

National Secretariat
fosafsecretary@gmail.com
Tel: 073 457 5963
Fax: 086 747 3505



13 April 2026

The Director-General
Department of Water and Sanitation
Per email: gww@dws.gov.za

**RE: PUBLIC COMMENT SUBMISSION – PROPOSED REGULATIONS FOR THE
MANAGEMENT AND CONTROL OF GOVERNMENT WATERWORKS AND
SURROUNDING STATE-OWNED LAND**

*Government Gazette No. 53963, Notice No. 7002, 16 January 2026 | Comment Closing Date:
13 April 2026*

This submission is made on behalf of members of the Federation of South Africa Fly Fishers (FOSAF), whose members regularly access government waterworks for recreational fly fishing. We welcome the opportunity to engage with this process and submit the following comments in terms of the public participation invitation published in the above-referenced Gazette notice.

This submission focuses on Regulation 9 (Fishing) and Regulation 29 (Offences and Penalties) as numbered in the body of the regulations. We note that these sections are listed as Regulations 8 and 27 respectively in the Table of Contents – a numbering inconsistency that should be corrected before promulgation to prevent interpretive uncertainty and enforcement confusion.

Our comments are offered in a constructive spirit. Several provisions in these regulations represent meaningful progress for the protection of aquatic ecosystems and are welcomed by the fly fishing community. We address those provisions first before turning to our primary concern.

We **support the objectives** of improving safety, environmental protection, and coordinated management of government waterworks.

1. PROVISIONS WELCOMED BY THE FLY FISHING COMMUNITY

As representatives of organised recreational fly fishing – a discipline that is inherently catch-and-release oriented and deeply invested in the long-term health of freshwater fish populations – we wish to acknowledge the following provisions as positive and well-considered:

1.1 Vessel Wash Bay Requirement (Regulation 10(1))

The mandatory wash-down of vessels and trailers before launching at a government waterwork is one of the most ecologically significant provisions in the entire set of regulations. The transfer of invasive aquatic plants (notably water hyacinth, kariba weed, and hydrilla), invertebrates, and fish pathogens between water bodies via contaminated vessels and trailers is a primary vector for the destruction of indigenous freshwater fish habitat across South Africa. This requirement is strongly supported and we encourage robust enforcement.

1.2 Prohibition on Live Fish Releases Without Authorisation (Regulation 9(3))

The prohibition on releasing live fish or other aquatic organisms into a government waterwork without both a water use authorisation under the National Water Act (NWA) and a permit from the relevant environmental authority is an important biosecurity measure. Unauthorised stocking – particularly of largemouth bass, carp, bluegill, and various tilapia species – has caused severe and in many cases irreversible damage to indigenous yellowfish, labeo, and other endemic species in highveld and escarpment dams. This provision directly protects the fish populations that make these waterworks worth fishing.

1.3 Prohibition on Introduction of Species (Regulation 21(6))

The outright prohibition on introduction of any plant or animal species at a government waterwork, except under a departmental-approved alien and invasive species plan, is consistent with NEMBA obligations and reflects sound ecological governance. Combined with Regulation 9(3), this creates a coherent biosecurity framework that the fly fishing community has long advocated for.

1.4 Alignment with the National Freshwater Fisheries Policy (Regulation 21(8))

Regulation 21(8) explicitly requires that activities at government waterworks be conducted in compliance with the National Freshwater (Inland) Wild Capture Fisheries Policy, 2021 (“the 2021 Fisheries Policy”). This cross-reference is significant and its implications for the gill net provisions of Regulation 9(2) are addressed in Section 3 below.

1.5 Designated Fishing Areas (Regulation 9(1))

The requirement that all fishing occur in designated areas set out in the Resource Management Plan (RMP), while potentially limiting access to some productive locations, provides a sound basis for protecting sensitive spawning areas, nursery habitat, and ecologically vulnerable zones from angling pressure. Properly implemented, this zoning approach supports sustainable recreational fisheries. We encourage DWS and Competent Authorities to engage FOSAF and the fly fishing clubs in the RMP development process for specific waterworks, as local clubs possess substantial baseline knowledge of fish behaviour and habitat in the dams they regularly fish.

1.6 Prohibition on Spearfishing and Crossbow Fishing (Regulation 9(4))

The outright prohibition on spearfishing and crossbow fishing at government waterworks is welcomed. These methods are incompatible with the management of recreational freshwater

fisheries and their exclusion is consistent with the catch-and-release ethic that underpins responsible freshwater sport fishing.

2. LEGAL AND POLICY INCONSISTENCY

The draft regulations, in their current form, raise serious legal, constitutional, and practical concerns, particularly:

- Disproportionate restrictions on public and recreational access
- Excessive regulatory burdens on landowners and user groups
- Overbroad discretionary powers with insufficient safeguards
- Potential inconsistency with constitutional property rights and administrative justice requirements

We submit that the regulations require substantial revision to ensure:

- Proportionality
- Legal certainty
- Fair administrative processes
- Protection of existing lawful uses and community access

Proposed Amendment:

- Insert a clause limiting regulatory burdens to what is strictly necessary and proportionate
- Clarify that landowners are not responsible for enforcement of state functions
- Provide for compensation or incentives where obligations are substantial

2.1 Conflict and overreach with the Constitution.

The regulations impose extensive obligations on landowners, including, monitoring and controlling access, record-keeping and reporting compliance enforcement functions and restrictions on commercial use.

These collectively amount to a **significant deprivation of property use and enjoyment**.

The legal risk of these regulations may constitute **arbitrary deprivation of property** under section 25 of the Constitution of the Republic of South Africa 1996, particularly where obligations are onerous and uncompensated and where there is **no clear proportional relationship** to regulatory purpose.

2.2 Conflict and overreach with the National Water Act 1998

Citizens have the right to reasonable recreational use of water (Schedule 1 NWA). These rights arise out of primary legislation (NWA) and these Regulations seek to introduce new rules and to narrow, restrict, and effectively remove these primary rights. It cannot be correct that the Minister is able to gazette these new secondary rules where they are not subject to parliamentary oversight and input and are in effect an overreach of the Minister's powers. Regulations cannot replace the legislated right to the water with a system of permission to access the water.

2.3 Administrative gridlock (Section 3 and 4)

The new rule that proposes to mandate a Competent Authority (Section 3.3) to implement permission based access control is problematic as it sets up an administrative gridlock. It is an open secret that government departments are ill equipped to take on additional responsibilities, underfunded, inefficient and slow to act. The powers of the Competent Authority are broad, vaguely defined and lacking clear criteria. This includes decision on access approvals, permits and events and activity restrictions. This creates the risk of arbitrary administrative action contrary to the rule of law and the Promotion of Administrative Justice Act 2000.

This has all the making of a rule that cannot be fairly implemented due to slow and inefficient government process where the users are effectively prevented from exercising their rights while the Competent Authority is appointed and/or the Resource Management Plan (RMP) (Section 4) is developed and approved.

This gridlock could take years to settle and directly affects current revenue generating enterprises from operating legally. This may also lead to unforeseen consequences of these revenue generating entities no longer being financially viable and resulting in job losses when unemployment is at an all time high.

The deadline proposed to register a lease for an activity generating revenue stream within 6 months is unworkable. There has to be thousands of businesses that would need to register with DWS. It has the potential to overwhelm DWS systems and to have the effect of legal uncertainty due to administrative delays in finalising these leases.

It is suggested that implementation of the leases/permissions be held over UNTIL the appointment of the Competent Authority and gazetting of the RMP has taken place.

Furthermore that the Regulations be amended to define clear criteria and guidelines for all discretionary decisions, the requirement that decision be issued with reasons and time frames are introduced for decision making.

2.4 Resource Management Plans (RMP's) – Centralisation without safeguards

Concern:

RMPs become the primary tool for controlling access, activities and zoning:

However there is no guaranteed meaningful stakeholder participation nor clear standards or limits on restrictions.

The impact is that there is a risk of localised over-regulation with unpredictable and inconsistent rules across waterworks.

Proposed Amendment:

Mandate **formal stakeholder representation**, including Angling groups, Environmental NGOs and landowners and require Public consultation (minimum 90 days), the publication of draft RMP's and socio-economic and environmental impact assessments.

2.5 Access Restrictions and Permitting Regime

The concerns are that the regulations require approval for entry and activities, enable permit and lease requirements for common uses and may restrict traditional and informal access.

Impact:

Negative effect on recreational users ,subsistence users and tourism and local economies.

Proposed Amendment:

Introduce a **tiered, risk-based system** for low risk activities (e.g. recreational angling)
→ **exempt or simplified notification**

For Medium/high-risk → proportionate permitting

Grandfather existing lawful access and community use.

Ensure any fees are transparent, reasonable and subject to impact assessment

2.6 Procedural Fairness and Appeal Mechanisms

The concern is that the regulations do not adequately guarantee, notice, the opportunity to be heard and clear appeal rights.

Legal Risk:

Non-compliance with administrative justice requirements under PAJA.

Proposed Amendment:

Insert explicit provisions ensuring procedural fairness before adverse decisions, written reasons for decisions and an accessible appeal and review mechanism(s).

2.7 Impact on existing Rights and Agreements

The concern is that these regulations may interfere with existing servitudes, lease agreements and established commercial and recreational activities.

Legal Risk:

Unlawful interference with vested rights and legitimate expectations.

Proposed Amendment:

- Include **transitional protections**:
 - Recognition of existing rights
 - Reasonable adjustment periods
- Require that new restrictions must:
 - Be justified
 - Not arbitrarily override existing agreements.
 -

2.8 Enforcement and Penalties

Concern:

- Broad offence provisions
- Potential criminalisation of minor non-compliance
- Enforcement burden placed partly on landowners

Proposed Amendment:

- Introduce **graduated enforcement**:
 - Education → warnings → fines → sanctions
- Clarify offences precisely
- Limit enforcement responsibilities to **authorised state officials**

2.9 Environmental Protection – Support with Enhancements

We support:

- Biodiversity protection
- Pollution control
- Sustainable use

Proposed Enhancement:

- Incorporate co-management approaches
- Use community-based monitoring (e.g. angling groups)
- Require scientific evidence before imposing restrictive measures

2.10 Socio-Economic impact concerns

Based on stakeholder feedback :

- Risk to tourism and small businesses
- Loss of informal recreational access
- Increased compliance costs for clubs and operators
- Potential job losses

Recommendation:

Conduct and publish a comprehensive socio-economic impact assessment before finalisation.

2.11 Internal Inconsistency with Regulation 21(8)

Regulation 21(8) requires that activities at government waterworks be conducted in compliance with the National Freshwater (Inland) Wild Capture Fisheries Policy, 2021. That Policy – approved by Cabinet and the governing national policy instrument for inland fisheries – explicitly retains the prohibition on gill nets, fyke nets, and fish poisons in freshwater as prescribed under provincial nature conservation legislation, pending the development of a national Freshwater Wild Capture Fisheries Act.

Regulation 9(2) therefore creates an internal contradiction within these very regulations: it establishes a WUA pathway that could be used to authorise gill net use, while Regulation 21(8) simultaneously requires compliance with a national policy that prohibits that use. This contradiction must be resolved by amending Regulation 9(2) to align with the policy position already incorporated by reference in Regulation 21(8).

2.12 Conflict with Provincial Nature Conservation Legislation

Under the Gauteng Nature Conservation Ordinance 12 of 1983 and equivalent provincial conservation legislation in other provinces, the use of gill nets, seine nets, and fyke nets in freshwater bodies is prohibited without a specific permit from the relevant provincial conservation authority. Such permits are issued only for scientific research or controlled management purposes under strict conditions.

The conditional permission structure of Regulation 9(2) creates ambiguity as to whether a DWS water use authorisation, once granted, effectively overrides or supersedes the provincial permit requirement. This ambiguity has direct enforcement consequences:

- Persons holding a WUA may believe they are authorised to gill net within a government waterwork regardless of provincial ordinance requirements;
- Provincial conservation officers and SAPS members face uncertainty about which instrument takes precedence when encountering gill net activity within a government waterwork; and
- The result is a regulatory grey zone in which unlawful activity persists unchallenged due to jurisdictional confusion between enforcement agencies.

A clear and unconditional prohibition in these regulations would eliminate this ambiguity and establish a single, enforceable national standard.

2.13 The ‘Subsistence’ Loophole in the ‘Commercial Fishing’ Definition

A further drafting concern arises from the definition of “commercial fishing” in Regulation 1, which is defined as fishing “for the purpose of generating revenue from the sale of the fish.”

Under this definition, a person using a gill net for subsistence purposes – capturing fish for personal consumption without commercial sale – is not engaged in “commercial fishing.” The prohibition in Regulation 9(2) applies to gill nets “or commercial fishing,” structured in a way that could be read as requiring the WUA only for gill nets used commercially. A subsistence gill netter may argue that neither the commercial fishing restriction nor the gill net conditional restriction applies to them under a plain reading of the provision.

This loophole should be closed. An unconditional prohibition on gill nets, irrespective of purpose, would eliminate this interpretive vulnerability.

3. PRIMARY CONCERN: THE GILL NET PROVISION (REGULATION 9(2))

Regulation 9(2) as published states:

“No fishing with gill nets or nets that can catch a high volume of fish at once or commercial fishing will be allowed at a government waterwork without a water use authorisation and consent from the relevant environmental competent authorities.”

This provision is mirrored in the offences section at Regulation 29(1)(f), which prohibits fishing with gill nets only “without a water use authorisation and authorisation from the relevant environmental competent authorities.”

The fundamental problem is that this is a conditional restriction, not a prohibition. It creates a lawful pathway for gill net use at government waterworks, provided the operator obtains a water use authorisation (WUA) under the NWA and consent from the relevant environmental authority. Our submission is that this pathway should not exist at all within government waterworks, and that the regulation should be amended to an unconditional prohibition.

4. ECOLOGICAL IMPACTS ON FISH POPULATIONS AND BIODIVERSITY

From the perspective of recreational fly fishers who observe and interact with these ecosystems over many years, the conditional permissibility of gill netting within government waterworks raises the following specific ecological concerns:

4.1 Indiscriminate Mortality

Gill nets are passive entanglement devices that do not discriminate by species, size, or conservation status. In South African freshwater systems, gill net deployment results in the incidental capture and mortality of:

- Indigenous and endemic fish species, including yellowfish (*Labeobarbus* spp.), labeo (*Labeo* spp.), tigerfish, and smallmouth yellowfish that are the primary target species of conservation-oriented fly fishing;
- Aquatic birds, including African darters, reed cormorants, African fish eagles, and various kingfisher species, which dive and forage at depths where nets are set; and
- Terrapins, otters, and other non-target aquatic fauna.

The catch-and-release fly fishing community has a direct and long-standing interest in the protection of these species. Government waterworks that support healthy indigenous fish populations are irreplaceable recreational and ecological assets.

4.2 Pressure on Indigenous Fish Populations

Many government waterworks hold remnant populations of indigenous fish species that are already under pressure from habitat degradation, poor water quality, and competition from invasive alien fish. Regulated gill netting – even under a WUA – introduces extraction pressure on fish populations in controlled environments where recovery from overharvest is slow and difficult to monitor. The precautionary principle strongly supports a prohibition in these circumstances.

4.3 Ghost Fishing and Water Quality

Abandoned or lost gill nets continue to capture and kill fish and wildlife indefinitely – a phenomenon known as ghost fishing. Decomposing by-catch in government waterworks introduces organic loading into raw water sources, creating measurable water quality risks for downstream abstraction and treatment operations. This is directly relevant to the NWA Section 19 duty of care obligation to prevent pollution of water resources, and is not adequately addressed by a conditional-use framework.

4.4 Invasive Species Transfer

The movement of gill nets between water bodies – typically without decontamination – is a significant vector for the transfer of invasive aquatic organisms and fish diseases. This is particularly concerning given the regulations' otherwise strong biosecurity stance reflected in Regulations 9(3), 10(1), and 21(6). It is inconsistent to mandate vessel wash-downs while simultaneously permitting the movement of gill nets (a far more effective organism-transfer mechanism) between waterworks under a WUA authorisation.

RECOMMENDATION

We recommend that Regulation 9(2) be amended to replace the current conditional restriction with an unconditional prohibition. The following wording is proposed:

“No person may use a gill net, seine net, fyke net, drift net, or any other form of passive entanglement or encircling net within a government waterwork, regardless of purpose, and whether or not such person holds a water use authorisation, access agreement, recreational use agreement, or lease in respect of that waterwork. This prohibition does not affect the use of landing nets or keep nets used solely in connection with lawful rod-and-line angling.”

The corresponding offence in Regulation 29(1)(f) should be amended to reflect this unconditional prohibition, removing the “without a water use authorisation” qualifier.

This amendment would:

- Eliminate the internal contradiction with Regulation 21(8) and align the regulations with the 2021 National Freshwater Fisheries Policy already incorporated by reference;
- Resolve the enforcement ambiguity created by the conflict with provincial nature conservation legislation;
- Close the subsistence-use loophole created by the narrow definition of “commercial fishing”;
- Protect indigenous fish populations and aquatic biodiversity in government waterworks consistent with the NWA’s public trust and duty of care obligations; and
- Create a single, clear, enforceable standard that SAPS, conservation officers, and Competent Authorities can apply without jurisdictional uncertainty.

We explicitly note that this prohibition would not affect lawful rod-and-line angling, including fly fishing, in any way. The landing nets and keep nets used in recreational angling are categorically different in design and function from gill nets and should be expressly excluded from the prohibition’s scope, as reflected in the proposed wording above.

5. FISHING LICENCE REQUIREMENT (REGULATION 9(5))

Regulation 9(5) requires any person intending to fish recreationally at a government waterwork to produce a valid fishing licence obtained from the relevant environmental authority. This is consistent with existing provincial requirements and is supported in principle.

However, we draw attention to a practical concern: in Gauteng, recreational freshwater fishing licences are issued by the Gauteng Department of Agriculture and Rural Development (GDARD) under the Gauteng Nature Conservation Ordinance. The current licence issuing system is administratively cumbersome and licence availability has historically been inconsistent. We recommend that DWS engage with relevant provincial conservation authorities prior to the commencement of these regulations to ensure that an accessible, efficient licensing pathway is in place for recreational anglers at government waterworks. Without this, enforcement of Regulation 9(5) will be inequitable and impractical.

6. REQUEST FOR PROCEDURAL RELIEF

We request that the Department:

1. **Extend the public comment period**
2. Publish all submissions and responses
3. Conduct **provincial stakeholder consultations**
4. Clarify inconsistencies and ambiguities in the draft

7. CONCLUSION

The fly fishing community has a deeper stake in the long-term health of South Africa’s freshwater ecosystems than perhaps any other recreational user group. Our sport depends entirely on clean water, healthy fish populations, intact aquatic habitat, and functioning biodiversity. We do not oppose the regulation of government waterworks – we support it, where it is ecologically grounded and practically enforceable.

Several provisions in these proposed regulations reflect exactly that approach, and we have acknowledged them. Our primary concern is narrow and specific: the conditional permission structure for gill nets in Regulation 9(2) creates a legally ambiguous pathway for a

demonstrably harmful practice in environments where it has no place. The amendment we propose is modest, consistent with the regulations' own stated objectives, and would significantly strengthen an otherwise well-intentioned framework.

While the objectives of the regulations are supported, their current formulation:

- Risks **constitutional invalidity in part**
- Imposes **disproportionate burdens on landowners and users**
- Creates **uncertainty and administrative risk**

We respectfully request that the Department **revise the draft regulations** to ensure they are:

- Proportionate
- Constitutionally compliant
- Practically implementable
- Inclusive of stakeholder interests

We would welcome the opportunity to engage further with DWS on fishing-specific provisions, including participation in Resource Management Plan development for waterworks regularly used by our club members. The institutional knowledge held by organised fly fishing clubs regarding specific dam ecosystems is considerable and we are committed to contributing it constructively.

We appreciate the opportunity to submit these comments and trust they will be given due consideration.

Submitted on behalf of:

FEDERATION FOR SOUTH AFRICAN FLYFISHERS



Authorised signatory

Date: 13 April 2026