwater fisheries at present. Until such time as National legislation is developed by DAFF, all legislation that applies to freshwater fisheries is under the jurisdiction of either National DEA (e.g. NEM:BA, TOPS Regulations and Lists) or Provincial Environmental Affairs Departments. As such any experimental permit will need to be issued by either National or Provincial DEA and not DAFF. I can find no provision that would allow for the issuing of an experimental permit to use gillnets when species that are protected under Provincial legislation are involved. SASACC have proposed that it would be useful to get a legal opinion from DEA (National and Province) so that this issue can be discussed/clarified at the next meeting.

### **TOPS REGULATIONS & LISTS**

Under the existing TOPS Regulations and Lists (Notice R152 dated 23 February 2007; Government Gazette No. 29657), the catching & killing, selling of (includes bartering and trading or even exercising control over a listed species is a restricted activity.

Currently, the (LM) is listed as Vulnerable under the Threatened category, however a permit may be issued to conduct any of the restricted activities mentioned above

The proposed new TOPS Regulations (Notice 255 of 2015; Government Gazette No. 38600 dated 31 March 2015) and Lists (Notice 256 of 2015; Government Gazette No. 38600 dated 31 March 2015) differ significantly from the existing ones and have direct implications for the Vanderkloof fishery. Under the new Regulations and Lists, the LM is now listed as Protected (as opposed to Vulnerable), and each listed species now has specific conditions related to restricted activities, where the issuing of a permit to conduct a restricted activity is either prohibited under Section 57(2) of NEM:BA, or exempted. The new Regulations and Lists specifically prohibit the issuing of a permit for the LM for the following activities: ***catching or capturing, killing, conveying, moving or otherwise translocating, having in possession or exercising physical control over.*** Exemption from a permit is given for the catch and immediate release of live fish into the water from where they were caught. If a fish dies it must also be returned to the water to satisfy the requirement that one may not be in possession of a specimen.

1. There are exceptions to these conditions but they apply to conservation initiatives, veterinary facilities, low-risk escape research facilities etc. and not to fishing.
2. So even if a permit is issued under the existing TOPS Regulations that will allow for the catching, killing, possessing and selling of LM for the experimental fishery, the permit is only valid for one year. When it comes time to renew the permit, the application will be dispensed with in terms of the new TOPS Regulations, which will have come into effect by then, and it is our understanding that this will not be approved because of the new Lists that specifically prohibit permits for these activities. If this is indeed the case then it makes sense to exclude any gear now that will result in the death of LM as it will not be allowed by the time the ssf is initiated.
  - a. Dr Olaf Weyl (from SAIAB) has indicated that they have released live fish from gillnets, but that this was done during a research trip when nets were monitored on a full-time basis. When a fish was caught the net was immediately lifted and the fish removed. Although they may have swum away, Dr Weyl clearly stated that they were damaged during removal and he could give no guarantee as to their survival post-release. It is unlikely that fishers will monitor their nets all night especially when multiple locations are being used. There are also safety and cost concerns that will make this strategy unlikely.
3. Furthermore, the existing TOPS Regulations make provision for SANBI to set off-take limits (Nationally and/or Provincially) for Threatened and Protected species. Under the new TOPS Regulations, this responsibility has been designated to the Scientific Authority (of which SANBI will be a member). Either way we need clarification of whether the FMP committee will have the authority to set catch limits for LM in either the experimental or the small-scale fishery, whether gillnets are used or not.

## **CONCLUDING REMARKS**

We submit that this motivation is based on our understanding and interpretation of the existing and proposed new TOPS Regulations and Lists and on the existing environmental legislation in terms of experimental permits. In order for us to move forward the committee needs clarification on the above issues. We have requested that it would be useful to either get written submissions from DEA and/or SANBI or alternatively (and preferably) to get representatives from DEA and SANBI to attend the next meeting so that the committee can make an informed decision on how to proceed.