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Office of the Ombudsman  
Cnr of Feld and Lossen Streets  
Private Bag 13211  
Windhoek

Urgent Attention: Mr John Walters  
(By Email: [ivanwyk@ombudsman.org.na](mailto:ivanwyk@ombudsman.org.na))

CC: Honourable Minister Bernard Esau  
(By Email: [besau@mfmr.gov.na](mailto:besau@mfmr.gov.na))

CC: CITES Secretariat  
(By Email: [info@cites.org](mailto:info@cites.org))

**RE: REPORT ON THE COMPLAINTS BY CIVIL SOCIETY  
ORGANISATIONS, NON GOVERNMENTAL ORGANISATIONS,  
INDIVIDUALS AND OTHER GROUPS ON THE ILLEGALITIES  
PERTAINING TO THE ANNUAL SEAL HARVEST IN NAMIBIA**

Thank you for your report dated 22 June 2012.

We have considered the contents and the outcome of your investigation into the annual Namibian Seal Harvest and although we are appreciative of your willingness to investigate this matter and the hours spent by you compiling this report, we are of the opinion that your findings leave several issues undecided and furthermore we are of the opinion that there are serious violations that were highlighted in our legal opinion that have not been given the due emphasis that they deserve whilst other



have by your own admission not been investigated owing to several different reasons.

(I place on record that I have not had the opportunity of perusing the complete opinion of the Attorney General nor the complete opinion compiled by Cliffe Dekker Hofmeyr and all reference to such statements made by such bodies are stated merely as quoted in your report.)

(1) OVER-EXPLOITATION OR SUSTAINABLE UTILIZATION? THE SEAL HARVEST VIOLATES THE PRINCIPLES OF SUSTAINABLE UTILIZATION CONTAINED IN THE CONSTITUTION AND THE MRA

1.1 I refer you to paragraph 7.2 of your report, "...Cliffe Dekker Hofmeyr concluded that it is not possible to assess or verify the facts presented regarding seal population or habitats and the effect on them of historical and current harvesting. In our view, in order to attempt to persuade the Namibian authorities of the unsustainable utilization of seals, contrary to the Constitution and the MRA and possibly in contravention of CITES, current scientific evidence is required to be produced which indicates that the current TAC for seals is not rationally linked to population numbers and will result in population numbers being reduced to a level from which they may not recover. It would assist to show that the TAC is not based on 'the best scientific evidence available...'

1.1.1 At paragraph 7.13 (page 11), it is stated, "Despite my oral and written requests for the outcome of the 2011/12 aerial survey of seals by the Benguela Current Commission and other information, the Ministry of Fisheries and Marine Resources did not respond"

1.1.2 At paragraph 7.14 (page 11), you further state, "I am unable to make a definite finding on the two opposing accounts of whether Namibia is "guilty" of unsustainable utilization of its seals or not...."



- 1.1.3 At paragraph 11.6 (page 19), you state, *"I agree with the conclusion of DLC Cliffe Dekker Hofmeyr that if there is evidence that the seal harvest is unsustainable, because seal specimens are exported, Namibia may be failing to meet its CITES obligations"*
- 1.2 The legal opinion submitted to you by Dawson Edwards & Associates raised serious concerns in respect of the TAC's that the Minister was authorizing in respect of Cape Fur Seal pups during the annual seal harvest. The basis of this concern was based on the possible overutilization of the seal species and the lack of proper records showing a link between the number of pups being born and the number of pups being harvested. Without such scientific data and surveys, it is, as per the author of the Cliffe Dekker Opinion, the contents of which is agreed to by yourself, *"without such scientific evidence, arguments for the unsustainability of the seal harvest lack substance"*, however it is stated that *"...current scientific evidence is required to be produced which indicates that the current TAC for seals is not rationally linked to population numbers and will result in population numbers being reduced to a level from which they may not recover."*
- 1.3 The Namibian Environmental Management Act 7 of 2007, such which was signed by the President on the 21 December 2007, which states that one of the principles of Environmental Management is  
"  
...  
(k) where there is sufficient evidence which establishes that there are threats of serious or irreversible damage to the environment, lack of full scientific certainty may not be used as a reason for postponing cost effective measures to prevent environmental degradation  
..."
- 1.4 Seal Alert SA (hereinafter referred to as "our client") has, in the past, requested access to such scientific data from 2006 onwards from the Minister of Justice, in order to ascertain and determine the basis for the annual TAC



granted. We are instructed that the first request was sent to the Ministry of Justice on 10 June 2010, to which our client received a response on 30 July 2010 (a copy of which is annexed hereto marked "A"), which advised that the then Minister had no objection to providing a response to the request, but they required a reasonable time period within which to put the substantial amount of requested information together, in respect of which a period of two weeks was estimated. Furthermore, the Ministry stated that there was no objection to our client's observation of the harvesting process but this was to be conditional on terms acceptable to the Ministry, such which included the condition that any observation by our client had to be for the entire seal harvesting process (pre harvesting) and the actual harvesting. We are instructed that following this correspondence from the Ministry, no further response in respect thereof was ever received by our client.

- 1.5 On 7 April 2011, as Seal Alert's SA's attorneys of record, we lodged a second request for the aforementioned information, to which we received a response on 26 April 2011 (A copy of which is annexed hereto marked "B") from the Ministry of Justice stating that the information had been requested by the Ministry of Justice from the Minister of Fisheries and Marine Resources. No further response was ever received.
- 1.6 Mr Walters, with all due respect, as the Ombudsman of Namibia, I put it to you that you had a duty in terms of the Constitution and your powers outlined in respect thereof to request such information from the Ministry of Justice and to make a finding on what is essentially the core of our client's complaint. If a finding cannot be made on whether the annual seal harvest is overutilizing its resources, based upon the lack of scientific evidence (such which is and should be made available) then it is our submission that you have not fulfilled your obligation in terms of Chapter 10 of the Constitution, such which states "*the duty to investigate complaints concerning the over-*



*utilization of living natural resources, the irrational exploitation of non-renewable resources, the degradation and destruction of ecosystems and the failure to protect the beauty and character of Namibia". Furthermore, the Constitution of the Republic of Namibia clearly defines the powers of the Ombudsman, one of which such powers is, "to issue subpoenas requiring the attendance of any person before the Ombudsman and the production of any document or record relevant to any investigation by the Ombudsman". It is our submission therefore that the failure and/or refusal of the Minister of Fisheries to provide crucial information regarding the outcome of the 2011/12 aerial survey of the seals by the Benguela Current Commission as well as alleged other information is simply unacceptable in light of the fact that it is not only relevant to the investigation but is crucial to making a finding on the sustainability of the annual seal harvest.*

- 1.7 We are of the opinion that such scientific data should have been made available to you in order for your office to make a finding on that aspect. The issue of overutilization strikes at the heart of our complaint and for the Office of the Ombudsman to not request such scientific evidence (which by the action of the Ministry of Justice has implied that such is available) and/or not be provided with such data as requested, in order to make a finding on the sustainability of the harvest flies in the face of your agreement to investigate this matter in full. Such a finding is crucial to more than just the issue of overutilization, in that it is acknowledged in the Cliffe Dekker opinion that if there is evidence that the harvest is unsustainable then Namibia might very well also be in breach of its obligations under CITES given that the seal specimens are mostly exported. This furthermore confirms the importance of making a finding on the issue of sustainability before it is too late. Reliance on the alleged lack of scientific data is in our opinion an unacceptable response to the complaint in respect thereof.



- 1.8 We place on record that in earlier correspondence received from you dated 20 February 2012 (a copy of which is annexed hereto marked "C"), we were instructed by you that your report would be delayed by virtue of the fact that you were waiting for such survey data, such which was necessary to make your findings, however it is evident that such survey data was not part of the investigation as no findings on this have been made irrespective of your alleged reliance on such.
- 1.9 I further refer you to paragraph 13.8 of your report, where you discuss the varying versions of the status of the seal population of which our client is of the opinion that owing to factors such as mortality rates and predation figures, the seal population is in danger as the pup population is almost nonexistent. The Minister, however, is of the opinion that the seal population is in a healthy growing state. These are two very differing versions, such which bear no common ideals in respect of the seal population. As stated previously, there is a clear calling for the scientific and independent data to verify either our client's account or that of the Minister. Of concern to us, is that no scientific data is referred to in your report and furthermore no official finding is made in respect of the population of the seal species. The office of the Ombudsman, as an independent body, cannot in such an instance infer that the version by the Minister is correct. It is our submission that such a calling may only be made once the scientific data has been analyzed. Mr Cilliers (at page 15) notably admits that there are many factors that affect and presumably justify the non-fulfillment of allocated quotas, however, the nature and degree to which such factors affect the number of seals being killed is omitted and therefore such a statement is essentially baseless.
- 1.10 Mr. Walters, with all due respect, we have presented a large amount of evidence to you, such which includes, *inter alia*, video evidence, photos and statistics, which our client believes to be true and correct, and thus far we have



not been provided with any evidence which contradicts that which we have placed before you. You made it evidently clear that there are always two sides to a story and that you need to obtain the other side from the Minister of Fisheries, however, we have not been presented with any scientific evidence or data that disproves any of our allegations or statistics provided to you. Insofar as your statement at paragraph 7.14 is concerned, it is our submission that (sufficient evidence) has been placed before you (and to date not disproved) and no finding on whether the harvest is at all sustainable has been made thus far.

- 1.11 In light of the above, we are of the opinion that the seal harvest should not be permitted to commence until such time as reliable scientific data has been provided, such which disproves our allegations of overexploitation.

(2) THE CALCULATION OF THE ANNUAL TAC

- 2.1 For convenience and ease of understanding, we would like to bring the following to your attention to illustrate just how crucial population statistics are. In 2000, during an International Wildlife Management Congress ("IWMC") meeting, the Deputy Director of Marine Resources, Dr BJ Van Zyl, in his paper, "Culling Seals in Namibia – A Conservation Necessity, stated the following,

*"Methods currently used to recommend total allowable catches (TAC): Since 1987 the Marine Mammal Section of the Directorate of Resource Management has had the task of advising the Ministry on management of the seal population, and of recommending harvest levels annually for the different colonies and for the different age and sex classes. These recommendations are based on the analysis of aerial census results, population trends, fecundity rates, pup and adult survival rates, changes in sex-ratio, indices of pups and adults, and past harvesting rates.*



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*These data are used in a model which predicts the ideal harvest levels for maintaining sustainable yields. Recommended pup harvests may be as high as 30% of pups born, while recommended bull harvests vary depending on the strength of cohorts 7 to 8 years earlier. Biological data are also used to recommend on other management-related issues, such as harvesting seasons, harvesting methods and size limits. Scientific recommendations are submitted in confidentiality to the Permanent Secretary of the Ministry of Fisheries during June each year. They are reviewed by the Management component of the MFMR which provides a socio-economic perspective and considers the input of the sealing industry. After review, recommendations are then forwarded to the Minister of Fisheries for consideration and amendment before submission to the Cabinet".*

- 2.1.1 In order to determine whether a seal colony can be sustainably harvested, the number of pups born in the colony must be counted, in and amongst other trends and rates, but in particular the natural mortality of these pups (usually a past average) must be known from birth to start of the harvest, 7 months later, and then subtracted. This would give a figure of the number of pups still surviving at the start of the seal pup harvest on 1 July.
- 2.1.2 Once this has been done, the anticipation of the proposed pup TAC, which may not be higher than 30% of the pups born, can then be compared to establish whether or not the proposed TAC will be sustainable. It is important to understand, that the 30%, is viewed as that percentage that the seal colony can afford to lose in pups born overall without it affecting their future survival.
- 2.1.3 Our client has instructed us that scientists from the Ministry of Fisheries have assessed the natural mortality of pups, between birth in December, and the start of the sealing season, several months later, on 1 July, and state the mortality to be as follows: Kirkman/Roux put it at





62% and Kitchner puts it 44% whilst marine scientists, Silvia Mecenero, Stephen P. Kirkman, and Jean-Paul Roux, used as references in the report of Mr John Walters, wrote a scientific paper, titled, "*A Refined Fish Consumption Model for Lactating Cape Fur Seals (Arctocephalus Pusillus Pusillus), based on Scat Analyses*", Pup production at each study colony, as determined from aerial surveys conducted in the third week of December for five of the eight lactation periods (1994/1995, 1995/1996, 1996/1997, 1997/1998, and 2001/2002) (Johnston et al., 2004), was assumed to represent the number of females lactating at that colony in December of that year (Table 2); females give birth to one pup only (Rand, 1955). For years without an aerial survey (1998/1999, 1999/2000, and 2000/2001), pup counts were estimated by linearly interpolating between the available counts of the preceding and succeeding years. Adjustments were made for pup mortality over the period December to July; in January, pup mortality was assumed to be 30% (27-32%) of pup production, and for February-July 32% (27-34%) of pup production (MFMR, unpublished data). (<http://icesjms.oxfordjournals.org/content/63/8/1551.full.pdf>).

- 2.1.4 In 2006, Minister Iyambo sought Cabinet approval to increase the pup TAC by 30% from 65 000 to 85 000 pups, and requested a rolling 3-year TAC and a lengthening of the sealing season, by one month earlier, to attempt to facilitate sealers filling the TAC, due to past poor performances by sealers. Minister Iyambo then received Cabinet approval for 2006, 2007 and 2008. In 2009, Minister Esau had to again undertake a population survey, and also requested a rolling TAC for the next 3 years, which Cabinet approved, granting him a pup TAC of 80 000 pups for 2009, 2010 and 2011. During the Prime Minister/Seal Alert meeting in 2007, Dr C Kitchner, a leading scientist with the Ministry of Fisheries, gave a slide presentation, titled, "*Illustration of the*



*Survival of the Average Pup Cohort since 1970*", it revealed that from birth, pups suffer a 44% natural mortality, prior to the start of the sealing season on 1 July.

2.1.5 Our client's argument is based on the fact that the pup production declared by the Ministry for Cape Cross was 65 073 pups in 2006, however, if the natural mortality of either 62% or 44% was applied as required, and subtracted from the pups born, that would leave between 36 440 – 24 727 pups surviving at the start of the sealing season. This is just one of the examples provided to us that raises serious concerns as to the legitimacy of the annual TAC's which are being granted and furthermore justifies our request for the scientific data on which the granting of the annual TAC is based. Minister Iyambo had granted a 50 000 pup TAC to the 2 sealing rights holders for Cape Cross which if applied would harvest all surviving pups in a futile attempt to fill the TAC. Such TAC's are clearly not in line with the principles of sustainability. Our client has raised these concerns at all levels, which has included the Prime Minister as well as subsequent meetings with the Minister of Fisheries. All attempts by our client to solve this matter amicably and/or obtain clarity on the discrepancies as described have failed and simply been ignored.

2.2 We have been further instructed by our client that in 2006, the Ministry and the rights holder at Cape Cross, Mr. Gys Cilliers, both confirmed that a mass die-off was currently taking place after the pup count. The Ministry itself confirmed a major mass die-off, as reported on the 18<sup>th</sup> December 2006, *"Autopsies Reveal Seals Are Starving"*, in which Dr Moses Maurihungirire stated the local Cape fur seal population had experienced similar starvation cycles in the 1980s and in 1994, 1995, 2000 and 2002.



- 2.3 Right's holder, Mr Gys Cilliers of Seal Products at Cape Cross commented in the media on the 18<sup>th</sup> October 2006, and I quote, *"Confirmed that seal mortality matched that of the 1994 disaster year"*. The Ministry of Fisheries scientist Dr JP Roux, put natural mortality rates at 95-100%. As a point of reference, it is important to note the following, as reported by Ministry Seal Biologist, Dr JP Roux, *"From January 1994, pup growth was very low. Pups were losing weight in March and pup mortality increased. By July 1994 researchers of the Marine Mammal Section estimated that less than 5% of the 200 000 strong 1993/1994 cohort would survive to the weaning stage. In mid-June the average mass of the few surviving pups was just over 8,6kg, nearly 5kg less than the average for the previous seven years. At the time thousands of adults were washed ashore in an unprecedented mass starvation. Adult mortality seemed to peak during mid-winter but continued until end of October. Both sexes and all age groups were affected. An estimated 300 000 seals died during 1994, nearly a third of the total population. From August (start of the sealing season) to November 1994, the body conditions of the remaining adult females had deteriorated badly and abortions were widespread. Researchers estimated that around 40 000 females aborted during this period at Cape Cross alone"*.
- 2.4 As stated, all attempts to get factual info, like seal population numbers in 2007, 2008, 2009, 2010 or even for 2011 have been denied. All attempts to assess how this mass starvation had affected the seals were denied. It is our client's submission that data is crucial for the determination of the annual TAC calculation as well as to what extent it has been filled in those respective years. We are instructed that, during the seal conference in September 2011 together with the Ombudsman, the Ministry (in its presentation) revealed for the first time, that a population survey conducted in 2008 confirmed that Cape Cross pup production had declined 24%, such which now brings the total number of pups to 50 000. The 50 000 pup TAC applied by the Minister since 2008, to a pup production at birth of just 50 000, would effectively kill all the pups. These numbers have notably also not factored in elements of natural mortality as required. This raises serious issues of legitimacy in respect of that TAC. A



simple reality confirms this, whether the pup population at Cape Cross is or was 37 394 pups in 2002 (Verified) or 65 073 pups in 2006 (claimed) or the 24% decline to 50 000 pups in 2008 (Ministry Presentation), a TAC of 50 000 pups awarded to 2 sealing rights holders for Cape Cross, will in effect kill every pup and thus cannot be considered sustainable. One only has to physically visit Cape Cross days prior to the start of the sealing season to observe that far from there being tens of thousands of pups, only at best are there a few thousand pups clustered in small groups along the beach.

- 2.5 For 2012 (given that the three year rolling quote for three years from 2009 has expired), Minister Esau is required to undertake another population survey assessment and seek Cabinet approval for the 2012 sealing season as well as the TAC's which are granted. Based on these requirements, we are lead to believe (based on the formula provided above by the scientist, BJ van Zyl) that the surveys and population statistics must have been presented to Cabinet in order for the Cabinet to approve the harvest and the TAC for the harvest due to start this July. Therefore, these records must be available from the Ministry and therefore we reiterate our view that such records should have been requested by you in order to make a finding on the aspect of sustainability of the seal harvest. If such records do exist, then these should have been part of your crucial findings in order to disprove or prove our allegations of overexploitation of the seal species.
- 2.6 Until such time as this has been undertaken, thousands of baby seals shall be clubbed to death (using methods in the Regulations, of which you call for revision) but yet no definite measures, such as a moratorium, have been called for pending the recommended changes in the Regulations. Such action is provided for in your powers as outlined in the Constitution of Namibia. It is of grave concern to us and no doubt to many other NGO's and animal welfare societies and none more so than our client that yet another harvest shall



proceed despite your report calling for some significant changes, but no mandatory measures whatsoever have been put in place to monitor when and how the changes shall be put into effect.

**3 THE MARINE RESOURCES ACT OF 2000 & THE SEA BIRDS AND SEAL PROTECTION ACT 1973**

3.1 It is common knowledge that the Marine Resources Act 27 of 2000 replaced the Sea Birds and Seal Protection Act ("SBSPA") 46 of 1973. Seals were, as it was, afforded a great deal of protection in terms of the SBSPA in that their habitat was protected from outside interference in terms of which prohibitions prevented people from accessing certain areas and from harming sea birds and seals whilst in these areas. Such has been removed with the repealing of the SBSPA and the subsequent promulgation of the Marine Resources Act ("MRA"), such which does not retain any such protection for seals afforded under the previous regime. The Cape Fur Seal is a protected species which appears in Appendix II of CITES. Although species listed therein do not face an immediate threat of extinction, it is imperative that all trade in respect thereof is strictly regulated so as to avoid any future danger to the species.

3.2 As acknowledged in your report at paragraph 10 (page 18) there is inconsistency that exists between the provisions of the MRA and its Regulations in that the Regulations appear to exempt a person from obtaining a permit to harvest seals. Although your report states that the practical effect of the inconsistency is limited, what your report does not examine is the fact that since 2000, there has been no legislation which prevents humans from killing, maiming, torturing, disturbing or injuring seals outside of any commercial purpose. As per your report, the APA does not apply to seals based upon the fact that they are not under the control of the sealers, so the next logical question that arises, is what domestic protection does the Cape



Fur Seal enjoy in Namibia as all such prevention and prohibitions in respect thereof have been removed by the repealed SBSPA and no such replacement has been made by the MRA. It is our submission that ALL protection in respect of the Cape Fur Seal has been removed and although the MRA is now the governing legislation over the seal species, it is still of no consolation that none of the protective mechanisms and provisions were included into the new Act.

- 3.3 Mr Walters, it is imperative that you take cognisance of the fact that under the current regime, Cape Fur Seals enjoy no protection under any of the laws applicable in Namibia. Given the fact that this species is mostly exported, CITES requires that there are laws in place for the protection of the species and also requires that the export does not violate any such domestic legislation. It is submitted, with respect, that no such domestic legislation currently exists. The SBSPA has been repealed, the MRA does little to replace the repealed protection and yet the export of seal products is still permitted. It is our submission that this is in VIOLATION OF CITES and of Namibia's international obligation to protect its endangered species (even though the Cape Fur Seal appears on Appendix II). Common sense dictates that a species which is not yet extinct should moreso be protected to avoid this eventuality when large quantities are being exported.

- 3.4 In summary, it is our submission that insofar as Namibian domestic legislation fails to provide for the protection of the Cape Fur Seal as per the provisions of the SBSPA, and yet continues to export the products, this is in fact a violation of the CITES Convention. You confirm in your report that if the harvest is deemed to be unsustainable, then there may well be a violation of the CITES Convention. There is therefore the possibility (in light of the lack of a finding on the issue of sustainability), that the harvest is in fact not



sustainable but yet Namibia is not willing to recognise this and act responsibly in line with its international commitments.

- 3.5 We have been instructed by our client to include a document, such which was drafted by him personally, which outlines the historical aspect of seal harvesting trends in Namibia and the impact that such has on the current population statistics. The document is annexed hereto marked "D")

4. THE NAMIBIAN SEAL HARVEST VIOLATES THE ANIMAL PROTECTION ACT (APA)

- 4.1 The Animal Protection Act 71 of 1962 defines 'animal' as *"any equine, bovine, sheep, goat, pig, fowl, ostrich, dog, cat, or other domestic animal or bird, or any wild animal, wild animal, wild bird or reptile which is in captivity or under control of any person"*

- 4.2 At paragraph 8, it is stated, *"...the APA criminalizes a number of inhumane practices; include beating, terrifying and causing suffering. It protects animals, but does not confer rights on them. I agree with Judge Cameron where he states the following in his minority judgement:*

4.2.1 *"The Act and the SPCA Act are both animal welfare legislation. Though not conferring rights on the animals they protect, the statutes are designed to promote their welfare. The statutes recognise that animals are sentient beings that are capable of suffering and pain. The statutes thus acknowledge the need for animals to be protected from human ill treatment"*.

- 4.3 I refer you to paragraph 8.9.2.2, *"it is the duty of the courts to interpret the statutes and in the absence of such interpretation and taking into consideration the circumstances described in 8.1.1, 8.2 and 8.6, it cannot be said that seals are under the control of the clubbers during harvesting. Therefore, the sealers and by extension, the*



*authorities who permit the 'cruel treatment' of pups, cannot be in breach of any of the provisions of the APA". Paragraph 8.9.2.3 further goes on to state, "However, where a holder of a quota harvests seals in contravention of any condition prescribed under the MRA he would in terms of section 52(3)(c) of the Act be guilty of an offence. In addition, in terms of section 52(4)(b) of the Act any person who harvest seals in contravention of section 47 and the regulations, is guilty of an offence".*

- 4.4 By virtue of your agreement with the above statement made by the Honourable Judge Cameron, that statutes are designed to promote animal welfare and further the acknowledgement that animals are capable of pain and suffering, surely the conclusion can then be drawn that there should be designated legislation which is designed to prevent such cruelty and take active steps to prevent cruelty and promote welfare. This being said, all references to the sections in the MRA, are solely for the purpose of governing all violations of the prescribed methods in the regulations, such which is punishable by criminal sanction and/or fine. The regulations are not aimed at governing, in any way, the welfare of the animal itself. Notably, as per Judge Cameron's judgement, it is imperative that statutes exist which protect wild animals from human ill treatment, such which can take place in many different ways such as: commercial fisherman directly netting, entangling, cause to be captured, injure, drown, shoot or kill seals during the course of their fishing activity, and on the mainland the seals may be subject to human interference by way of being mamed, tortured, pursued, shot at, terrified and disrupted. Protection against such activity was afforded to the seal species under the SBSPA but has been notably removed from the MRA. Given the fact that Namibia is home to many mainland seal colonies and furthermore the fact that seal harvesting is permitted in Namibia, it is our submission that it is crucial that animal welfare legislation is applicable, specifically in reference to seals. In light of the methods that are utilized to kill the seal pups, it is crucial that there is domestic legislation which affords the species a degree of protection. By your own admission, the APA does not apply which begs the





question as to which animal welfare legislation is in force to protect this protected species.

4.5 I refer you to page 22, subheading "Findings", where it is stated, *"seals, as wild animals, do not fall within the ambit of the definition of animals in the Animal Protection Act (APA; the sealers, and by extension "the authorities who permit the cruel treatment of pups", can thus not be in breach of any of the provisions of the APA; the APA does not confer rights on seals, but does protect them from cruelty"*

4.5.1 By your own admission, you state that the APA does not apply to seals. With all due respect, the above statement is highly contradictory in that you acknowledge the need for animal welfare legislation, you acknowledge further that the APA does not apply to seals and then you further state that although the APA does not confer rights, it does protect them from cruelty. Furthermore, we would like to draw your attention to

the highly perplexed situation which is created if one is to interpret the APA as per your suggestion:

4.5.1.1 If the Animal Protection Act does not apply to any wild animals which are not 'under control' then based on this interpretation, any person may then harm, mame, kill, torture etc any wild animal which does not fall within the definition of animals in terms of the Act. This cannot, with respect, be a correct interpretation of the Animal Protection Act.

4.6 We would like to draw your attention also to paragraph 8.9.4 (page 16), *"Common sense dictates that sealing activities that continue nearly uninterrupted for four months in a breeding colony may cause considerable disturbance and fear/ distress to animals"*. By your own admision, you claim that the harvesting activities may



cause distress to animals, yet further acknowledge that animal welfare provisions are not applicable to an internationally protected species.

4.7 It is further stated (at paragraph 8.9.5), *"I am of the view that seal pups are not allowed to settle down before clubbing begins. It is indeed impossible to comply with this part of the Regulations because pups are unrestrained and constantly in motion"*. By your own admission, you claim that the pups are not under control during harvesting by virtue of the fact that they are unrestrained and constantly in motion and further that the pups are not allowed to settle down prior to being clubbed. Common sense then clearly dictates that if there is a breach of the regulations in that the pups are not first allowed to settle, then by the same token in order for there to be compliance in this respect, the pups should be restrained prior to clubbing, which would in turn lead the pups to be "restrained" and therefore under the control of the sealers. Notwithstanding the fact that your acknowledgement of the constant movement of the pups confirms that difficulty and/or inability to effect the so called three step process of killing the pups.

4.8 I refer you to page 22 of your report, (bullet point 6), where it is stated *"pups are not allowed to settle down as required by the Regulations, as wild animals they can ONLY settle down when confined"*. The Concise Oxford Dictionary defines "confined" as "keep or restrict someone or something within certain limits of space" or "confines to the borders or boundaries of a place, especially with regard to their restricting freedom of movement".

4.8.1 Furthermore, I would like to highlight the inconsistency in one of your findings, (to which I refer you to page 23 of your report – bullet 2, sub bullet 3) where you state:



“..Regulation 20 should be amended by adding the following requirements:

*“compelling rights holders to erect temporary enclosures where pups, not exceeding 100 at a time, can be confined to settle down before they are released and clubbed”.*

4.8.2 Notwithstanding the fact that once the seals are placed in such temporary enclosures, this immediately brings the seals within the definition of an animal as defined in the Animal Protection Act as they are then clearly exercising “control” over the animals. On your interpretation then, it is assumed that following the temporary enclosing of the seal pups by the sealers, that the pups shall settle down which may very well occur, however, it is quite probable that once the temporary enclosures are removed, the pups are once again (by virtue mostly of fear – bear in mind that these are nursing pups that are still fully dependant on their mothers and have been forcibly removed from them causing a tremendous amount of stress and trauma) going to be exposed to a chaotic environment with ± 18 sealers attempting to club 100 seal pups that are trying to flee from the terror. This brings me to the next point in your report, where it is stated *“rights holders should ensure that each harvest complies with the “four steps” method of effective hitting/shooting, effective monitoring, effective bleeding out and effective implementation”*. It is simply not practical to recommend that the somewhat traumatized baby pups be placed in a temporary enclosure, **then released** towards the sea and thereafter clubbed effectively. In order for effective clubbing to be implemented, the animals should not at any point be released and be given an opportunity to try and flee whilst the sealers are attempting to club the pups effectively. The only manner in which this may prove to be effective, is if the temporary



enclosures are designed for the pups to remain in and thereafter individual seals should be released from the enclosure and clubbed effectively to ensure that the three step methods is applied effectively. This would, however be a lengthy process to ensure that it is implemented effectively, however, it is highly doubtful that such a process can be achieved successfully within 90 minutes. (In this respect, I refer you to the document annexed hereto marked "E") which details the crucial differences between the Canadian Seal Hunt and the Namibian Seal Harvest). It is therefore our submission that the suggestion of temporary enclosures in an attempt to merely get the baby pups to settle down is not only impractical but shall not in any way assist in the effective clubbing of the baby seals.

4.9 I furthermore wish to bring the following factors to your attention as a response to your allegations contained in paragraph 8.9.1 of your report:

- 4.9.1 10 August 2007 – Seal Alert SA flew over Cape Cross (photographic evidence available) and we are instructed that no seal pups were present at the colony;
- 4.9.2 31 July 2009 – quote from Bart Smithers (undercover photographer), *"If I had to take a generous estimate of the maximum number of seal pups one could club under ideal conditions at Cape Cross at this time of the year, I would be very surprised if it were as many as 2000"*;
- 4.9.3 13 July 2010 – Debbie Gibson (SPCA), *"There weren't 50 000 pups in one group as per the TAC. At the public viewing point though, there were probably at least 20 000 and there were smaller groups south of that point that we could see"*;



4.9.4 The following quotes from Mr Gys Cilliers, *"Harvesting season had to be suspended for three days in order for the beaches to be cleaned and for dead seals to be buried. I do believe that there are just as many dead seals on the beach again today"*, *"He again confirmed that the season for pup culling was over. There simply are not any more pups"*, *"Cilliers also conceded that Seal Products could not meet their quota of 30 000 pups for 2006. Those harvested were small. When we started the harvesting season in July, seals were already skinny"*

## **5 THE INTERNATIONAL POINT OF VIEW**

5.1 I refer you to paragraph 9.3 (page 16) of your report, such which states: *"There are of course many ways of killing a seal pup and many of those have been tried locally as well as in other countries (particularly USA, Canada and Russia). However, all these trials have come up with the same conclusion: However gruesome it may sound, if clubbing is done properly and accurately it is indeed the most effective method to dispatch of a pup in the quickest way, rendering the pup unconscious and 'brain dead' virtually instantly and in the process minimising suffering and stress. In addition, at a semi-industrial scale, when several hundreds of pups are killed in a short period of time, it is also the most practical method if not the only one applicable. Of course, all of this is valid only 'if it is done properly' as mentioned above; hence, the Regulations we have on how this should be done and how inspectors should monitor this. As was mentioned at the meeting with Mr Hugo, there is always room for improvement and one should be vigilant to uphold the standards of killing methods, the skills and training needs of the sealers and the reporting process by inspectors"*

5.2 We would like to bring the following to your attention:

### **5.2.1 The United States of America**

The United States Marine Mammal Protection Act of 1972 states the following:



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*"102 (b) [IMPORTATION OF PREGNANT OR NURSING ANIMALS; DEPLETED SPECIES OR STOCK; INHUMANE TAKING.]*

*Except pursuant to a permit for scientific research, or for enhancing the survival or recovery of a species or stock, issued under section 104(c) of this title, it is unlawful to import into the United States any marine mammal if such mammal was –*

- (1) pregnant at the time of taking;*
- (2) nursing at the time of taking, or less than eight months old, whichever occurs later;*
- (3) taken from a species or population stock which the Secretary has, by regulation published in the Federal Register, designated as a depleted species or stock; or*
- (4) taken in a manner deemed inhumane by the Secretary"*

5.2.1.1 The United States of America banned the import of seal products in 1972, owing to the fact that the imports were held to be in direct contravention of the provisions of the Marine Mammal Protection Act of 1972 (as quoted above). We draw your attention to the fact that as a result of the Namibian Seal Harvest TAC being predominantly pup based, all imports to the USA from Namibia are banned.

## **5.2.2 The Canadian Position**

5.2.2.1 The killing of nursing seal pups has notably been banned in Canada (since 1987) such which has been effected by inclusion in the Marine Mammal Regulations. For ease of reference, seals may not be harvested until their first coats have moulted and they are living independently of their mothers. Seals are not usually harvested until they are about 25 days old (take note that the nursing period is only 12 days). This issue is discussed in further detail in the document annexed hereto marked "E").



### 5.2.3 The European Union

5.2.3.1 The EU Parliamentary Assembly issued a European Directive (Ref: 83/129/EEC) such which introduced a ban on the importation and sale of whitecoat and hooded seal pups in the European Union. On the 16 September 2009, Regulation No 1007/2009 was introduced and the contents thereof bind all Member States. The Regulation, inter alia, bans the import of skins of harp seal pups and hooded seal pups and all products derived therefrom. The Regulation acknowledges that *"the hunting of seals has led to expressions of serious concerns by member of the public and governments sensitive to animal welfare considerations due to the pain, distress, fear and other forms of suffering which the killing and skinning of seals, as they are most frequently performed, cause to those animals"*.

### 5.2.4 Russia

5.2.4.1 International Federation for Animal Welfare (IFAW) has been campaigning to end commercial seal hunting for more than 40

years, and our work helped bring about the end of the Russian seal hunt in 2009. At the time, Russia's Minister of Natural Resources Yury Trutnev said, **"The bloody seal slaughter, the killing of the defenseless animals, which can't be even called a 'hunt,' is now prohibited in Russia as it is in most developed countries. It is a serious step towards the conservation of biodiversity in Russia."** Russian Prime Minister Vladimir Putin also called seal hunting a **"bloody**



industry" and something that "should have been banned years ago." (<http://www.ifaw.org/united-states/node/38326>)

5.2.4.2 On the 20 August 2011, Russia furthermore introduced a trade ban/restriction on the import/export on raw, tanned and dressed fur skin (or pieces/currings thereof) of harp seals and their white coat pups.

5.2.4.3 I refer you to paragraph 9.5 of your report, where is is stated, "The panel further observes that the method used for killing of pups in Namibia, namely the "stun" and "stick" method has been the subject of much controversy because it is regarded by many as inhumane (David, 1989). Unlike adult males, to hunt the pups with rifles is impractical because of the relatively small size of the head and their tendency to congregate in groups. Other alternative killing methods which have been investigated have been found by scientists and veterinarians to be neither adaptable to fur seal hunt nor more humane than stunning and sticking" (Keyes, 1980)

5.3 Notably, the killing of nursing seal pups has been banned worldwide even in countries such as Canada and Russia. Further to this, the importation of seal products is also being restricted by countries all over the world owing to the inherent cruelty that is present in the way that the seal pups are harvested and to the decrease in the demand for the product. We are instructed that seal coats are not utilized once the seal has reached a year of age as they become too coarse to be utilized and therefore has no market value and is therefore not economically viable.

5.4 I refer you to paragraph 9.6 in your report, which examines the Report of the North Atlantic Marine Mammal Commission Expert Group such which concludes the following:





"...

*when using the Hakapik or club to stun young seals in the large scale seal hunt, the operator is situated very close to the animal and will, as in a slaughterhouse operation, be able to stun the seal by directing the stunning device (blow) to the brain and then kill the animal by bleeding out.....also, in general, there are no known killing method that can guarantee a 100% instantaneous stun and kill of animals...no official criteria of death have been formulated for animals except for whales"*

5.4.1 It is submitted, with respect, that this report envisages a situation where the targeted seal is not (a) a nursing pup (as the practice has been banned internationally), (b) not in a colony with hundreds of seals (c) not dependant on its mother. It also does not envisage a situation where there are 18 sealers trying to club several hundred seal pups, such which (owing to fear and panic) are trying to flee away from the disturbance caused by the sealers and as confirmed by yourself, are not in anyway restrained by the sealers (and therefore under control). The footage that was provided to us, by our client, did not show the sealers being located "very close to the animals" such which would allow them to ensure that the first blow to the head of the pup was effective enough to render the pup 'brain dead'.

5.4.2 I further wish to draw your attention to the fact that the circumstances under which the Canadian seals are harvested differ substantially to the circumstances present in Namibia and as a result no resemblance in applicability of method should be allowed.

5.5 Although acknowledging (at paragraph 9.10) that the regulations are not impossible to implement but rather that there is always room for improvement, it is stated that "I am further of the view that training and enforcement should aim to meet the three steps of effective hitting/shooting, effective monitoring and effective bleeding out".



5.5.1 In the quote above, it is acknowledged that training is required for the sealers to effectively implement the three step process and furthermore it is acknowledged in the Cliffe Dekker Hofmeyr opinion that lobbying for the amendment of the Regulations should be implemented to result in, and I quote "*...better regulation of harvesting and therefore reduced suffering of seals*". It is further stated in your report (at page 23 as a recommendation) that sealers should be trained and competent in the procedures that they use, including killing methods, monitoring death, unconsciousness and rapid bleeding. This having been formulated in your report, there are no obligatory measures that are put in place to monitor that such methods are in fact going implemented by the sealers. Without proper monitoring of such, your recommendations are with respect, nothing more than recommendations on a piece of paper.

(6) **THE ECONOMICS OF SEAL HUNTING AND SEAL WATCHING IN NAMIBIA**

6.1 At paragraph 12.1, it is stated that despite your office not having researched and commented on the economics of seal hunting and seal watching, you do acknowledge that "*...although it is mostly low paid, low skilled and seasonal work, employment is nonetheless important in Namibia...*"

6.1.1 In our legal opinion, we drew a great deal of attention to the tremendous amount of benefit, profits and advantages that eco-tourism (ie: seal viewing) may have for Namibia, such which, if considered on a practical level, shall benefit the citizens of Namibia in portraying Namibia as an environmentally friendly African country as opposed to being the home of the largest marine mammal harvest in the world. Moreover, it is our submission that this aspect of economics should



have been examined in your report and a finding should have been made on this especially in light of your justification that the annual seal harvest creates many jobs for Namibians. Notwithstanding the tourism benefit that seal viewing may create for Namibia, if one considers job creation to be the dominant justification for its continuation, then surely common sense dictates that the seal viewing industry will create year round jobs (as it does in the Republic of South Africa) for indigent local Namibians as opposed to employment for only 5 months of the year. Seal viewing in South African supports a multi - million rand industry which spearheads a great deal of tourism income for our country. Also, you are no doubt aware that various campaigners worldwide have called for the boycott of all products from Namibia as well as a boycott against Namibian tourism. This, above all, should have been the main basis upon which the economics of eco-tourism and seal viewing should have been further investigated by your office. It is no secret that people worldwide are outraged by the Namibian annual seal harvest for varying reasons, such which have all been brought to your attention. We have put forward possible alternatives to the harvest highlighting specifically the benefits that such may have for Namibians and insofar as these have not been investigated, it is our submission that your office has not given due regard to another important issue which has been raised.

- 6.2 I furthermore wish to bring the following to your attention, in the 2000 report by Mr BJ Van Zyl, "Culling Seals in Namibia – A Conservation Necessity", the following was stated:

*"Anti-sustainable use NGO's. The Ministry of Fisheries had to deal with IFAW (International Fund for Animal Welfare) in the past pertaining to the issue of seal culling. The Ministry has offered IFAW the opportunity to "buy-out" the two right holders on conditions:*



- 
- a. they should pay the annual levies based on the annual TAC, and*
- b. they must establish a trust fund to pay the workers who will lose their jobs a pension"*

6.2.1 The statement above, also made by Mr BJ van Zyl, clearly emphasizes the fact that the Ministry itself has offered the opportunity of "buying out" the two right holders, which confirms the assumption that perhaps this industry is not as prosperous as it appears from the outset. For the Office of the Ombudsman not to examine the possibility of non-consumptive utilization (which has been proven to be a highly profitable and beneficial activity) for the citizens of Namibia, when the Ministry is making offers such as those above, is somewhat questionable. (The report can be viewed at: <http://www.iwmc.org/sustain/2ndSymposium/issues/issues-14-3.htm>)

## **(7) OUR RECOMMENDATIONS GOING FORWARD**

In light of your report and the finding that there are elements of impossibility of implementation of the Regulations in certain respects, it is our submission that your recommendation to the Minister to consider independent monitoring of the harvest, should be implemented as a matter of urgency, however, at this late stage, we are appreciative of the fact that logistically this may be difficult to organise prior to the start of the harvest for 2012. It is, suggested in this regard that, in addition to our earlier request for our client to be allowed observation rights during and after the harvest, that our client, Mr Francois Hugo, be allowed further permission to view and film the harvest, such which shall be subject to a strict confidentiality agreement between himself and the Minister that no such footage shall be released to the media



and/or the public and/or or to any other NGO's. This, as an interim measure, shall be one step towards consolidating the concerns as raised in your report.

Lobbying for the amendment of the Regulations, will be a lengthy process and shall not offer any immediate solution to the issues at hand. Once your recommendations have been discussed and effected by the Minister, then it will be possible for qualified independent experts and scientists to view the harvesting process and determine whether the regulations are in fact possible and are in fact being implemented correctly with the three step process. We feel, however, that our client has a vested interest in the welfare of seals, and his vast depth of knowledge and experience may prove to be invaluable to the Ministry and may prove to be of tremendous assistance in trying to address the clear faults that exist within the annual sealing industry in Namibia. For the seal harvest to continue indefinitely without official implementation of any of your recommendations seems unconscionable. Until such time as this is addressed, it can be argued that your office is allowing a harvest to continue with admittedly questionable methods.

#### (8) CONCLUSION

Mr Walters, with all due respect, we, along with many others, believed that referring this matter to you was the best course of action in light of the unwillingness of the Ministers to take any of our allegations seriously. Notwithstanding the fact that you have taken time to investigate our complaints, we are still not satisfied that all the issues raised have been sufficiently addressed. The issue of overutilization was one of the core aspects which was brought to your attention in our legal opinion and a **finding has not been made on such** and further no scientific data has been provided to disprove any of the allegations which were made in respect of the seal population and we further find it very hard to believe that the reason is that no such records exist. Surely, such a finding is crucial to the determination of whether the annual seal harvest is sustainable and whether it should continue. On this basis, it is our



submission that the seal harvest should not commence this year until such time as a ruling has been made on the sustainability of the harvesting activities (subject to your office **compelling** the release of the scientific data from the Minister of Fisheries) and we therefore respectfully suggest that an interim moratorium be issued until such a finding has been made and until your recommendations have been implemented. For harvesting to continue indefinitely without any assurance of whether the activities are in fact sustainable or not surely cannot be indicative of responsible environmental utilization principles.

The regulations are admittedly questionable in certain respects, such which needs to be addressed and cannot be left to the sealers themselves to implement. As an independent body of Namibia, it is our submission that your report should have made certain of your recommendations mandatory such as the amendment of the Regulations and the implementation of an independent monitoring system and also place a legal obligation on the Minister to make such public data on surveys available to the public. This would ensure that a system of checks and balances is in place to monitor such TAC's for purposes of ensuring that the welfare of the seal species is not in jeopardy. In light of Namibia's continued commitment to environmental prosperity, we feel that these are crucial aspects which should have been addressed in your report.

As a result of the very clear discrepancies that exist in the versions provided by our client and the Minister in respect of issues relating to the sustainability of the seal species, it is our suggestion further that, as per the agreement last year, all parties need to sit round a table and discuss a solution to this issue and reach consenses on the issue of overexploitation of the seal species in Namibia. In light of the numerous emails and other submissions received by your office in respect of your investigation, it is far from unreasonable to request that such a meeting take place where the parties can finally reach agreement on the issues addressed herein.



We furthermore reserve our rights in respect of our earlier request to you dated 3 July 2012 for our client to be granted consent by yourself to observe and document the activities of the seal harvest, alternatively, that you make the necessary arrangements with the Minister of Fisheries and Marine Resources to arrange the necessary consent for our client to observe and film the harvesting activities. I place on record that Mr Francois Hugo shall not release any footage to the media and shall not at any point interfere with the activities of the sealers whilst they are harvesting. Should the consent by yourself, alternatively by the Minister not be granted timeously, our client's rights to attend remain fully reserved. We are of the opinion that until such time as your recommendation of an independent monitoring system has been put in place, this proves to be the most effective solution.

Yours faithfully

Peter Anthony Edwards

**DAWSON EDWARDS & ASSOCIATES**

petere@dawsons.co.za

"A"



REPUBLIC OF NAMIBIA

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**MINISTRY OF JUSTICE**

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**GOVERNMENT ATTORNEY**

Tel: 284 61 2812451  
Fax: 284 61 222428  
Fac: 284 61 229788

Private Bag 13188  
WINDHOEK  
NAMIBIA

Enquiries: M. Khupo (281 2468)  
M. Hill (281 2900)

Our Ref: 402/10/A4/C

Your Ref: EM Angula

30 July, 2010

**LORENTZ ANGULA INC.  
LEGAL PRACTITIONERS  
LA CHAMBERS, AUSSPANN PLAZA  
DR, AGOSTINHO NETO ROAD  
WINDHOEK, NAMIBIA**

**BY FAX: (061) 379 701 &  
DELIVERY**

Dear Madam,

**RE: CULLING OF CAPE FUR SEALS**

We refer to our letter to you dated 21 July, 2010.

We have since consulted with the Ministry of Fisheries and Marine Resources on the above-referred matter.

We have been instructed as follows:

**Regarding your letter dated 10 June, 2010:**

Whilst the Ministry has no objection to providing a response to the various issues stated in your letter, they will require a reasonable time to put together the substantial

All official correspondence must be addressed to the Government Attorney



Information demanded. The Ministry requires about 2 weeks from today to put together a response to the requested information.

**Regarding your client's request to observe the harvesting:**

The Ministry generally has no objection to your client's observation of the "harvesting process" but will only allow it on terms acceptable to it. Our client's position is that the observation must be for the entire seal culling process, that is the pre-harvesting and harvesting processes.

An observation of the entire process will enable your client to have a full and proper appreciation of the entire culling process and not a skewed view thereof, which our client is afraid will happen if your client observes the actual harvesting only.

Therefore, our client is not amenable to your client observing the on-going harvesting as the entire culling process is already way on course. Our client will favorably consider your client's observation of the entire process for the coming year and which observation, if agreed, must commence in December, 2010 (at the end of the on-going harvesting).

These are the instructions we have for now. We will now await to hear from you. Due to circumstances beyond our control, we were only able to revert to you today and not on Wednesday, 28 July, 2010, as promised. We apologise for that.

Yours faithfully,

  
M. Khupe  
pp: GOVERNMENT ATTORNEY

"B"



REPUBLIC OF NAMIBIA

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**MINISTRY OF JUSTICE**  
**GOVERNMENT ATTORNEY**

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Tel: 264 61 2812451  
Fax: 264 61 222428  
Fax: 264 61 229788

Private Bag 13189  
WINDHOEK  
NAMIBIA

Enquiries: Mr. M. Khupe / Ms. M. Hill

Our Ref: 402/10/A4/C

Your Ref: PAE/SV

26 April, 2011

**DAWSON EDWARD & ASSOCIATES**  
**LEGAL PRACTITIONERS**  
**CAPE TOWN, SOUTH AFRICA**

BY FAX: 0027 21 462 4390

**ATTENTION: MR. P. A. EDWARDS**

Dear Sir,

**RE: REQUEST FOR INFORMATION RELATING TO THE ANNUAL CAPE FUR**  
**SEAL HARVEST AT THE CAPE CROSS SEAL COLONY**

We refer to your letter dated 8 April, 2011.

Kindly be informed that we have forwarded same to our client Ministry and now await the requested information from them.

Yours faithfully,



M. Hill

pp: GOVERNMENT ATTORNEY

All official correspondence must be addressed to the Government Attorney

Sherry

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**Subject:** The Ombudsman's Report on the Annual Seal Harvestin Namibia

**From:** Vanessa [<mailto:vboesak@ombudsman.org.na>]

**Sent:** 20 February 2012 02:30 PM

**To:** [steveroest@seashepherd.org](mailto:steveroest@seashepherd.org); [steve@seashepherd.org](mailto:steve@seashepherd.org); [bigbart@glolink.co.za](mailto:bigbart@glolink.co.za); 'The Seals of Nam'; [laureus@seashepherd.org](mailto:laureus@seashepherd.org); 'Nikki'; 'NSPCA Special Projects Unit'; 'Sisco Auala'; [deb-col@iway.na](mailto:deb-col@iway.na); [nschleberger@namibiatourism.com.na](mailto:nschleberger@namibiatourism.com.na); [marso@napha.com.na](mailto:marso@napha.com.na); 'Fanuel Demas'; 'Leigh-Anne'; [giltape@HANnamibia.com](mailto:giltape@HANnamibia.com); 'Peter Edwards'; 'Fink, Sheryl'; [claus@tailamiso.com](mailto:claus@tailamiso.com); [daniel.kali@debeersgroup.com](mailto:daniel.kali@debeersgroup.com); 'Gabes Uahengo'; [rlowe@africa-calls.de](mailto:rlowe@africa-calls.de); 'Mx Schwieger'

**Subject:** The Ombudsman's Report on the Annual Seal Harvestin Namibia



Dear All

In my previous correspondence I promised that my report and findings will be available by the end of March 2012, hoping that we will receive the results of the survey to determine the number of seals in Angola, South Africa and Namibia, by the Benguella Current Commission by mid January or February 2012.

However, I have now been informed by the Ministry of Fisheries and Marine Resources that the survey was in fact done during December 2011, and that the scientists of the respective countries are currently busy to analyse the data. The results of the survey are expected only at the end of May 2012.

In the light hereof, my report will consequently also be delayed. I need this information to draw conclusions and to make recommendations. I can assure you that I am in the meantime busy with the report.

Best regards

*John Walters*

**Ombudsman: Namibia**

**Tel: +264 (0)61 2073224**



10<sup>th</sup> July 2012

Dear John Walters,

#### SUMMATION OF SEAL HARVESTING TRENDS IN NAMIBIA

Conservation and environmental management is mandated into the Constitution of Namibia. The lack of protection or total abolishment of protection in legislation in Namibia for Cape fur seals is of paramount concern and importance to Seal Alert-SA. Considering Namibia's international obligation to the Convention in Trade of Endangered protected species, I assume as an independent, such concerns are similar, yet entirely absent from your findings or recommendations.

Allow me to quote a recent scientific paper by Kirkman, Chapter 3, "Based on size estimates given in Rand (1963a, 1963b, 1972) and where necessary, area comparisons using Google Earth5, the total area of the islands where seals were known to have bred previously (Best and Shaughnessy 1979, Shaughnessy 1982, 1984) **but are absent from in the present day, is approximately 1 035 ha** (n = 20) 6. **The total area of the islands where seals currently breed is only around 25.5 ha** (n = 20)7, of which 62 % comprises Vondeling Island (9 ha) and North Reef (7 ha), islands which were only re-colonised by seals in the 1990s. Therefore, **the total area of islands currently occupied by seals is at most about 2.5 % of the total area of islands they occupied historically**. It can be seen in Figure 6 that the combined coastline length of the large Atlas Bay and Wolf Bay colonies, together for which well over 100 000 new born pups have been counted in some years since 1980 (Chapter 2), corresponds to only about a third of the circumference of nearby Possession Island (90 ha), where the seal colony is extinct (also shown in the Figure are Long Islands, which at c. 1 ha is typically sized for an island with an extant seal colony). This puts into perspective how vast a seal colony the latter island (the third largest of the islands offshore of South Africa and Namibia) could previously have supported and casts doubt on the notion that space was limited in pre-exploitation times because of the relatively small size of the islands (e.g. Griffiths et al. 2005). Indeed, **when it is considered that a quarter of the current seal breeding population occurs on islands representing just 2.5 % of the total area of the islands previously occupied by seals**, the argument that the availability of space for breeding at mainland locations during the 20<sup>th</sup> century has allowed the seal population to surpass its pristine level, **does not seem plausible**. Given the above, had breeding space been the most important factor limiting the total seal population size historically, it was likely that carrying capacity would previously have been **considerably larger than at the current population size**."

Furthermore Kirkman states, "Based on the previous discussion, neither food nor breeding space was likely to have limited the seal population, historically, to levels below the current population size. Also, the seal population in the present day is subjected to **several sources of mortality which would have**

been absent or insignificant in the pristine population. These include high mortality incurred by first year animals in mainland colonies due to terrestrial predators (Oosthuizen et al. 1997) and effects of heat stress (de Villiers and Roux 1992), ongoing sealing in Namibia with current quotas exceeding 80 000 individuals a year (Morton et al. 2007) and the numbers of seals which drown incidentally in fishing nets or are deliberately killed by fishermen, which though unknown, are thought to be significant (David and Wickens 2003). When taking all this into account, **justifying reductions in seal numbers to reduce impacts on seabirds based on speculation that present numbers exceed historical numbers, is unmerited**". ([http://adu.org.za/pdf/Kirkman SP 2010 PhD thesis.pdf](http://adu.org.za/pdf/Kirkman_SP_2010_PhD_thesis.pdf)).

Clearly such summation applies equally to culling seals for its perceived impact on fisheries.

In addition, and perhaps the most concerning, is the several mass die-off's recorded since the late 1980s primarily in mainland colonies, due to commercial industrial overfishing and a lack of prey necessary for seals to survive in the future.

Pelagic fishing a primary source of prey for seals collapsed from a high commercially caught of 1,3 million tons in the late 1960s to a TAC effectively zero in 2000.

By your own admission, the South West African industry dates back to 1884, which held all rights to sealing on '**12 named islands**', such number is reflective of all the named islands off Namibia. The continued extinction of these 'seal islands' was directly related to seal harvesting. In response seals sought refuge on islets and rocks apparently due to the inaccessibility to sealers this unsuitable breeding habitat afforded the seals. By your own admission, or Annexure A seal harvests, no natural migration or population of the mainland occurred until 1927. Further, by your own admission mainland seal colony development, did not occur until 1922, and only occurred after Judel Lurie was awarded sole rights to kill and capture seals on **the unnamed islets and rocks** that remained for the seals offshore.

It stands to reason, after over-utilization of the seals on islands had directly caused these colony by colony seal populations to become extinct, such practices continued onto the last remaining remnants of offshore land as evident in the extinction of islands in Luderitz in 1922 and the cessation of sealing on all islands, islets and rocks by 1982.

Such extinction of this endemic seal, colony by colony, has occurred in 98% of its offshore habitat. As stated by Kirkman, "**that a quarter of the current seal breeding population occurs on islands representing just 2.5 % of the total area of the islands previously occupied by seals**", such a quarter of the seal population (it was estimated that only a quarter of the current seal breeding population occurs on islands (27.19 %  $\pm$  3.74 SD, n = 6 years), at the time sealing on offshore seal colonies ceased numbered **32 017 pups in 1983**. With no further harvesting, although still a protected seal and habitat under the SBSP act, declined substantially further to **22 334 pups recorded in 2002**.

A decline by **31%** as a protected species, in its preferred and endemic protected habitat is cause for serious concern, considering the loss already recorded of 98% of its previous existing offshore habitat. Even greater concern, this portion of the population (27%) has in the same period shrunk further too now represent just **20% of the seal population (2002)**.

Increasing the need for the protection status of this protected species to be re-evaluated and suitable legislation to be adopted, is that this offshore population is not subjected to the, and these include **high mortality incurred by first year animals in mainland colonies due to terrestrial predators (Oosthuizen**

et al. 1997) and effects of heat stress (de Villiers and Roux 1992), ongoing sealing in Namibia with current quotas exceeding 80 000 individuals a year (Morton et al. 2007) or disturbances to mainland colonies.

There is also a clear recorded pattern of overutilization of seals on offshore islands/islets or rocks in recent years, to which seals have not recovered from. After 1689 seals were harvested in 1976 on the islands in Luderitz, extinction followed the next year. After 1876 pups or 67% of the seal population was harvested in 1976 on Hollamsbird, the seal population declined to 45% of its numbers recorded in 1972. Likewise harvesting at all the remaining islets or rocks, after sealing ceased declined, with Sinclair by 53%, Albatross by 65%, Long by 37% and Hollamsbird by 55% (2002).

In more recent times, during the mass die-off in 1994, instead of a moratorium being introduced, a TAC of 28 000 pups was applied to Cape Cross reducing it by 53% the following year, likewise a TAC of 27 000 pups applied at Atlas Bay, reducing it by 73% the following year. As recently as 2006, another mass die-off occurred. A pup TAC of 50 000 was set for a Cape Cross, on a pup production recorded at 65 073 pups (December 2005). MFMR population data in 2008 shows Cape Cross decline by 24% to 50 000 pups.

The collapse of this species has been sorely overlooked for far too long, with just 2,5% of its former endemic breeding habitat remaining. A decline of 75% after seal harvesting to represent just 25% of the seal population, with this declining trend continuing after sealing ceased in 1983 by 31% to now reflect only 20% of the seal population.

It should be noted, the Cape fur seal today, originated from offshore islands prior to exploitation – now only 20% remains.

The historical trend in seal harvesting cannot be overlooked, **and the result that seal colonies harvested go extinct one by one**. First to go were the large seal islands(1884), then the small islets or rocks(1983) and now evidence is emerging of the collapse of mainland colonies as well, Dolphin Head and Cape Cross in 2007.

Seal Alert-SA respectfully requests that you recommend with urgency the protection status of seal populations remaining in their endemic offshore range be re-examined.

For the Seals  
Francois Hugo Seal Alert-SA

## The Methods Used for Killing Seal Pups during the Annual Seal Harvest in Namibia

Mr Walters, we have been instructed to bring the following points to your attention in respect of the methods used in killing the baby seal pups. In your report, reference is made to the North Atlantic Marine Mammal Commission Expert Group such which details and analyzes the different methods used in sealing.

It is submitted, with respect, that your report has erred in examining and drawing similarities between sealing activity in Canada and harvesting activity in Namibia. Upon closer examination, the circumstances that exist in these two contexts are vastly different, so much so that little to no resemblance can be drawn between the two. We shall detail such below and trust that you shall be appreciative and take cognizance of these differences and consider a review of this in light of your report.

### The Canadian Seal Hunt

- The Canadian Seal Hunt is administered by the Department of Fisheries and Oceans (DFO);
- The Harp Seal accounts for the majority of the seals harvested commercially, and according the DFO, the population of Harp Seas is in abundance and is estimated at 9 million animals, nearly four times the population in the 1970's;
- The official commercial “Canadian Seal Hunt” takes place from November 15 to June 14 as per the Marine Mammal Regulations. The majority of sealing occurs in late March and April.
- In 2010, the DFO issued a total of 12500 commercial sealing licences to sealers;
- The licensing policy in respect of sealing requires all commercial sealers to work under an experienced sealer for two years in order to obtain a

professional licence (two year apprenticeship) – in addition to this, the sealers are provided with comprehensive information relating to all aspects of sealing by the government, sealing industry as well as other stakeholders;

- The seal hunt affects only individual seals which are found in all areas in and around Canada most of the commercial sealing is done in Newfoundland, Labrador and the Gulf of Lawrence (such which form a large part of Canada);
- The seals targeted are NOT nursing seal pups and are not found in breeding colonies but only applies to seals which are living “INDEPENDENTLY” from their mothers (notably harp seals nurse for a period of 12 days) whereafter they are self-surviving – in this regard the Marine Mammal Regulations prohibit sealing on seals until such time as they have moulted their first coats and are living independently from their mothers. Seals are not usually until they reach about 25 days old;
- Harp Seals are usually located at individual location on ice floes and not in a big colony or group, such which makes sealing quick, effective and does not result in widespread panic and disturbance of the colony;
- The Harp Seal Population numbers 9 million and the average TAC between 2007 and 2010 has been 230 000 seals (it is imperative that it is borne in mind that this TAC applies to ALL SEALS in the 9 million unlike the Namibian seal harvest which applies the TAC purely to the number of nursing pups born, less than one year);
- Calculation of the Canadian TAC for Harp Seals amounts therefore to a TAC which applies to a mere 2,5% of the population, such which is subject to differ if the actual harvest numbers are applied (67000 in 2010) which then further amounts to only 0,7% of the population which is effectively hunted then;



- Upon further calculation, if you take into consideration the fact that the annual TAC is 230000 divided by 12500 permits issued to sealers; this translates into 1 seal per hunter per day. The hunter therefore has sufficient time within which to locate a targeted seal, shoot the seal and carry it back into the boat. This ensures that the hunter is given enough time to implement the “three step method” so as to minimize all possible suffering and cruelty of the animal;
- Furthermore, in Canada, the permits granted for sealing are applicable in and around Canada but is not restricted to a particular colony or area. Also the TAC applies to the population as a whole and not purely to pups;
- The methods utilized by the Canadian sealers are more humane, in that the sealers approach the seals on ice floes alternatively by boat and it is not possible to reach an individual seal across the slippery ice flow before it wriggles into the sea in an attempt to club it. As a result of this, the sealers usually shoot the seal from their boat to kill or immobilize it and clubbing is used predominantly as a secondary method to ensure that the seal is in fact dead;
- The Canadian Seal Hunt has implemented several different methods of observation of the sealing activities such which makes for a system which allows for checks and balances. Such observation includes surveillance by air, vessel monitoring systems (VMS), Sea patrol inspections, landing site patrol inspections as well as inspection at the buyer and processing facilities. In addition there are independent observers (which notably are fully trained professionals) who report to the Canadian Authorities in the case of any breaches of the Marine Mammal Regulations which are reported by such persons.
- In the case of any such violations which are observed in respect of the seal hunting activities, such must be reported to the Fisheries and Oceans Canada Office, and an investigation will be launched. If such sealer is found guilty, the

sanction for such activity varies from court imposed fines to confiscation of all gear and/or licence. Namibian law provides sanction for violations of such behaviour, however there is no independent monitoring system in place and therefore no accountability in place for the sealers should they violate the Regulation resulting in cruelty to the seals during harvesting.

- The difference between the Harp Seal and the Cape Fur Seal needs also to be mentioned. The Harp Seal is a relatively immobile animal, such which is unable to run on all four flippers (as is the case with the Cape Fur Seal) as its front flippers have rescinded and therefore the only way for this animal to escape is to wriggle away on its belly. It is therefore a rather stable target for a sealer to shoot and/or club effectively without the animal escaping. Or trying to escape vigorously;
- The sealers do not enter a breeding colony of seals (including nursing baby pups) and attempt to wildly (and yet effectively) club hundreds of baby pups after forcibly removing them from their mothers (which is highly traumatic for the mothers, the pups and the other seals present in the colony).

**I shall now record the situation present in Namibia:**

- 93% of the TAC is pup based ( a practice which has been internationally banned in many countries owing to the inherent cruelty which exists in such activity;
- The pups targeted are still nursing and highly dependent on their mothers;
- The seals targeted are present in a very large breeding colony and harvesting activity causes fear, stress, terror and most of all poses a disturbance to all seals present thereon;
- The seal pups are subject to very high rates of mortality owing to very high predation statistics as well as impacts of recorded mass die off's such which has purportedly been a result of starvation;

- The Cape Fur Seal pups are highly agile and as a result of which naturally will flee from human interference and attempt to get away from the sealers such which further demonstrates the blatant failure of the implementation of the regulation which require effective “three step method”;
- Cape fur seal pups are not immobile but are rather capable of maneuvering and trying to escape from the interfering humans;
- The pups are firstly forcibly and traumatically removed from their mothers (on whom they are notably still highly dependent) rounded up in a group and thereafter clubbed to death (notably, the regulations require one forcible hit such which will render the animal brain dead), however as illustrated several times, including by way of actual footage, it is not possible for 18 sealers to club hundreds of distressed baby seal pups (who are not in any way restrained) effectively within a somewhat limited time span and ensure that the so called three step process if being implemented effectively. A reasonable person cannot be led into believing that in a space of 90 minutes, hundreds of pups can be effectively clubbed only once to ensure death after the first hit;
- It is our submission that the lack of an independent monitoring system in place during the Namibian Seal Harvest results in the failure to ensure that the sealers face some sort of accountability should they deliberately violate the Regulations.
- It is our submission that the clubbing of the baby seal pups is not as regulated as per the report of the Ombudsman and we are furthermore of the opinion that the seals are repeatedly being beaten in an attempt to accurately strike them on the head. It is our submission that the “three step process” is NOT being adhered to at Cape Cross and/or other harvesting sites, and we are furthermore of the opinion that the three step method is suitable for the Canadian seal hunt as those seals are hunted in completely different circumstances to those that exist at Cape Cross and in Namibia. The three step

method can easily be applied to an individual seal, whereupon the sealer can effectively attend to the step required therein. Namibian conditions restrict this in all aspects.

Your report acknowledges that the sealing Regulations are not impossible to implement but rather that there is always room for improvement. With all due respect Mr Walters, as illustrated above, it is not a matter of improvement with the current regulations. It is a fact that the circumstances present at Cape Cross do NOT make for a humane harvest to take place. It is furthermore placed on record that all comparisons to harvests in Canada are not a basis for allowing this harvest to continue.