Our ref: PAE/sv/4340

1 June 2011

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Re: Legalities of the Annual Seal Harvest at the Cape Cross Seal Reserve in Namibia

With reference to your email dated 30 March 2011 and further to our several telephonic conversations and emails we revert herewith.

OVERVIEW

The content of this legal opinion concerns the Annual Seal Harvest in the Republic of Namibia. It examines various aspects of the harvest, from the applicable legal instruments to practical implementation of them. This document should serve as the basis upon which the Namibian authorities need **URGENTLY** examine the existing laws and regulations governing seal management as well as the annual seal harvest in Namibia. It is clear that, in line with the evidence presented in this opinion and subject to such evidence being made available to the authorities, that there are serious violations that have and still are taking place by the Ministry and the sealers alike.

This legal opinion has identified several defects with the framework within which the annual seal harvest is being carried out. Further to this, the seal management laws are not being properly and effectively implemented by the necessary governmental departments. It is our submission, that the authorities consider putting the annual harvest on hold pending further investigation into the matter. The evidence that we have been presented with provides a disturbing insight into the survival of a species which is already considered endangered.

As per the evidence presented, we are of the opinion that Namibia ought to convene a Legal Commission on Sealing in which all relevant parties are given an opportunity to present their case and address the concerns raised in this opinion. As noted in the content of this opinion, none of the previous four Commissions on Sealing have addressed these aspects which have no doubt lead to the current situation four decades later. The Namibian Commission on Fishing in 1991 stated, "The investigation is limited to the exploitation of fish as defined in section 1 of the Sea Fisheries Act. Seals are not included in this definition and consequently also the industry of sealing excluded from investigation. "The Commission was unsure of its mandate to delve into matters concerning the harvesting and/or culling of seals. The seal resource is not governed by the Sea Fisheries Act but by the Sea Birds and Seals Protection Act." [Attached as an appendix to this legal opinion is the summary provided by you in respect of the relevant Seal Commissions – Appendix 1].

Namibia has ensured the rapid development of a comprehensive fisheries management regime and it has further established itself as one of the leaders among developing nations in accepting and implementing its responsibilities under international laws relating to fisheries. In light of this commitment, the 2007 meeting that was held between the Prime Minister of Namibia and Seal Alert – SA, the Prime Minister made the point that if Seal Alert-SA could demonstrate that seal harvesting destabilises the country or violates existing legislation or is unlawful, then Namibia would not want to continue its seal harvesting policy. As a result, the conclusion to be drawn is that Namibia does not want a policy whereby harvesting is unlawful or in contravention with existing legislation. It is our submission that the annual seal harvest is not in line with the principles of the Namibian Constitution, it is in violation of Animal Protection Laws effective in the Republic of Namibia and further the MRA regulations setting out the manner in which seal harvesting should take place are impossible to implement and therefore should be deemed invalid. Lastly, we are of the opinion that principles of jurisdiction as contained in the acts are not being adhered to and as a result of this, it is unclear which department is exercising control over the Cape Cross Seal Reserve and which department is responsible for the proper implementation and effective monitoring of the annual seal harvest.

The Cape Cross Seal Reserve is a major tourist attraction which contributes significantly to the Namibian economy each year. The seal species therefore, should be preserved in line

with principles of conservation and sustainability which are enshrined in the Namibian Constitution as well as the relevant legislation.

(1) THE SEAL POPULATION IN NAMIBIA

1.1 Early historical accounts of seal populations relate solely to seals on offshore islands mainly due to the fact that no mainland seal population existed prior to exploitation of the seal species. It is therefore pertinent to take notice of some historical accounts of seals on islands, such as 'Seal Island' which was described by Sir Henry Middleton in 1604 as "... there is not an island in the world more populated with seals than this one, the whole seashore lies overspread with seals, a sight honourable to behold. In 1832 Captain Morrell reported large number of seal carcasses on Possession, Seal and Penguin Islands in Namibia exceeding 500 000 according to his estimates. These same islands are today extinct of the Cape Fur Seal Species.

1.2 It is relevant to note that under government sealing operations between 1901 and 1972 [which took place exclusively on islands] disturbed seals fled to the mainland, and the first mainland seal breeding colonies developed from 1940 onwards.

1.3 It should also be noted that after the Guano Island Sealing Division ceased sealing on islands due to the US ban on imports in 1972, private sealing concessions for periods between 5 and 25 years were granted for seal island colonies at Hollamsbird Island, Islands within Luderitz, Long Island, Albatross Rock and Sinclair Island.

1.4 It should be noted further that in terms of the SBSP Act of 1973, the Minister's Jurisdiction extends only to Namibian waters, the islands listed under Schedule 1 of the Act and up to the high water mark. In addition, the sealing regulations of 1976 adopted by Namibia were based on sealing methods which were developed for harvesting of seals on islands.

1.5 Since 1952 seals were restricted to "islets" and as a result of this, all offshore seal breeding occurred on small rocks less than 2ha in size. These rocks were typically low lying and were located in areas which were subject to very rough seas with little or no safe anchorage for boats wanting to land upon these crowded offshore seal island colonies.

1.6 It is within this context of seal harvesting, that the commercial viability of such activity was extremely limited. As sealing season commenced at the start of winter, it brought with it approaching north western storms which required sealers to travel considerable distances by boat to reach these offshore islands and as processing facilities on islands were extremely limited, such commercial activity proved unprofitable given the low value of less than $2 US dollars a skin. More importantly this method of seal harvesting was unsustainable even on the larger islands as such activity lead to the permanent collapse of the seal colony from such daily disturbance, which resulted in the eventual complete extinction of these seal colonies. As a result of unsustainable seal harvesting on islands, seal population numbers declined by over 90% and have never recovered, and seal habitat has been reduced by 96%.

1.7 Scientifically it has been peer reviewed and accepted that prior to human exploitation of seals, **no mainland seal breeding colonies existed**, even during times of pristine and peak population levels. It has further been accepted that historical seal harvesting activity exterminated all the offshore seal breeding colonies, bringing the species close to collapse and extinction by the start of the 1900s. This prompted government to introduce protection of the seal species for the first time in 1893. Following this decision by government, seal harvests were restricted to certain seasons together with an age determined regulatory system. The administration and actual harvest was also undertaken by the Guano Island Sealing Division of Sea Fisheries. This in turn, resulted in annual harvests having a greater impact upon the remaining herds of seals so as to cause unnatural migration away from these island seal colonies to areas of fewer disturbances which seals found predominantly in the diamond restricted mainland. In 1952, government introduced policies that

restricted seals to "islets" and prevented recovery or re-population of extinct or exterminated seal islands. After 1940, when the seal population was less than 50% of the seal population surveyed for the first time in 1972 [which it later became listed as a CITES appendix II endangered species in 1977], **mainland seal breeding colonies unnaturally developed.**

1.8 In summary, prior to government's harvesting of seals under the Guano Island Sealing Division, no mainland colonies originally existed or were harvested until mainland breeding of seals begun in 1940 when government started harvesting these displaced seal colonies on the mainland and thereafter in 1972 introduced the SBSP Act with the aim of awarding private sealing concessions.

1.9 The first seal pup population survey was undertaken in 1972. This survey found that islands like Possession Island (90ha), Seal Island (44ha) and many others were already exterminated due to seal harvesting and it further found that none of these islands had recovered effectively leaving them extinct to seals. The 13 islands listed under Schedule 1 of the SBSP Act, found breeding colonies of seals on only 4 of these islands and in addition a further 5 seal colonies within Namibian waters [not listed under Schedule 1] were identified. Of the total 13 islands whose land area is 199 ha, breeding seals had been reduced to 7,6 ha or 3,8%. The total loss of offshore breeding habitat amounted to over 94%. From projected pristine population levels prior to exploitation, harvesting on islands by state sealers reduced the seal population to in excess of 93%.

1.10 It is within this context and according to your evidence that ever since the first seal survey in 1972, 8 offshore seal colonies producing 44 995 pups. Since Namibian independence between the period 1990 - 2000, survey's reveal that these offshore seal colonies under the jurisdiction of the SBSP Act declined 27%, from 48 272 to 35 596 pups, and after the SBSP Act was repealed and seals incorporated into MRA, between the period 2000 - 2006, these seal colonies declined a further 12%, from 35 596 to 31 324 pups. The seal population has effectively declined by more than 90% from pre-exploitation levels and since Namibian independence in 1990, by a further 35%.

1.11 According to our understanding and your further evidence, the Minister of Fisheries has awarded no permits or seal harvesting TAC's for any of the islands since independence, excluding the forced removal of seals from Mercury Island in 1990. Considering the current pup TAC of 85 000, such TAC if applied correctly within the Minister's lawful jurisdiction [which ends at the high water mark] would be more than double the total production of all pups upon these islands. The sealing industry itself has stated a pup TAC of less than 60 000 is not commercially viable. It is thus clear that seals have been forced to seek safer habitats following the continued disruption of their preferred habitats (being islands) which has resulted in these animals being forced to choose the mainland as an alternative. Notably, islands which historically were home to thousands of seals are now extinct, which in turn further raises the concern that if sealing activity is allowed to continue on the mainland in line with the MRA, the seal colony may collapse in the same manner which defies all principles of sustainability. Offshore habitats are where seals originated from and the subsequent fleeing of these seals from sealing activity was the cause of its collapse. A point of further concern is the fact that 90% of these seal colonies have not repopulated, even after sealing stopped on these islands in 1972.

1.12 Notably, **environmental sustainability** envisions a process whereby current processes of interaction with the environment are pursued with the idea of **keeping the environment as pristine as naturally possible based** on ideal-seeking behaviour. An "unsustainable situation" occurs when natural capital (the sum total of nature's resources) is used up faster than it can be replenished. Sustainability requires that human activity only uses nature's resources at a rate at which they can be replenished naturally. It is our submission that, in light of the evidence presented to us in respect of the annual seal harvest in Namibia, this principle is not being observed or implemented.

1.13 In the course of further research as well as your detailed accounts, we understand that mass die-off's of Cape Fur Seals occurred in 1988, 1989, 1995,

2000, 2002 and 2006, and these events were similar in numbers recorded in the 1994 incident. Seal Biologist at MFMR Dr JP Roux wrote, "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".

1.14 The Minister of Fisheries, tasked with responsible utilization, conservation, protection and promotion of marine resources, should **NOT** in light of the mass die off's of the seal species, permit double the number of seal pups to be harvested to a record high of 85 000 pups in 2006, on a seal population at least 27% lower than the peak in the seal population in 1993, some 13 years earlier and which has since suffered several mass die-off's.

1.15 As further evidence of this, it is stated by MFMR that a pup TAC of less than 30% of the pups born in each sealing colony is a sustainable TAC, yet the actual harvest figures clearly show that sealers struggled to fill these "sustainable" TAC's averaging just 60% of their quota. The only explanation for this failure to harvest the full TAC of 30% of the pups born was that there are insufficient pups present in these sealing colonies to even account for 30% of the pups. Pup population surveys are thus either over inflated or seal mortality is far higher than that projected of 30% of the pups in their first year from birth.

1.16 There are two significant periods of seal population surveys to consider in respect of legislation, and within those seal populations which fell within the jurisdiction, management and control of SBSP and MRA and those that fell outside, yet still occurred within Namibia;

- **1990 – 2000 (Seals protected under SBSP Act).**
  - Seal pup survey on islands within SBSP jurisdiction that were not harvested, declined 27%, from 48 272 to 35 596.
  - Seal pup survey on mainland outside SBSP jurisdiction that were harvested, increased 12%, from 136 265 to 153 285.
- **2000 – 2006 (Seals incorporated into MRA with the SBSP Act repealed).**
  - Seal pup survey on islands within MRA jurisdiction that were not harvested, declined a further 12%, from 35 596 to 31 324.
  - Seal pup survey on mainland outside MRA jurisdiction that were harvested, increased a further 7%, from 153 285 to 164 121.

1.17 It is somewhat scientifically strange if not impossible that the 17 islands falling under the protection of SBSP Act, where no seal harvesting took place during the above period, continued to record 10 of the 17 islands extinct to seals, with seals remaining on just 7,6 ha or 3,8% of the protected offshore island area. The seal population has effectively declined by more than 90% from pre-exploitation levels and since Namibian independence by a further 35%.

1.18 In complete contradiction of the above, seals that fell outside the jurisdiction of both SBSP Act and MRA, where jackal predation alone accounts for up to 35% of the pups dying, that were annually harvested increasingly from 30 000 to 85 000, and with mass die-off's affecting in particular these mainland colonies in 1994, 1995, 2000 and 2002, where up to 90% of the pups died and half the adult seal population in each of these years, would in pure scientific contradiction show increased growth of 21%, and with 8 new mainland breeding colonies being established.

1.19 It should be noted Cape fur seals have evolved on offshore islands for over 5 million years and it is only since exploitation and extermination of an amount which is in excess of 90% of the seal island colonies through seal harvesting that mainland seal colonies have developed after the 1940s. Some scientists attribute a recent northward shift in prey availability, but it is in the south where the greatest recovery of fish has occurred with no mass die-off. It would be relevant to note that South Africa's only mainland seal colony located only 120km away, where seal harvesting ceased in 1990, saw the pup production increase from 74 620 to 80 897, with no mass die-off's or annual harvesting of seal pups. Any notion therefore that a seal harvest controls the seal population is therefore simply incorrect.

(2) THE CONSTITUTION OF THE REPUBLIC OF NAMIBIA

2.1 The Constitution of the Republic of Namibia contains a number of fundamental principles which are enshrined in the wording of the text. Article 95 of the Constitution contains 'Principles of State Policy' with the subheading "Promotion of the Welfare of the People" which states:

The State shall actively promote and maintain the welfare of the people by adopting, *inter alia*, policies aimed at the following:

"...

(l) maintenance of ecosystems, essential ecological processes and biological diversity of Namibia and **utilization of living natural resources on a sustainable basis** for the benefit of all Namibians, both present and future."

2.2 This provision in the Constitution of the Republic of Namibia clearly envisions precautionary measures in respect of conservation of ecosystems around Namibia in a manner which promotes the sustainability of particular species for the benefit of Namibians in the present as well as the future.

2.3 Given the fact that the Cape Cross Seal Colony is located along the coast of Namibia is a major breeding ground for the Cape Fur Seal and further that the Colony has been declared a Conservation area to which access is restricted to certain periods, there is little doubt that it was such ecosystems along with their diversity which the Constitution envisioned in expending the principle of sustainability.

2.4 Further to this, a recent article, *'National pride campaign Launched'* released by the Namibian state owned newspaper, *Newera*, dated 28 April 2011, states:

"A Motivational Campaign to instill national pride among Namibians has been rolled out, and as of today, each Namibian is being asked to strive for the best in all they do for the sake of the country 'doing only the best for our country.
The compelling reason for all to do this, says President Hifikepunye Pohamba, should be "because I am a proud citizen".
"Positive attitudes of conservation and protection of the natural environment, and all that promote general decent human behaviour are encouraged."

2.4.1 This national pride campaign comes at a time when, in less than two months, 85000 seal pups will be cruelly beaten, terrified and moreover slaughtered at the hand of a select few sealers whilst a further 6000 seal bulls will also suffer the wrath of the sealing community.

2.5 The overall authority to utilize Cape fur seals in Namibia lies in the Constitution, to which both the Prime Minister and Minister of Fisheries has referred to Article 95 (1) , "... utilization of living natural resources on a sustainable basis for all Namibians".
We are instructed that during the Seal Alert-SA meeting with the Prime Minister and the presentation given by the MFMR in 2007, it was accepted that:
"Utilization of seals can either consumptive or non-consumption according to applicable legislation".

(1) **Non-consumptive utilization** – Seal Viewing by Tourists is currently taking place at Cape Frio, Cape Cross, Pelican Point and Sperregebiet. One example of non consumptive utilization is 'Mola Mola Cruises', a boat based seal viewing operation which takes tourists to view seals at Pelican Point. The operation has 8 boats which are each capable of carrying 98 people at a cost of N$480 per person.

- Although the Ministry of Fisheries and Marine Resources supplied figures of 53 000 to 73 000 visitors paying to visit Cape Cross Seal Colony during 2007 allegedly earning N$2 million for the Ministry of Environment and Tourism (MET) as opposed to the Ministry of Fisheires, these figures are disputed by the following:
- Visitors numbers have increased from 70 000 to 100 000 for the Cape Cross Reserve. Foreign tourists are charged an N$80 entrance fee per person; N$10 per vehicle or N$40 per bus.
- It is therefore estimated that Cape Cross Seal Reserve generates over N$8 million and a further N$7 million from boat-based seal viewing operators in Luderitz. It is therefore estimated that seal viewing in Namibia generates in excess of N$15 million or three-times the revenue earned from seal harvesting. It is thus imperative to emphasize the importance and **earning potential** of the non consumptive utilization of seals.

2.6 Since independence in 1990, the Minister of Fisheries has issued sealing permits or rights and issued TAC's for three seal colonies found breeding on the mainland (Cape Cross, Wolf and Atlas Bay); these seal breeding colonies occur along 1-2km of coastline and up to 150 metres inland above the high water mark. Approximately 60 percent of the seal breeding population occurs within these three colonies.

- Between 1990 – 2000, under the Seabirds and Seals Protection Act of 1973;
  - Whose jurisdiction is clearly defined as ending at the "high-water mark".

- Between 2000 to present, under the Marine Resources Act of 2000;
  - Whose jurisdiction is also clearly defined as "Namibian waters" ...and includes the seabed up to the high water mark".

2.7 It is our submission that the Minister has exceeded his jurisdiction in that the harvest takes place in an area which is outside this defined area and as a result the seal harvest has in fact been in contravention of the provisions of the MRA. The regulations in addition, as will be discussed later, require the seal pups to be driven in an area which is clearly outside the lawful jurisdiction of the designated Minister

2.8 Under General Policy for Conservation of and Control over Marine Resources: The Marine Resources Act of 2000 describes the Minister's statutory duties under this Act very clearly, namely;

- (1) "The Minister may from time to time determine the general policy with regard to the conservation and utilization of marine resources in order to realize the **greatest benefit for all Namibians** both present and future".
- (2) "The management, protection and utilization of marine resources in Namibia and Namibian waters shall be subject to this Act".

2.9 If one considers the benefits to be derived from either seal harvesting or seal viewing, it is clear from the statistics that both revenue and job creation enjoy a much greater benefit from seal viewing as opposed to seal harvesting. In addition, the benefit that is to be enjoyed from seal viewing comes without the highly controversial task of killing thousands of baby seals to which there are a tremendous amount of moral objections worldwide.

2.10 Seal viewing in Namibia, currently exceeds the revenue from seal harvesting, by three times, earning as much as $15 million together with an even greater earning potential. These operations (as opposed to seal harvesting) also provide year round employment for Namibians currently employed and has the potential to benefit the Namibian tourism economy on an even greater scale.

2.11 It is therefore clear that the Ministry of Fisheries has erred in its statutory duties under the Marine Resource Act of 2000, to promote both consumptive and non-consumptive utilization of seals, and has failed to consider the immense benefits that the latter approach may yield. There is great earning potential and revenue to be made from seal viewing which would only result in increased investment and job creation in this industry. The controversial seal harvest, however, has incurred seal import bans in the US and 27-nations of the European Union, including seal import bans from its two largest tourism country's Netherlands and Germany, and has caused millions of potential tourist visitors to consider boycotting Namibia's products and tourism.

2.12 Serious questions need to be asked why the Minister of Fisheries, adopted seal harvesting policies over seal viewing, when;

- MFMR seal biologists confirmed a mass seal die-off in 1988 and 1989, in which 90% of the pups died, just prior to Namibia's independence.
- Ignored the scientific recommendations in three previous Commissions on sealing, which saw South Africa end its commercial seal harvesting policy, and after two decades experienced a stabilisation of its seal population and some of its most important fish stocks recovery to highest numbers yet recorded.
- When sealing rights had lapse in 1987 and were not renewed, where no market as confirmed by sealers existed for pup skins, and in which its own Commission on Fishing in 1991, felt its mandate did not include seals, as seals were excluded from the Fisheries Act and protected by the seals own protection Act.
- Where 9 former sealing countries ended their commercial seal harvesting policies, and developed instead seal viewing, sharing a market that has grown to 1,3 million visitors worth in excess of N$84 million to instead become the only country in the southern hemisphere still harvesting seals.

- To incur seal import bans in the US and the 27-nations of the European Union, including two of its largest tourism partners Netherlands and Germany.
- Continued to demand that the sealing industry continue harvesting seals, when the sealing industry itself had offered to sell-out and be shut down in 2009.

3. BACKGROUND

3.1 The Cape Cross Seal Reserve situated in Namibia is one of several protected areas in Namibia which falls under the Ministry of Environment and Tourism (MET). The Cape Cross Seal Reserve was proclaimed in 1968 for the protection of the Cape Fur Seal Species. Since 1972, the seal colony at Cape Cross has become one of the largest tourist attractions in Namibia which has seen visitor numbers grow from 6 300 to 105 000 persons per annum. The Reserve itself generates a huge amount of revenue for the Namibian Tourism Industry, a figure which exceeds N$ 8million, which notably is 80-times the revenue the Minister of Fisheries receives from levies incurred through harvesting seals in the same seal colony. Further to this, there are several boat based seal viewing operations which bring in an estimated N$15 million in revenue. One such South African offshore seal boat viewing sees figures of 300 000 tourists who generate millions in ticket sales alone. Notably, Namibia has not undertaken to offshore seal viewing activity despite the numbers of these animals that visit colonies around Namibia annually.

3.2 The MET has several Directorates' which exist whose responsibility it is to carry out the objectives envisioned by the Ministry. Of particular importance to the Seal Reserve are the Parks and Wildlife Management (under which the Cape Cross Seal Reserve falls) as well as the Directorate of the Scientific Services. The Scientific Services, established in 2000, whose mission is to:
"Promote the maintenance and rehabilitation of essential ecological processes, life support systems and biological diversity, and the sustainable utilization of

natural resources, by providing a scientific basis for an informed decision making process"

3.3 Every year, from July to November, seal harvesting occurs at the Cape Cross Seal Reserve purportedly under the auspices of the Ministry of Fisheries and Marine Resources. The annual harvesting is governed by the Marine Resources Act of 2000 as well as the Sealing Regulations of 2001.

3.4 Internationally, Namibia is a party to the Convention on International Trade of Endangered Species (CITES) to which the Cape Fur Seal (Arctocephalus Pusillus Pusillus) is listed on Annexure II of the Convention. The body responsible for implementation of the CITES is the Directorate of Scientific Services for the Ministry of Environment and Tourism.

4. THE LEGAL FRAMEWORK

The Republic of Namibia became independent in 1990, and thereafter the management, protection and utilization of the seal resource was in terms of the Sea Birds and Seal Protection Act of 1973. The designated minister under the act was the Minister of Economic Affairs. The jurisdiction that this minister was allocated in terms of this act was clearly defined as all Namibian waters up to the high water mark as well as islands. In 2000, the Marine Resources Act was enacted together with the MRA Regulations of 2001.

4.1 The Marine Resources Act of 2000 (MRA) repealed the earlier Sea Bird and Seal Protection Act 46 of 1973 (SBSP Act) which was enacted to provide for the *"control, protection, capture and killing, and lastly for the disposal of the products of sea birds and seals."*

4.2 The SBSP Act included the Sealing Regulations of 1976 which set out various aspects of the sealing industry with provisions dedicated primarily to the methods that were to be used in the harvesting process. The Regulations set out a specific killing procedure to which we shall refer to later in this opinion.

4.2.1 In terms of the SBSP Act, the Minister (Minister of Economic Affairs) had control over:

"(a) sea birds and seals as well as over the acquisition, gathering and disposal of all products of seabirds and seals, within the Republic and the territorial waters and fishing zone of the Republic...on any island specified in Schedule 1; and

(b) Islands"

4.3 In terms of the SBSP Act, seals were awarded protection in certain areas, whereby prohibitions prevented people from accessing certain areas and further from harming sea birds and seals whilst in these areas.

4.3.1 The prohibitions are listed in Section 3 of the act and are as follows:

No person shall:

(a) set foot on or remain upon any island;

(b) upon any island or within the territorial waters or fishing zone of the Republic or along the coast of the republic between the low water mark as defined in Section 1 of the Sea Shore Act, 1935 (Act 21 of 1935), and the high water mark as so defined, pursue or shoot at or wilfully disturb, kill or capture any bird or seal;

...

except in the performance of his duties under this act or under the authority and subject to the conditions of an exemption granted by or under this act or of a permit.

4.3.2 In terms of these provisions, the lawful jurisdiction that the dedicated Minister of Economic Affairs was permitted to control was restricted to the 'high water mark' which as defined in the Sea Shore Act of 1935 reads as follows:

"high water mark" is defined as 'the highest line reached by the water of the sea during ordinary storms occurring during the most stormy period of the year, excluding exceptional or abnormal floods' whilst "low water

mark" is defined as 'the lowest line to which the water of the sea recedes during periods of ordinary spring tides'.

4.3.3 Having read and understood the above provisions, it is our opinion that the jurisdiction of the Minister over the designated area in terms of the SBSP Act **ends at the high water mark**. It is imperative that we emphasize that the areas over which the Minister has control (which includes islands and area until the high water mark), **does not include** the area above the high water mark which when read with the MRA Regulations are contradictory in that the seals should be driven "away from the sea" in order for harvesting to occur.

4.3.4 As a conclusion, we are of the opinion that the Minister was NOT acting lawfully in allowing regulations that clearly violated the provisions of the Act.

4.4 This having been said, the Sealing Regulations of 1976, state the following:

"...

(2) A holder of a right relating to the harvest of seals must identify a group of pups to be harvested, which **must be driven away from the sea** and allowed to settle down before clubbing begins, care taken to facilitate the escape of adult seals

..."

4.5 This clearly implies that the harvesting and ultimately the act of clubbing the seals falls **outside** the area of jurisdiction of the designated Minister as the regulations themselves require the pups to be driven away from the sea in order for the killing to take place.

4.6 Accordingly, given the fact that the harvesting of seals was taking place outside the jurisdictional area which the SBSP Act assigned to the Minister, we are of

the opinion that the Minister of Fisheries, who was responsible for the granting of the right to harvest the seals on the Seal Reserve, may have been acting without authorisation which is *ultra vires* and ultimately invalid.

4.7 Furthermore, we are instructed that on the 18th of August 2995, a freelance photographer, Mr. John Liebenberg was arrested by officials of the Ministry of Fisheries for several hours after attempting to film the clubbing of seals during that year's harvest. Mr. Liebenberg was given a "spot fine" of N$30 for trespassing, however, the fine was issued by officials of the Ministry of Environment and Tourism (MET). This was further aggravated by the fact that Mr. Jan Jurgens (Permanent Secretary of MFMR at the time) was quoted as saying: "...the processing (of seals) is done on private property over which we (the government) have no jurisdiction" which is highly contradictory considering that Cape Cross is a proclaimed seal reserve situated on state land. This incident makes it clear that the Ministry of Fisheries **had no legal basis** with which to charge the photographer and as a result had to rely on the Ministry of Environment and Tourism (MET) to lay a charge of trespassing.

THE NEW ACT

4.8 The MRA, which came into effect in 2000, provides for "*the conservation of the marine ecosystem and the responsible utilisation, conservation, protection and promotion of marine resources on* ***a sustainable*** *basis; for that purpose to provide for the exercise of control over marine resources; and to provide for matters connected therewith.*"

4.9 Further section 3 of the MRA deals with the Control over marine resources, of which subsection (2) states "The management, protection and utilization of marine resources in Namibia and Namibian waters shall be subject to this Act." This provision, like its predecessor, gives the Ministry jurisdiction over an area **up to the high water mark.** Again we are of the opinion that the designated was acting outside the boundaries of his jurisdiction due to the fact that the regulations require that the seals be driven away from the sea in order to be

harvested which means that at the time that the seals are killed, they are within the jurisdiction of the Ministry of Environment and Tourism rather than the Ministry of Fisheries, despite seals being a 'marine resource'

4.10 The Marine Resources Act permits the harvest of any "marine resource" which includes "all marine organisms including... vertebrae and invertebrae animals..." Further to this, Section 33 of the Act expressly provides for the Minister to have the power to allow for the harvest of any marine resource for commercial purposes. It is imperative that we emphasize that in terms of the MRA, the Minister is authorised to allow the harvesting of marine resources (which includes seals as these are vertebrae animals) and therefore, provided that the harvesting of these seals takes place **strictly** in accordance with the harvesting rights granted to the concession holder as well as the MRA regulations then such persons would not be in violation of the APA due to the fact that the APA is subject to any other law which would thus include the MRA.

4.11 Having said this, however, we are of the opinion that:

4.11.1 The Minister is acting outside the scope of his jurisdiction in that the act affords him jurisdiction up to the high water mark. The regulations clearly state that the high water mark is where the Minister's authority ends. Therefore, the current acts of seal harvesting are **ILLEGAL** in that they are being carried out in an area that is not authorised in terms of the MRA. The regulations are as a result contradictory and wholly inadequate in governing the current acts of seal harvesting.

4.12 We are further of the opinion that the Ministry of Environment and Tourism should be involved in the allocation of harvesting rights, is the fact that the Cape Cross Seal Reserve is a major tourist attraction which contributes significantly to the economy of Namibia and therefore all harvesting of this resource should involve this department as they are the lawful authority with jurisdiction over the area.

4.13 Secondly, as shall be seen later in this opinion, it is clear that it is **impossible** to comply with the regulations as prescribed by the MRA in respect of the seal harvest at Cape Cross. Further, due to the fact that compliance with the MRA regulations is simply impossible given the circumstances which exist at Cape Cross, we are of the opinion that the **current manner in which the seals are killed IS in violation with the APA.**

4.14 Further to this, the repeal of the SBSP Act and the implementation of the MRA in 2000 have resulted in all the protection which was awarded to Cape Fur Seals under the SBSP Act having fallen away with the implementation of the new act.

4.15 Another point of concern within the new MRA is the ambiguity that is created when the act is read together with the Regulations. Part VI Section 32 of the MRA reads as follows:

"32(1) No person shall in Namibia or in Namibian waters harvest any marine resource for commercial purposes except under a right, an exploratory right or a fisheries agreement" whilst section 18 of the MRA Regulations reads as follows:

"18(1) Except in terms of a right, an exploratory right or an exemption granted under section 62(1)(a) of the Act, a person may not –

(a) Harvest any species of marine mammal **other than the Cape Fur Seal** (Arctocephalus Pusillus) or any species of marine turtle".

...

4.16 It is clear, that there is inconsistency between these two provisions relating to the rights granted to harvest the seal species. A literal interpretation of the MRA provision leads to the clear conclusion that no harvesting of any species may be undertaken **unless** a person has been lawfully issued with a right, exploratory right or fisheries agreement. However, the MRA regulations are in clear contradiction with this interpretation by exempting the Cape Fur Seal from harvest in terms of such a right, exploratory right or an exemption. The direct interpretation of such a provision is that seals may be harvested

without any prior authorisation by a governmental department authorised to issue such permits or right.

4.17 Such a literal interpretation may not have been the intention of the Minister in drafting the Regulations; however, this point again emphasizes the inefficiency of these Regulations in affording seals the necessary protection which they were provided with under the Sea Birds and Seal Protection Act of 1973.

4.18 It is our submission that the MRA as well as the regulations are wholly inadequate and open to interpretation and as a result are unable to afford the seals the necessary protection with which they were provided under a previous act and further that this is in violation of the CITES Convention to which Namibia is a party. This arises from the fact that CITES governs the international trade and export of particular species which includes the Cape Fur Seal in Appendix II of the Convention. The CITES Convention requires a management authority to ensure that any exports of such a species are **NOT** a threat to the survival of the species or harvested in violation of any laws protecting seals within Namibia. Given the fact that when the relevant provisions of the MRA and the Regulations are read together, one may come to the conclusion that seals may be harvested in a manner which is essentially unregulated and not subject to a right, exploratory right or fisheries agreement, it is our submission that it is in contravention of the terms of the CITES Convention and ultimately **unlawful.**

4.19 The Marine Resources Act prescribes certain *'Management and Control Measures'* which include:

47. "(3) The Minister may prescribe measures for the conservation of marine resources, for the control of harvesting of such resources and, for the protection of the marine environment, including-

(a) the place and time in which harvesting operations may be conducted;

(b) species, size and other characteristics and quantity of marine resources that may be harvested;

(c) methods and gear that may be used; and

(d) measures to limit the amount of harvesting capacity"

Section 52 of the Act sets out the *'Offences and Proceedings'*, which states the following:

52. "(4) Any Person who –

(a) violates any condition of a right, an exploratory right, a fisheries agreement, a quota or a licence;

(b) harvests marine resources in contravention of section 47 or any regulation prescribed thereunder;

..."

4.20 In terms of Section 4 of the Marine Resources Act of 2000, the following acts are criminally punishable:

(4) Any person who –

(a) "violates any condition of a right, an exploratory right, a fisheries agreement, a quota or a licence";

(b) "harvests marine resources in contravention of section 47 or any regulation prescribed thereunder";

"Shall be guilty of an offence and liable on conviction to a fine not exceeding N$500000".

(5) CONTRAVENTION OF REGULATION 20 BY THE SEALERS

Following a great deal of research into the methods that are being utilised by the sealers during the annual harvest together with video evidence provided by yourself, it is clear beyond any reasonable doubt that the regulations contained in the MRA simply **CANNOT BE COMPLIED WITH.** The reasons are as follows:

5.1 The Cape Cross Seal Reserve is a breeding colony and as the Ministry of Environment and Tourism states 'the largest Cape Fur Seal Colony in the world' which may in its breeding season hold up to 210, 000 seals.

5.2 In terms of the MRA Regulation definitions, "pup" is defined as 'a seal in its first year of life' which naturally is still nursing and has not been fully weaned from the seal cow.

5.2.1 According to the regulations, the 'pups' must be identified, driven away from the sea and be allowed to settle down before clubbing begins;

5.2.2 A group of pups must then be released from the group in the direction of the sea;

5.2.3 A clubber must kill a pup by clubbing it on top of the head with a sealing club when a group moves past the clubbers;

5.2.4 The inspector overseeing the harvest must be satisfied that a pup which has been clubbed, is dead;

5.2.5 A sticker must pierce the heart of the pup with a knife, after the pup has been clubbed.

5.3 As per your submissions and video evidence, these regulations and the methods they prescribe for the harvest of the pups in the Cape Cross Seal Reserve are simply **impossible** to implement at the Reserve and as a result of this the annual harvest results in the unwarranted suffering on behalf of the seals which is in contravention of the Animal Protection Act of 1962. The regulations are wholly inadequate for the following reasons:

5.3.1 The Regulations require that "seals must be harvested in the presence of at least one fisheries inspector" – in the video evidence submitted to us, there was no clear indication of any inspector that was overseeing the activities of the sealers. This is in clear violation of the Regulations as notably the sealers themselves are unqualified and untrained in the harvesting of these animals and would be unaware of any breaches which may occur during the harvest of seals.

5.3.2 The regulations further require that the holder of a right to harvest must **'identify a group of pups to be harvested.'** This requires the sealers to identify seal pups 'in their first year of life' in and amongst the thousands of seals that are present on the reserve on any given day. Further to this, due to the fact that these pups are still nursing from their mothers, they are not easily spotted in between these thousands of older seals on the Reserve nor do these pups gather together in a group on the Reserve making identification of a group of pups virtually impossible. Adding even further to this problem is the frantic and fearful disturbance that is

created amongst the entire seal colony by the sealers which results in a desperate rush for the seas whilst the sealers attempt to 'humanely' harvest and fulfill their daily pup quota.

5.3.2.1 From our extensive research on the subject of identification of Cape Fur Seals, we have found it to be **impossible** to identify the exact age of a Cape Fur Seal or at least a seal pup by mere visual examination. The identification process often used by scientists to ascertain the exact age of a seal is by inspection of the teeth in the lower jaw which in yearlings are lower than those in seals older than one year.

5.3.2.2 In a study undertaken in 1972, catch figures for the commercial harvest realised this error, *"It has become apparent that not all seals taken in the harvest are pups. Some are adults, and have been declared as bulls by concessionaires (irrespective of their sex. Others are sub – adults; seals in their second year, are particularly difficult to distinguish from yearling pups using external characters. These sub adults have been included in the figures for the yearling harvest."* (Best, 1973)

5.3.2.3 The sealers that are undertaking these activities are not experienced harvesters, nor are they citizens with any knowledge of the aging process of a seal or the identification of a seal pup. It is thus my conclusion that it is impossible for such sealers, in the largest breeding colony of Cape Fur Seals, to 'identify' a group of seal pups of less than a year (by visual confirmation only), drive them away from the sea and allow them to settle down before clubbing begins. Due to this fact, the Minister **should not** be awarding an age dependant TAC for seal pups where the identity of a pup under one year **cannot be verified by visual confirmation only**.

5.3.2.4 A further concern in this regard is the time period within which the sealers are expected to complete the harvesting process. As per our instructions as well as further research, the sealers are required to complete the daily harvest of pups within a time frame of 90 minutes (06:30am and 08:00am) prior to the Reserve opening to tourists. In addition, the Reserve covers an area of 2 km along the beach and 150m inland which is a large area to be covered within a time frame of 90 minutes. Previous submissions on behalf of the sealers themselves have shown that they kill 1000 seal pups in a morning on average which is extremely high given that each sealer is required, in terms of the regulations, to identify a group of pups; facilitate the escape of the adult seals; allow the pups to settle down; then allow the pups to be released towards the water; then club a pup on the top of the head as it moves past the sealer. Further to this, the inspector is responsible for ensuring that the clubbed pups are dead after which "a sticker" shall pierce the heart of the pup with a knife.

5.3.2.4.1 Notably, no time frame limits are provided to allow for these three steps to be implemented properly and to ensure that each and every seal has been clubbed in the proper manner and is in fact dead. This ultimately leads to the situation where the pups are now 'beaten' in an effort to ensure that they are dead. In the video evidence provided by yourself, the inspector was **notably absent** and therefore it is probable that not all seal pups are in fact dead after the clubbing has taken place alternatively they are being beaten several times to kill them. In order for these sealers to kill as many pups as the daily limit has allowed in the past, it is clear that they are NOT given sufficient time to ensure that Regulation (c) and (d) are properly complied with.

5.3.2.4.2 Further to this, the regulations require that if a particular pup has been verified dead by an inspector, then by logical reasoning it should not be necessary to further pierce the heart of the seal pup in order for it to bleed out as this animal should presumably already be dead. In addition to this point, the three step process is one which should be undertaken consecutively to provide for the situation whereby if a seal is not killed instantly by the club on the head then the further two steps of piercing and bleeding out ought to ensure this. However, given the time frame in which the harvest has to take place, these steps are impossible for the inspector to carry out on 1000 different pups immediately after clubbing. This again amounts to acts of cruelty by the sealers.

5.3.2.5 A further concern is that whilst the sealers are trying to identify the pups which need to be killed, they are simultaneously causing disruption of the entire colony and naturally the seals scramble for the sea which further results in a chaotic atmosphere in which the sealers are unable to identify pups correctly which results in seals over the designated age being mistakenly killed by the sealers.

5.3.2.6 In addition, some of the seal cows are pregnant and still nursing at the time of harvest, and such a chaotic and no doubt stressful disturbance of the breeding colony disrupts natural breeding which may lead to abortions and pup abandonment causing colonies to collapse during the 139 days of daily sealing activity.

5.3.2.7 The manner in which these pups are in reality being killed (as can be seen from the video evidence) is that the pups are all rounded up in a group (whereupon they scramble to get on top of each other presumably due to fear) and the clubbers then beat these pups to death whilst in the group. The words in the Regulations "drive seals away from the sea" and "released", cannot possibly on

a practical level, in such a large seal breeding colony, be complied with.

5.4 If somehow the Regulations could be complied with, this would be so time consuming that the harvest would not be commercially viable.

5.5 From your submissions regarding the impacts of this annual seal cull on the Cape Fur Seal Population, provided they are correct, we are of the opinion that there does not appear to be in place proper and effective resource management measures for the annual cull which may lead to a negative impact on the seal population in the future. This fact together with the impracticality and impossibility of implementing the harvest regulations properly provides a ground upon which a High Court Review of the granting of seal harvesting rights could be sought.

5.6 Further to the breach of the MRA regulations in respect of the seal harvest, the actions on behalf of the sealers themselves constitute an offence in terms of the Animal Protection Act of 1962 which amounts to animal cruelty whilst the seals are under the control of the sealers.

(6) THE TOTAL ALLOWABLE CATCH (TAC)

6.1 The Total Allowable Catch (TAC) refers to the quantity of a particular species that a rights holder may catch. This TAC is based on scientific evidence and recommendations presented to the Ministry, which according to Deputy Director Dr BJ Van Zyl, 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. 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."*

"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 Ministry of Fisheries and Marine Resources 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. Quotas are allocated annually to the 2 concessionaires and the harvesting season usually begins on the 1st of August and lasts until mid-November."

6.2 According to the scientific evidence provided to us by you, we are led to understand that mass die off's of seals occurred in the years 1994, 1995 and 1996 in unprecedented mass starvations. The die offs affected both sexes and all age groups with abortions being widespread. However, according to your evidence, the TAC allocation for 1994 registered an increase in Cape Cross of 27% whilst Atlas Bay registered an increase of 50% in the TAC allocation. Further to this, no pup population survey was completed in 1994.

6.3 This activity would have been governed in terms of the SBSP Act (prior to coming into force of the MRA) and in our opinion these scientific calculations, or lack thereof, indicate that the TAC allocation was clearly not based on scientific evidence if they were increased in a period when the population was said to have been suffering from mass die off.

6.4 Our suggestion in this regard would be to include your scientific findings in the High Court Review Application in which case the Ministry may be called upon to submit and make available their justifications for having issued such high TAC's in light of the evidence that you have.

(7) POST 2000 – THE MARINE RESOURCES ACT

7.1 The objective of the MRA is defined as: "provide for the conservation of the marine ecosystem and the responsible utilization, conservation, protection and promotion of marine resources on a **sustainable** basis"

7.2 We are instructed that, a "sustainable" pup TAC, as defined by the Ministry of Fisheries and Marine Resources, should **NOT exceed 30% of the pups born in each seal colony**, however, according to the evidence submitted by yourself, the pup TAC for the year 2006 was **85000** pups which in light of the **121462** recorded pup births which amounts to a TAC of 70% of the total population. This is further aggravated by the fact that if one takes into account the natural mortality of seal pups born as well as the effects of Jackal

Predation which accounts for 25-32% and 25-35% respectively, this leaves an almost non-existent pup population. These statistics are in light of the fact that another mass die off was registered in 2006.

7.3 Nangula Mbako – Permanent Secretary of Fisheries and Marine Resources in Namibia was quoted as saying:

"The permanent secretary reiterated that government believes in sustainable exploitation and utilization of resources. The animals harvested are dictated by the abundance of stock and based on the scientific evidence, necessary measures are taken to balance the ecosystem. "*If the stock increases or decreases, measures based on available scientific evidence are taken to ensure balance. We do that with seals and other species,*" Mbako said. This year, the sustainable management of seals has guided the ministry to reduce the total allowable catch (TAC) of seal pups to 5 000. The step was taken based on the marginal reduction experienced in 2006 when most seals starved. "It will thus be illogical to leave seal abundance unchecked and out of proportion with the rest of the ecosystem components; this will in fact result in their perpetual demise," the permanent secretary added.

7.4 Scientific evidence has shown that the annual number of seals at the respective colonies differs on an annual basis and further the species has shown mass die off's in past years which has resulted in adult mortality and widespread pup abortions due to mass starvations.

7.5 In light of these figures and statistics, the Minister of Fisheries announced an **annual rolling TAC for the years 2007, 2008 and 2009 of 80000 seal pups and 6000 bulls.** Further to this, the annual harvest season was amended to start 1 month earlier on the 1st of July as opposed to the 1st of August.

7.6 In light of these statistics (of which we have only but mentioned in passing), we believe it sufficient to state that it is clear that the Ministry is **NOT** abiding by principles of sustainability or responsible utilization of the seal resource during its annual seal harvest. This would be another aspect of the harvest which would need to be raised in a high court review application.

(8) PROVISIONS OF THE ANIMAL PROTECTION ACT OF 1962 AND CONTRAVENTION OF PROVISIONS CONTAINED THEREIN

8.1 The overall purpose of the Animal Protection Act is to consolidate regulate and prevent acts of cruelty being administered to both domestic and wild animals which are under the control of any person.

In order to ascertain whether the Namibian Seal Harvest is in line with current international standards, regard should be had to the following: -

(1) The United States of America upheld an import ban on all seal products as it directly conflicted with their Marine Mammal Protection Act of 1972. In 1974, the two sealing colonies in Namibia were visited by two independent US veterinarians who concluded that the annual Namibian seal harvest **did not attain the standards of humaneness** required by the US Department of Commerce. The import ban was upheld in 1977 by the US Appeal Court.

(2) A further import ban was recently introduced by the 27 nations of the European Union owing to the scientific assessment of the European Food Safety Authority.

8.2 The Animal Protection Act of 1962 expressly sets out the offences in respect of cruelty to animals of which two are pertinent in relation to the present case. These provisions being, section 2(1)(a) which prohibits animals from being "cruelly ill-treated, beaten, terrified, maimed or tortured" whilst section 2(1)(r) prohibits the "wanton, unreasonable and negligent" doing of an act or omission which results in unnecessary suffering on behalf of the animal.

8.2.1 The method which is prescribed in the MRA Regulations for the sealers to follow violates several provisions of the Animal Protection Act in that, the animals are firstly terrified by the presence of the sealers in the colony (this applies to both pups and adult seals which can be seen from the desperate rush of the seals to the safety of the ocean once the human presence is realised), the seal pups are then gathered in a group whereupon the pups are then beaten with a wooden club (which notably **DOES NOT** always result in instantaneous death by the pups) which necessitates the further need to repeatedly beat the pup in order to ensure that it is dead. The failure of this method to ensure the instant death of the pups after one club and the inability of the sealers to kill the pup instantly is an inherently cruel method of harvesting which is a clear violation of the provisions of the Animal Protection Act.

8.2.2 The Animal Protection Act of 1962 expressly provides for powers allocated to officers of the society for prevention of cruelty to animals. These are contained in Section 8 of the act with the relevant provisions being 8(1)(b) and 8(1)(c) which provide for the arrest of any person who is suspected on **reasonable grounds** of having committed an offence

8.2.3 under the act and further provides that on the arrest of any person on a charge, the officers may seize the animal or thing in possession or custody at the time of arrest and may take such evidence forthwith to a magistrate.

8.2.4 The MRA of 2000 provides for the harvest of 'marine resources' which includes its definition 'all marine organisms...vertebrae and invertebrae animals' and therefore seals fall with the marine resource definition which in terms of the act is eligible for 'harvesting.' The purpose of the MRA is to 'provide for the conservation of the marine ecosystem...responsible utilisation, conservation, protection and

promotion of marine resources on a sustainable basis' and therefore all harvesting which takes place under the MRA should adhere to these principles of responsible utilization and sustainability.

8.3 It is our view that, in light of recent submissions which have been made by yourself as well as the evidence with which we have been provided (which includes video and eyewitness accounts of past seal culls which have taken place on the Cape Cross Seal Colony in Namibia), the manner in which the seal harvesting is being implemented is not in accordance with the MRA Regulations and it is such breaches of these provisions which constitutes a clear violation of the above mentioned provisions of the Animal Protection Act of 1962.

8.4 As per your submissions of video evidence obtained during the annual seal harvest, the act of killing the pups is **NOT** adhering to the MRA regulations which in turn are resulting in the inhumane and illegal suffering of thousands of seal pups annually. The particular acts of cruelty arise when 15-20 seal clubbers are allowed to enter a seal colony (which is home to thousands of seals of all ages), separate the nursing pups from their mothers, and club the pups. In the video evidence that we have been presented with, there was **ONLY ONE INSPECTOR PRESENT** who has a statutory obligation to ensure and verify each pup's death. It is our submission that it is simply not possible to expect or burden one human being with the onerous task of ensuring that over 1000 seal pups are in fact dead. It is clear from the evidence that these pups are in fact **NOT** being clubbed once on the head and thereafter checked for instantaneous death but are rather being randomly and sometimes numerously clubbed by the sealers and further they are not all being checked to ensure that they are in fact dead after clubbing. This constitutes gross inhumaneness and gross cruelty. The lack of piercing the heart of the seal pups (as required by the regulations) and the lack of verifying death is evidence that a violation of the APA is occurring at the Cape Cross Colony.

8.5 The SPCA in Namibia would be the correct authority to approach the Magistrate in the district as they possess the necessary locus standi to request such an order. In order for the SPCA to request this order, they will require reasonable grounds on which the order is sought whereupon the evidence that has been previously obtained must be presented to the Magistrate.

8.6 Regarding the several email communications between yourself and the SPCA relating to the purported attempt by the SPCA to approach the Magistrate in Swakopmund and the Magistrate's opinion on the law, with respect our view is that the Magistrate has erred in her interpretation of the APA. If one considers the implications of the aforementioned interpretation, it would mean that any individual could and may (legally) hurt torture or abuse any 'wild' animal because such an animal is not 'under control'. Such an interpretation cannot, with respect, be correct. In any event, the seals in question are clearly "under control" in a number of respects:

8.6.1 the colony is a protected conservation area under the control of the Ministry of Environment and Tourism (MET) to which access is controlled and limited;

8.6.2 Film-makers were arrested and charged whilst within the Cape Cross Colony which further adds evidence to the assumption that the area is under control;

8.6.3 for a harvesting right to be allocated under the MRA, there must be implied an element of control over the species to be harvested;

8.6.4 during the harvest and prior to clubbing, the harvesters must herd the pups into a group and then "release" them toward the sea before killing. This is clear control of the seals which are being cruelly beaten.

8.7 In light of this, I am of the opinion that an interested party may bring an application to compel the Namibian SPCA to act in respect of the aforementioned acts of cruelty being carried out at the seal colony.

(9) DOCUMENTING THE SEAL HARVEST AT CAPE CROSS SEAL RESERVE

9.1 In terms of Section 4 of the Marine Resources Act of 2000, the following acts are criminally punishable:

(4) Any person who –

(a) violates any condition of a right, an exploratory right, a fisheries agreement, a quota or a licence;

(b) harvests marine resources in contravention of section 47 or any regulation prescribed thereunder;

(c) being the owner, the lessee, the charterer or the master of a vessel, allows the vessel to be in any area where it is not authorised to harvest marine resources without its gear being stowed in accordance with section 49(2);

(d) In a marine reserve, without having been granted permission to do so under section 51(3), dredges or extracts sand or gravel, discharges or deposits waste or any other polluting matter, or constructs or erects any building or structure or in any way disturbs, alters or destroys the natural environment;

(e) discharges in or allows to enter or permits to be discharged in Namibian waters anything which is or may be injurious to marine resources or which may disturb or change the ecological balance in any area of the sea, or which may detrimentally affect the marketability of marine resources, or which may hinder their harvesting;

(f) kills or disables any marine mammal by means of any explosive, poison or noxious substance, or by means of a firearm except as may be prescribed; or

(g) harvests any marine animal by means of a driftnet, being a gillnet or any other net, or a combination of such nets, with a total length exceeding 2.5 kilometres, or any shorter length as may be prescribed, being placed in the water and allowed to drift for the purpose of trapping or entangling marine resources,

Shall be guilty of an offence and liable on conviction to a fine not exceeding N$500000.

9.2 As can clearly be ascertained from the abovementioned provisions, there is no such offence that exists under the MRA which allows for the arrest of a person who is found to be **filming** within a declared Reserve.

9.3 Provision 4(d) which relates to marine reserves lists a number of acts which would be considered a criminal offence under the act, however, if the evidence that we have been provided with and further the statements of the arrested men in question, it seems that these men have not committed any of the acts as aforementioned and further it appears that the arrest of the men was merely an attempt at ensuring that the seal cull was **NOT** filmed and that all filming that had already taken place was destroyed.

9.4 Given the fact that the relevant photographers were charged with an offence that does not exist under the MRA nor were the alleged offenders guilty of altering; destroying or disturbing the natural environment we are of the view that the arrest was not lawful or legal. In view of this, the instruction given by the legal counsel in Namibia is both unreasonable and unnecessary in the circumstances.

(10) THE CITES CONVENTION

10.1 The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is an international agreement between governments whose primary aim is to ensure that international trade in specimens of wild animals and plants does not threaten their survival. This Convention became effective in Namibia in 1991. The Cape Fur Seal (Arctocephalus SPP) is listed as an endangered species in Appendix II of the Convention.

10.2 Article II of the Convention contains the fundamental principles which are the following:

10.2.1 Appendix II shall include:

"(a) all species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival; and

(b) other species which must be subject to regulation in order that trade in specimens of certain species referred to in sub-paragraph (a) of this paragraph may be brought under effective control.

10.3 **Article IV - Regulation of Trade in Specimens of Species Included in Appendix II**

10.3.1 The export of any specimen of a species included in Appendix II shall require the prior grant and presentation of an export permit. An export permit shall only be granted when the following conditions have been met:

10.3.1.1 (a) a Scientific Authority of the State of export has advised that such export will not be detrimental to the survival of that species;

10.3.1.2 (b) a Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora; and

10.3.1.3 (c) a Management Authority of the State of export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.

10.4 "A Scientific Authority in each Party shall monitor both the export permits granted by that State for specimens of species included in Appendix II and the actual exports of such specimens. Whenever a Scientific Authority determines

that the export of specimens of any such species should be limited in order to maintain that species throughout its range at a level consistent with its role in the ecosystems in which it occurs and well above the level at which that species might become eligible for inclusion in Appendix I, the Scientific Authority shall advise the appropriate Management Authority of suitable measures to be taken to limit the grant of export permits for specimens of that species."

10.5 CITES is the primary instrument governing the international trade and export of any particular species. The purpose of the convention is to ensure that **ALL** international trade is undertaken with conservation and sustainability in mind. Therefore any commercial harvest of a species, which is to be used in the international trade industry, should adhere to these principles. Namibia is a party to CITES and has been since 1991. Due to the fact that Namibia exports the various different parts of the seal pups for commercial purposes, it therefore is required to adhere to the provisions of the convention. Further the CITES convention requires that, "a management authority of the state of export is satisfied that the specimen was not obtained in contravention of the laws of that state for the protection of fauna and flora".

10.6 The Marine Resources Act of 2000 is the instrument responsible for the control and implementation of the harvesting of marine resources. The MRA includes 2001 Regulations which purportedly govern all aspects of the exploitation of such resources. There is, however, a discrepancy that exists within these two instruments whereby section 35 of the MRA expressly states that NO harvesting may be undertaken without a right, exploratory right or fisheries agreement whilst section 18 of the Regulations states that except under a right, exploratory right or exemption a **person may not harvest any species of marine mammal other than the Cape Fur Seal** which by legal interpretation standards would allow any person to harvest seals without any kind of authorisation. This cannot be correct. If such an interpretation was meant by the Legislature then it is our submission that this is in clear violation of the CITES Convention whereby the Ministry of Environment and Tourism (MET)

must ensure that any export of species **are not a threat to their survival** or harvested in violation of any laws protecting seals within Namibia. Further, given that the Cape Fur Seal is listed as an endangered species in terms of CITES, such a harvesting approach would surely decimate any remainder of the population resulting in extinction.

10.7 Biological criteria for Appendix I

The following criteria must be read in conjunction with the definitions, explanations and guidelines listed in Annex 5, including the footnote with respect to application of the definition of 'decline' for commercially exploited aquatic species.

A species is considered to be threatened with extinction if it meets, or is likely to meet, **at least one** of the following criteria.

A. The wild population is small, and is characterized by **at least one** of the following:

i) an observed, inferred or projected decline in the number of individuals or the area and quality of habitat; or

ii) each subpopulation being very small; or

iii) a majority of individuals being concentrated geographically during one or more life-history phases; or

iv) large short-term fluctuations in population size; or

v) a high vulnerability to either intrinsic or extrinsic factors.

B. The wild population has a restricted area of distribution and is characterized by **at least one** of the following:

i) fragmentation or occurrence at very few locations; or

ii) large fluctuations in the area of distribution or the number of subpopulations; or

iii) a high vulnerability to either intrinsic or extrinsic factors; or

iv) an observed, inferred or projected decrease in any one of the following:

- the area of distribution; or

- the area of habitat; or

- the number of subpopulations; or

- the number of individuals; or

- the quality of habitat; or

- the recruitment.

C. A marked decline in the population size in the wild, which has been **either**:

i) observed as ongoing or as having occurred in the past (but with a potential to resume); or

ii) inferred or projected on the basis of any one of the following:

- a decrease in area of habitat; or

- a decrease in quality of habitat; or

- levels or patterns of exploitation; or

- a high vulnerability to either intrinsic or extrinsic factors; or

- a decreasing recruitment.

10.8 Should the CITES criteria of either (B) or (C) apply to the recent trends of the Cape fur seals namely seal island extinction, loss of breeding habitat on islands,

very high levels of exploitation, several mass die-off's, such species would be eligible for Appendix I listing, which would therefore prevent commercial trade internationally. The evidence provided to us regarding the current status of the seal population is in need of further examination in order to preserve the sustainable levels of the seal population.

10.9 The Directorate of Scientific Services is a branch of the Ministry of Environment and Tourism which has the following duties:

10.9.1 Conducting and coordinating scientific wildlife research and monitoring.

10.9.2 Providing specialist technical and scientific advice regarding conservation and resource management issues.

10.9.3 Capturing and translocating wildlife in support of protected area management, biodiversity conservation and restoration, and expansion of the wildlife resource base for rural communities.

10.9.4 Coordinating and supporting the implementation of international agreements and conventions, e.g. the Convention on Wetlands.

10.9.5 Facilitating the sustainable utilization of wildlife resources.

10.9.6 Serving as the national implementing body for CITES.

10.9.7 Promoting international market access for Namibian wildlife producers.

10.10 The Cape Fur Seal is listed as an endangered species in terms of this international convention to which Namibia is a party and further, as depicted on the Ministry of Environment and Tourism (MET) website, the Directorate of Scientific Services in Namibia is the "national implementing body for CITES" and therefore this body is required to, in terms of the Convention, regulate the trade and export of specimens at a level which will optimise the survival of the species and promote effective sustainability and further avoid over utilization of such species.

10.11 Due to the fact that this scientific body is a subsidiary of the Ministry of Environment and Tourism, who claims no control over "marine resources", the Scientific Service body should be directly involved with the Ministry of Fisheries in ascertaining the precise levels of Cape Fur Seal that should be allowed for the harvesting of these animals for the commercial purpose of the harvesting rights in order to ensure optimal sustainability of the seal species. As the implementing body for CITES as well as the management authority for export , the Ministry of Environment and Tourism (MET) has a direct interest in the harvesting of seals which notably takes place in an area within their jurisdiction. Therefore, the issuing of export permits of the harvested seals lies solely within the jurisdiction of the Ministry of Environment and Tourism and not the Ministry of Fisheries. It is our submission that the Ministry of Fisheries may have been illegally issuing these export permits as they are not the management authority responsible for ensuring that the specimen was obtained in contravention with the laws of the state of export.

10.12 According to your instructions, we note that in terms of section 37(2) the minister is required to publish in the Gazette the texts of all conservation and management measures adopted under any international agreement to which Namibia is a party and any measures so published shall be deemed to be a regulation prescribed under section 61. If this in fact has not been done by the Minister then this would constitute a breach and violation of the section under the MRA. However, having not examined the Gazettes, we do not wish to make further allegations on this matter.

10.13 From your submissions that we have received, provided this data is correct, in respect of the scientific calculations concerning the seal population and the amount of pups that should be killed, it is evident that these calculations are in excess of what they should be and yet the Minister keeps increasing them. This is another issue which could be included in a High Court Review Application together with the accompanying evidence.

11 TRANSFER OF RIGHTS UNDER THE MARINE RESOURCES ACT

11.1 With regard to the purported buyout offer, the MRA of 2000 states in section 42:

42 (1) "No right or exploratory right may be transferred to another person except with the approval of, and subject to the conditions determined by, the Minister, but such approval may only be granted if the quota, if any, or a portion thereof, connected with the right or exploratory right is also transferred to the same person.

(2) No quota for any marine resource, except a quota held by a person nominated under section 3 5 (2), may be transferred to the holder of a right valid for the same resource, except with the approval of the Minister

(3) No licence, except a licence held by a person nominated under section 3 5 (2), may be transferred, except with the approval of the Minister, and subject to subsections (2) and (3) of section 40."

11.2 It is clear from the above provisions of the MRA that **NO** transfer of any rights is permissible without the express authority of the Minister. Any attempt by the rights holder to transfer without the express permission from the Minister would therefore be unlawful and a breach of the MRA.

12 THE CAPE CROSS SEAL RESERVE (HIGH COURT REVIEW APPLICATION)

12.1 As mentioned, the Cape Cross Seal Reserve (one of the protected areas in Namibia) is administered by the Department of Environment and Tourism. It would appear; however, that the Annual Seal harvest is governed under the auspices of the Ministry of Fisheries and Marine Resources as the Ministry of Environment and Tourism claims no jurisdiction over marine resources.

12.2 Further, it is clear that the Ministry of Environment and Tourism has statutorily defined conservation duties in the area which they control. This

effectively includes the Cape Cross Seal Reserve despite the seals being a marine resource over which they claim no jurisdiction. This argument, however, may not be applicable in that the granting of a right by the minister for the harvesting of seals (above the high water mark) is ultra vires the powers of the Minister of Fisheries and accordingly invalid.

12.3 In light of the evidence which you have provided us and our further research into the annual seal harvest, it is clear to us that there are many issues to which the Ministry of Fisheries and Marine Resources as well as the Ministry of Environment and Tourism should examine.

12.4 In particular, the aspect relating to the 'control' issues at the Cape Cross Seal Reserve will be issues that could be raised in a High Court Review Application reviewing the process whereby rights are allocated to the various rights holders. This application, if undertaken, should be accompanied by all necessary scientific data which can clearly demonstrate the need for better conservation methods at the Colony and in addition the inadequacy of the current harvest regulations.

12.5 A further element is the inadequacy of the MRA Regulations in governing the harvest, the annual TAC allocations, the role of the Directorate of Scientific Services in administering the CITES Convention and the inadequacy of the MRA to provide the necessary protection that the Cape Fur Seal enjoyed under the SBSP Act.

(13) THE OMBUDSMAN: CHAPTER 10 OF THE CONSTITUTION OF THE REPUBLIC OF NAMIBIA

13.1 Chapter 10 of the Constitution of the Republic of Namibia makes provision for an Ombudsman, one of whose functions include, "(c) *the duty to investigate complaints concerning the over utilisation 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.*"

"...

(e) the duty and power to take appropriate action to call for the remedying, correction and reversal of instances specified in the preceding Sub-Articles
through such means as are fair, proper and effective, including:

(aa) negotiation and compromise between the parties concerned;

(bb) causing the complaint and his or her finding thereon to be reported to the superior of an offending person;

(cc) referring the matter to the Prosecutor-General;

(dd) bringing proceedings in a competent Court for an interdict or some other suitable remedy to secure the termination of the offending action or conduct, or the abandonment or alteration of the offending procedures;

(ee) bringing proceedings to interdict the enforcement of such legislation or regulation by challenging its validity if the offending action or conduct is sought to be justified by subordinate legislation or regulation which is grossly unreasonable or otherwise ultra vires;

(ff) reviewing such laws as were in operation before the date of Independence in order to ascertain whether they violate the letter or the spirit of this Constitution and to make consequential recommendations to the President, the Cabinet or the Attorney-General for appropriate action following thereupon;

(f) the duty to investigate vigorously all instances of alleged or suspected corruption and the misappropriation of public monies by officials and to take appropriate steps, including reports to the Prosecutor-General and the Auditor-General pursuant thereto;

(g) the duty to report annually to the National Assembly on the exercise of his or her powers and functions.

Further to this, there are several powers of investigation that the Ombudsman is allocated which includes the following: -

13.2 Article 92 Powers of Investigation

The powers of the Ombudsman shall be defined by Act of Parliament and shall include the power:

(a) 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;

(b) to cause any person contemptuous of any such subpoena to be prosecuted before a competent Court;

(c) to question any person;

(d) to require any person to cooperate with the Ombudsman and to disclose truthfully and frankly any information within his or her knowledge relevant to any investigation of the Ombudsman.

13.3 Although this process may be a rather lengthy one, the ombudsman is required to be impartial to the influences of state departments and further he is required to be a Judge of Namibia or alternatively a legal practitioner who is entitled to practice in all the courts of Namibia. He has wide ranging powers of investigation as well as the power to make recommendations on whether the laws themselves are in accordance with the principles accorded in the Constitution. This may be a long term solution to end the detrimental effects of the seal harvest and ensure that sustainability on the Cape Fur Seal population is in force.

COURSES OF ACTION

We are instructed that in 1994 the Namibian Fisheries Minister, Mr. Helmut Angula launched a police investigation into the "theft" of an "internal discussion document" which was leaked to the media. The highly confidential report was written by a governmental seal expert who purportedly recommended in the report that no seal harvest should have taken place for that year. The recommendation was subsequently ignored by the Minister who thereafter authorised the largest TAC harvest in the country's history. Such action not only violates

media freedom but raises serious questions as to the legitimacy of annual TAC numbers being issued by the minister in light of **blatant disregard** for the expert opinions of those who are duly employed to advise and inform the Minister on matters of scientific calculation.

The decision of the Minister of Fisheries to award such high seal pup TAC's on a population which according to our instructions, numbers less than 850 000 of which sealers only managed to harvest 655 000 (filling less than 60% of the TAC) is clearly not in line with the principles of conservation and sustainability as required by the Constitution, by the Marine Resources Act and further with the CITES Convention. In addition to this fact, in light of the mass die off's which occurred in 1994, 1995, 1996, 2000, 2002 and in 2006, it is our submission that the decision of the Ministry to increase the existing 10 year sealing rights to 15 years in light of mass starvation and/or pathological viral infection is surely NOT in line with conservation and principles of effective sustainability given that the cause of mass die off's was unascertainable at the time.

We have further attached a copy of correspondence between Mr. Hatem Yavuz and Mr. Francois Hugo of Seal Alert SA over the purported buyout offer made by Mr. Yavuz in an attempt to put an end to the sealing industry [Appendix 2]

Going forward, and subject to the necessary evidence being available, we would advise that the following action should be taken:

- SPCA be requested to approach the Magistrate in Swakopmund for the required arrest/order under the APA and an order placing the seal colony under the control of the SPCA or their nominated agent e.g.: Minister of Environment and Tourism.
- If the SPCA fails to do this, an application to the High Court could be brought directing them to carry out their duties under the APA.
- If the Magistrate fails to issue the orders requested by the SPCA, then after having received written reasons from the Magistrate, the SPCA brings it on a High Court application directing the magistrate to issue the required orders under the APA.
- Once arrest orders are in place then the SPCA can bring a High Court Review of the granting of seal harvest rights on various grounds:

1. Ultra vires because the harvesting of the seals occurs within the Colony which falls under the jurisdiction of the Department of Environment and Tourism, however the sealing rights are authorised by the Ministry of Fisheries.
2. No proper scientific basis for the harvest.
3. The regulations are inadequate and further to this are not being properly adhered to.
4. The harvest and export is not under the management of the Department of Environment and Tourism as is clearly required by CITES.
5. Harvest is unconstitutional because it is not a conservation measure but merely a commercial harvest.

We have also included a section on the authority which is enjoyed by the Ombudsman in line with the Namibian Constitution. In light of all the evidence that you have, this may be another way forward in obtaining an independent opinion relating to the current seal harvesting.

Yours Faithfull

Peter Edwards
peter@dawsons.co.za

APPENDIX 1:

The Commission's on Sealing

The Diemont Commission in 1986, which included no marine scientists, "stated that ... control and reduction of the huge seal herds was an issue of major importance in the fishing industry and culling must be undertaken by the State". This policy was accepted by the government. However Butterworth et al (1988) stated the recommendations in the report to have no scientific basis. As part of the policy of population reduction, seals were chased off Seal Island False Bay when they tried to come ashore to breed (dubbed 'seal shooing' by the press). As a result, 4400 dead pups were removed from the mainland beach opposite the island. The 'shooing' programme caused uproar in the press and was hotly debated, but the Minister maintained that the 'shooing' and seal culling programmes would be continued and that regulations which prohibited fishermen from shooting seals would be repealed.

To fully understand the inaccuracies of the Diemont Commission, who was at the time, Justice MA Diemont, a scientific report by Butterworth was submitted, it stated, "The scientific basis of the rationale offered in the Commission's report for this recommendation is critically examined. Many of the report's statements are found to be erroneous or misleading. It is argued that there is no scientific basis upon which to predict whether such reduction would have positive or negative impacts on sustainable yields of commercial fish species, nor is such a prediction likely to be possible in the immediate future. The detrimental effects of operational seal-fishery interactions may provide a rationale for population reduction, but these have yet to be quantified adequately by scientific assessments". More so, Butterworth goes on to state, "In 1983, the international market for seal pelts collapsed, removing much of the commercial incentive for harvesting seals, specifically pups. This served to focus attention on the question of whether seal numbers needed to be controlled or reduced (probably by culling programmes) because of their deleterious effect on fish stocks and fishing operations. In 1983 this matter was considered by the Scientific Committee of Enquiry into the Exploitation of Pelagic Fish Resources of South Africa and SWA. This Committee chaired by Dr TG Alant, was known as the Alant Commission and included eight other scientists. Recommendations of the Committee reads:

- "Seals, seabirds and other predators on commercially important pelagic shoal-fish should not be culled if the principle objective for doing so is to attempt to make more fish available to the industry". This recommendation was accepted by the South African government.

Butterworths paper goes on to dispel a number of incorrect statements made by the Diemont Commission, namely covering the following topics;

- Age of First Parturition - 'cubs ... grow rapidly and by their second year are able to reproduce'.
  - 4-5 years of age.
- Colony Growth Rates - 'undisturbed colonies expand with astonishing rapidity : the seals bred fast';
  - "Between 1971 - 1983, 13-17 island colonies are estimated to have decreased in size".
- Migration Patterns - 'there is, steady recruitment from Cape Cross and other colonies on the SWA coast to South African colonies'.
  - "A report on the movements of 14 pups tagged on Seal Island False Bay revealed that 10 were found at Cape Cross, in the reverse direction proposed".
- Consumption by seals - 'seals eats its weight of fish in a day'.
  - "5-20% of weight"
- Average seal weighs 100kg and a bull 400 to 500kg.
  - "54kg".
- Total consumption for Seal Island False Bay, 3,5 million kg.
  - "120 000 kg".
- Exclusion of birds by seals - 'Seal Island False Bay was at one time inhabited by birds and no seals, today there is a colony of 35 000 seals and no birds'.
  - "From an 'original' mixed community of seals and seabirds in 1687, the island became a pure seabird colony from 1830 - 1910 (after intensive sealing), and was a mixed community again for 35 years, but now is dominated by seals (whilst its largest former seal island, 250-times bigger remained extinct)".
- Correction of ecological imbalance - 'to restore the balance a large number of seals will have to be destroyed annually on the West coast'.

- (see attached island chart).

It is in this context, that the Hanks Commission on Sealing in 1990, was set up and recommended and was adopted by Cabinet, the following;

- In 1990 the South African government announced that the proposed killing of 30 500 seals was being postponed indefinitely. "No further decisions on either harvesting or culling will be taken by government until such time as additional scientific research has been done and duly evaluated. Such studies will include research into more acceptable methods of harvesting or culling".
  - "There is no evident biological distinction between Namibian and South African fur seals. There is no evidence that there is more than one seal population in southern Africa, and it is recommended that the Minister gives priority attention to liaison with the relevant authorities in Namibia with a view to the possible implementation of a unified policy for seal management".
    - "The Cabinet has decided to negotiate with Namibian authorities on the joint management of the seal resource off the southern Africa, as was the case prior to Namibian independence".
  - "There is no scientific reason for halting the proposed harvest of seal pups or bulls, provided scientifically recommended harvest levels are applied". "The committee strongly recommends that there should be no further harvesting until a system of licensing and training sealers is in place to ensure the highest possible standards of humaneness".
  - "The committee concluded that it was premature to determine the justification, or otherwise, for culling to alleviate the negative consequences of operational or biological seal-fishery interactions". "The committee recommends that additional independent information on the real impact that seals have on the fishing industry, as well as on the marine ecosystem, be obtained before any consideration is given to culling".
  - "It is estimated that in the absence of any harvesting or culling, the seal population and consumption figures may roughly double to 4 million in the next 10 years".
    - A decade later, seals at Kleinsee proved all wrong. Pup population in 1990 was 78 809, in 2002 it was 79 710 and in 2004 it was 80 897.

In what is considered strange, to no opposition, Namibia started its sealing policy. This was after the Alant, Diemont and Hanks Commission on Sealing, as well as a further Commission of Fishing in Namibia in 1991.

In this regard the Namibian Constitution states, Article 95 "maintenance of ecosystems, essential ecological processes and biological diversity of Namibia and utilization of living natural resources on a sustainable basis".

The Commission on Fishing in Namibia in 1991 stated:

- Exploitation of fish as defined in section 1 of the Sea Fisheries Act. Seals are not included in this definition and consequently also the industry of sealing excluded. The seal resource is not governed by the Sea Fisheries Act but by the Sea Birds and Seals Protection Act.
- Dr JP Roux seal biologist at MFMR, testified;
  - "At this stage there is no scientific justification to reduce the seal population in order to protect the fish resource, because there is no scientific evidence that the seals have a detrimental effect on these resources".
  - "... stocks of fish and other predators are subject to considerable fluctuations ... (a) comparison of fisheries yields or stock levels before and after a seal cull would almost certainly not provide a reliable indication of the culls effect".
  - "The Namibian component of the population (north of the Orange River), for example, is more than half of the total, and our best estimates at the moment are between 650 000 and 700 000 seals. Moreover this Namibian component has not increased significantly since 1984. Our data on mortality, pregnancy rated, pup production etc ... collected since 1987 show that it is extremely unlikely that the seal population would double in the next 10 years, north of the Orange River".
  - "Advises, between 25 and 30% of the number of pups born is a safe number to harvest without harming the population whatsoever".
  - "I'm fairly satisfied at the moment that the great majority of the seals harvested along the coast don't suffer whatsoever;" also "I will think it would be difficult to improve on the standard that we've reached in the past two years".

- "It seems that the availability of food to the seals is generally better in the North (better pup growth) than in the South resulting in a lesser pup mortality. In addition, the colonies in the South of the country have recently experienced two very poor years (1988/1989). During which 80% to 90% of the pups born were lost".
- "Harvesting and/or culling of seals in Namibia, the seals are not killed in order to protect fishery. They are killed to sustain an industry based on seals".

- The Commission made the following statements;
  - "In all of these hypotheses, it seems probable that fewer seals will mean more fish will be available to the remaining predators, including anglers and commercial fisheries. Therefore, seals probably have an impact on the fishing industry, particularly when angling is included".
  - "We, on this Commission, find it difficult to comprehend why there can be any doubt that seals have an impact at least on the angling fishery".
    - Angling is a sport not a commercial activity
  - "It is a fact, however, that the available scientific evidence, at this point in time, does not enable the Commission to define the impact of seals on the fishing industry".
  - "It must also be emphasized that seals in Namibia are not an endangered species".
  - "It seems to us, as already pointed out supra, that the element of culling together with harvesting, are both integral elements of Government policy".
  - "The lack of scientific evidence which would quantify the effect of seals on the fish resources has bearing on the economic justification for culling".
  - "The lack of scientific certainty does not relieve the Government of their responsibility under the Constitution to adopt policies aimed at; 'maintenance of ecosystems, essential ecological processes and biological diversity of Namibia, and utilization of living natural resources on a sustainable basis for the benefit of all Namibians, both present and future" .
  - Recommendation:

- Government should take positive steps to assure increased viability of the sealing industry. Any requirement that seal meat must be processed as agricultural products should be eliminated. Seal processing should be regulated by the Ministry of Fisheries only, under the same regulations and controls as any fish or other marine product".

- The Sealing Concession holders made the following statements;
  - "We don't really have a good market for skins at all".
    - 93% of TAC was seal pup skin based
  - "At the very, very most, one out of 20 may receive a blow on the body first, but immediately afterwards then it will receive a blow on the head". He added that as soon as they have been clubbed, "we stab in the heart with a knife".
    - Video evidence in 2000 and 2009 proved this statement false.

Date: 26th of June 2009

To: Francios Hugo of Seal Alert,

The positive alternative to stop the harvest is to buy all us out. Buying us out will mean you buy the whole lot "lock, stock and barrel" as in your article written on the 25th of June. Yet we will only sell, if we see a gain for re-investment in other fields in Namibia and Turkey. We have many families to feed, and we cannot afford to give away one of our most precious materials used in the fashion industry, that has been in great demand since 2003.

As discussed on the telephone today (although I'm n Russia at the moment) , we would be inclined to sell of f the Namibian plants and full quota's , plus the Turkish plant processing seals only (as you know , it is the Turkish plant that is the main cause of today's protests) .

Funds will be used to support a new investment in Namibia , since we just cannot let go of some ninety five workers in Namibia alone. We also have some sixty workers in Istanbul (not including sub-contractors) doing the tanning and garments only for seals .
To retire on this ongoing project we would agree on a total value for all three (including our own personal declaration) to retrieve from this business of a value standing at fourteen million and two hundred and fifty thousand united states dollars .

I would like you to head or lead your end of the deal(contract) and as for myself would lead and head the contract in full.

Any speculations made during the course of transactions or negotiations, we will no longer discuss or enter ANY negotiations with any NGO or campaigner until our prime quota expires in 2019.Your discretion would be appreciated.

In addition for your information. If such a deal takes place and is concrete, we will assist in the seal museum project.
As you know the harvest starts next week and we will not waste our precious time if we feel or see that we are being played about.

Regards – Haso Yuviz

26/06/2009 Nalcik, Kabardino-Balkar Republic, Russian Federation.