SEAL HARVESTING IN NAMIBIA: A CRITICAL ANALYSIS

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ABBREVIATIONS

APA	-	Animal Protection Act 71 of 1962
CITES	-	Convention on International Trade in Endangered Species
EEZ	-	Exclusive Economic Zone
EFSA	-	European Food and Safety Authority
GDP	-	Gross Domestic Product
IFAW	-	International Fund for Animal Welfare
FAO	-	Food and Agriculture Organisation
MFMR	-	Ministry of Fisheries and Marine Resources
MRA	-	Marine Resources Act 27 of 2000
NHWA	-	Nature Habitat Wildlife Association
SPCA	-	Windhoek Society for the Prevention of Cruelty to Animals
TAC	-	Total Allowable Catch
WSPA	-	World Society for the Protection of Animals

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3. Adv J. Walters – the Ombudsman of the Republic of Namibia.

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Last but not least, Mr Mundia, my supervisor, for assisting me during the year 2013.

DEDICATIONS

I would like to dedicate this paper to the Governmental Institutions of Namibia currently linked to the activity of seal harvesting in Namibia; including the Ombudsman of the Republic of Namibia, the Ministry of Fisheries and Marine Resources and the Ministry of Environment and Tourism.

I further dedicate this paper to Seal Alert-SA - a South African based seal rescue facility, Seals of Nam - a Namibian initiative to end the yearly harvest and finally the International Fund for Animal Welfare – an international organisation for animal welfare.

DECLARATION

I hereby declare that this dissertation is entirely my own work.

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Suné de Klerk

ABSTRACT

Seal harvesting along the coast of Namibia is not a new phenomenon as it is historically rooted dating back to 1884. Since independence Namibia has been harvesting seals based on Governmental control and in 2000 the Marine Resources Act 27 of 2000 was promulgated followed by the Regulations Relating to the Exploitation of Marine Resources a year later. These two statutes regulate and control the sealing in Namibia and provide the methods in which the harvest shall take place. However, it is feared that the methods given are not implementable and that the harvest is unsustainable, inhumane and cruel. The study focusses on a brief introduction and historical background followed by a discussion on seal harvesting globally, the methods implemented during harvesting, their respective pro's and con's and the products derived from seals. Then focus shifts to the practice in Namibia, the reasons advanced for a yearly harvest and the possible implications of the harvest. The study then focuses on national and international law, followed by a discussion of the analysis – outlining how and why Namibia is currently contravening national and international law. Finally a detailed discussion of the practice in Canada is given followed by a conclusion and recommendations on improving the current practices of the harvest in Namibia.

CHAPTER 1
INTRODUCTION AND BACKGROUND

1.1 Introduction

Namibia has one of the largest and most controversial marine mammal slaughters on earth representing one of Namibia's oldest commercial fisheries. The Namibian Skeleton Coast is home to the largest seal colony in the world[1] and each year around 91,000 seals are harvested at a reserve near Cape Cross although the Ministry of Tourism has stated the "Cape Cross Seal Reserve was established to protect the largest breeding colony of Cape Fur seals in the world".[2] Namibia is the only country in the southern hemisphere harvesting seals

Cape Fur seals (*Arctocephalus pusillus*) are a species of sea lion.[3] Two sub-species exist: the South African (Mostly found off the Namibian coast) and the Australian sub-species. Cape Fur seals are found at the coasts of South Africa, Namibia and Angola[4] and nowhere else in the world.[5] The pups are born between late October and early January.[6] The mothers nurse their pups for a period of one year or more.[7] Namibia is the only country in the world to harvest 90% seal pups.[8] The seal harvest season lasts about 139 days during July to November. Government employed sealers enter the reserve at 5am and harvests till 9am for the duration of the harvest.[9]

The Namibian Government has allowed the harvest for many years while Hugo, the founder of Seal Alert-SA has been trying his best since 2011 to stop the harvest focussing on animal cruelty and unsustainability. Hugo has sent various documents to the Namibian Government, including the Ombudsman, in which he requested

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1 Gekoski (2011:54).

2 *Cape Cross National Park* available at http://www.met.gov.na/documents/cape%20cross%20national%20park.pdf; last accessed on 18 August 2013.

3 *The Namibian Cape Fur Seal Slaughter.* Available at http://www.harpseals.org/about_the_hunt/cape_fur_seal_alert.php; last accessed on 9 March 2013.

4 Kirkman (2011: 495).

5 *The Namibian Cape Fur Seal Slaughter.* Available at http://www.harpseals.org/about_the_hunt/cape_fur_seal_alert.php; last accessed on 9 March 2013.

6 National Aquarium of Namibia, Swakopmund.

7 *The Namibian Cape Fur Seal Slaughter.* Available at http://www.harpseals.org/about_the_hunt/cape_fur_seal_alert.php; last accessed on 9 March 2013.

8 Hugo, F. 2009. *Exclusive Interview with Francois Hugo, Founder, Seal Alert-SA.* Available at http://voices.yahoo.com/exclusive-interview-francois-hugo-founder-seal-3806330.html; last accessed on 9 March 2013.

9 Gekoski (2011:54).

Namibia to stop its yearly harvest. In 2012 the Ombudsman delivered his final findings on the harvest and declared it legitimate.

1.2 **Background of the Paper**

The industry of seal harvesting commenced in South West Africa in 1884 when the Deutsche Kolonial-Gesellschaft (DKG) had a monopoly and held all rights to capture and kill seals along the coast of South West Africa (SWA).[10] After the Union Military Forces occupied SWA during the First World War, sealing was not allowed and the rights held by DKG were cancelled. After the arrival of the Europeans and due to the uncontrolled harvesting that took place between the 17th and 19th century, Government regulation of sealing started at the beginning of the 20th century.[11] During this time the seal population was estimated less than 100,000.[12] The recovery of seal numbers during the 20th century was largely attributed to the enforcement of legal controls on harvesting.[13]

The first Proclamation introduced to protect seals and control sealing was *Proclamation No. 18 of 1922* which prohibited the pursuing, capturing or killing of seals except under a license. Boats must have been registered and licensed. During this period the sole right to operate at Cape Cross was awarded to Offen and later the sole right to capture and kill seals was awarded to Lurie.[14] In 1949, the *Sealing and Fisheries Ordinance*[15] was passed which repealed the 1922 Ordinance. Control over sealing was tightened and contravention of the Ordinance or Regulations resulted in a fine or imprisonment. In 1973 the *Sea, Birds and Seals Protection Act*[16] repealed all previous sealing laws and specified the age, sex and size to be killed as well as sealing locations.[17]

After independence Namibia declared authority over a 200 mile exclusive economic zone (EEZ) in terms of the *United Nations Convention on the Law of the Sea*. The aim hereof was to prevent further depletion of Namibia's marine resources. In 1992

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10 Walters (2012a:3).
11 *Op Cit*.
12 Kirkman (2011:497).
13 *Op cit,* p. 499.
14 Walters (2012a:4).
15 No. 12 of 1949.
16 Act No. 46 of 1973.
17 Walters (2012a:4).

the *Sea Fisheries Act*[18] was promulgated to preserve and conserve marine resources and to control their exploitation. In order to become a signatory to various international instruments pertaining to fisheries management, Namibia promulgated the *Marine Resources Act*[19] (MRA) which repealed all preceding laws.[20] A year later the *Regulations relating to the Exploitation of Marine Resources* were established under *Section 61 (1)* of the MRA.

Seal harvesting has always received attention, especially when the harvest is about to commence. The attention rose to a maximum level when Dawson, Edwards and Associates, a law firm on behalf of Seal Alert-SA, sent a legal opinion to the Ombudsman of Namibia, alleging certain illegalities pertaining to the annual seal hunt in Namibia. They maintained there was enough evidence presented to prevent the Minister from commencing the harvest, pending further investigations.[21] The harvest was, however, not suspended. It was not only Seal Alert-SA that raised attention to the alleged brutal and illegal harvest. Others included the International Fund for Animal Welfare (IFAW); Windhoek Society for the Prevention of Cruelty to Animals (SPCA) who was allowed to observe the harvest since 2010;[22] South African Seal Saving Initiative; Sea Shepherd Conservation Society; National Council of SPCA–South Africa; Seals of Nam and the World Society for the Protection of Animals (WSPA). The organisations have raised the following concerns:

1. The Namibian harvest is contrary to Namibian and international law;
2. Namibian law does not regulate the harvest adequately;
3. Namibia violates the principle of sustainable utilisation contained in the Constitution and MRA;
4. The MRA and Regulations are contradictory and do not effectively protect seals;
5. The Regulations are impossible to implement;
6. The harvest violates the *Animal Protection Act*[23] (APA); and
7. The harvest violates the rights of seals.[24]

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18 Act No. 29 of 1992.
19 Act No. 27 of 2000.
20 Walters (2012a:4).
21 Dawson Edwards & Associates. 22 June 2011. *Summary of illegalities pertaining to the annual seal harvest in Namibia,* p.6.
22 Weidlich, B. 10 June 2010. *Seal activists ready to prevent 2010 harvesting. The Namibian Newspaper.*
23 Act No. 71 of 1962.
24 Walters (2012a:5).

This requested a response from the Ombudsman and in June 2012 he addressed the aforementioned issues in a report.[25] Due to this report this paper was researched to determine whether the response is legitimate.

1.3 **Problem Statement**

The Namibian Government orders the harvest of ±85,000 seal pups and ±6,000 bulls every year in accordance with the *Marine Resources Act*[26] and the *Regulations*,[27] specifically *Regulation 20*. *Regulation 20* prescribes specific measures to be used during the killing of pups and bulls. A group of pups must be released towards the sea and be killed by clubbing on the head when the group moves past the clubber. The inspector must be satisfied that the clubbed pup is dead and thereafter a sticker must pierce the heart of the pup with a knife. Adult seals should be killed by shooting it in the head with a rifle and the bullet must immediately kill the seal.[28] The inspector must also be satisfied the adult seal is dead. The MRA provides for sustainable use and protection of marine resources.

However, the methods prescribed by *Regulation 20* are not implemented. Namibia has been criticised about the yearly harvest, focussing on the legitimacy and severity of the harvest. The Ombudsman admitted in his report that the *Regulations* prescribed by law for the annual harvest are not complied with.[29] Filmed images of the slaughter shows the pups are clubbed repeatedly and some pups are found breathing after being clubbed, stabbed and even skinned.

Pups vomit mothers' milk due to shock and some of their chests are cut open whilst still being alive.[30] Although the law prescribes pups must be less than a year old, older seals are killed, as it is almost impossible to determine the age of a seal visually in a big colony during harvesting.[31] Sometimes bulls are not shot in the head, but are struck on other parts of the body. Immediate death of the animal does not follow and

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25 *Op cit,* p.1.
26 Act 27 of 2000.
27 Regulations Relating to the Exploitation of Marine Resources of 2001.
28 EFSA (2007:42).
29 *The Namibian Cape Fur Seal Slaughter.* Available at http://www.harpseals.org/about_the_hunt/cape_fur_seal_alert.php; last accessed on 9 March 2013.
30 *Op cit.*
31 Hugo, F. 23 September 2013. *Electronic Interview*.

it virtually bleeds to death (as no sticking is required by law) or escapes to sea wounded.[32] This is in violation of the *Regulation*.

The *Rome Declaration on the Implementation of the Code of Conduct for Responsible Fisheries, Convention on the International Trade of Endangered Species* (CITES) and the *Reykjavik Declaration on Responsible Fisheries in Marine Resources* all make provision for the sustainable use of marine resources. CITES has listed seals as an endangered species in Appendix II.

Another point to note is the sustainability of the harvest. The quota should be set at 30% of total pups in the colony.[33] However, quotas don't make provision for natural mortalities and die-offs which could imply the quota is more than the surviving pups. The MRA and international law provide the "principle of sustainability". If Namibia does not adhere to this principle, it contravenes both laws.

If the only law regulating the Namibian harvest is uncertain, vague, inadequate and not implemented, it could be concluded that Namibia is currently not applying its own law and requires law to be enforced in an effective manner. If the law requires pups and bulls to be harvested by using specific methods, that should be the methods implemented. It does not suffice that methods are prescribed in law but is not implemented correctly.

The purpose of the study was to evaluate the issue of implementation of law, focusing on the current practice in Namibia, national law, applicable international law and the law of other jurisdictions such as South Africa, Russia, Norway and Canada. The study also evaluates the issue of animal cruelty experienced during the harvest due to *Regulations 20* not being implemented.

The ultimate outcome of this study determined whether or not Namibia is on the wrong side of the law. The study undertook a situational analysis of the rights of Namibian seals. If it can be shown that Namibia is currently in contravention of the law, the harvest is unnecessarily brutal and that there are other solutions available to

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[32] EFSA (2007:44).

[33] Hugo, F. 2008. *Namibia's Baby Seal Cull – 2008.* Available at http://www.actionagainstpoisoning.com/page426/page426.html; last accessed on 9 March 2013.

the ‘so-called’ problem, it should be brought to the attention of the Government and Namibian community.

1.4 **Research Questions**

The primary question is formulated around the implementation of the methods prescribed by the *Marine Resources Act* and *Regulation 20* in practice and to what extent the law is derogated from. The secondary question will consist of:

1. Is Namibia currently contravening national and international law regarding sealing and why?

1.5 **Hypothesis**

Namibia is currently in contravention of both national and international law due to lack of implementation and inadequacy of relevant law.

1.6 **Methodology**

Research consisted of a detailed document review and drawing a comparison between Namibia and other jurisdictions; focussing mainly on Canada. Qualitative and quantitative research methods were conducted throughout the study. The following are methods used to validate the findings and solidify the conclusions:

1. Qualitative research conducted through reviewing reports and documentation which consisted mainly of Internet sources, as very little literature is available on the Namibian harvest. The reports consisted of national and international writings on the topic.

2. Structured and unstructured interviews were conducted with organisations and people with interest. This included an interview with Hugo, the Founder of Seal Alert-SA, incorporated the view of animal rights activists. An interview with the Ministry of Fisheries and Marine Resources gave an insight on the measures implemented during the harvest and the sustainability thereof. Walters, the Ombudsman of Namibia, also gave his insights on the

sustainability of the harvest and the legality of the laws regulating it. An interview with the Ministry of Environment and Tourism proved unsuccessful.

3. A field visit was conducted in areas surrounding Henties Bay and Cape Cross. A visit to Seal Shoes, a seal product shop based in Henties Bay, provided information on the various products derived from seals. Seals Product (Pty) Ltd, a seal factory, gave an insight on the process seals go through after being clubbed to the stage of skinning. The Aquarium in Swakopmund also portrays information on seals and the seal harvest in its foyer. Cape Cross provided the opportunity to experience the seals in their natural habitat.

1.7 Chapter Outline

Chapter 2: Seal Harvesting Globally

This chapter provides a detailed literature review regarding seal harvesting globally. It focuses on the different methods of seal harvesting with their respective advantages and disadvantages, harvesting in other jurisdictions; including South Africa, Norway and Russia and the products derived from seals.

Chapter 3: Seal Harvesting in Namibia

This chapter provides a detailed literature review focusing on the practice of seal harvesting, the definition of seal harvesting, reasons for continuing with the harvest and the possible implications the harvest may have. The Namibian Government advanced the following reasons for the continuation of the harvest: it is economically advantageous as it is a source of revenue, seals are consuming Namibia's commercial fish and it is an important source of employment. However, contrary to this it has been submitted that seal watching would benefit the country more in terms of foreign exchange than a harvest, the harvest produces relatively few jobs compared to employment seal watching would provide and seals consume only 50% commercial fish. Even though seals do consume commercial fish, it is mostly suckling pups harvested which render the fish eating argument void.

In addition to this, sealing may have a devastating impact on tourism, the seal population, international relations and the ecology. It has been submitted by the Government of Namibia that the seal harvest is done on a sustainable basis. Further, local tour operators and lodge owners have stated the harvest does not affect Namibia's tourism. However, according to researchers, tourism is declining and the harvest is done on an unsustainable basis which, in the long run, will be detrimental to the seal population's survival.

Chapter 3: The Law Regulating Harvesting

This chapter focuses on the current law in place in Namibia and those international instruments Namibia is a signatory to. In the discussion of Namibian law primary focus is given to the *Marine Resources Act, Animal Protection Act* and the *Regulations Relating to the Exploitation of Marine Resources* published in the Government Gazette No. 2567. Namibia is a signatory to the *Convention on International Trade in Endangered Species* which has listed seals in Appendix II. Other international instruments include the *United Nations Convention on the Law of the Sea*, the *Rome Declaration on the Implementation of the Code of Conduct for Responsible Fisheries* and the *Reykjavik Declaration on Responsible Fisheries in Marine Resources*.

I submit in this paper that Namibia is currently contravening the abovementioned laws. Quotas are based on a lack of scientific evidence and are not rationally linked to population numbers. It continues harvesting although the population has faced massive die-offs and natural mortality. Namibia, is therefore not sustainably harvesting seals as required by law. The APA does confer protection to seals, but some still experience pain and suffering during the harvest as the *Regulations* are not properly implemented. Lastly, the study considers why Namibia is failing in implementing the law.

Chapter 4: Discussion of Analysis

In this chapter the study explains how Namibia is currently violating the law by considering the content of Chapter 2 and 3. It is also explained why Canada and Norway is currently better placed than Namibia at both a legal and implemental

framework. Consideration is given to whether the reasons advanced by the Namibian Government for the yearly harvest is fundamentally grounded and valid.

I submit in this Chapter Namibia does not only harvest seals but also culls them and the harvest does not provide justifiable employment, revenue and protection of fisheries to continue with the harvest. Further, there are contradictions within Namibian law and Namibian law is inadequate in affording protection for seals due to lack of implementation of law. Lastly, I submit the harvest is unsustainable resulting in the contravention of the APA, MRA, CITES and other international laws.

Chapter 5: Comparative Analysis: Canada

This Chapter focuses on Canada and its annual seal hunt. Canada still harvest seals to date. When considering this jurisdiction the study seeks to determine the laws pertaining to the hunt and the methods applied during the hunt. Canada is given focus in this paper as it has the largest marine mammal slaughter in the world and has effective law in place. However, just as Namibia, Canada has been under scrutiny because of alleged animal cruelty.

Chapter 6: Recommendations and Conclusions

The study concludes Namibia is currently on the wrong side of the law and that little has been done to improve the situation since the Ombudsman's report in 2012. I considered whether there are any other possibilities for Namibia to deal with the so-called "seal problem" apart from having a harvest. This includes recommendations regarding development of law, greater research and protection for seals and the establishment of seal watching facilities. It is also outlined how Namibia can improve the current method of seal harvesting.

CHAPTER 2
LITERATURE REVIEW: SEAL HARVESTING GLOBALLY

Seal harvesting is practiced around the world in different countries. Each has different laws regulating the method to be used in the harvest. Further, various products are derived from the harvest and these products are exported to other countries to be manufactured and sold.

2.1. The Different Methods of Seal Harvesting

Seal harvesting takes different forms. The Namibian method is stipulated in *Regulation 20*. Sealers have to kill seals by using a sealing club to strike the pup on the head with one hard blow. When the seal is unconscious or dead the heart must be pierced with a knife to allow the animal to bleed. The bulls must be shot in the head with a rifle.

Abroad the practices somewhat differ. In Greenland harvesting is conducted with rifles. Seals are shot in the head from an open boat while they are on the ice.[34] Norway uses both guns and hakapiks to conduct its harvest. Adult seals are shot in the head and a hakapik is used to ensure the animal is dead. They may not be clubbed. The hakapik is used to crush the animal's skull and pierce its brain. The young may be killed with a hakapik. After the seal was struck on the head a knife is used to make an incision from the jaw to the sternum to bleed.[35]

In Canada the majority of hunters use firearms but hakapiks and clubs may be used.[36] The Canadian sealing regulations describe the dimensions of the clubs and hakapiks, the calibre of the rifles/shotguns and the minimum bullet velocity. The *Marine Mammal Regulations*[37] require a sealer using a hakapik to club the seal on the head crushing its skull. Prior to 2009 the sealer was required to do an eye test to

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34 *Fact Sheet – Seals – Greenland*. 2012. Naalakkersuisut, Government of Greenland, p. 1.

35 Regulations relating to the exercise of sealing in the West Ice and East Ice: Established by the Ministry of Fisheries and Coastal Affairs 11 February 2003 pursuant to Act 6 June 2008 No. 37 relating to wild living marine resources (Act) § 16 and § 18 **Amendments:** Amended March 11, 2011 No. 272.

36 *Animal Welfare in Canada.* Available at http://www.sealsandsealing.net/welfare.php?page=3&id=1; last accessed on 18 August 2013.

37 Marine Mammal Regulations SOR/ 93-56.

ensure the seal is dead before moving on to the next.[38] In some instances shooting the seal does not kill it immediately and the hakapik is used to ensure death.[39]

2.2. **The Advantages and Disadvantages of Seal Harvesting Methods**

The hakapik is advantageous because it can be effectively used when sufficient care is taken to apply the blows to the head and verify the results. It also reduces the chances of the animal escaping; it is rapid and bleeding can occur immediately after the blow. The Norwegian Scientific Food and Safety Panel on Animal Health and Welfare stated the hakapik is an effective method to ensure unconsciousness or death.[40] However, if not used adequately the animal may not be stunned immediately; it could strike another part of the body or only affect one side of the brain which could cause pain, suffering and affect the reflex test. [41]

The club may be an effective method as the skulls of the pups are fragile and an accurate blow can render it unconscious. If the first blow is not successful the sealer can do it repeatedly as long as the procedures prescribed by law are followed. Disadvantages include that the animals are in constant movement which may compromise accurate blows and if older seals are mistaken for pups (and their skulls are not as fragile) it may take longer to kill them causing unnecessary suffering. Momentum needed for blows can also affect the accuracy thereof and in general all the hakapiks' disadvantages would apply to the club.[42]

The advantages of using a shotgun/rifle are it should cause immediate death if the animal is shot in the head or upper neck; it causes less stress to the colony as there is little human intervention; if it is coupled with optical sights it advances accurate shooting and a silencer will also cause less distress. In Namibia, the use of rifles/shotguns with low calibre and velocity would reduce the risk of other animals being injured other than the one intended to be shot.[43] The disadvantages of using a shotgun/rifle is the animal may not be hit with enough force or accuracy to cause immediate death. The animal may escape wounded and it may be difficult to re-hit a wounded seal especially in large colonies such as in Namibia. The distance between

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38 *Op cit.*
39 EFSA (2007:115).
40 *Op cit,* p. 66.
41 *Op cit*, p. 39.
42 *Op cit,* p. 41.
43 *Op cit,* p. 43.

the hunter and seal implies an unnecessary delay in verifying the results of the shot. If animals are shot in the extremities of the head such as the nostrils, or on the skin surface, there may not be enough impact resistance for the bullet to fragment, but the seal can still sustain life threatening injuries. In Namibia, due to the low inertia of the ammunition in use, the risk is high for animals not being killed with a single shot and some may seem dead but regain consciousness at a later stage.[44]

2.3. **Seal Harvesting in Other Jurisdictions**

Today, commercial sealing still takes place in Namibia, Canada, Greenland and Norway.[45] South Africa stopped commercial sealing in 1990 and until recently, Russia had a commercial sealing industry but the slaughtering of baby Harp seals is now banned.[46]

Commercial sealing now only accounts for a small percentage of fur trade globally, with factory fur farming replacing wild fur.[47] Focus in this section will be given to South Africa, Russia and Norway. The table below depicts harvesting globally for the year 2005, in which Namibia, Canada and Greenland were responsible for 95% of all seals slaughtered.[48]

44 *Op cit,* p. 44.
45 Campbell (2011:16).
46 *Op cit.*
47 *Op cit*.
48 *Op cit,* p. 9.

2.3.1. **South Africa**

South Africa also played a role in the historical removal of the seal colonies from their offshore island breeding grounds, leaving them to breed on small rocky islands with insufficient barriers to protect them against large Cape waves and stormy areas. New born pups are not able to swim and due to the heavy storms they are swept off the island where tens of thousands of them drowned each year.[49] Commercial exploitation of the South African Cape Fur seal began in the early 17th century. By the time legal authority over sealing in the Cape was established in 1983 it was suggested that the population was reduced to less than 50,000.[50] With legislation in place seals had to be harvested on a sustainable basis. However, in 1986 the South African Government, in support of the Diemont Commission, agreed that the South African seal population should be reduced.[51]

In 1990 South Africa stopped their annual harvest and no longer permits it.[52] There is no distinction between the Cape Fur seals of South Africa and those of Namibia.[53] The South African Government, however, has done nothing to restore the colonies to the islands they used to inhabit and no new breeding colonies have formed on the south coast.[54] Hugo has proposed to bring the seals back to their former breeding grounds by establishing small colonies with rescued seals. He and the South African Government is currently working together to implement his plan. Further, the country is yet to implement laws that would regulate and ban firearms to be taken onto boats by fishermen. As a result, many seals are still killed at sea with firearms.[55]

Although South Africa has ended its commercial sealing with no adverse impacts to fisheries,[56] the environment or the ecosystem, the South African seal population has not increased in 17 years. The Ombudsman's report states that it appears that the ban on seal harvesting in South Africa is not the only cause for the stabilisation in

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49 *The Namibian Cape Fur Seal Slaughter.* Available at http://www.harpseals.org/about_the_hunt/cape_fur_seal_alert.php, last accessed on 9 March 2013.
50 Butterworth (1988:1).
51 *Op cit.*
52 Campbell (2011:30).
53 *The Namibian Cape Fur Seal Slaughter.* Available at http://www.harpseals.org/about_the_hunt/cape_fur_seal_alert.php; last accessed on 9 March 2012.
54 Kirkman (2011:499).
55 *Op cit.*
56 Hugo, F. 24 July 2013. *Electronic Interview.*

growth of the seal population during 1993-2004 but that limited breeding ground and scarcity of food also contributed.[57]

2.3.2. **Norway**

The Norwegian Government allows seal hunting[58] although it is on a much smaller scale.[59] Since the 1990's the use of hakapiks has decreased and rifles are used for the initial stunning of seals. Bleeding occurs on ice immediately after they have been shot and stuck with the spike of a hakapik. Skinning may only start after bleeding.[60] As a result of population concerns, Norway's seal hunt is now controlled by quotas based on recommendations from the International Council for the Exploration of the Sea.[61]

Norway has strict and detailed legislation governing sealing, including dates for the sealing season, quotas, methods of killing, mandatory training for sealers, approval of vessels and inspection.[62] All sealing vessels are required to be registered and carry a qualified veterinary inspector on board[63] and sealers are required to pass a shooting test each year before the season starts using the same weapon and ammunition they would use on the ice.[64] Likewise, they have to pass the hakapik test.[65] Adult seals older than one must be shot in the head with expanding bullets and cannot be clubbed to death.[66] The hakapik is used to ensure the animal is dead. The animal is then bled on the ice and live animals may never be brought onto any vessel. Young seals don't have to be shot; they are killed with a hakapik by crushing the skull and using the spike to pierce the animal's brain.[67]

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57 Walters (2012a:10).

58 *Op cit.*

59 EFSA (2007:26).

60 *Op cit,* p. 27.

61 *Sealing.* Available at http://www.fisheries.no/ecosystems-and-stocks/marine_stocks/mammals/seals/sealing/; last accessed on 20 September 2013.

62 *Norwegian Sealing.* Available at http://web.archive.org/web/20080319075512/http://www.norway.org/policy/environment/sealing/sealing.htm; last accessed on 20 September 2013.

63 EFSA (2007:27).

64 Article 3 of the Norwegian Regulations.

65 EFSA (2007:28).

66 *Op cit.*

67 Regulations relating to the exercise of sealing in the West Ice and East Ice: Established by the Ministry of Fisheries and Coastal Affairs 11 February 2003 pursuant to Act 6 June 2008 No. 37 relating to wild living marine resources (Act) § 16 and § 18 **Amendments:** Amended March 11, 2011 No. 272.

Article 7 of the *Norwegian Regulations* provides the hunt should take place in such a way that the animals do not suffer unnecessarily, while Article 8 and 9 provides for at least one person assigned to a marksman to effect bleeding. In addition to this no line may be fastened to the animal unless it is bled out. The *Norwegian Regulations* also do not consider an animal dead if it has not been bled and can till then not be skinned.[68] Seals in the water and seals with young may not be killed and the use of traps, artificial lightning and striking a seal anywhere but on the skull is forbidden.[69]

2.3.3. **Russia**

Russia's seal hunt is Government–subsidised.[70] There have been reports that many seals are not properly killed and are transported while injured to processing areas.[71] In January 2000, the Russian Parliament passed a bill to ban seal hunting with 273 votes to 1, however it was vetoed by President Vladimir Putin.[72] Five species of seals are hunted in Russia, including the Harp seal.[73]

The methods used to kill seals are nets, traps, rifles or hakapiks.[74] The type of method used to kill a seal and the time of year it is hunted depends on the seal species. Once the seals have been killed, their pelts are transported to land *via* helicopter.[75] In 2007, EFSA was not able to find any information regarding regulations controlling the hunt.[76] In 2009, Russia's Minister of Natural Resources and Ecology announced a complete ban on the hunting of harp seals younger than one year of age.[77]

2.4. **Products Derived from Seal Harvesting**

Seals are harvested for their pelts, genitalia, oil, meat[78] and trophy hunting. Currently there is minimal increase in the value of seal pup products. The leather made from

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68 EFSA (2007:49).
69 *Op cit,* p. 28.
92 *Harp Seals.* Available at http://marinebio.org/species.asp?id=302; last accessed on 4 September 2013.
71 *Op cit.*
72 *Op cit.*
73 EFSA (2007:29).
74 *Op cit.*
75 *Op cit,* p. 30.
76 EFSA (2007:30).
77 Simon, M. 2012. *Seal Culling in Namibia.* Available at http://www.earthtimes.org/conservation/seal-culling-namibia/2086; last accessed on 9 March 2013.
78 National Aquarium of Namibia, Swakopmund.

adult seal pelts are tanned in South Africa and imported back to Namibia for the manufacture of shoes and other products.[79] There are concession holders in the sealing industry and one buyer Hatem Yavuz, who runs sealing businesses all around the world, accounts for a significant number of all Namibian seal pelts purchased.[80] The oil, meat and leather are mostly sold locally, while others are mostly exported. The following table[81] indicates the products manufactured from various parts of seals:

Product from Seal	**Product Manufactured**
Pelts	Fur Products
Genitalia	Dried, packed and sent to Asia
Meat & Carcasses	Meat and Bone Meal
Skin	Dried, salted & tanned in South Africa
Blobber	Oil (Fodder & Medicinal)

2.4.1. **Pelts**

The pelts of pups[82] are soft and of high quality. Pelts are mainly used for coats and other fashion accessories.[83] They are stored in brine after processing and are mainly exported.[84] In Namibia pelts account for 65% of the total catch value. According to the MFMR the pelts of pups are exported for N$47.25 and those of adult seals for N$38.13 which is relatively cheap compared to Canada's prices.[85] In 2008 most of the pup pelts were exported to Turkey and Canada.[86]

2.4.2. **Leather**

Leather is made from adult pelts and is used to make belts, slippers, jackets and shoes. Most of the products are sold domestically and to South Africa. Apart from

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79 Campbell (2011:42).
80 *Op cit.*
81 *Op cit,* p. 43.
82 Also called wild fur.
83 *Seal Pelts.* Available at http://www.sealsandsealing.net/products.php?page=5&id=0&prod=3; last accessed on 20 September 2013.
84 Campbell (2011:44).
85 *Op cit,* p. 44, 47.
86 *Op cit,* p. 46.

shoes, the total amount of products sold is low. Shoes can sell between US$27.50 and US$62.50.[87]

2.4.3. **Genitalia**

Genitalia is used in Chinese medicine, cooking and as an aphrodisiac. CITES and other local stakeholders suggest there is still a considerable demand for seal genitalia sourced from Namibia and could sell between US$115 and US$145 per kilogram.[88]

2.4.4. **Oil**

Oil is used medicinally (which is high in Omega 3)[89] and for cattle feed. In 2005 the harvest produced 163,000 litres of oil of which 20% was used medicinally and 80% as cattle feed. Oil used medicinally sells for US$0.07 per litre and those used for cattle feed for US$0.14 per litre. However, exports in oil vary from year to year.[90] Seal Products (Pty) Ltd, a Namibian based business and one of the concession holders, sells Omega 3 made from seal oil and utilise the entire seal.[91]

2.4.5. **Fodder and Seal Meat**

Seal meat and carcasses are used to make fodder for cattle, pigs and as a subsistence food for workers employed by concession holders.[92] It is high in protein and other essential minerals.[93] Seal meat is also sold as a gourmet item overseas.[94]

2.4.6. **Seal Trophy Hunting**

Seal trophy hunting forms part of Namibian tourism. About 446 trophy hunting businesses are registered with the Namibian Tourism Board.[95] Just as many other

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87 *Op cit,* p. 48.
88 Campbell (2011:48-49).
89 *Seal Oil.* Available at http://www.sealsandsealing.net/products.php?page=5&id=0&prod=2; last accessed on 20 September 2013.
90 Campbell (2011:49-50).
91 *Seal Products (Pty) Ltd.* Available at http://www.sealproductsnamibia.com; last accessed on 8 September 2013.
92 Campbell (2011:50).
93 *Seal Meat.* Available at http://www.sealsandsealing.net/products.php?page=5&id=0&prod=1; last accessed on 20 September 2013.
94 Campbell (2011:52).
95 *Op cit,* p. 53.

wild animals, national and international hunters hunt seals with bows and arrows or rifles[96] which are then taken to a taxidermist to stuff the animal as a mounting piece.

[96] Hugo, F. 2009. *Exclusive Interview with Francois Hugo, Founder, Seal Alert-SA.* Available at http://www.actionagainstpoisoning.com/page426/page426.html; last accessed on 9 March 2013.

CHAPTER 3
LITERATURE REVIEW: SEAL HARVESTING IN NAMIBIA

3.1. Introduction

The Namibian seal harvest is a commercial and environmental practice. However, the harvest has not always been applauded. Many suggest or argue the harvest should be stopped or Namibia should reduce the brutality of the harvest. These arguments date back to 1990 when IFAW made its opposition to the seal hunt public.[97] There is currently an estimated 1.2 million seals in Namibia and Namibian waters; comprising of 600,000 females, 350,000 bulls and 254,554 pups.[98]

Seal harvesting has been a practice in Namibia for almost 300 years[99] and there are currently three main colonies of seals in Namibia where harvesting takes place;[100] Cape Cross, Atlas Bay and Wolf Bay.[101] The government oversees the harvest and one inspector from the MFMR supervises. Sealers are given training on how to conduct the harvest and are tested at the beginning and during the season running from July to November.[102] Initially the pups are harvested and as the hunt progress the focus shifts to the adult bulls.[103]

During the harvest pups are rounded up on the Namibian beach, stunned and stuck to death (called the "stun and stick" method)[104] while their mothers watch and try to defend them. As per *Regulation 20* pups are killed with clubs and the adult males are shot.[105] After each day's hunt bulldozers scoop up the carcasses to be transported to a factory for processing,[106] while others churn up the blood-soaked beach, throwing a sandy blanket over the scene before 10am when the beach opens and tour busses arrive to see and photograph the animals in their natural habitat.

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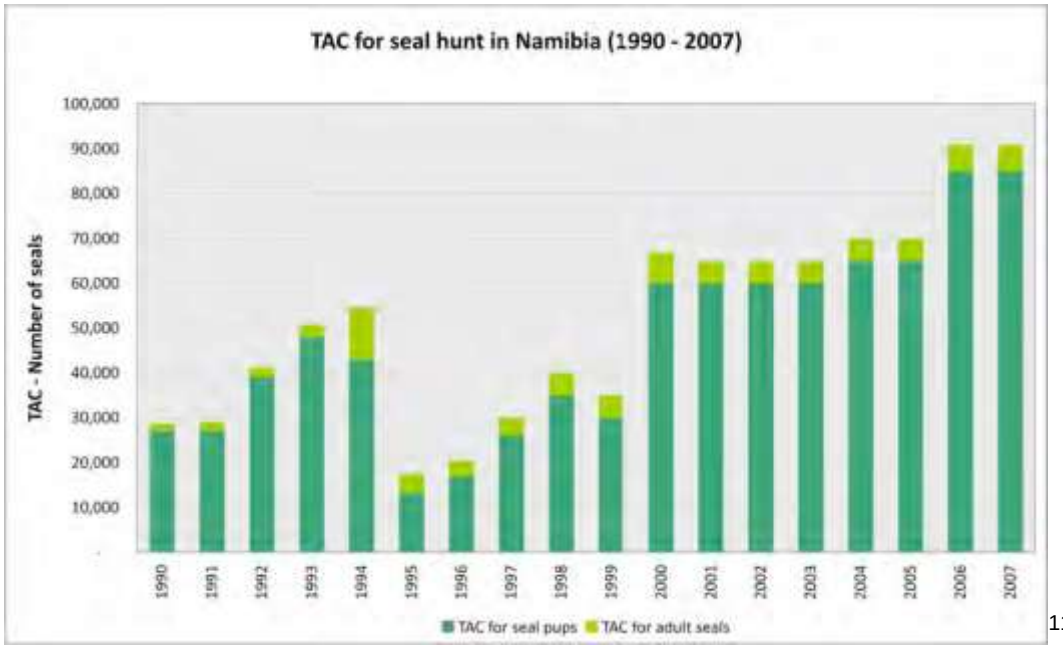
97 Natural Habitat Wildlife Adventure. 1992, p. 3.
98 Walters (2012b:4).
99 Campbell (2011:29).
100 EFSA (2007:30).
101 National Aquarium of Namibia, Swakopmund.
102 Campbell (2011:34).
103 *Op cit.*
104 *Op cit*, p. 62.
105 *Op cit*, p. 30.
106 *Op cit.*

At the factory harvested seals are skinned and the pelts are packed and shipped off to Turkey where they are used to manufacture coats which sell for about N$230,000 each. The bulls' genitals are dried and marketed as an aphrodisiac each worth almost N$4,000 in Asia.[107] It would be devastating to think that bulls will be shot and exported to Asia, to a point of over-exploitation, sharing the same fate as rhinos.

According to EFSA, since 2000, the Total Allowable Catch (TAC) for pups is between 50,000 and 85,000 and for bulls between 5,000 and 7,000. About 600 pups and 200 bulls are killed per day until the season ends or until the quota has been reached.[108] The Ombudsman stated *"it is alleged by the activists that over 1000 pups are harvested every morning, but according to the sealers it is only about 500."*[109] The following table depicts the TAC for seal harvesting in Namibia from the year 1990 to 2007:



[110]

The TAC is calculated from aerial population surveys conducted every three years[111] and population modelling. The TAC is between 48% and 63% of pups.[112]

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107 Gekoski (2011:55).

108 *The Namibian Cape Fur Seal Slaughter*. Available at http://www.harpseals.org/about_the_hunt/cape_fur_seal_alert.php, last accessed on 9 March 2013.

109 Walters (2012a:20). A reliable source has claimed that the total amount killed each day ranges between 1000 – 1500.

110 Campbell (2011:8).

111 Mundjulu, I. 16 September 2013. *Electronic Interview.*

112 Campbell (2011:36).

Seal harvesting is not the only cause of the decrease in population of Cape Fur seals: the Namibian Government allows the killing of seals by trophy hunters[113] and they are illegally killed by Namibian and South African fishermen at sea.[114]

EFSA has raised concerns with the method used in the Namibian harvest, which include factors of humanity, distress and injury.[115] Best stated the stunning method is effective; however, the USA Department of Commerce said it is not effective and bleeding is done incorrectly. Many seals are stunned lightly and regain consciousness before bleeding takes place. Further, incisions are not made at major vessels.[116] The killing of pups requires several blows and some are still conscious during sticking. It has also been stated that some pups still breathe or show movement when they are loaded to be taken to the factory.[117] Kirkman added that sticking is done carelessly and there are time delays between stunning and sticking in which the animal can regain consciousness.[118]

The law requires pups to be clubbed while in small groups. The pups are unrestrained and are almost always moving; therefore a smaller group must be separated from the large.[119] According to Kirkman, this requirement is not adhered to. Animals are being stunned while still in groups and they are tightly round up and kept in the group for too long leading to overheating, suffocation and the vomiting of milk.[120] When it comes to the shooting of adult bull seals it requires knowledge and skill. Kirkman again found the practice is ineffective as many animals escape to sea wounded.[121]

The final founding of Kirkman and EFSA is the Namibian harvest in careless, it causes unnecessary cruelty and suffering or pain, it is severe,[122] it contains undue delays and instils fear in animals.[123] The stunning of conscious animals shows serious welfare concerns.[124] EFSA further concluded it causes disturbance, fear and

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113 Campbell (2011:53).
114 EFSA (2007:30).
115 *Op cit,* p. 62.
116 *Op cit*.
117 *Op cit*.
118 *Op cit*, p. 63.
119 *Op cit*.
120 *Op cit*.
121 *Op cit*.
122 WSPA Working Group. 2007. *OIE Guidelines for the Slaughtering of Animals*.
123 EFSA (2007:65).
124 *Op cit*, p.90.

distress in the colony, animals (both targeted and non-targeted) sustain injuries, some are not clubbed to a state where they are not able to regain consciousness and bleeding out is not done effectively. Therefore many seals regain consciousness for long periods till they eventually die.[125]

3.2. **Definition of Seal Harvesting**

The Ombudsman's report states Namibia does not cull seals, it rather harvests them. He explains this by quoting the Oxford Dictionary which states a cull is "*to reduce the population of (a wild animal) by selective slaughtering*". The dictionary defines harvest as "*season's yield's or crops*". "*According to our official policies we are harvesting seals on a sustainable basis, i.e. trying to keep the population at a productive and safe level, to sustain future harvest… a cull would in contrast be defined as killing seals for the purpose of decreasing the population*." Namibia harvests seals because it is a renewable commercial resource.[126] Although there has been controversy regarding whether Namibia harvests or culls seals, the law as per *Regulation 20* states Namibia harvests them. Therefore the term "harvest" will be used throughout the study.

3.3. **Reasons Advanced for a Yearly Harvest in Namibia**

The most common reasons given for sealing are to obtain their pelts, meat, fat, oils and for reducing the population. Seal fat has a variety of uses and their meat is used in animal feed. The Namibian Government has advanced the following reasons for continuing with its harvest as it:

1. Creates employment opportunities for Namibia;
2. Provides a source of revenue for Namibia; and
3. Helps improve Namibia's fish stocks.

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125 *Op cit,* p. 91.

126 *Op cit.*

3.3.1. **Employment**

In 2004 the Namibian Permanent Secretary Mbako stated "*The sealing industry sustains jobs for the unemployed, poor and destitute*".[127] Sole proprietor structure is most commonly found within the sealing industry. Owners act as managers and appoint a few foremen and labourers. About 117 people are employed on a seasonal basis while others estimate it between 122 and 137.[128]

Campbell states the total wages paid in the season is estimated at US$119,900.[129] The following average wages are paid per season:

1. Slaughterers - US$274;
2. Processors - US$1,307; and
3. Leather producers - US$3,442.[130]

The clubbers also feel affected by the harvest but see it as their bread and they have to do it to survive.[131] The Ombudsman stated: *"Nevertheless, despite the limited growth prospects, the strength of the current industry is in the jobs it supports. Although it is mostly low paid, low skilled and seasonal work, employment is nonetheless important in Namibia"* – a few jobs do make a difference.[132] This was also the opinion of Mundjulu of the MFMR.[133]

Those against the Namibian harvest claim the harvest creates relatively few employment opportunities[134] and fur dealers hire a small number of Namibians to participate in the harvest[135] on a part time basis. Sea Shepherd has pledged an annual amount of about N$369,000 towards job creation in sustained seal tourism if Namibia agrees to stop the yearly harvest.[136] Even if the harvest provides jobs, the sealers and processors of the harvest are paid low wages for the entire sealing

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127 *The Namibian Cape Fur Seal Slaughter.* Available at http://www.harpseals.org/about_the_hunt/cape_fur_seal_alert.php, last accessed on 9 March 2013.
128 Campbell (2011:66).
129 *Op cit.*
130 *Op cit,* p. 67.
131 Walters (2012a:15).
132 *Op cit,* p. 20.
133 Mundjulu, I. 16 September 2013. *Electronic Interview.*
134 Gekoski (2011:55).
135 *The Namibian Cape Fur Seal Slaughter.* Available at http://www.harpseals.org/about_the_hunt/cape_fur_seal_alert.php, last accessed on 9 March 2013.
136 Gekoski (2011:56).

season.[137] For the duration of the harvest unskilled workers are given an employment opportunity while living in cardboard shacks near the seal colony.[138]

It has been submitted by Harpseals.org that they wonder whether the leaders of Namibia are not capable to think of another way to provide employment for 70-130 people. Even if a few unskilled workers, as they are not required to have any qualifications, are given employment, it is still temporary.[139] It is also important to note that thousands of dollars earned by the sealing industry go to those who hold the right to benefit and not the workers. A mere fraction of the income goes to the actual workers and when harvesting is stopped or when the seal population collapses completely, these unskilled workers will have no way to earn money.[140]

3.3.2. **Revenue**

The harvest persists due to its economic contribution to the country. Seal skins, genitals and other products are exported or sold locally to contribute to Namibia's annual GDP. The Ombudsman did not dwell into the economics of seal hunting and seal watching but it could be said the harvest results in human profit.[141] Seals are natural resources available to humans to fulfil needs and wants. This results in exchange of a currency for goods and services and considers the supply, allocation and demand of these products and services.[142] Seals generate economic activity through provision of goods and services for the harvest, for processing and the sale of goods for production or consumption.[143]

Concessionaries of the harvest has to pay N$2 per pup and N$6 per bull harvested. They also have to pay royalties on the TAC and not on the number of seals actually harvested.[144] Therefore, if the quota is set at 85,000 pups and 6,000 bulls, the royalties income for Namibia would amount to N$212,000.

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137 *The Namibian Cape Fur Seal Slaughter.* Available at http://www.harpseals.org/about_the_hunt/cape_fur_seal_alert.php, last accessed on 9 March 2013.

138 *Op cit.*

139 *Op cit.*

140 Hugo, F. 2009. *Exclusive Interview with Francois Hugo, Founder, Seal Alert-SA.* Available at http://voices.yahoo.com/exclusive-interview-francois-hugo-founder-seal-3806330.html, last accessed on 9 March 2013.

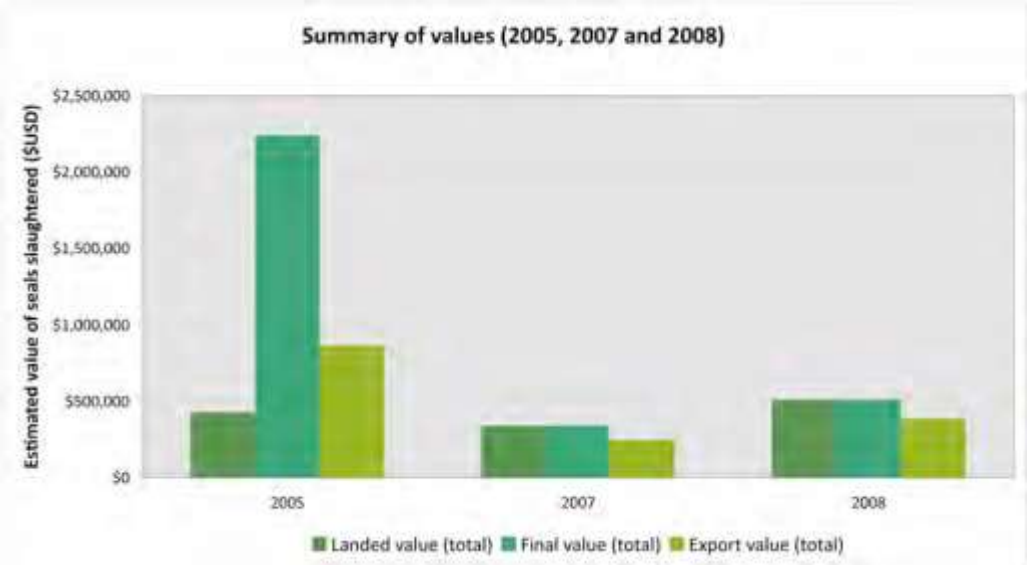
141 Simon, M. 2012. *Seal Culling in Namibia.* Available at http://www.earthtimes.org/conservation/seal-culling-namibia/2086; last accessed on 9 March 2013.

142 Campbell (2011:23).

143 *Op cit,* p. 27.

144 *Op cit,* p. 54.

Revenue is also generated through the sale of intermediate and final products. In 2007 the total revenue generated was 78% pelts and 19% genitalia based.[145] In 2008 the value peaked to over US$500,000 due to an increase in the number of pups and bulls slaughtered, resulting in more pelts being sold.[146] The graph below shows the landed, final and export value of seal products for the years 2005, 2007 and 2008.



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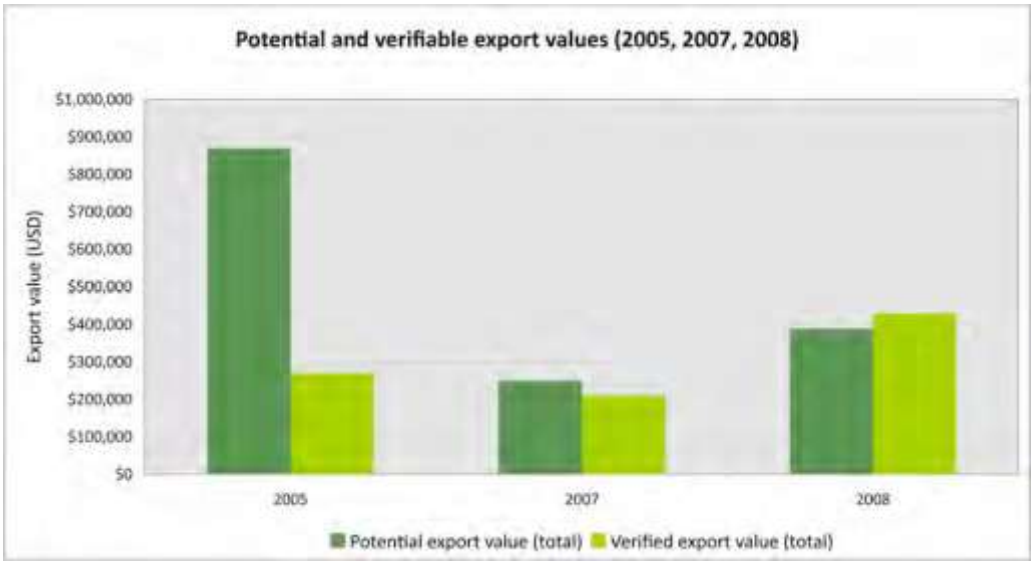
Not all potential export values will be achieved in the verified export value but it could also be that the verified value is higher than the potential value. This will be illustrated in the following graph.[148]



145 Campbell (2011:58).
146 *Op cit,* p. 61.
147 *Op cit,* p. 60.
148 *Op cit,* p. 62.

In 2008 the verified export value was higher than the potential export value due to the large volume of genitalia reportedly exported.[149]

Tax revenue is also a source of economic income for Namibia. Taxes on sealing are derived from:

1. Seal products;
2. Business within the sealing industry; and
3. Employees in the sealing industry.

Taxes generated in 2008 amounted to $76,901.[150]

Possible growth in the industry is limited if at all. This is due to volatile market prices, low value of products and the uncertainty regarding the sustainability of the TAC. Namibia might already be at the upper limit implying there is little room for expanded slaughter. The industry is also limited due to the increase of competition from other products and bans placed on Namibia.[151]

International welfare organisations have conducted studies showing seals are worth more to the Namibian economy alive than dead, almost 300% more. Seal based tourism could generate about N$12.5 million or more under the correct management.[152] Bank of Namibia in an annual report showed the fishing industry contributed 5% to the country's GDP in 2005 while sealing amounted to a mere 0.01%.[153] There is no figure available for recent years, but in 2000 a total of 41,753 killed seals earned Namibia N$600,000, which is N$14 per seal, although sealers claim it earned about N$5 million.[154]

In 2007 the Namibian tourism industry earned over N$2 million from 70,000 tourists paying to see and photograph the seals. In this year the Namibian Government permitted sealers to kill 700% more seal pups than what was permitted when Namibia became independent in 1990 but the harvest reached a revenue of only N$113,000, which was only 5% of what eco-tourism could bring in.[155] If just 200

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149 *Op cit.*

150 *Op cit,* p. 65.

151 *Op cit,* p. 69.

152 Gekoski (2011:55).

153 *The Namibian Cape Fur Seal Slaughter.* Available at http://www.harpseals.org/about_the_hunt/cape_fur_seal_alert.php, last accessed on 9 March 2013.

154 *Op cit.*

155 Hugo, F. 2008. *Namibia's Baby Seal Cull - 2008.* Available at http://www.actionagainstpoisoning.com/page426/page426.html; last accessed on 9 March 2013.

tourists cancelled their holidays to Namibia, the lost revenue would have exceeded the sealing industry's total revenue.[156]

3.3.3. **Fisheries**

A major question revolving around the harvest is whether seals should be harvested because of the alleged effect it has on fish stocks.[157] The Government alleged in the Annual Report of 2007 seals consume more than 860,000[158] tons of fish.[159] The harvest is, therefore, necessary to protect Namibia's fish stocks. EFSA states seals are also harvested in Namibia to reduce their perceived impacts on threatened seabird populations.[160]

Namibia's Minister of Fisheries, Bernhard Esau stated "*we are not against the presence of seals in our waters; we just want to control matters so that we are not caught off guard*".[161] Deputy Minister of Fisheries, Titus Libende, maintains seals should always be harvested because they eat fish which affects his fisheries. "*The exercise, which is condemned by animal rights groups, is necessary for the survival of Namibia's fishing industry*", the Government said.[162]

Contrary to this argument it is submitted there is currently no scientific basis to predict that the seal population has a negative effect on the yields of commercial fish species.[163] Therefore fisheries might serve as a rationale for reduction of the seal population, but it still needs to be addressed by scientific assessment.[164] Recommendations of the Scientific Commission of Enquiry into the Exploitation of Pelagic Fish Resources of South Africa and South West Africa states that *"*seals, seabirds and other predators on commercially important pelagic shoal-fish should not be culled if the principal objective for doing so is to attempt to make more fish available to the industry".[165] Butterworth submits seals eat between 5 to 20% of their

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156 *Op cit.*

157 Butterworth (1988:1).

158 Of which 282 900 was seen as commercial fish (Butterworth (2012:33)). Mr Mundjulu in his electronic interview stated that the 860 000 is determined by literature and studies by scientists.

159 Ministry of Fisheries and Marine Resources. 2008. *Annual Report 2007,* Windhoek, Namibia.

160 EFSA (2007:30).

161 Gekoski (2011:55).

162 Kaira, C. *Namibia sets seal cull at 86 000 to protect fishing.* Available at http://www.businessweek.com/news.2011-07-11/namibia-sets-seal-cull-at-86-000-to-protect-fishing.html; last accessed on 9 March 2013.

163 Butterworth (1988:1).

164 *Op cit.*

165 *Op cit.*

body mass which range between 54 and 72kg.[166] The Namibian Government shares the belief of the Diemont Commission[167] that less seals would lead to more fish.[168] However, the MFMR does not make it clear how seals are deemed to impact fisheries in Namibia.[169] According to Kirkman seals' diet consists of sardines, anchovies, horse mackerel, squid and hake[170] which all fall under the scope of commercial fisheries. However, they also consume goby and lantern-fish that are not classified as commercial.[171]

According to Hugo the 860,000 is false as seals' diets consist of 50% non-commercial fish. He stated: "*The Government has been culling seals even when it had neither population data nor any means of quantifying seal consumption*" and is therefore of the opinion it is a good excuse for the harvest. It is, however, not based on scientific fact.[172] Paul Watson states the theory of seals posing a danger to the fish population is a fallacy.[173] The harvest is 90% based on nursing baby seals who are not fish eaters.[174] Hugo therefore contends that overfishing is over consuming Namibian fisheries and not seals, as the commercial industry lose less than 0.3% to seals.[175]

It is submitted there is no proof of a link between seal reduction and an increase in yield of fish. Nine species of fish are commercially fished in Namibia of which hake is the most important. Research has shown a reduction in the seal population could in fact have a negative effect on fisheries - seals prey on predatory hake which preys on commercial hake. If the predatory hake increases the commercial hake will decrease. Lastly, Butterworth submits fishermen and seals should not be competitors.[176]

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166 *Op cit,* p. 2.

167 *Op cit,* p. 5.

168 Hugo, F. 2008. *Namibia's Baby Seal Cull – 2008.* Available at http://www.actionagainstpoisoning.com/page426/page426.html; last accessed on 9 March 2013.

169 Campbell (2011:32).

170 National Aquarium of Namibia, Swakopmund.

171 Kirkman (2011:496).

172 Hugo, F. 2009. *Exclusive Interview with Francois Hugo, Founder, Seal Alert-SA.* Available at http://voices.yahoo.com/exclusive-interview-francois-hugo-founder-seal-3806330.html, last accessed on 9 March 2013.

173 Kisting, D. 27 July 2011. *Seal culling exposed to the world. The Namibian Newspaper*.

174 *The Namibian Cape Fur Seal Slaughter.* Available at http://www.harpseals.org/about_the_hunt/cape_fur_seal_alert.php, last accessed on 9 March 2013.

175 *Time for Namibia to see the tourism value of seals.* 17 June 2010. *The Namibian Newspaper.*

176 Butterworth (1988:5).

Campbell has stressed the importance of two industries that depend on seals for survival; fisheries and tourism.[177] The activity of seal harvesting generates revenue for Namibia, but it should also be considered that seal watching is a popular tourism activity undertaken by over 10% of total tourist arrivals in Namibia. The industry generated over US$2 million in 2008. Likewise, NHWA proposes the replacement of seal hunting with seal watching. NHWA attempts to quantify the seals worth as a tourist attraction and that seal watching can at least equal the revenue of seal harvesting.[178] Eco-tourism is considered as one of the fastest growing industries, but specific statistics are not established.[179] Campbell further states the MFMR encourages high harvest quotas, due to the impact of seals on fisheries.[180]

Apart from creation of employment, economic benefit and fish stock protection there are also other important factors that must be taken into account according to Campbell. One area of concern is the potential overexploitation of the Namibian seal population and international problems the country is experiencing. Europe has already placed a ban on seal product trade with Namibia and there are a number of campaigns that seek bans in other potential markets for the Namibian sealing industry, including Russia, Turkey, Hong Kong, Taiwan and China.[181]

3.4. **Possible Implications of Seal Harvesting**

The continuation of seal harvesting in Namibia may have an effect on various factors. The main areas to be focussed on include the impact of seal harvesting on the following areas:

1. Tourism Industry;
2. Ecology;
3. International Relations of Namibia; and
4. Seal Population.

These factors will each be considered in detail below.

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177 Campbell (2011:8).
178 Natural Habitat Wildlife Adventure. 1992, p. 3.
179 *Op cit.*
180 Campbell (2011:9).
181 *Op cit.*

3.4.1. **Tourism Industry**

There are various seal watching destinations in Namibia. The table below represents the total revenue generated from these tourism destinations.

Destination	**Estimated Total Revenue in NAD**
Cape Cross	3,236,800.00
Pelican Point	12,857,600.00
Cape Frio	686,091.00
Dias Point and Atlas Bay	68,125.00

[182]

In most of these destinations 70% of the revenue generated is due to seals.[183] According the Gekoski, the Namibian tourism industry is losing money as visitors are repelled by negative publicity.[184] The Namibian seal colony has become one of Namibia's top tourist attractions.[185] However, animal rights activists claim the international consumer boycott against Namibia's harvest is starting to hurt Namibia's tourism industry.[186] Pat Dickens from Seals of Nam stated two South African tour operators have said their business with Namibia has dropped significantly because of *"the cruelty associated with the slaughter"*.[187] It is not only the tourists that do not wish to come to Namibia but even the tour operators are not in favour of promoting tourism in Namibia.[188]

Contrary to this argument local tour operators are of the opinion business is as good as usual even though the hunt persists. Managers at a lodge near Cape Cross also stated there is no noticeable decline in bookings during the time of the harvest.[189] Nevertheless some, such as Paul Watson, are still of the opinion the harvest is affecting tourism in Namibia. Pat Dickens stated in 2012 that she would take the matter to the Adventure Travel Trade Association's Adventure Travel World Summit

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182 Campbell (2011:84-90).
183 *Op cit.*
184 Gekoski (2011:55).
185 Hugo, F. 2008. *Namibia's Baby Seal Cull – 2008.* Available at http://www.actionagainstpoisoning.com/page426/page426.html; last accessed on 9 March 2013.
186 Hartman, A. 19 September 2012. *Seal cull hurts tourism, lobbyists say*. *The Namibian Newspaper*.
187 *Op cit.*
188 *Op cit.*
189 *Op cit.*

to inform 55 countries of Namibia's barbaric savagery. The Summit was held in Switzerland during October 2012.[190]

The Ombudsman has a view of his own. He states if tourists are shocked to find a seal they photographed one day might be killed the next morning, the same has to apply to a "*rhino, lion, whale, dolphin, elephant, cheetah*"[191] and many more. He uses Jacques Cousteau's statement of 1978 to support this: *"Those who are moved by the plight of the harp seal could also be moved by the plight of the pig – the way they are slaughtered is horrible."*[192] One thing that should be remembered regarding this statement is that seal meat is not generally sold to be eaten by humans, while pigs are. Humans are not dependent on their fur or meat for survival; hence a person who might be saddened by the way cows or pigs are killed knows it is done in light of human survival. Many people have also campaigned against the killing of elephants, dolphins, rhinos and whales and are also condemning the seal harvest.

3.4.2. **Ecology**

Seals are seen as competitors by fishermen and the Government of Namibia and the slaughter is therefore encouraged where in reality seals are an important part of the Namibian complex ecosystem.[193] Their habitat within the ecosystems have been negatively affected as former breeding islands are now 98% extinct and less than 20% are breeding on their original natural habitats. Seal colonies are now almost entirely land based[194] where their preferred habitat is offshore islands. It is not likely that seals of the islands would revert back to their 'original' status even if harvesting of seals is ceased unless the islands are repopulated.[195] Some argue the high numbers of seals are creating an ecological imbalance but in fact human intervention is causing the imbalance as nature usually holds the natural equilibrium.[196]

Hugo proved that sealing causes an ecological imbalance as methods used to harvest seals could cause the collapse of the entire seal colony. The MFMR however stated scientific evidence proves beyond reasonable doubt that Hugo's allegations

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190 *Op cit.*
191 Walters (2012a:20).
192 *Op cit.*
193 *The Namibian Cape Fur Seal Slaughter.* Available at http://www.harpseals.org/about_the_hunt/cape_fur_seal_alert.php; last accessed on 9 March 2013.
194 Campbell (2011:29).
195 *Op cit.*
196 Butterworth (1988:4).

have no basis and the Constitution gives Namibia the mandate to harvest seals.[197] Hugo's counter argument is the Constitution aims to conserve, protect and develop eco-tourism, not commercial sealing.[198] Lastly, seals are given time to return to the colony before it opens for tourists; this shows the harvest disturbs the whole colony[199]. The Ombudsman stated *"common sense indicates that sealing activities that continue nearly uninterrupted for four months in a breeding colony may cause considerable disturbance and fear and distress to the animals".*[200]

3.4.3. **International Relations of Namibia**

One of the biggest concerns pertaining to the annual harvest is the impact it may have on Namibian international relations. Countries have boycotted Namibian products and bans have been implemented. Analysts have warned it may cost the country millions in lost taxes.[201] In 2009 the EU, including Belgium, Netherlands and Germany, has banned seal product imports and stockpiled 20,000 unsold seal skins.[202] The matter has now been taken up with the WTO Panel (Schedule 5).[203] According to the EU Namibia does not fall under the exemptions given for trade.[204]

Other countries such as the United States, South Africa and Mexico have all specifically banned Cape Fur seal product imports,[205] bringing the total to 27 countries not willing to import seal products.[206] Bans are important as it is a means of effectively preventing complete species annihilation.[207] However, the MFMR stated the EU's ban will not affect the harvest as there are still other possible markets.[208]

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197 Hugo, F. 2009. *Exclusive Interview with Francois Hugo, Founder, Seal Alert-SA. Available* at http://www.actionagaisntpoisoning.com/page426/page426.html; last accessed on 9 March 2013.

198 *Op cit.*

199 *Op cit.*

200 Walters (2012a:16).

201 Gekoski (2011:55).

202 *The Namibian Cape Fur Seal Slaughter.* Available at http://www.harpseals.org/about_the_hunt/cape_fur_seal_alert.php; last accessed on 9 March 2013.

203 IFAW. 2013. *WTO – EU Seal Ban Briefing.* Available at http://www.ifaw.org/sites/default/files/World-Trade-Organization-EU-WTO-Seal-ban-briefing-Jan-10-2013.pdf; last accessed on 10 October 2013.

204 Campbell (2011:68).

205 *The Namibian Cape Fur Seal Slaughter.* Available at http://www.harpseals.org/about_the_hunt/cape_fur_seal_alert.php; last accessed on 9 March 2013.

206 Simon, M. 2012. *Seal Culling in Namibia.* Available at http://www.earthtimes.org/conservation/seal-culling-namibia/2086; last accessed on 9 March 2013.

207 Hugo, F. 2009. *Exclusive Interview with Francois Hugo, Founder, Seal Alert-SA.* Available at http://voices.yahoo.com/exclusive-interview-francois-hugo-founder-seal-3806330.html, last accessed on 9 March 2013.

208 Campbell (2011:68).

3.4.4. **Seal Population**

The International Union for Conservation of Nature (IUCN) rates seals as of least concern, but according to CITES the species will face extinction if their use is not closely controlled.[209] The species does not face extinction only because of the harvest but massive die-offs in recent years are also a contributing factor.[210] Whether one considers their habitat, legal obligation, conservation rating, excessive quotas or massive die-offs from starvation due to overfishing, the Cape Fur seals are most certainly endangered.[211] They have effectively decreased as a population due to prey shortage as a result of environmental fluctuations or overfishing, on-going harvesting and natural mortality.[212] The Ombudsman stated environmental anomalies which may lead to a shortage of food will definitely lead to mass mortality of seals due to starvation; however there are sufficient safeguards and guarantees in Namibia's environment management system to secure the immediate future of seals.[213] Hugo is convinced the Cape Fur seal colony will collapse due to over-exploitation.[214]

Historically there were no mainland colonies and sealing exterminated 23 breeding island colonies which accounted for 99% of the population. From this point of view seals are virtually extinct and none of the former breeding colonies have been repopulated.[215] The surviving seals fled to the mainland and this is where sealing now takes place. The Namibian Government stated the species was close to extinction in 1990.[216]

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209 *Op cit,* p. 22.

210 Hugo, F. 2009. *Exclusive Interview with Francois Hugo, Founder, Seal Alert-SA.* Available at http://voices.yahoo.com/exclusive-interview-francois-hugo-founder-seal-3806330.html, last accessed on 9 March 2013.

211 *Op cit.*

212 Kirkman (2011:502).

213 Walters, J. 30 September 2013. *Electronic Interview*.

214 Hugo, F. 2008. *Namibia's Baby Seal Cull – 2008.* Available at http://www.actionagaisntpoisoning.com/page426/page426.html; last accessed on 9 March 2013.

215 Hugo, F. 2009. *Exclusive Interview with Francois Hugo, Founder, Seal Alert-SA.* Available at http://voices.yahoo.com/exclusive-interview-francois-hugo-founder-seal-3806330.html, last accessed on 9 March 2013.

216 *Op cit.*

CHAPTER 4
THE LAW REGULATING SEAL HARVESTING

4.1. National Law

Namibia harvests seals based on the assumed mandate given to it through various statutes and the Constitution. They could be summarised as follows:

1. The *Constitution of the Republic of Namibia* provides in Article 95 (1) for the maintenance of ecosystems, essential ecological processes and biological diversity and the utilization of living natural resources on a sustainable basis.
2. The MRA provides for the conservation, promotion and protection of marine resources and their sustainable use.
3. The APA provides against the cruel and inhumane treatment of animals.
4. The *Regulations,* specifically *Regulation 20,* provide for the methods to be used during the harvest.
5. The *Environmental Management Act*[217] provides for scientific assessment and sustainable use of resources.

4.1.1. The Namibian Constitution

The Constitution lays the foundation for all policies and legislation in Namibia and *Article 1(6)* states the Constitution shall be the supreme law of the country. It contains three environmental clauses relevant to the sustainable use of natural resources:[218]

(a) *Article 100* vests all natural resources in the State, unless otherwise legally owned.

(b) *Article 95 (1)* stipulates "*the state shall actively promote and maintain the welfare of the people by adopting policies which include the maintenance of ecosystems, essential ecological processes and biological diversity of Namibia and utilisation of living resources on a sustainable basis for the benefits of all Namibians"*. This Article places an obligation on the State to protect its environment and to promote sustainable use of its natural resources.

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[217] Act 7 of 2007.

[218] Ruppel (2011:80-81)

(c) *Article 91 (c)* states one of the duties of the Ombudsman is 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 failure to protect the beauty and character of Namibia.

Another important clause of the Constitution is *Article 144.* This Article makes international law applicable in Namibia as far as it is not in conflict with the Constitution or an Act of Parliament. In relation to environmental matters *Article 144* is important for the application of international instruments in Namibia.

Seals are virtually extinct on most of their natural offshore island habitats. Quotas for sealing on mainland are based on inadequate and lacking scientific evidence. Further, the quotas are not rationally linked to the population numbers. I challenge the view that the Namibian harvest is currently biologically sustainable and submit Namibia is in contravention of Article 95 (1) of the Constitution.

4.1.2. **The Marine Resources Act (MRA)**

The MRA provides for the conservation of the marine ecosystem and the responsible administration, conservation, protection and promotion of marine resources on a sustainable basis and to exercise control over marine resources. It won an international award in 2012 as the world's most inspiring, innovative and influential policy on the protection of oceans and coasts.[219]

Section 2 states the Minister may from time to time determine the general policy regarding the conservation and utilisation of marine resources in order to realise the greatest benefit for all Namibians both present and future. *Section 3* provides for control over marine resources; for management, protection and utilisation thereof in Namibia and Namibian waters which shall be subject to the Act. *Section 24* provides for the establishment of a Marine Resources Advisory Council which shall advise the Minister in relation to any matter under the Act.

[219] Mundjulu, I. 16 September 2013. *Electronic Interview.*

Part VI of the Act deals with the harvesting of marine resources in *Section 32* to *43*. No person may harvest marine resources for commercial purposes except under a right, exploratory right or a fisheries agreement[220] and if a quota has been set for the harvest no person shall harvest the resource except in terms of the quota.[221]

The Minister may from time to time, by notice in the Gazette, announce a period during which applications may be made for rights to harvest for commercial purposes any marine resource and the conditions thereof.[222] The Minister may, for the purpose of any international agreement to which Namibia is a party, make regulations as considered necessary for the carrying out and for giving effect to the provisions of any such agreement.[223] The Minister shall also publish in the Gazette the texts of all conservation and management measures adopted under any international agreement to which Namibia is a party.[224]

Section 38 (1) states the Minister may set a TAC to limit the quantity which may be harvested in respect of any marine resource in a given period. *Section 38 (2)* states where the Minister decides to determine a TAC, he/she shall, on the basis of the best scientific evidence available, having requested the advice of the council, determine the TAC by notice in the Gazette.

Section 39 deals with measures and quotas: "*The Minister may, by notice in the Gazette, subject the harvesting of marine resources to such measures as he or she may consider necessary, and which may include quotas*". Lastly, *Section 51* deals with marine reserves and provides for the following:

(1) The Minister may declare an area to be a marine reserve for the protection of marine resources.
(2) Prior to the declaration of the reserve the Minister shall establish objectives for the management of the reserve and the activities to be conducted in it, including:
    a. The species of marine resources that may or may not be harvested;
    b. The conditions of the harvest; and
    c. Conditions of access to the marine reserve.

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220 Section 32 (1).
221 Section 32 (2).
222 Section 33.
223 Section 37 (1).
224 Section 37 (2).

Just as any other promulgated Act by the Parliament of Namibia, the MRA also contains a penalties section. The section provides for penalties for any person who acts in contravention of the Act or a right granted.[225] Under *Section 52 (3)(c)* of the Act a rights holder that contravenes any of the conditions prescribed in the MRA will be guilty of an offense and under *Section 52 (4)(b)* any person who harvests seals in contravention of *Section 47*[226] and the regulations is guilty of an offense.

Namibia is, in my view, in contravention of the MRA for the following reasons: Namibia continues to harvest seals even after the seal population has been hard hit by three large die-offs. Further, seal numbers are reduced due to predation by other wild animals and a lack of food sources. Section 38 (2) requires the Minister to determine quotas based on the best scientific evidence available. The Ombudsman has admitted Namibia is currently facing a lack of scientific evidence which imply the requirement in Section 38 (2) is not met. Further, the sustainability factor the MRA requires is also not adhered to as the harvest is not biologically sustainable.

4.1.3. **Regulations Relating to the Exploitation of Marine Resources**

The Regulations define an adult seal as a seal of at least three years of age and a pup as a seal in its first year of life.[227] Part II of the Regulations deals with the forms and procedures for the granting of rights and issuing licences. *Regulation 18* states:

> *Except in terms of a right, an exploratory right or an exemption granted under Section 62 (1)(a) of the MRA, a person may not – harvest any species of marine mammal OTHER* (my emphasis) *than the Cape Fur seal (Arctocephalus pusillus pusillus).*

Sealing regulations[228] provides that seals must be harvested in the presence of at least one fisheries inspector. The holder of a right to harvest 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 whilst allowing adult seals to escape. Currently the *Regulations* do not state what the upper size limit of the groups may be.[229] The prescribed method for the harvesting of pups is outlined as follows:

1. A group of pups must be released towards the sea;

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225 Section 52.
226 Deals with management and control measures and include prohibitions of using poisoning and nets.
227 Regulation 1.
228 Regulation 20.
229 EFSA (2007:63).

2. A pup must be killed by clubbing it on the head when the group moves past the clubber;
3. The inspector must be satisfied the clubbed pup is dead; and
4. A sticker must pierce the heart of the pup with a knife after the pup is clubbed.

Adult seals should be killed by shooting it with a rifle in the head and the bullet must immediately kill the seal.[230] The inspector must also be satisfied that the adult seal is dead. A rifle uses ammunition capable of killing an adult seal instantaneously by penetrating the brain case and destroying the brain without exiting on the opposite side of the brain case. However, the *Regulations* do not require the adult seals' hearts to be pierced.[231]

The holder of a harvesting right should, on a monthly basis, report to the inspectorate office on data relating to the harvesting, processing, transport and disposition of marine resources.[232] Part IX deals with offences and penalties - *Regulation 39* states that a person in contravention of *Regulation 18* and *20* and found guilty thereof can receive a fine not exceeding N$300.

I question whether the methods as prescribed by the *Regulations* are implemented in the harvest as methods used are not effective, bleeding is not done properly, some seals regain consciousness and others are still alive during sticking or skinning. Another important point of concern is that filmed footage shows pups have to be stunned repeatedly due to ineffective blows and there are time delays between stunning and sticking. Bulls are not always shot in the head but are hit on other parts of the body which can either lead to the animal not being killed immediately or the animal escaping to sea wounded. It is also evident that seals are subjected to practices of animal cruelty due to the *Regulations* not being implemented. Further, the reporting requirement in the *Regulation* is evidently not followed due to the lack of reports available on the topic. Based on the reasons given, I submit Namibia is in contravention of various aspects of the *Regulations*.

230 EFSA (2007:42).
231 EFSA (2007:50).
232 Regulation 26 (1).

4.1.4. **Animal Protection Act (APA)**

The Act defines an animal "*as any equine, bovine, sheep, goat, pig, fowl, ostrich, dog or cat or other domestic animal or bird, or any wild animal, wild bird or reptile which is in captivity or under the control of any person".*[233] The APA expressly sets out the offences in respect of cruelty to animals of which two are applicable to seal harvesting:

1. *Section 2(1)(a)* prohibits animals from being "cruelly ill-treated, beaten, terrified, maimed or tortured"; and
2. *Section 2(1)(r)* prohibits the "wanton, unreasonable and negligent" doing of an act or omission which results in unnecessary suffering on behalf of an animal.

Any person that is suspected of committing such an offence under may be arrested under *Section 8*. The SPCA is given the power to arrest and detain anyone caught beating an animal to death.[234]

I submit that seals do fall within the ambit of an 'animal' as defined in the Act. Pups are under the control of human beings as they are selected and round up while being subjected to human intervention. The APA, therefore, confers rights and protection onto seals. As law is inadequate and not effectively implemented, it leads to an inhumane harvest in which seals experience pain and suffering which is exactly what the APA tries to prevent. Pups are repeatedly stunned while the APA prevents animals from being beaten. Further, older seals may be mistaken as younger seals which causes unnecessary suffering during stunning. The current practice instils fear, pain and anxiety within the entire colony. In my view this is a clear indication that the provisions of the APA are contravened.

4.1.5. **Environmental Management Act**[235]

The Act enables the Minister to give effect to Namibia's obligations under international environmental conventions. *Section 2* provides that scientific assessments should be conducted before a decision is made regarding an environmental practice and such assessment should be taken into account when a

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233 Section 1.

234 Dickens, P. 2011. *Namibia's Deadly Little Secret: The Cape Fur Seal Cull.* Available at http://www.all-creatures.org/articles/ar-namibia-ss.html; last accessed on 21 September 2013.

235 Act 7 of 2007.

decision is made. S*ection 3* provides principles that should be applied by the government, natural and juristic persons. These include:

1. Renewable resources should be used sustainably for the benefit of generations; and
2. Sustainable development must be promoted.

The *Nature Conservation Ordinance of 1975* goes hand in hand with the Act. It established reserves and provides for restrictions on entry and prohibits certain activities. However, the Minister may decrease/eliminate any species detrimental to another, to research and issue regulations. Other Namibian policies dealing with sustainable utilisation of natural resources include:

(a) *Green Plan;*
(b) *Vision 2030;*
(c) *National Development Plan;* and the
(d) *Environmental Assessment Policy.*

I submit the Act is contravened for the following reasons: New born pups which survive to the stage of harvesting might be less than the quotas passed for the particular year. This could be due to trampling, weather conditions, predation and scarcity of food. The TAC, according to Van Zyl, should be set at 30% of the total pups in the colony.[236] However, it has been proved the quota is set at a higher number. It was stated in Campbell's research the quota is set between 48 and 63% of the pup population[237] derogating far from the prescribed 30%. Further, the Act requires scientific assessments to be conducted before a decision is made regarding resources. However, Namibia conducts such research only every three years. This entails current research is lacking and the decision to harvest is not made on sound scientific evidence.

4.2. **International Law**

Namibia is a signatory to the following international instruments:

1. The United Nations Convention of the Law of the Sea of 1982;

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[236] Hugo, F. 2008. *Namibia's Baby Seal Cull – 2008.* Available at http://www.actionagainstpoisoning.com/page426/page426.html; last accessed on 9 March 2013.

[237] Campbell (2011:36).

2. The Rome Declaration on the Implementation of the Code of Conduct for Responsible Fisheries of 2005;
3. The Reykjavik Declaration on Responsible Fisheries in Marine Resources of 2001; and
4. The Convention on the International Trade in Endangered Species of 1973.[238]

4.2.1. **The United Nations Convention of the Law of the Sea of 1982**

UNCLOS is an international agreement that resulted from the third United Nations Conference on the Law of the Sea (UNCLOS III). UNCLOS defines the rights and duties of nations in their use of the world's oceans, establishing guidelines for businesses, the environment and the management of marine resources.[239] *Article 65* of the Convention states nothing restricts the rights of coastal States to prohibit, limit or regulate the exploitation of marine mammals more strictly than provided for in the Convention.

Further, States have the right for their nationals to engage in fishing on the high seas subject to their treaty obligations.[240] All States have the duty to take, or co-operate with other States in taking, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas.[241] *Article 118* requires co-operation over marine resources on the high seas.

Finally, in determining the TAC, nations are to take measures on the best scientific evidence available to the State concerned, to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield and take into consideration the effects on species either associated with or dependent on the harvested species.[242]

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238 Walters (2012a:5).

239 Hollis, D. 2010. *The United Nations Convention on the Law of the Sea (UNCLOS).* Available at http://www.eoearth.org/article/United_Nations_Convention_on_the_Law_of_the_Sea_(UNCLOS)_1982; last accessed on 10 September 2013.

240 Article 116.

241 Article 117.

242 Article 119.

4.2.2. The Rome Declaration on the Implementation of the Code of Conduct for Responsible Fisheries of 2005

The Rome Declaration was adopted by the FAO Ministerial Meeting on Fisheries in Rome, 10-11 March 1999. Some of the principles adopted herein are:

(a) *Principle 1*: The achievement of sustainable management of fisheries is of great importance.

(b) *Principle 6*: Greater consideration should be given to the development of more appropriate ecosystem approaches to fisheries development and management.

(c) *Principle 7*: Aspects of trade and environment related to fisheries need to be addressed within the framework of the Code of Conduct.

The Ministers in attendance of the meeting affirmed to their obligations.

4.2.3. The Reykjavik Declaration on Responsible Fisheries in Marine Resources of 2001

The Declaration was held on 1-4 October 2001. It was recognised there is a clear need to introduce immediate effective management plans with incentives that encourage responsible fisheries and sustainable use of marine ecosystems, including mechanisms for reducing excessive fishing efforts to sustainable levels.[243] Further, it is important to advance the scientific basis for incorporating ecosystem considerations.[244] Data is needed for the design, implementation and upgrade of management strategies.[245] Lastly, *Principle 10* emphasises the need to encourage FAO to work with scientific and technical experts from all different regions to develop guidelines for the best practices regarding introducing ecosystem considerations into fisheries management.

4.2.4. The Convention on the International Trade of Endangered Species of 1973

CITES is an international agreement between governments. Its primary aim is to ensure that international trade in specimens of wild animals and plants does not

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243 Principle 2.

244 Principle 5.

245 Principle 7.

threaten their survival. This Convention became effective in Namibia in 1991.[246] The Cape Fur seal is listed as an endangered species in *Appendix II*.

Appendix II of the Convention contains the following fundamental principles:

(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 utilisation 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.

Article IV deals with the regulation of trade in specimens of species included in Appendix II. The export of any specimen of a species listed in Appendix II shall require the prior grant and presentation of an export permit, which shall only be granted when the following conditions have been met:

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

(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

(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.

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. Namibia is currently exporting products derived from a species listed in CITES and should therefore adhere to the provisions of the convention.[247] According to the Ministry of Environment and Tourism the Directorate of Scientific Services in Namibia is the

[246] Hugo, F. 2008. *Namibia's Baby Seal Cull – 2008.* Available at http://www.actionagainstpoisoning.com/page426/page426.html; last accessed on 9 March 2013.

[247] Walters (2012a:18).

"national implementing body for the CITES"[248] and is therefore required to regulate the trade and export of specimens at a sustainable level.

Other international instruments dealing with the protection, conservation and sustainable use of natural resources include:

1. *United Nations Conference on the Human Environment of 1972;*
2. *World Charter for Nature of 1982*;
3. *Rio Declaration of 1992;* and
4. *Agenda 21 of 1992.*

I submit Namibia is currently in contravention of all the international laws stated above for the simple reason that it does not conduct the harvest on a sustainable basis. Seals are left void of any protection even though the law requires effective protection laws should be in place. International laws require sustainable use of marine resources. Namibia is currently, based on empirical evidence, not utilising seals sustainably.

The reasons I have submitted for Namibia's contravention of law is discussed in detail in the next Chapter.

4.3. **Possible Causes for the Contravention of Law**

The main possible causes for Namibia not complying with the laws mentioned above could be summarised as follows:

1. Sealers conducting the harvest are not trained by veterinarians or legal officials. They are trained by their co-sealers and concession holders.[249] The sealers are, therefore, not equipped with knowledge of the seal anatomy and current regulations in place;
2. Namibia currently lack enforcement mechanisms to ensure the law is adhered to. Sealers in contravention of the Regulations are not apprehended or fined. Further, the punishment implementable is not deterring;

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[248] *MET Services.* Available at http://www.met.gov.na/searchcenter/Pages/Results.aspx?k=cites&s=All%20Sites; last accessed on 11 September 2013.

[249] Mundjulu, I. 16 September 2013. *Electronic Interview.*

3. The law governing sealing is inadequate and lack various important humanity principles. The law is vague and unclear which could lead to various interpretations of the sections; and
4. Namibia currently bases a harvest on inadequate scientific evidence. Population figures are not up to date and accurate. Further, the TAC is set on a fixed number for a period of three years without research done to confirm the numbers present during the three year running period.

CHAPTER 5
DISCUSSION OF ANALYSIS

This Chapter considers the content of Chapter 3 and 4 and determines where Namibia is currently derogating from the law and how.

5.1. Definition of the Practice

According to the Ombudsman Namibia harvests seals and does not cull them. To evaluate this statement, one has to consider the main reasons for seal harvesting in Namibia. The fact that Namibia gains revenue through the sale of seal genitals and pelts and the creation of jobs, it could be, in my view, stated to be a harvest. However, if consideration is given to the claim that seals consume more than 860,000 tons of fish per year,[250] seals have flourished to such an extent that they present a real threat to other marine resources with an equal right to protection and sustainable exploitation and that their capacity has increased to a state where the environment cannot sustain them,[251] it would rather seem to be a reason to decrease the population than to have commercial benefit.

In addition to this seals are killed in a selective manner. Pups selected to be killed are round up and clubbed to death and it is only the young still sucking on their mothers that are selected. Bulls are also selected and shot to death. It is thus evident that Namibia does exercise “selective slaughtering” as per the definition of a cull. In my view Namibia seems to harvest and cull seals and there is no reason to make a definite distinction. Hugo submits Namibia claims it does not execute a cull because a cull by nature of its definition would be unlawful under the Constitution requiring sustainable utilisation.[252]

5.2. Perceived Benefits of Seal Harvesting

The biggest motivation for seal harvesting in Namibia is to benefit fisheries and reduce the ‘fish eating’ seals and was never driven by the commercial value of the product itself. Hugo states any scientist will confirm the best way to control the seal population is to harvest the breeding females, yet all females are exempt from the harvest because there is no market for the product. This continues even after it has

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250 Gekoski (2011:55).
251 Walters (2012:9).
252 Hugo, F. 23 July 2013. *Electronic Interview.*

been scientifically proven that the female population exceeds both pups and bulls.[253] The pups are harvested as their pelts have economic value; however the original idea of reducing the 'fish eating' seals is lost. Little scientific evidence is available on the benefit of seal harvesting on fish stocks and seal populations. I therefore question what scientific evidence the MFMR can present to justify the harvest of 85,000 pups, how it benefits the fishing industry and effectively reduces the population?

Hugo states a comparison in growth of seal populations on offshore islands and those on the mainland effectively proves the seal harvest does not achieve population reduction or benefits fisheries.[254] If each fish eating seal consumes 2kg of fish per day it equates to more than 500,000 per year which is almost equal to the entire fishing industry catch.[255] Why does the Namibian Government then allow larger fishing quotas each year if there is an evident fish stock problem? IFAW rejects that killing seals will boost fish stocks – "there hasn't been a single case where killing seals or whales anywhere in the world has resulted in an increase in the prey population", Fink, the director of the seal campaign of IFAW, said. "*There are more than two species. If seals are killed then other species will step in and may eat even more fish*."[256]

Another important aspect of the seal harvest is the employment it creates. I am of the opinion that low paid and seasonal work is not a justifiable solution to Namibia's unemployment issue. It has also been submitted the sealing industry only employs 81 people that is much less than the 162 the MFMR submitted in 2000.[257] If eco-tourism is considered it would create year round employment for more employees with better salaries. It could also create much more revenue for Namibia compared to the sale of seal products.[258] Campbell states tourism is the fastest growing economic sector in Namibia and is expected to be largest contributor to GDP within

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253 Walters (2012b:2).

254 Hugo, F. 25 July 2013. *Electronic Interview*.

255 *Op cit.*

256 Crowley, K and Njini, F. 2013. *Baby Seal Cull in Namibia Hampered by Bans, IFAW says.* Available at http://www.bloomberg.com/news/2013-07-23/baby-seal-cull-in-namibia-hampered-by-bans-ifaw-says.html; last accessed on 21 September 2013.

257 Dawson Edwards & Associates. 22 June 2011. *Summary of illegalities pertaining to the annual seal harvest in Namibia,* p. 5. Statement made by Anna Erastus, Director of Policy, Planning and Economics in the MFMR.

258 Hugo, F. 25 July 2013. *Electronic Interview.*

10 years.[259] Seal watching in Namibia can occur year round as the colonies are present all year.[260]

The main sites for seal watching in Namibia are Cape Cross, Pelican Point, Cape Frio and areas around Luderitz.[261] Cape Cross is estimated to generate N$2,422,560 in revenue,[262] Pelican Point N$12,857,600,[263] Cape Frio N$686,091[264] and the areas around Lüderitz N$68,125 in revenue.[265]

Campbell concludes the seal watching industry in Namibia has great potential and is likely to grow in-line with international visitor arrivals in Namibia.[266] I therefore submit the arguments advanced by the Government for the continuation of the harvest, namely revenue, employment and fish stock protection is flawed.

5.3. **Contravention of the APA**

The Ombudsman addressed the animal cruelty aspect and argued specifically as to whether the harvest violates Namibia's APA which "*criminalises a number of inhumane practices, including beating terrifying and causing suffering*".[267] He quotes Judge Cameron's opinion on the Act: "*The statute recognises that animals are sentient beings that are capable of suffering and pain. The statute thus acknowledges the need for animals to be protected from human ill-treatment*."[268] However, the Act does not define "under control" and neither was the words subjected to judicial interpretation.[269] The biggest question under the APA is whether or not seals do fall into the ambit of human control, as required in the APA. I also question why the Ombudsman did not seek judicial interpretation thereof?

The Ombudsman stated it cannot be said seals are under the control of clubbers during harvesting because they are constantly moving and therefore the authorities who permit the 'cruel treatment' of pups cannot be in breach of the provisions of the Act.[270] However, the meaning and extension of the words "under control" is yet to be

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259 Campbell (2011:70).
260 *Op cit,* p. 79.
261 Campbell (2011:79).
262 *Op cit,* p. 85.
263 *Op cit,* p. 87.
264 *Op cit,* p. 88.
265 *Op cit,* p. 90.
266 *Op cit,* p. 93.
267 Walters (2012a:11).
268 *The Namibian Cape Fur Seal Slaughter.* Available at http://www.harpseals.org/about_the_hunt/cape_fur_seal_alert.php, last accessed on 9 March 2013.
269 Walters (2012a:11).
270 *Op cit,* p. 22.

determined and interpreted by a court of law.[271] The counter argument to this fact could be illustrated by the following example: A person beating a dog in his yard could also claim the dog is moving whilst being beaten. The seals are selected and gathered before clubbing begins and for them there is no escape. The Ombudsman stated in his recommendations sealers should erect temporary enclosures and allow seals to settle down before clubbing begins.[272] I therefore argue it is senseless to say they are not under human control.

The Ombudsman further states seals as wild animals do not fall into the definition of an animal under the APA and that the Act **does not confer rights on seals but does protect them from cruelty**.[273] I am of the opinion the Ombudsman is contradicting himself in this statement – how can the seals not fall into the ambit of an 'animal' in the APA but the APA still protects them from cruelty? "*However gruesome the methods used to club sounds, the killing of pups is the 'most practical and the only one applicable' in Namibia*."[274] A club strike to the head of the pup (although it may appear brutal) is humane if it achieves rapid, irreversible loss of consciousness and leading to death".[275] This statement is supported by the MFMR.[276]

Hon. Angula has stated to Hugo "*the method of killing, I agree I don't want that. I don't want the beating of an animal in front of myself, but it's a resource just like a fish*".[277] Seals are not fish -[278] they are warm blooded sentiment mammals capable of experiencing pain, distress, fear and other forms of suffering - [279] which is exactly what the APA intends to prevent. The Ombudsman stated it is possible for both targeted and non-targeted animals to sustain injuries before they are killed or escape and some non-targeted animals may sustain injuries before being released. Not all animals clubbed or shot are killed or rendered irreversibly unconscious and pups are reportedly not frequently properly bled out,[280] therefore some animals may be subject to animal cruelty during the harvest. The Namibian hunt is not adequately

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271 *Op cit,* p. 16.
272 Walters (2012a:23).
273 *Op cit,* p. 22.
274 Staff Reporter .26 June 2012. *Ombudsman OKs seal culling. The Namibian Newspaper*.
275 Simon, M. 2012. *Seal Culling in Namibia.* Available at http://www.earthtimes.org/conservation/seal-culling-namibia/2086; last accessed on 9 March 2013; WWF's Independent Veterinarians Working Group Report of 2005.
276 Gekoski (2011:54).
277 Hugo, F. 2009. *Exclusive Interview with Francois Hugo, Founder, Seal Alert-SA.* Available at http://www.actionagainstpoisoning.com/page425/page426.html; last accessed on 9 March 2013.
278 EFSA (2007:60).
279 Hugo, F. 2009. *Exclusive Interview with Francois Hugo, Founder, Seal Alert-SA.* Available at http://www.actionagainstpoisoning.com/page425/page426.html; last accessed on 9 March 2013.
280 Walters (2012a:15-16).

monitored and seals are treated in a less humane fashion than in other harvests, animal rights groups, including the IFAW, have said.[281] IFAW stated the hunting of seals in Namibia does not meet the internationally recognised requirements for humane killing.[282]

Other sealing countries have banned killing nursing baby seals in the 1980's as it is inhumane and cruel.[283] People who have seen footage of the harvest saw the brutal clubbing of the sometimes obviously alive and seals in pain. The clubbing is applied repeatedly and, therefore, they do not agree with the Ombudsman that it is humane.[284] One of the reasons why the EU banned imports on seal products is the cruelty of the process.[285] Namibia's response to the EU ban was that it wouldn't affect its economy as there are other markets, including Asia and Turkey.[286] Responses like these trigger organisations to request a world ban on a "no demand – no supply" basis.[287] Earthtimes makes reference to another statement by the Ombudsman: seal harvesting has been taking place for centuries. They argue harvesting could in this sense be compared to slave trade - just because something inhumane has been practiced for centuries is no justification for its continuation.[288]

I am of the opinion Namibia is contravening the APA for the following reasons:

1. Seals are subjected to repeated clubbing in an effort to kill them while the APA protects animals from being beaten;
2. Certain older seals are mistaken for pups as age confirmation through visual means is impossible. Thus animals are mistakenly killed which constitutes "wanton, unreasonable and negligence" as described in the Act; and

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281 Kaira, C. *Namibia sets seal cull at 86 000 to protect fishing.* Available at http://www.businessweek.com/news.2011-07-11/namibia-sets-seal-cull-at-86-000-to-protect-fishing.html; last accessed on 9 March 2013.

282 Walters (2012a:13).

283 Hugo, F. 2008. *Namibia's Baby Seal Cull – 2008.* Available at http://www.actionagainstpoisoning.com/page425/page426.html; last accessed 9 March 2013.

284 Simon, M. 2012. *Seal Culling in Namibia.* Available at http://www.earthtimes.org/conservation/seal-culling-namibia/2086; last accessed on 9 March 2013.

285 *Op cit.*

286 Hugo, F. 2009. *Exclusive Interview with Francois Hugo, Founder, Seal Alert-SA.* Available at http://voices.yahoo.com/exclusive-interview-francois-hugo-founder-seal-3806330.html, last accessed on 9 March 2013.

287 Simon, M. 2012. *Seal Culling in Namibia.* Available at http://www.earthtimes.org/conservation/seal-culling-namibia/2086; last accessed on 9 March 2013.

288 *Op cit.*

3. The sealing activities create unnecessary suffering, anxiety and fear within the entire colony. [289]

5.4. **Contradictions within the Law**

There is a contradiction between the Regulations and the MRA. *Section 32(1)* of the MRA provides commercial harvesting of marine resources may only be done under a right or a fisheries agreement and *Section 32(2)* provides where quotas are set, harvesting must be undertaken in terms of it. However, *Regulation 18(1)* of the MRA Regulations states: *"except in terms of a right or exemption a person may not harvest any species of mammal other than the Cape Fur seal."* The Ombudsman agreed in his report this is contradictory and causes legal uncertainty as it would appear this provision exempts a person from obtaining a permit to harvest seals and he has requested that the Regulation be amended. However, he also added the Regulations are secondary to the MRA and therefore the MRA would take preference.[290]

I therefore submit the interpretation of sealing in Namibia is left with legal uncertainty until Regulation 18 has been amended. This has not been done to date.

5.5. **Contravention of CITES**

Namibia's signatory to CITES in 1990 binds it to the Convention. Therefore, in order to export seal products CITES requires suitable protection legislation in Namibia to protect seals. Namibia has left seals void of any protection, even any protection afforded to it under the APA.[291] This clearly indicates that Namibia has been in violation of CITES in the export of seal products. Namibia has removed all legislative protection around an endangered CITES species but still relies on CITES for exports. The Ombudsman agreed if Namibia is utilising seals in an unsustainable manner, Namibia is failing to meet its CITES obligations. He is, however, not of the opinion that Namibia is in contravention of CITES[292] and failed to address the aspect of whether or not seals currently have adequate protection.

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289 Dawson Edwards & Associates. 22 June 2011. *Summary of illegalities pertaining to the annual seal harvest in Namibia,* p. 2.

290 Walters (2012a:18).

291 Hugo, F. 24 July 2013. *Electronic Interview.*

292 Walters (2012a:19).

CITES further requires before a listed species may be exported, the sustainability of the species should be regulated in order to preserve the species at a safe level for survival. However, in light of scientific evidence relating to the excessive TAC's set each year, it could be seen as posing a threat to the survival of the species. For these reasons I submit the principles of CITES is not adhered to.[293]

Further, if the contradiction between the *Regulations* and the MRA is interpreted as Cape Fur seals may be harvested by anyone without any kind of authorisation, it would also be in clear contravention of CITES.[294]

5.6. **Inadequacy of Seal Harvesting Law**

The Regulations do not place an upper limit on the size of the groups of pups to be held before clubbing begins; nor does it specify a time limit between stunning and sticking. The Regulations also do not require adult seals to be bled-out after shooting. It also does not make reference to a requirement that sealers should be trained and be competent in the procedures they use, including killing methods, monitoring death, etc.[295] I therefore question why these issues are not addressed in either the MRA or the Regulations? The two controlling statutes of the harvest do not address some of the biggest concerns of the international and national community. Has the Namibian Parliament not considered the possibility to improve its laws to settle some of the concerns by putting new Regulations in black and white? In my view, this is a clear indication that the current law regulating the harvest is not adequate in ensuring a humane slaughter.

NSPCA and WSPA are of the opinion *Regulation 20* is inadequate to ensure a humane slaughter and compliance with the international standards of humaneness and such non-compliance leads to the inhumane, unethical and cruel slaughter of seals.[296]

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293 Dawson Edwards & Associates. 22 June 2011. *Summary of illegalities pertaining to the annual seal harvest in Namibia,* p. 3.

294 *Op cit.*

295 Walters (2012a:22).

296 *Op cit,* p. 12.

5.7. **Lack of Implementation of Law**

The Ombudsman admitted the *Regulations* prescribed by law for the harvest are not complied with,[297] but stated the Regulations are not impossible to implement and there is always room for improvement.[298] Mundjulu of the MFMR submitted the Government must ensure the law is enforced.[299] Various organisations alleged Namibia is not complying with law. However, according to the Ombudsman, two experts who witnessed the harvest certified not a single Regulation was breached.[300] They were satisfied the harvest was humane as that of slaughtering cattle in an abattoir and therefore the seal harvest can comply with domestic regulations and international standards.[301]

The law states pups must be clubbed on the head with a metre long wooden stick and then stabbed in the chest to facilitate death. However, filmed images of the slaughter shows the pups are clubbed repeatedly and some pups are found breathing after being clubbed, stabbed and even skinned. Pups vomit fresh mothers' milk from shock and some of their chests are cut open whilst still being alive.[302]

The harvest period was not always from July to November.[303] The time has been extended to allow more time for sealers to reach the quotas that are increased to meet the demand for products.[304] In some instances older seals are killed, even if the law prescribes pups to be less than a year old, as it is almost impossible to determine the age of a seal visually in a big colony during harvesting.[305] This is in violation of the *Regulations*. New born pups might be less than the pups stated in the quota – this could lead to all the pups being harvested in one season. Those who benefit from the harvest demand the quotas to increase to sustain their million-dollar invested sealing factories.[306]

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297 *The Namibian Cape Fur Seal Slaughter.* Available at http://www.harpseals.org/about_the_hunt/cape_fur_seal_alert.php; last accessed on 9 March 2013.

298 Walters (2012a:18).

299 Mundjulu, I. 16 September 2013. *Electronic Interview.*

300 Walters (2012a:21).

301 *Op cit,* p. 20.

302 *The Namibian Cape Fur Seal Slaughter.* Available at http://www.harpseals.org/about_the_hunt/cape_fur_seal_alert.php; last accessed on 9 March 2013.

303 Dawson Edwards & Associates. 22 June 2011. *Summary of illegalities pertaining to the annual seal harvest in Namibia,* p. 4.

304 Hugo, F. *Namibian Seal Killing, Trade, Legal & Socio-Economic Aspects.* Available at http://www.actionagainstpoisoning.com/page364/page364.html; last accessed on 21 September 2013.

305 Hugo, F. 23 September 2013. *Electronic Interview.*

306 Hugo, F. 2008. *Namibia's Baby Seal Cull – 2008.* Available at http://www.actionagainstpoisoning.com/page426/page426.html; last accessed on 9 March 2013.

Research has shown the sealers also do not follow prescribed methods regarding the harvesting of bulls. Sometimes bulls are not shot in the head as required, but are struck on other parts of the body. This does not cause the immediate death of the animal and it virtually bleeds to death (as no sticking is required by law) or escapes to sea wounded.[307] No one can argue this is what the Namibian legislators intended.

If the only law regulating the seal harvest in Namibia in uncertain, vague and inadequate, but above all not implemented, it could be concluded Namibia is currently not adequately implementing its own law and requires law to be enforced in an effective manner. If the law requires pups and bulls to be harvested by using specific methods, that should be the methods implemented. It does not suffice that methods are prescribed in law but is not implemented correctly. The fact that animals have to be struck numerous times and are not bled out before skinning begins is in clear contravention of the law.

I therefore submit the current *Regulations* are inadequate for the following reasons:

1. It is impossible to identify the precise age of the pup which is less than one year old from visual confirmation only;
2. Inspection is inadequate; and
3. The time frame in which the harvest takes place is inadequate to allow for adequate stunning, sticking and checking or monitoring of pups which would be time consuming. [308]

5.8. **Unsustainability of the Harvest**

The Brundtland Commission of the United Nations on 20 March 1987 defined sustainability as "*sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs*".

Hugo submits sealing historically took place on offshore islands, using the same methods used today. The result was that 98% of the colonies collapsed and the majority have remained extinct which was a permanent impact from sealing. Repeated daily activity of sealing will disturb the breeding pattern and drive seals away. Hugo is therefore of the opinion that if the sealing industry continues, the seal

307 EFSA (2007:44).

308 Dawson Edwards & Associates. 22 June 2011. *Summary of illegalities pertaining to the annual seal harvest in Namibia,* p. 2.

population will collapse. Seal colonies that have been left undisturbed showed no growth or decline. There will be no need for a harvest if the population is left in their preferred habitat and the population will remain naturally stable.[309]

Further, Hugo states the premature removal of the pup relieves the female from the burden of caring for the pup which enables her to carry pups more often. The Ombudsman stated this fact makes the sustainability issue contradictory as it is argued the seal population would collapse but on the other hand it would increase.[310] However, these are just possibilities that might occur as a result of the harvest.[311] Hugo further mentions if there is a growth in the seal population, it could be attributed to the harvest due to the disturbance thereof.[312]

Contrary to the sustainability argument the Ombudsman had the following to contribute: Namibia's policy of sustainable utilization of living resources is not only enshrined in the *Constitution* but received worldwide approval at the first Earth Summit held in Rio de Janeiro. The provisions of *Agenda 21* make it clear the Namibian Government's policy is in line with the agreed policy of the Earth Summit. The principles of sustainable utilisation are also provided for in the preamble of the MRA. *Section 2* empowers the MFMR to determine policy regarding the conservation and utilisation of marine resources in Namibia "*in order to realise the greatest benefit for all Namibians both present and future*".[313] After Namibia's independence, the policy objectives for the fisheries sectors were stated in the White Paper Policy – "*seals are considered to be exploitable resources and will be utilised through culling, but conserved at safe sustainable level*". The Government stated seals have flourished to such an extent that they present a real threat to other marine resources with an equal right to protection and sustainable exploitation and their capacity has increased to a state where the environment cannot sustain them.[314]

The Ombudsman noted the lack of scientific evidence that the killing of seals is sustainable (i.e. that the population would not eventually collapse) and despite earlier uncontrolled and indiscriminate exploitation, seals are still with us and will always be with us for a long time to come if we are careful.[315] The fact that Namibia's

309 Hugo, F. 12 June 2013. *Electronic Interview.*
310 Walters (2012a:20).
311 Hugo, F. 12 June 2013. *Electronic Interview.*
312 Hugo, F. 24 July 2013. *Electronic Interview*.
313 Walters (2012a:8).
314 *Op cit,* p. 9.
315 Staff Reporter. 26 June 2012. *Ombudsman OKs seal culling. The Namibian Newspaper*.

sustainable utilisation of natural resources legislation and regulations are "*well anchored and its accession to a number of international instruments demonstrates its commitment to the management of its marine resources"*[316], according to him, justifies his statement. In the Ombudsman's Continuation report he addressed the matter on whether or not the TAC for seals is rationally linked to population numbers. He stated an aerial consensus conducted in December 2011[317] contradicts the claims and allegations made that Namibia is not harvesting the species sustainably.[318] He further states the aerial survey provides sufficient scientific evidence the Namibian Cape Fur seal population is growing steadily and the level of exploitation is sustainable; therefore the TAC is rationally linked to the population.[319] However, Dawson Edwards and Associates states the TAC has not been rationally adjusted to consider mass die-offs, natural mortality and predation.[320]

On the other hand IFAW alleged there is currently no assurance that the Namibian Cape Fur seal hunt is being conducted in a manner that is biologically sustainable. They are not able to find any evidence to prove the population is increasing and there is also no evidence that the current exploitation of seals are biologically sustainable.[321]

The Namibian Government continues to allow and promote the slaughter of Cape Fur seals despite the fact that the population has been hard-hit by three large die-offs since 2000,[322] the first of which was in 1994 when almost half of the adult seals and all the pups died from starvation.[323] Hugo has submitted the sealing quota is too high. Namibia has more than doubled its commercial fisheries since 1990. Due to reduced fish resources, global warming and a change in fish environments, the mortality of seal pups has doubled. According to Hugo, this entails that 62% of seal pups would die before sealing starts.

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316 *Op cit.*

317 Mundjulu, P. 16 September 2013. *Electronic Interview*. A stock assessment model was used to determine the TAC.

318 Walters (2012b:3).

319 *Op cit.*

320 Dawson Edwards & Associates. 22 June 2011. *Summary of illegalities pertaining to the annual seal harvest in Namibia,* p. 3.

321 Walters (2012a:8).

322 *The Namibian Cape Fur Seal Slaughter.* Available at http://www.harpseals.org/about_the_hunt/cape_fur_seal_alert.php, last accessed on 9 March 2013.

323 Hugo, F. 2008. *Namibia's Baby Seal Cull – 2008.* Available at http://www.actionagainstpoisoning.com/page425/page426.html; last accessed on 9 March 2013.

To cite an example one could use the harvest of 2006. The Government determined 65,073 pups were born in December 2006 to which it awarded a sealing quota of 52,950. If 62% of 65,073 would die before the harvest starts, 24,728 would remain. This implies the quota was granted for more pups than the number that would actually survive to the harvest stage. This could be an indication that sealing quotas are too high.[324] Van Zyl, Namibia's Director of Marine Resources, stated that harvesting seals is a necessity and the quota could be set to as high as 30% of pups born. This implies the quota in 2006 should have been 19,522 and not 52,950.[325]

In the Dawson Edwards Opinion is was stated seal harvesting has been and continues to be unsustainable in the sense that it results in a significant reduction in numbers; the seal population has effectively declined by more than 90% from over-exploitation and since Independence by a further 35%.[326] From this it is evident more research is needed to determine accurate population numbers and the quota should be set at 30% of the total pups born, which is evidently not done.

I therefore submit Namibia, in harvesting seals unsustainably, is in contravention of the MRA, which requires the sustainable use of marine resources and all international agreements Namibia is a signatory to. Greater and more frequent scientific evidence and monitoring of the population is needed before it could be said Namibia is harvesting seals on a sustainable basis. The international agreements made reference to in Chapter 4 all require the sustainable use of resources, including CITES (Article IV (a) and (b)). Namibia is, in my view, currently in contravention of the law.

5.9. **Comparison with Other Jurisdictions**

In determining to which extent Namibia is able to improve its law, one can make reference to both Norway and Canada. Norway has strict legislation which governs the sealing period, quotas, methods of killing, mandatory training and inspection. All sealers are required to pass a shooting test and hakapik test. The law requires seals to be bled out immediately after they have been stuck or shot and live animals may never be taken onto a boat. Seals are therefore not considered dead if they have not

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324 Hugo, F. 2008. *Namibia's Baby Seal Cull – 2008.* Available at http://www.actionagainstpoisoning.com/page426/page426.html; last accessed on 9 March 2013.

325 *Op cit.*

326 Walters (2012a:20).

been bled out and may not be skinned. Striking a seal on any other part of the body than the head is considered unlawful.

Canada, on the other hand, considers the total seal population and other factors that could influence seal mortality in determining their TAC. Veterinarians hold workshops for sealers on regulations and methods that are considered humane. It is sad to discover Canada has removed the 'blink-eye test' from its law but it is still an important factor in considering the most humane methods in ensuring quick and painless deaths. Like Norway, Canada does not allow the skinning of live animals and no sealing is allowed in whelping patches. The most important considerations regarding Canada is the basic guiding principles they require the hunt to follow. These include minimising distress, rendering an animal unconscious without the need to stun it repeatedly, testing for consciousness and having no delay between stunning and sticking.[327] Canada, therefore, places much emphasis on the three-step method of stunning, checking or monitoring and sticking.

If the abovementioned is compared to the harvest in Namibia I concluded the following would be proper adjustments to the law based on how other countries conduct their harvests:

i. Namibia needs to improve its current legislation to govern all major aspects of the harvest including the sealing season, how to determine quotas, humane methods to be used during the harvest, mandatory training for sealers and independent inspection. Further, greater sanctions should be imposed in law for the contravention thereof.

ii. It should be unlawful to:
    1. Skin an animal alive;
    2. Fail in testing the unconsciousness of the animal;
    3. Strike a pup on any other part of the body except the skull;
    4. Fail in sticking an animal in a reasonable time after stunning; and
    5. Sealing in whelping patches.

iii. Namibia has to consider the total seal population in determining quotas, but not only this alone. Consideration should also be given to natural

[327] Butterworth (2012:460).

mortality such as shark, jackal, killer whale and hyena predation, trampling, starvation, sea pollution and disease.[328]

iv. Sealers should be required to attend workshops on how to execute the law effectively and how to harvest in the most humane manner possible.

v. Namibia should adopt the 'blink eye test' which was legally enforced in Canada. It is another method of ensuring the animal has indeed lost consciousness or might be an indicator of death.

vi. The basic guidelines established in Canada should be incorporated into and be evident within Namibian law.

vii. Namibia has to implement the three-step method of stunning, checking and stunning and it should be monitored to ensure the method is not derogated from.

Comparative law is used to classify one's own law and to determine how other jurisdictions have settled a particular issue. Namibia should, therefore, not ignore the ways that have been practiced abroad, as they have been practicing sealing for a much longer time. Namibia should rather use the research and examples of law that have been introduced in these jurisdictions to improve its own laws.

[328] National Aquarium of Namibia, Swakopmund.

CHAPTER 6
COMPARATIVE ANALYSIS: CANADA

The Canadian Department of Fisheries and Oceans (DFO) regulates the seal hunt in Canada.[329] Seals are harvested in Canada for both subsistence and commercial purposes. It is considered to be the largest marine animal hunt in the world.[330] Most seals are killed between the age of 1 and 3.5 months[331] and sealers are required to have a licence.[332]

The DFO set quotas for the Harp seal in 2012 in the amount of 400,000. The same quota was set in 2011. But in 2010 it was 330,000 and in 2009 only 280,000. The quota for Hooded seals in 2012 was 8,200 which has remained unchanged since 2007. Grey seal quotas were set at 60,000 for 2012, 50,000 for 2010 and 2009 and 12,000 for 2008 and 2007.[333] Although the quotas are set each year, the total catch is in most cases less and the numbers keep on declining.[334] The DFO takes into consideration the total population and a variety of other factors such as ice conditions and its impact on seal mortality when setting the TAC.[335]

Veterinarians in Canada have held workshops for sealers on the new regulations and quick humane methods to kill seals. A third of sealers have already attended these workshops. Many consider this as proof that they are not barbaric killers.[336]

Various species of seals are hunted and each is hunted in different numbers and at different ages. Since 2005 traditional sealing is allowed to hunt up to 6 seals for personal consumption.[337] The traditional hunters, possessing a licence, undergo training in killing seals and the regulations.[338]

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329 *Fisheries and Oceans Canada.* Available at http://www.dfo-mpo.gc.ca; last accessed on 20 September 2013.
330 Butterworth (2012:457).
331 EFSA (2007:24).
332 Section 26.1 of the Marine Mammal Regulations.
333 *Sealing in Canada – Frequently Asked Questions.* Available at http://www.dfo-mpo.gc.ca/fm-gp/seal-phoque/faq-eng.htm; last accessed on 20 September 2013.
334 EFSA (2007:25).
335 *Sealing in Canada – Frequently Asked Questions.* Available at http://www.dfo-mpo.gc.ca/fm-gp/seal-phoque/faq-eng.htm; last accessed on 20 September 2013.
336 Seal Alert. 2009. *About seals, seal protection guidelines and help.* Available at http://www.sealalert.org; last accessed on 12 June 2013.
337 Section 6.
338 EFSA (2007:25).

Canada's *Marine Mammal Regulations of 1993* regulates the seal hunt. It states sealing runs from 15 November to 15 May; however the date may be extended at the discretion of Canada's Fisheries Minister. The hunt is either carried out on small boats or vessels but when seals are on the ice and close to shore, the hunt may be on foot. Depending on the ice conditions, seals are either shot or killed with a hakapik.[339] The DFO estimates 5,000 sealing licences are active and 1,500 to 2,200 boats participate with one or two designated marksmen who shoot seals at ranges of less than 40 meters. The hunting quota is split between the various areas where the hunt takes place. Catches are usually separated into the "young of the young seals" and those of a "year or older".[340]

The *Marine Mammal Regulations* under the *Fisheries Act of 1985* outline the regulations to be applied during the commercial hunt. Additional restrictions may be imposed on the licence. Further, it also requires the sealers in *Section 8* to kill the seals quickly and describes the legal methods to be used in the hunt:[341] Seals are to be hit on the head with a club or hakapik or be shot, although shooting is now the predominant stunning method.[342] Prior to 2009, if the seal was clubbed, the sealer manually checked the skull or administered the 'blink eye test'[343] to confirm the seal was dead[344] before he or she moved on to strike another seal. In the case of a firearm, the sealer also administered the test as soon as possible to confirm the seal was dead.[345] If it appears the seal was still alive, the sealer immediately stunned the animal again.[346] No person is allowed to skin or bleed a seal until it has been confirmed dead[347] through the test or palpation of the skull.[348]

The descriptions and requirements of the rifle,[349] hakapik,[350] clubs and ammunition are also given in the regulations. Riflemen are required to take a firearm safety

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339 EFSA (2007:25).

340 *Op cit.*

341 Section 28.

342 Butterworth (2012:458).

343 The animal will be considered dead if the blinking eye test is administered and the animal has a glassy eyed, staring appearance and exhibits no blinking reflex when its eye is touched while it is in a relaxed condition.

344 Dead entails irreversible or terminal unconsciousness, i.e. brain-dead.

345 Section 28.

346 Section 28.

347 Section 29.

348 EFSA (2007:26).

349 According to the *Marine Mammal Regulations* either expanding bullets should be used with a velocity of 550m/s or a shotgun of not less than 20 gauge and rifled bullets. Sealers usually aim for the head or neck.

350 The *Marine Mammal Regulations* require the hakapik to be made from metal ferrule which weighs 340g with a slight bent spike not more than 14cm in length on the one side and a blunt projection on the other side attached

course and register their firearms.[351] The use of nets is prohibited except for traditional hunters. Further, the regulations regulate other measures such as:

(a) Sealing seasons are established for Harp, Hood and Grey seals;
(b) It is illegal to kill and trade Harp seals before they begin to moult their white fur;[352]
(c) It is illegal to hunt and trade Blueback Hooded seals; and
(d) No sealing in breeding or whelping patches is allowed.[353]

In Canada there are generally accepted principles of a humane slaughter, which include the following: The animal should experience minimal distress prior to and during stunning, rendering the animal unconscious without the need to repeat the application of the stunning method, confirming unconsciousness by monitoring for multiple indicators of consciousness, delivering death without delay and ensuring unconsciousness persists until death occurs.[354]

However, just as the Namibian hunt, Canada's hunt has been under scrutiny.[355] Various veterinarian reports of animal welfare aspects have been reported by IFAW and the World Wildlife Fund. The reports indicate methods other than those prescribed[356] by the regulations are used in the stunning, killing and skinning of seals.[357] Veterinarians state the primary focus is not on making the hunt humane, but rather to make it less inhumane by adopting methods that are practical on ice.[358] In 2009 the EU prohibited trade in commercial seal hunts. Canada responded by revising the regulations and making the hunt more humane. However since then more States have prohibited the trade of Harp seal fur.[359] There are certain aspects that pose as obstacles to a humane slaughter such as extreme weather conditions, strong winds, high seas, extreme cold, low visibility and lack of enforcement mechanisms.[360]

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to a wooden handle. The wooden handle should be between 105 and 153cm in length with a diameter of 3 to 5.1cm.

351 EFSA (2007:26).
352 The hunt for baby white-coat Harp seals was outlawed in 1987.
353 Section 30.
354 Butterworth (2012:460).
355 *Op cit,* p. 457.
356 For example the use of boat hooks and gaffs.
357 EFSA (2007:53).
358 Butterworth (2012:461).
359 *Op cit,* p. 457.
360 *Op cit,* p. 463-464.

It has been submitted that some animals shot are not killed and are either lost or found alive later.[361] The animal will then only be killed with a hakapik. In some instances the sealers also use lower calibres than prescribed by law.[362] Another concern submitted is that some seals are not killed with the first shot and need to be shot again or killed with a hakapik.[363] Clubbing has also shown to be problematic. Some seals struck/clubbed do show a decreased level in consciousness but is not entirely unconscious,[364] while others showed no signs of skull fractures.[365] It was also shown in Daoust's report some seals are still alive and conscious on deck,[366] which entails the animals were dragged alive over the ice.[367] Burdon submits some seals are likely to be conscious when skinned but EFSA emphasises there is a lack of evidence to show how many seals in reality suffers during the hunt. It might be concluded that some animals experience pain, fear and suffering.[368]

Burdon's research has also shown the 'blink test' is not executed in all instances.[369] His research, done prior to 2009, has shown the 'blink test' was not executed in all instances before sealers moved on to the next seal. If the blinking test was executed, it was either poorly performed or inadequate.[370] The 'blinking eye' test was mandated in the regulations prior to the 2009 amendments, but is no longer prescribed. It has been repealed as it might be an unreliable means of determining consciousness in the hunt's conditions and sealers are likely to neglect it. Butterworth submitted the inability to test for unconsciousness must be considered a cause for serious concern.[371]

Further, the three-step method of stunning, checking for reflexes and bleeding are not executed in a rapid sequence.[372] Even properly stunned animals have the potential to regain brain and body functions if left unbled.[373] According to the Regulations, bleeding should occur on the ice. Bleeding should occur without delay

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361 Butterworth (2012:459).
362 EFSA (2007:55).
363 Butterworth (2012:458).
364 Burdon, R.L. *et al.* 2001. *Veterinary Report Canadian commercial seal hunt Prince Edward Island.* March 2001. Canada. Report of an International Veterinary Panel, 36pp. as cited in EFSA (2007:56).
365 Butterworth (2012:458).
366 Daoust, P. *et al.* 2002. *Animal welfare and the harp seal hunt in Atlantic Canada.* Canada Veterinary Journal 43, p. 687-694. as cited in EFSA (2007:56).
367 Butterworth (2012:460).
368 EFSA (2007:56).
369 Butterworth (2012:460).
370 *Op cit.*
371 *Op cit,* p. 462.
372 EFSA (2007:58).
373 Butterworth (2012:460).

and not 'as soon as possible' as the Regulations state, to prevent the animal from regaining consciousness.[374] Some animals struck are not recovered by sealers,[375] others are stockpiled on the ice being observed to be alive and breathing and some animals have shown the presence of blood in their stomachs, giving the impression they were still alive after the first hit and swallowed blood.[376]

The veterinarians had the following conclusions about the Canadian seal hunt:

(1) Burdon stated the hunt lacks consistency and some of the animals are killed in an unacceptable manner;
(2) Daoust concluded the hunt is relatively acceptable;
(3) Butterworth[377] expressed concern for animal welfare. Further, it was noted there is a lack of implementation of the Regulations, the Regulations are disregarded by sealers and government officials do not effectively monitor the hunt. The aim should be to minimize distress, induce unconsciousness painlessly and ensuring the animal is unconscious until death occurs;[378] and
(4) Smith concluded it is in fact possible for Canada to have a humane hunt.[379]

It is a necessity for the three-step method to be followed through and due to concerns raised about the hunt; it still requires attention to be drawn to the industry.[380] EFSA concluded some animals may experience pain, suffering and fear[381] but more data is needed to establish the number of seals killed inhumanely as the views of the reporters on the hunt tend to be conflicting.[382]

Lastly, any sealer acting in contravention of the Regulations is penalised. The court decides on the consequences of such illegal actions and could include court-imposed fines, licence prohibitions and the forfeiting of catches, fishing gear, vessels and vehicles.[383]

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374 *Op cit.*
375 Butterworth (2012:459).
376 EFSA (2007:58-59).
377 Butterworth, A. *et al.* 2007. *Welfare aspects of the Canadian seal hunt.* Preliminary Report 30pp and Final Report 45pp. as cited in EFSA (2007:60).
378 Butterworth (2012:466).
379 EFSA (2007:60).
380 *Op cit.*
381 Butterworth (2012:461).
382 EFSA (2007:91).
383 *Sealing in Canada – Frequently Asked Questions.* Available at http://www.dfo-mpo.gc.ca/fm-gp/seal-phoque/faq-eng.htm; last accessed on 20 September 2013.

I chose Canada for a comparative analysis due to its practice in determining the TAC. Canada does not only focus on the number of pups born, but also on other factors which could affect the survival of pups. Namibia cannot continue to determine TAC's by virtue of aerial consensus alone. Workshops are held to train sealers on humane methods of killing, not as in Namibia where co-sealers and concession holders train the clubbers.[384] Further, the Canadian law is much more advanced than Namibian law; it requires the kill to be quick, a consciousness test should be executed before a sealer could move on to the next seal, skinning of live animals is not allowed and no sealing is allowed in whelping patches. Namibia is currently allowing sealing in a breeding colony. The general principles of humane killing are definitely a strong standpoint to start from in ensuring the hunt is humane and Namibia could adopt these principles. Canada also emphasises the importance of the three step method. Canada is of course far from perfect, and is criticised in the same manner as Namibia, but it tries to adopt laws to prevent pain and suffering; hence there is always room for improvement.

[384] Mundjulu, I. 16 September 2013. *Electronic Interview.*

CHAPTER 7
CONCLUSION AND RECOMMENDATIONS

7.1. **Conclusion**

I submit the Namibian seal harvest is unlawful, unnecessarily brutal, cruel and unsustainable. However, the Ombudsman stands his ground in that he does not have adequate and sufficient grounds in law and fact to recommend to the Namibian Government to stop the annual seal harvest as the harvesting of seals is lawful, however the battle is not quite over.[385] Pat Dickens stated they will continue to make good on their word until the bloodshed is permanently ended, the seals are protected under effective new legislation and the people of Namibia are given the opportunity to benefit from this resource in terms of viable and economically rewarding eco-tourism.[386] The *Sea Birds and Seal Protection Act*[387] was clear in its contents and jurisdiction and mainland harvesting would have been unlawful;[388] however since the repeal of the Act seals have not been afforded the same protection.

Hugo is of the opinion it has been conclusively proven that no intervention by mankind is needed to manage wild seal populations. Nature does so adequately through pups washing off islands and drowning, shark predation at sea and around colonies, jackal predation on land and factors such as a lack of fish, disease, heat and cold. These are all major natural seal killers and the only successful way to save seals is to respect their freedom and work with them unconfined and free.[389]

According to the Ombudsman there are many other ways of killing a pup and many of these methods have been tried and tested locally and internationally. However, all these trails reached the conclusion that clubbing, if done properly, is the most effective way to render a pup immediately unconscious and minimise suffering and stress[390] and when several pups are killed in a short period of time on a semi-industrial scale (such as Namibia) it is the most practical way if not the only.[391] However, the Ombudsman mentioned there is always room for improvement and the

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385 Available at http://www.thesealsofnam.org/about/; last accessed on 24 October 2013.

386 Hartman, A. 19 September 2012. *Seal cull hurts tourism, lobbyists say. The Namibian Newspaper*.

387 Act 46 of 1973.

388 Hugo, F. 20 June 2013. *Electronic Interview*.

389 Hugo, F. 2009. *Exclusive Interview with Francois Hugo, Founder, Seal Alert-SA.* Available at http://voices.yahoo.com/exclusive-interview-francois-hugo-founder-seal-3806330.html, last accessed on 9 March 2013.

390 This was confirmed by The Panel of Animal Health and Welfare.

391 Walters (2012a:16).

standards of killing should be upheld, the sealers must be trained and attention should be given to the reporting process of inspection. He is further of the opinion that clubbing is the most practical method and the only one applicable to Namibia. However, he agrees an appropriate remedy would be "*to amend the MRA and Regulations, to replace existing measures with those that could be implemented and would result in better regulation of harvesting and therefore reduced suffering of seals*".[392]

The Ombudsman has made recommendations to address the issues mentioned and brought before him:

1. A number of regulations should be streamlined to address concerns relating to seal harvesting;
2. Regulation 20 should be amended:
    a. Rights holders should immediately bleed out animals to ensure they are irreversibly unconscious or dead;
    b. Rights holders should be compelled to erect temporary enclosures where pups, not exceeding 100, could be confined before they are released for clubbing;
    c. Sealers should be trained[393] and be competent in the procedures used such as killing methods, monitoring death, unconsciousness and rapid bleeding; and
    d. The three-step method should be implemented;[394]
3. The MFMR should consider independent monitoring of seal harvesting; and
4. The MFMR should publish all conservation and management measures adopted under any international agreement Namibia is a party to in the *Government Gazette*.[395]

All might seem well with the proposed recommendations which could make a difference in Namibia. It has, however, been a year since the Ombudsman's report has been released, the 2013 harvest is almost over and none of the above has been implemented to improve the current harvest. These recommendations have no effect if they are not implemented within a reasonable time. I am of the opinion these measures should have received priority after it was released in 2012 to ensure the

392 Walters (2012a:18).

393 In Mundjulu's electronic interview stated that sealers are trained by their colleagues together with the inspector and scientists who gives a refresher course at the beginning of every harvest with regards to the regulations.

394 Walters (2012a:23).

395 Staff Reporter. 26 June 2012. *Ombudsman OKs seal culling. The Namibia Newspaper*.

2013 harvest and those to come, comply with the law. It took more than a year before it was published that the MFMR has accepted the Ombudsman's recommendations.[396] However, this does not change the effect on the current harvest and raises concern that the implementation of these recommendations may take longer than expected. The Ombudsman stated only the Minister can determine when exactly the recommendations will be fully implemented. It is, however, predicted to be implemented in 2014.[397]

The statement made by Esau; *"if the pressure groups cannot come up with another formula regarding the seals they cannot stop us. Otherwise they have to take the seals to their countries and they can keep them there"*[398] is not the correct approach to the global concern Namibia is currently facing. Various recommendations have already been submitted which could resolve the 'seal problem'. The only requirement to solve the problem is the speedy implementation of the Ombudsman's recommendations. Further, the response given to me by the Ministry of Environment and Tourism's Deputy Director of Tourism: "*we are under orders not to speak to anyone about the seal harvest*" does not support the global outcry for answers.

7.2. **Recommendations**

I am of the opinion there are enough justified reasons and empirical evidence to consider ending the yearly seal harvest, however if the harvest should continue I submit the following recommendations on improving the practice:

1. It should introduce legislation to allow for an observer, evidence gathering and prosecution.[399] An observer would allow for transparency during the harvest and would be able to point out to sealers when the law is not complied with. Further, the industry should be documented once a year detailing the rights of and the TAC for each rights holder, the revenue generated from seal products, the number of employees employed and their respective salaries.[400] Namibia should allow media coverage of the harvest.[401] Currently anyone found filming the harvest would be imprisoned for doing so.[402] The

396 Lamprecht, H. 7 August 2013. *Robvoorstelle aanvaar. Republikein.*

397 Walters, J. 30 September 2013. *Electronic Interview*.

398 Poolman, J. 31 July 2013. *Sealing Expands. The Informante Newspaper.*

399 Hugo, F. 19 June 2013. *Electronic Interview*.

400 *Op cit.*

401 The Ombudsman of Namibia agreed with the fact that filming the harvest would increase transparency but it is mainly the rights holders that object to media coverage due to their disturbance on seals during harvesting; Walter. J. 30 September 2013. *Electronic Interview*.

402 Gekoski (2011:55).

Government sees it as a threat to sovereignty and will not tolerate illegal filming.[403] If the harvest is documented on film it could insure further implementation of law.

2. Room should be made for sufficient, effective and independent scientists to research and recommend on seal populations, natural deaths and finally a sustainable TAC for both bulls and pups. If the harvest could be supported by scientific fact, which was not concluded by a branch or scientist of the MFMR, it would deem the harvest more sustainable and legitimate.

3. Rights should be given over seal watching, shark cage diving and seal conservation and protection, not harvesting. This should generate needed foreign exchange in millions of dollars, without the need to kill, offering a business opportunity and a final alternative to killing. The abovementioned alternatives already exist. They have proved profitable and carry little or no overhead costs, are forever growing, etc., i.e. Namibia should invest in eco-tourism.[404] Namibia is known for its tourist attractions, mainly consisting of natural destinations, therefore the idea of eco-tourism supports seal watching and could only be beneficial to the country.

4. The current legislation governing the harvest has to be reformed. The Ombudsman stated it is correct that organisations and scientists are of the opinion the Namibian harvest is inhumane and unsustainable after they have studied Namibia's current legislation. He therefore formulated recommendations, particular in regard to law reform.[405] The law is failing in addressing crucial aspects of a humane harvest, it does not afford adequate protection and conservation to a species listed under CITES and lacks clarity. Law is the most important factor to consider when it comes to the legitimacy of the harvest. As long as there is a gap within the law or if the law remains inadequate, the harvest will remain a point of concern. Once the law has been improved, strict mechanisms for its enforcement should be implemented.

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403 Kisting, D. 27 July 2011. *Seal culling exposed to the world. The Namibian Newspaper*.

404 Hugo, F. 2009. *Exclusive Interview with Francois Hugo, Founder, Seal Alert-SA.* Available at http://voices.yahoo.com/exclusive-interview-francois-hugo-founder-seal-3806330.html, last accessed on 9 March 2013.

405 Walters, J. 30 September 2013. *Electronic Interview*.

5. Sealers should be required by law to be adequately trained in the contents of the *Regulations*, the method of killing and a seal's anatomy in order to pursue a humane harvest. Sealers should be strictly monitored, supervised and punished in the event the law is not adhered to.

6. The Minister should protect and preserve what is left of the seal islands, give the seal population the opportunity to go back to their offshore islands and protect them and their waters. These are the foundations of the species future survival. A seal rescue facility should be initiated to help with research of the species, to document what the figures claim, to see exactly how many are dying and compare it to population numbers.[406]

7. The APA should be interpreted as to include seals as an 'animal' as they are harvested under human control during the duration of the harvest. Further, the definition of an animal should not be limited and only decided by the element of 'under control'. A seal is scientifically defined as a mammal capable of experiencing pain and suffering. Therefore the APA should apply to seals to ensure the slaughter is humane. Although the Ombudsman states there is a difference between law and science, his findings are still open to be challenged in the High Court.[407] There is, therefore, a dire need for the court to interpret the ambit of an 'animal' and reform the law to settle the matter.

8. The current recommendations made by the Ombudsman should be implemented as soon as possible. This would indicate Namibia is taking the concerns raised seriously and wishes to address them. It should strive for a harvest which complies with international standards; practising it at the utmost level of humaneness.

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National Aquarium of Namibia, Swakopmund.

vii. SCHEDULES

1. **Cape Cross Field Visit**

Image 1: The Seal Products (Pty) Ltd factory located near Henties Bay.

Image 2: The various products available at Seal Shoes in Henties Bay; including Omega 3 Oil, shoes, slippers, handbags, wallets and seal skins.

Image 3: Mounted seal trophy in Seal Shoes.

Image 4: Natural mortalities along the northern coast of Namibia.

Image 5: Cape Cross Seal Reserve.

Image 6: Tourists arriving and watching the seal colony at Cape Cross.

Image 7: The seal colony at Cape Cross.

Image 8: A seal pup sucking on his mother and a dead seal pup.

Image 9: Cape Cross Lodge situated near Cape Cross Seal Reserve.

Image 10: Jackal predation on seals.

Photos taken by: Suné de Klerk
Henties Bay and Cape Cross
4-5 October 2013

2. Electronic Interview with a scientist of the Ministry of Fisheries and Marine Resources

ELECTRONIC INTERVIEW:	Seal Harvesting in Namibia: A Critical Analysis	
INTERVIEWEE:	Mr. Ipinge Mundjulu	(imundjulu@mfmr.gov.na)
INTERVIEWER:	Ms. Suné de Klerk	(sune@cronjelaw.com)
DATE:	16 September 2013	

Dear Interviewee,

Thank you very much for taking the time out of your busy schedule to assist me with the finalization of my Dissertation as a partial fulfillment of my LLB degree. Below are 10 questions based on the topic. Feel free to type the answers below each question.

1. Has Namibia done population surveys over the past three years to determine the quotas to be set for pups and bulls to be harvested?

Yes, a population surveys was conducted in the 2011 to assess the state of the resource. A stock assessment model was used to determine the sustainable total allowable catch.

2. Are the sealers trained in the method of harvesting as per the Regulations? Do they take a yearly hunting test to ensure accuracy?

Yes, they are trained, 1st By their colleagues who had been in the industry for over 30 years. 2nd The scientists together with the inspector gives a refresher course at every beginning of the harvesting season with regard to regulations.

3. Does the sealing season provide substantial employment for Namibians? If yes, how many and are you aware of their relevant salaries?

"Substantial employment" is relative. The fact is, every employment created in Namibia is very essential given the challenge of unemployment that Namibia is facing. During the harvesting season, the seal industry at the coastal town of Henties bay is the largest employer. Much more sustainable employment could be achieved by the industry through product diversification if the market was not hindered.

"Relevant salaries" is also relative; however the industry is governed by the labor act.

4. Is the current law, namely the Marine Resources Act and Regulations, adequate in ensuring a humane and an un-cruel harvest?

In 2012, the Marine Resources Act won an international award as the world's most inspiring, innovative and influential policy on the protection of oceans and coasts that allowed Namibia to successfully manage its marine resources and instituted a more ecologically and economically sustainable fishing industry by implementing a rights-based and scientific approach to fisheries management. This speaks by itself.

5. Are the instances in which the methods of harvesting, as prescribed by law, are not adhered to? If yes, then why does this occur?

NO! The Namibian government ensures that the law is enforced. The harvest takes place under the watchful eye of the fishery's inspectors, fisheries biologist and police. This ensures that harvest takes place as prescribed in the act.

6. The Government of Namibia claims that seals consume 860 000+ tons of fish per year. Is this based on scientific evidence and how much of the claimed amount is commercial fish? Further, if Namibia's fish stocks are decreasing, why is the total quota for fishing increasing yearly?

Literature and studies by scientists has shown that, seal consume that much amount of fish. Something must be clear to everybody in the world. In Namibia, seals are regarded as an exploitable marine resource where the government can derive both consumptive and non consumptive economic gains; the management policy is to exploit them on a sustainable basis. Thus it does not make sense to assume that the harvest is "**culling**" orientated in the sense of protecting fish stock.

7. In your opinion, does a seal classify as an "animal"? The Ombudsman stated in his report of 2012 that a seal does not fit into the ambit of an animal as per the Animal Protection Act as they are not under human control. During sealing sealers target and round pups up before they are clubbed. Could this not count as human control? What is your view on the matter?

A seal is a marine resource, just like fish. The marine resource act is publicly available, my view are similar to those in the act.

8. Would it be economically detrimental for the Government of Namibia if the seal harvest is to be stopped? If yes, would Namibia not be able to create more revenue if an eco-tourism root is followed?

Every employment lost in Namibia is detrimental. Having a resource that is benefiting us both consumptive and non-consumptive is a blessing for the country.

9. There have been claims by animal rights activists that the seal harvest does not confirm with the principle of sustainability as required by CITES and the Constitution of Namibia. Has there been any scientific evidence to prove that the current quotas are sustainable?

The ministry of fisheries and marine resources has won world prestigious awards due to its highly recognized management of the marine resources. This management is based on sound scientific advice.

10. In your opinion, as inspector of the seal hunt, is there a possibility for law reform to make the hunt more humane and acceptable to the international community? Has the recommendations of the Ombudsman been considered or implemented?

I am not an Inspector but a Scientist. To reiterate on that, my view are similar to the marine resource act of 2000. I have witness the harvest for many times, there is nothing inhumane or whatsoever. The international community shall always have their own view. They should visit more slaughter houses.

3. Electronic Interview with the Ombudsman of Namibia

ELECTRONIC INTERVIEW:	Seal Harvesting in Namibia: A Critical Analysis	
INTERVIEWEE:	Adv. John Walters	(ivanwyk@ombudsman.org.na)
INTERVIEWER:	Ms. Suné de Klerk	(sune@cronjelaw.com)
DATE:	30 September 2013	

Dear Interviewee,

Thank you very much for taking the time out of your busy schedule to assist me with the finalization of my Dissertation as a partial fulfillment of my LLB degree. Below are 5 questions based on the topic. Feel free to type the answers below each question.

1. Your report entitled: *Report on the Complaints by Civil Society Organizations, Non-Governmental Organizations, Individuals and other Groups on the Illegalities Pertaining to the Annual Seal Harvest*, was released in June 2012. In this report you made certain recommendations on how Namibia can improve the harvest and these recommendations were accepted by Minister Esau only in August 2013 (more than a year later). How long would it take for these recommendations to be fully implemented taking into consideration that the harvest for 2013 is almost over?

The Minister assured me in August 2013 that they have accepted my recommendations; they are busy to improve the current legislation and my recommendations will be taken up in the amended or new legislation. Some of them are already implemented. How long it will take to fully implement the recommendations, is a question which only the Ministry can answer, but I would expect it to happen before the next harvest in 2014.

2. Is it currently illegal for the media to film the harvest? Various individuals and organizations have stated that they were not allowed to film the harvest and have done so in secret. If the harvest is humane as stated by Government officials and Namibian scientists, would it not be better to film the harvest to prove that the harvest is humane? It has been the opinion of some that Namibia does not allow filming to hide the brutality of the harvest.

May I answer your question with a question. Do you think any proof of a humane killing of seal pups, will settle the matter? Or rather a total ban of harvesting of seals? However, I agree with you that transparency is always good. I was informed that the rights holders are the main objectors to such interventions, because the movements of the crew disturb and frighten the seals causing them to flee to the sea. How valid this objection is, is for you to evaluate. I made my recommendation in this regard.

3. If Namibia was to reform the law, including new law regulating training of sealers, requirement for yearly population data and the implementation of the stun, check and stick method; how would this change the fact that organizations and scientists are of the opinion that the harvest is inhumane and unsustainable? I.e. would law reform settle the matter?

It is correct that organisations and scientists are of the opinion that our harvest is inhumane and unsustainable after they have studied our current legislation. In order to make our harvest more humane the EFSA Report suggested a number of recommendations. I

included these recommendations, particular in regard to law reform, in my Report. I have also found that a club strike on the head of the pup (although, it may appear brutal) is humane as long as it achieves rapid, irreversible loss of consciousness and leading to death. I have also found that the stunning and sticking method, used for the killing of pups, at home at elsewhere, is the most practical and the only one applicable to the harvest in Namibia based on what other scientist said. Scientists, like lawyers always differ; therefore they approach courts to settle their differences. I have invited the organizations to approach our courts if they differ from me. I am still waiting for the challenge.

4. It was also concluded in your report that a seal does not fall into the ambit of an animal in the Animal Protection Act, due to the fact that they do not fall under the 'control' of human beings. Isn't the matter relating to classifying an animal a scientific one not subjected to any other requirements? Seals are scientifically classified as mammals; that care for their young and can experience fear and pain. Isn't this 'fear and pain' exactly what the Animal Protection Act tries to prevent?

Again, science and the law differ, science classify animals and the law (APA) defines what should be regarded as an animal and we are bound by the law. I made a factual finding in regard to seals; they are not "***animals"*** as define under the APA, because they are wild animals not under the control of somebody. The APA protects the welfare of animals which fall under its definition of "***animals***", and not animals which fall outside the ambit of its definition. My findings and the interpretation of the APA are open to challenge; a high court ruling, followed by law reform can settle the matter.

5. Are there currently any measures in place to ensure that the seal population would not collapse due to over-exploitation over a long period of time as it has occurred in South Africa? The population might be at stable levels now, but what if another mass die-off is experienced in future? Is the future of the species then also secured?

A very difficult question, because nobody can predict the future. Environmental anomalies which may result in shortages of food will definitely lead to mass mortality of seals due to starvation. I have found that the current level of exploitation in Namibia is biologically sustainable, that the Total Allowable Catch (TAC) of seals is currently rationally linked to the numbers of seals and it does not result in over-exploitation. Namibia is compelled by its Constitution to use its living natural resources sustainably. Every three years the Benguela Current Commission (BCC), of which Namibia is a member, conducts a seal stock assessment to determine the number seals in Namibia, R.S.A and Angola. The assessment results indicate that the seals population has increased. There are sufficient safe guards and guarantees in our environment management system to secure the immediate future of seals. I based this statement on my findings that the legal framework which the government put in place for the sustainable utilization of living natural resources is well anchored and its accession to a number of international instruments, demonstrates its commitment to the management of its marine resources. The Ombudsman has an oversight role and duty to protect the environment and living natural resources of Namibia.

4. Various Electronic Discussions/Interviews with the Founder of Seal Alert SA

ELECTRONIC INTERVIEW:	Seal Harvesting in Namibia: A Critical Analysis	
INTERVIEWEE:	Mr. Francois Hugo	(sasealion@wam.co.za)
INTERVIEWER:	Ms. Suné de Klerk	(sune@cronjelaw.com)
DATE:	12 June 2013	

Hi Sune,

Do you have a copy of our legal opinion submitted to heads of state, if not I will send it to you.

Seal Alert issue is not about the cull or the laws adapted around it. It has been about the management and senseless of this slaughter. To reach the reality, it is important to start at the beginning. Historically when European explorers first arrived they found no mainland colonies, all colonies of seals were found on offshore islands. There is some evidence that an early colony formed at Cape Cross in 1900 (mainland), but this has to be taken into account as a result of forced displacement via sealing on islands which drove seals to seek safer habitat.

To truly understand, just accept that seals preferred habitat, the evolutionary path as a species, was that adapted to breeding on offshore islands. There are 46 islands of the southern African coast totaling 1000 ha in size (a very small space shared by 32 species of seabirds), whatever the original population size of seals, the ratio, would be about 4% east Cape Coast, 85% Western Cape and 11% Namibia.

The majority of these islands or islets are less than 1 ha, so only a few are large, safe, and important of this species. All sealing used to be conducted on offshore islands, using current methods, and the direct result is that 98% of these colonies collapsed, and in the majority have remained extinct – impact from sealing a permanent one. Driving seals off these islands, as seen over 70% now occurring on one colony in northern Cape, and overall 80% of the seal population now occurs on mainland colonies that did not exist 60 years ago, mostly in Namibia.

Pup sealing season falls in winter, when north-western storms roll in. Imagine applying current regulations to these stormy offshore colonies. As soon as approached seals flee into the safety of the sea, stampedes ensures many pups trampled. The result is not an orderly controlled humane hunt but total free for all. Repeated daily activity, will disturb the breeding pattern and drive seals away, the colony collapses. Continue this as an industry, and the seals collapse. By 1900 govt acknowledges the species was close to extinction. Unfortunately there was no conservation, or protection of species or population counts. The first in 1972, simply documented the after effect. Possession island (90ha) in Namibia its largest was a a major seal colony and sealing factory – extinct. Robben Island (507ha) and Dassen Island nearby (273ha) in western Cape likewise – extinct. Early historical accounts point to the seashore of the islands filled with seals. This is where Seal Alert differs from govt. It wants the species to be restored to its endemic natural habitat, it's become extinct from via sealing. Govt refuses to address this.

The seal cull. Firstly it has always been the motivation to kill seals to benefit fisheries and "reduce" the fish eating seals, it has never been driven by commercial value of the product itself. The product funds the cull. Any scientist will confirm the best way to control the population is to cull the breeding females, yet all females are exempt from cull as there is no market for the product. So instead, the only viable market is the pup skins, but in doing so the original object of reducing the seal population or killing "fish eating" seals to benefit fisheries is lost. Why because all 85 000 pups are non-fish eating suckling mother's milk at time of slaughter. Secondly by increasing the TAC on pups, year on year, a greater % of the pups born get slaughtered in the colony. This premature removal of the pup, unburdens the difficult task of hunting and feeding the pup for 12 months, and facilitates the cow in growing the un-born pup being carried, to produce pups more often. All growth for the species have come from the 4 mainland colonies that were culled, and even with over 50% of the pups culled these colonies doubled and tripled in pup numbers. The very opposite of a cull to reduce or benefit fisheries.

All along, the few remaining herds of seals on offshore islands that were left alone, showed no growth or decline. Now just use your own logic. There is less fish today than there was 50 years ago. A seal leaving an island and competing amongst themselves will struggle to survive, much more so than 50 years ago, when fish more plentiful. Big seas will wash away their pups, causes a natural cull as high as 50%. Cold and heat cause greater mortality of new born. Restricted space on islands prevents growth.

No need to cull, simply protect their habitat, population remain stable. Commercially islands become a huge tourist drawcard – boat based seal viewing.

Instead Namibia has driven seals off islands, banned them from returning – forced them onto beaches, changing natural breeding doubling the pup numbers, causing several mass mortality, forcing seals to migrate ever northwards, and beating to death 85 000 to benefit one foreign individual willing to fund the cull.
I have tried to undo this mess, spoke to state and PM to no avail.

Francois.

ELECTRONIC INTERVIEW:	Seal Harvesting in Namibia: A Critical Analysis	
INTERVIEWEE:	Mr. Francois Hugo	(sasealion@wam.co.za)
INTERVIEWER:	Ms. Suné de Klerk	(sune@cronjelaw.com)
DATE:	19 June 2013	

Hi Sune,

If the seal harvest is in line with the Constitution then it should be transparent. Awarding a TAC based on tens of thousands of marine mammals clearly the possibility of significant cruelty is there. A legal point should be made that opens up this industry. An observer should be allowed to document the entire daily harvest from 06.30 to 10am with a video. Such violations, of which there is none (as per ombudsman findings) legislation, legislation should therefore be introduce, that allows for observer/evidence gathering and prosecution. The full extent of the industry, what is the t/o of each seal rights holder, how much was received for skins, meat, oil and gentiles. How many workers does each right holder employ and pay during the sealing season and the rest of the year.

Which fishing sector is concerned about seal numbers, is it the beach going part-time sport fishermen or commercial industry, whereas hake is a deep water fish too deep for seals to reach. It does not help that the Ombudsman claims 69 workers are employed in October for N$130 000. As sealing is only 5 months, hence N$1884 per worker. What is the average wage per year? Although the TAC is 91 000 it appears average harvest is 40 000. How much is the skins, meat etc sold for by each of the 3 rights holders. What is the minimum wage requirement in Namibia, as N$1000 a month seems very low.

Francois

ELECTRONIC INTERVIEW:	Seal Harvesting in Namibia: A Critical Analysis	
INTERVIEWEE:	Mr. Francois Hugo	(sasealion@wam.co.za)
INTERVIEWER:	Ms. Suné de Klerk	(sune@cronjelaw.com)
DATE:	20 June 2013	

Hi Sune,

For millions of years seals evolved on offshore islands, and only after intensive seal harvesting on islands bringing the seal population to near extinction by 1900, and the continuation of seal harvesting annually thereafter, did the first of mainland seal colonies develop thereafter in 1940. After the first pup count in 1972, seal harvesting ceased on the islands and moved exclusively to the mainland. In 1972, the pup count revealed a ratio of almost 50% island colonies and 50% on the mainland. In 1972, there were 10 island colonies and 5 mainland colonies. 44 995 pups born on islands and 40 193 pups on the mainland.

It is claimed that the seal population has been increasing at 3% p.a and that the seal population had doubled. This is the basis for the continuation of seal pup harvesting. Seals occupy a total of 18% of the former seal islands, and if this be true, one would have expected the largest growth to occur on non-harvested island seal colonies, free from annual harvesting, free from 25% of pups jackal predation and free from the several mass die-off's on the mainland recorded in 1988, 1994, 1995, 1996, 2000, 2002, 2006 and in 2009. Yet in 2011, still only 10 island seal colonies occupying 18% of the former seal islands. With a total pup number of 49 324. A growth after 39 years of 9%. Clearly no need for population control or threat to fisheries. Nature balancing itself. Yet we see with a mainland harvesting policy on 3 colonies, after a collapse in the 1990s of the pilchard stock the main source of seals food, the 40 193 pups recorded on 5 new mainland colonies, after several mass die-off's, jackal predation and heat effecting 44% of the pups born and a annual pup TAC 53 000 since 1990, that 40 193 has grown to 205 000 pups born now on 26 mainland colonies. An over 400% increase after die-offs, morality and harvesting, and a 400% increase in mainland colonies.

Bear in mind over 80% of seal former island colonies remain extinct, where such former islands could generate 10-times the revenue year around from eco-tourism/boat based seal viewing on such extinct seal islands in

Luderitz as an example. So what we are looking at is a management policy. Had management decided in 1900 and thereafter to not harvest seal pups annually and instead protect seal island habitat. 80 000 pups would have remained 80 000 after 39 years, and the estimated N$390 million seal viewing would have earned. Instead mainland seals were harvested and banned from islands or banned from returning to islands. It is estimated that this harvesting policy earned since 1990, N$42 million.

Yet the unrecorded factor of this unnatural increase in pup production via interference in breeding behavior on the mainland which has seen an increase of over 200 000 pups. It is stated pups account for 1 – 4,5 of the total population or 700 000 fish eating seals unnaturally in the environment. If each fish eating seal, all 700 000, all exempt from harvesting (except 5000 bulls) consume 2 kg of fish per day, their annual consumption of fish equates to over 500 000 tons, equal to the entire fishing industry catch. At approximately N$4 billion, since Namibian independence in 1990, Namibia seal harvesting policy and unnatural increase in pup production, has cost the country, N$84 billion in lost of seal consumed fish from the mainland seals, against less N$40 million earned in pup harvests. Yet, the Minister who is causing this loss annually to the Namibian people, is the same Minister who can't admit its mistake, and who administers seal management.

Francois.

ELECTRONIC INTERVIEW:	Seal Harvesting in Namibia: A Critical Analysis	
INTERVIEWEE:	Mr. Francois Hugo	(sasealion@wam.co.za)
INTERVIEWER:	Ms. Suné de Klerk	(sune@cronjelaw.com)
DATE:	23 July 2013	

Hi Sune,

I will read over it in the next few days. On a quick read, it appears you are missing an important point. Namibia's signatory to CITES in 1990, bound it to the fact that in order to export CITES Appendix II seals, the requirements are that suitable protection legislation are in place in Namibia. At the time this was the SBSP Act of 1973, which Namibia adopted until 2000. The SBSP Act clearly defines jurisdiction, as not Namibia, but up to the high tide and islands within Namibian waters. As the seal "harvest" under sealing regulations in 1976, ordered that seals be driven away from the seashore (beyond the high tide) to then be killed, and furthermore that the entire TAC had shifted to the mainland, would violate the terms of the SBSP Act and in turn those seal products exports in violation of CITES, as seals were not protected when harvested or harvested unlawfully under SBSP Act. Therefore Namibia was in violation of CITES between 1990 and 2000. In repealing the SBSP Act in 2000, and yet introduced sealing regulations in the MRA, yet offered seals no protection whatsoever or confirmed by the Ombudsman as the MRA specifically states in Section 32, no right is needed to kill Cape fur seals specifically and further stated that the APA Act does not include seals. Would clearly indicate Namibia has been in violation of CITES by exporting Appendix II seals when no protection legislation existed between 2000 and 2013 – nor any recommendations to address this.

The Ombudsman failed to address, yet Namibia claims the MRA was adopted to exercise "control over" living marine resources, yet then claims seals are not protected under APA as they are not under the control of sealers when killed or killed within state owned controlled seal reserve. The basis for Namibia's sealing industry is claimed it is not a cull, as by definition, a cull would be unlawful under Namibian Constitution of sustainable utilization and that it is instead a economic harvest to create jobs. But such economic ability does not lay in local consumption but requires international export of all seal products. Hence the importance of the terms of CITES, to which 173 country's are signatory. CITES requires that the Namibian Management of CITES, which falls under the Department of Environment, be checked before export permits under CITES are awarded. In issuing these export permits in violation of CITES since 1990, involving tens of thousands of violations, on a species that is supposed to be protected from such disregard, flies in the face of all conservation protocols and the Constitution.

The summation of all this is, Namibia has removed all legislation protection around an endangered CITES listed protected Appendix II species in violation of CITES and which it and 173 countries are signatory to, and via the Ombudsman report have confirmed these violations, yet continues to rely upon its Appendix II status to export and maintain its sealing industry – unlawfully issuing CITES export permits for seal products. The Ombudsman failed in his duty to make such a finding, and more so, by claiming Namibia is not violating CITES or is unlawful, is rubber stamping an unlawful activity.

The simple fact, that seals were protected under SBSP Act since 1973, and then further protected by CITES in 1977, and at the time all sealing activity was confined to offshore seal colonies, with no harvesting on the mainland – speaks volumes of the failure in legislation, which ignores the fact that sealing had already caused the extinction of most seal colonies on offshore islands and such disruption to breeding activity, so as to cause mainland development of seal colonies. This continued extinction of seals on almost all Namibia's offshore islands, from sealing has never been addressed, yet seals continued to be harvested and exported, in clear violation of the failure of this system. This alone should have ended the sealing industry of exports of these seal products.

Francois.

ELECTRONIC INTERVIEW:	Seal Harvesting in Namibia: A Critical Analysis	
INTERVIEWEE:	Mr. Francois Hugo	(sasealion@wam.co.za)
INTERVIEWER:	Ms. Suné de Klerk	(sune@cronjelaw.com)
DATE:	24 July 2013	

Hi Sune,

A recent media comment by Esau, "If we don't harvest the seals, this will create an imbalance in our marine ecosystem and eventually it will impact negatively on fish stocks and the entire fishing industry is threatened," Esau said. Seals consume 700,000 metric tons of fish a year, more than the country's total fishing quota, Esau said. The allowable catch for hake, which is exported to Europe, and horse mackerel, sold to countries in southern and western Africa, is 140,000 tons and 350,000 tons respectively".

The issue is not about campaigning or donations, it is simply about Namibia's lack of wanting to engage at any level and the media not willing to cover a non-event. The above statement by Esau says it all, void of reality, refusal to engage alternatives, a mindset similar to that of apartheid – that seals must be killed because they eat fish. South Africa thought the same until it stopped the cull in 1990. 23 years later no adverse impact on our commercial fisheries, which is larger and we have 25-times the human population. What is fact, is when SA culled its seals at its only mainland colony, between 1973 and 1990, the pup production doubled and in turn the population. The very opposite of the intention of a seal cull. After the cessation of seal culling, the pup protection remained stable, little or no further growth – the species managed themselves. In fact, all the other seal colonies not harvested, either declined by 50% or remained roughly the same after 4 decades of stats. The same has occurred on Namibia's non-harvested offshore islands. Only seal colonies that have shown growth is those harvested or those that developed because of disturbance from the cull.

The problem is Namibia is not willing to engage its scientists to look into this, and as all access and employment is govt related, no research is forthcoming. Based on Esau's comment above, its illogical to have such a viewpoint. If seals do consume 700 000 tons of fish, and this is the reason for the cull, to reduce the seal eating population or control it, and the govt ignores existing trends of the seal population culled, that saw pup production double and treble after culls. Then why has the cull, MRA and the regulations since 1990, exempted all fish eating seals from being culled. Any marine scientist will confirm, if the intention is to control or reduce the seal population the most likely group would be breeding females, not baby pups. Yet all seals over one year of age (except the few thousand bulls killed for the gentiles) are exempt from any cull. How does a cull involving 90% non-fish eating, suckling un-weaned baby seals benefit fisheries (and where is the science proving it after 4 decades). Secondly, if it is a cull of some-sort, even based on unproven science, such a cull should be scientific in nature, where there is no confusion over job creation or economic benefit. Seals are simply culled by govt to protect fisheries.

Yet, the same Minister and Ombudsman justify the cull, claiming it creates a few jobs – yet refuses to look at the non-consumptive use of seals and tourism, and the sustainable jobs it could create. A single offshore seal colony at Hout Bay, SA generates over N$30 million in revenue to view seals from boat-based operations.

The question that remains unanswered is why does Namibia kill baby seals? Prior to 1976, all seal products were exported to the US, until the US Marine Mammal Protection Act of 1972, banned the import of baby seal skin pelts, taken from seal pups less than 8 months old or still nursing. Namibia sorted waivers, until the US Supreme court found that harvested a nursing pup in a breeding colony to be cruel and inhumane. One would have thought that losing this only vital market for seal products, would have been sufficient to stop killing baby seals. Instead sealers were ordered to find new markets outside the US, and started to export to 27 countries in the EU, until the EU banned all imports in 2009, based on the same cruel reasoning. One would have thought this EU scientific authority review by 27 countries would have been sufficient to end its baby seal cull. Canada had already done so in 1983, but Namibia refuses. Instead Namibia signs an exclusive contract with its Honorary Consul to Namibia in Turkey, and increases its pup TAC. Namibia's entire sealing industry is based on the commercial viability of one individual, whose finances could collapse tomorrow in the world luxury goods/credit crunch market.

As a signatory to CITES, it requires, " 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: (a) a Scientific Authority of the State of export has advised that such export will not be detrimental to the survival of that species; (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; " yet we find that between 1990 and 2000, Namibia harvested and exported these seal products beyond the jurisdiction/protection of the SBSP Act of 1973 which defines below the high tide, and secondly after repealing the SBSP Act in 2000, left seals void of any protection, and even any protection afforded seals from

cruelty under the APA", yet neither the govt or Ombudsman addresses this, more so regulation 18, states anyone can kill seals exempt from any rights or permit. Which clearly confirms since 2000, that for the past 13 years, seals in Namibia have zero protection legislation, and furthermore neither the govt or Ombudsman deems it necessary to afford seals in the largest marine mammal slaughter on earth any form of protection, yet continues to enjoy exporting this CITES listed "protected" species, whose inclusion in CITES is meant to prevent such negligence from occurring.

The seal population in the harvested seal colonies of Wolf/Atlas Bay and Cape Cross is 26% lower than its peak in 1993, 18 years. The pup TAC is double that of what it was in 1993. By the Ombudsman own admission Wolf/Atlas Bay (half the pup TAC quota) is down over 50%. Sealers are unable to fill quota, averaging less than 50%. Seal colonies after just a few days of harvesting are left seal-less. How is any of this not detrimental to the future survival of seals in Namibia. It is somewhat strange, that the Ombudsman finds that seals are protected from sealers not following the regulations, which themselves are vague and impossible to implement, yet allows no independent monitoring of these regulations. Furthermore from the scant footage obtained illegally, numerous violations are evident.

It is clear Namibia is not interested in engaging on this subject. It wants to twist and bend the rules to suit itself, violate laws and only present data that only it controls. I know of no country that has been offered so much to assist it to protect its seals, yet it simply refuses all offers, hell bent on killing baby seals based on false misleading opinions. Have you seen the latest video taken of the seal cull in 2011? Herewith the link, http://www.youtube.com/watch?v=DdV1cnIgL_A

Francois.

ELECTRONIC INTERVIEW:	Seal Harvesting in Namibia: A Critical Analysis	
INTERVIEWEE:	Mr. Francois Hugo	(sasealion@wam.co.za)
INTERVIEWER:	Ms. Suné de Klerk	(sune@cronjelaw.com)
DATE:	25 July 2013	

Hi Sune,

Herewith some further points to consider. The first point raised is why does Namibia harvest its seals, instead of promoting non-consumptive use/ecotourism – for which the Constitution makes provision " sustainable utilization of living resources" which could be consumptive or non consumptive. A single offshore seal colony in Hout Bay, South Africa (one of SA's smallest) generates over 400 000 seal viewing boat based tourists paying N$50 a person or N$20 million in direct ticket sales. Generating 4 to 5 times the revenue generated from Namibia's seal harvest.

Why does Namibia not actively promote such an attractive policy, that creates year round employment, greater revenue and encouraged by the rest of the world. Instead it undertakes the only mass slaughter of baby seals on the planet, that has become the largest mass slaughter of marine mammals anywhere on earth. Sealing used to take place on the islands off Luderitz around 1927, which today are extinct to seals. A former seal island, named Seal Island in Luderitz could potentially support the entire population of Namibia's seals. Protection and repopulation of this island, could mirror the example of the Hout Bay seal colony and its revenue, and is ideally placed within a popular tourist visited area in Namibia.

Esau's point is that seals consume 700 000 tons of fish. Yet 90% of the TAC is pup based. What scientific research does Esau present that killing 80 000 pups each year benefits commercial fishery or controls/manages or reducing the seal population in any way that is beneficial? Surely for Esau to adopt a policy of harvesting instead of the more economically beneficial non-consumptive use of seal viewing, he should have substantial supporting scientific evidence – where is it? Instead, all Esau calls for is other ways of killing pups if people are opposed to Namibia's method's – he refused to discuss the alternative provision as outlined in Namibia's Constitution. Surely, if Cape Cross with a TAC of 40 000 and 23 000 pups harvested saw its seal pup population increase 11% (as per Ombudsman supplied data), it can hardly be argued that the seal cull has any benefit to commercial fisheries or in reducing the seal population, when as per the Ombudsman's own admission over a similar period, a non-harvested offshore seal colony declined by 40% (long island) immediately opposite a harvested seal colony. Long island's seal population is today the same as it was when first counted in 1972, with no harvesting.

That is 4 decades of no growth and no need to cull. In fact by the Ombudsman own admission, the 254 000 pup count is the highest on record, yet all this growth has come from the original 45 000 seals displaced to the mainland on just 5 colonies and first recorded in 1972, and of which 34 000 was harvested. With annual culling of pups, Cape Cross has grown from 17 000 to 72 000, an increase of over 320% growth. Which hardly can be stated as an effective management tool in controlling seal population numbers when compared to offshore

islands. Who all of which have either remained stable to the first population count or declined, with no harvesting or population controls. There is over 200ha of extinct former seal islands.

It is one thing to say, 1,2 million seals consume 700 000 tons of fish and that they must be culled, but it is quite another story, proving that culling 80 000 pups has any benefit at all. The problem is the policy holders refuse to look at the matter objectively or even discuss the matter with outsiders. Any comparison between seal colonies harvested and therefore disturbed, and those colonies not harvested and protected on islands or extinct islands, conclusively proves the seal cull, does not achieve population reduction or benefit to fisheries. So the question remains why does Namibia promote seal harvesting over seal viewing? Where in the Act's or Regulations is a rights system or permits that support seal protection and its habitat or promote seal viewing. Is the omission of such legislation not unlawful under the Constitution? Such multi-million dollar activities do exist in Namibia, at Cape Cross and boat based seal viewing at Pelican Point – but where in the regulations or MRA is allowances or permit requirements made available for this and promoted by govt. As this multi-million industry with much further area for expansion appears to be totally at present unregulated with no reference to it in the MRA, the sole Act governing seals.

The thing that Namibia has difficulty in understanding or refuses to acknowledge, is that firstly sealing only took place on offshore islands, as no mainland colonies existed prior to 1940, (with the exception of Cape Cross which originally was very small and in any event most likely developed from historical previous sealing disturbance on offshore islands, which all lay south of Cape Cross). That the direct developed of mainland seal colonies was caused either by the disturbance on offshore colonies or the collapse of these colonies from harvesting.

Either way, Namibia refuses to look at alternatives, and remains hell bent on destruction of seal colonies. It seems somewhat contradictory, to ignore that sealing only occurred on offshore islands and that in doing so, directly lead to 90% of these island seal habitats becoming extinct, and remaining extinct, whilst claiming the seal population on harvested/culled seal colonies is growing to highest levels on record, after several mass die-off events, and not one as claimed by the Ombudsman. Starvation mass die-off events which by the way, did not affect the offshore sealisland's or seals in South Africa, but only those on the mainland.

The facts are there, yet Namibia refuses to see that its baby seal cull should be stopped. I have always stated it is not lawfully possible to club to death thousands of wild seal pups, particularly related specifically to fur seals which run on all four flipper unlike Canada seals. It was made clear in our legal opinion, that the Commission on Fisheries, felt that seals fell outside their mandate as seals were not defined in the old fisheries Act, and that the seals had their own act, the SBSP Act. The Sea Fisheries Act of 1992 thereafter states "orderly exploitation, conservation, protection and promotion of 'certain marine resources'", to which seals were not included. What I have always questioned, on what basis was the SBSP Act repealed when considering its CITES obligations that required legislation protecting seals prior to export.

Seals were harvested unlawfully beyond the high tide between 1990 and 2000, yet this appears to be irrelevant today, but should it, for if such an Act as required by CITES was not repealed, current TAC on seals would be unlawful (killing seals on mainland above the high tide, beyond the jurisdiction of SBSP). The strong point legally, is the "control" issue. The Ombudsman contradicts himself, he clearly states the Act does not define "under control" and neither are the words the subject of judicial interpretation. But then goes on to say, the Namibian SPCA did not challenge the Magistrates interpretation of the law in the High court. Further states, "pups are not allowed to settle down as required in the regulations", and then goes on to recommend, that "sealers erect temporary enclosures and be allowed to settle down, before release and clubbed". Photographic evidence proves pups are forcibly separated from their mothers and seal colony, and herded away inland in groups and restrained through fear, intimidation and forceful threats of violence by a number of individualseal clubbers that encircle the group, and on a state controlled marine reserve. The Ombudsman view is that this does not constitute criminal violations of the APA because a court has not made an interpretation of the law. Was it not his responsibility and mandate to establish such interpretation. Why did he not seek or call for a High court review?

The Ombudsman cites dictionary meanings of control, to "command or direct", "the purpose of directing, and means of restraining, means of regulating", do all these not reflect the definition of the MRA to exercise "control over living marine resources" and the regulations written to restraint and regulate the manner in which seals are herded and then killed on state owned controlled land? The Ombudsman contradicts himself, when he is attempting to say, the opposite of control, is "out of control", defined as "no longer subject to containment, restraint or guidance". The dictionary defines "restraint" as " To hold back or keep in check; control: *couldn't restrain the tears.* **b.** To hold (a person) back; prevent: *restrained them from going.* **2.** To deprive of freedom or liberty. **3.** To limit or restrict. All of which are defined in the sealing regulations. "Containment", the act or condition of containing. **2.** an act or policy of restricting the territorial growth or ideological influence of a hostile power," and the word "guidance", " the act or function of guiding; leadership; direction.".

Clearly sealers operating under the MRA and sealing regulations are NOT "out of control", the opposite of " control", it is laughable for a learned Ombudsman to suggest that sealers are not guilty of criminal offences under APA, because they are the opposite of "wild animals under control of", and are instead "out of control". The ramification of a correct court interpretation is significant, for if found to be guilty of offences under APA, the practice of clubbing seal pups must end. The question, can a Minister tasked with killing marine resources as the only alternative under MRA, be the correct Minister to further the aims of the Constitution, the utilization of living marine resources non consumptively. The question remains, why the Ombudsman did not seek High court review, or recommend it or the Namibian SPCA under whose mandate animal cruelty exists?

What could be more important on a national policy of killing 80 000 CITES listed endangered seal pups?

Francois.

ELECTRONIC INTERVIEW:	Seal Harvesting in Namibia: A Critical Analysis	
INTERVIEWEE:	Mr. Francois Hugo	(sasealion@wam.co.za)
INTERVIEWER:	Ms. Suné de Klerk	(sune@cronjelaw.com)
DATE:	23 September 2013	

Hi Sune,

An industry denied all possible credible independent observation since independence and repeated attempts by previous officials to suppress reports by their own scientists makes referencing extremely difficult. Instead the onus should be on the department to reference that these allegations are not taking place in violation of AP and MRA and the Constitution.

It stands to reasons as per the Ombudsman conclusion, that the "out of control" seal harvest, opposite "of control", whereby the sealing industry escapes violations under AP, that many of the 6000 bulls shot in the wild would not be killed instantly, and if not, would be subjected to their penis being removed alive. The was a link to a video posted by a hunting group, that shot a bull seal shot several times with bow and arrow, was still not dead after several arrows. I myself have rescued many a seal with bullet wounds in neck and head, whereby even a small pups has survived with embedded bullet in brain, with no outward indications of this injury.

In the start of the industry in the 1970s, the sealing season was from July to Nov, when pups were aged 7 months. But after the US brought out the MMPA in 1972, which outlawed harvesting a "nursing seal pup" or a "pup aged 8 months", as it was deemed inhumane and cruel, and therefore banned all imports, upheld by the US Supreme court in 1976, after Namibia sought various waivers to circumnavigate the ban, by moving the sealing season to Aug to Nov, and having one of its local scientists claim 50% of the pups are now 8 months when harvested. This sealing season, Aug to Nov remained in force until 2006, when Minister Iyambo increased the pup TAC from 65 000 to 85 000, and then increased the sealing season to start one month earlier. July to Nov, to facilitate sealers attempts to fill the TAC that has never been filled, even with much lower TAC's.

There was a scientific report in 1977, it is referenced in our legal opinion submitted, that found much older seals were harvested, including females, whom sealers thought were bulls. Percentages were even given. But again logic stands to reason. The MRA clearly states "pups less than a year", however it is impossible even from a scientist to with certainty identify a less than year old pup by visual means, such age can only be determined by tooth extraction and examination. Details are referenced in our legal opinion. Pups are born jet black in Nov – Dec, by June/July the pelt changes to a light grey, males are slightly bigger than females, weight and growth thereafter is determined by availability of food and the success of the hunting/nursing female cow. Pelt and colour remain the same in look and feel until at least 3 years. A seal therefore aged 3 years could look and be the size of a 8-11 month old pup, pups and seals between 1 and 2 years of age are the most difficult, especially when harvested within a breeding colony, and when groups of pups and seals of all age groups congregate together. It is therefore impossible with visual means only to identify a group of "pups" within a breeding colony of 200 000 seals, to then separate them and harvest them. Equally as pics show, groups of 500 or more are rounded up, under such circumstances, nothing would prevent a pup or 1,2 or 3 year old being confined or included in the group, or by any natural means separating from the group, as the seals would seek security in numbers, when rounded up forcibly.

A violation of the Constitution that was never addressed by the Ombudsman, relates to the Wolf/Atlas Bay quote, the Constitution provides for the "sustainable use", the TAC has remained unchanged since 2007, (80 000 pups), yet the latest pup count shows Wolf/Atlas Bay pup count down by 50%. No adjustment of the TAC for this colony was made for the 50% reduction in pup numbers, instead double the number of quota holders was awarded. Ensuring more sealers to kill more pups, and a N$15 million sealing factory is being built in Luderitz, to process specifically those pups.

I still see no verification on your part to establish whether in fact, any magistrate in Namibia, officially found a seal to not be a wild animal under AP, and therefore void of violations under AP by the sealers for cruelty involving beating 80 000 pups to death.

Francois Hugo

ELECTRONIC INTERVIEW:	Seal Harvesting in Namibia: A Critical Analysis	
INTERVIEWEE:	Mr. Francois Hugo	(sasealion@wam.co.za)
INTERVIEWER:	Ms. Suné de Klerk	(sune@cronjelaw.com)
DATE:	26 September 2013	

Hi Sune.

Over several years, I have tried to get Namibia to just take a step back and think. I have to admit I have failed. The Minister sees seals as eating 700 000 tons and are therefore a threat to the commercial fishing industry catching 500 000 tons. People fly over the desert coastline and see thousands of seals and this just adds to the belief that there are too many.

Yet I see things completely different. I see most of their former habitat extinct. 98% of seals former habitat is today extinct. The reality is seals occupy a pin-prick on a map of Namibia 1500km by 200km economic fishing zone. There is a seal colony off False Bay, SA. Each December 16 000 pups are born there, with a total seal population of 64 000seals. Anybody seeing this overcrowded island seal colony, would see thousands of seals and think too many. It is in fact, the largest offshore seal colony for this species – yet, the island is 2 ha or 100m by 200m in size. Which is in fact a tiny piece of rock in a very big ocean. To which half the pups wash away and drown during big seas at pupping time and other seals are under constant attack from over 200 patrolling great white sharks, which kill 50 seals per day. Add to a seals plight is increased foraging distance and the energy needed to find reduced fish stocks through overfishing or depleted stocks, and diseases, injuries and difficulty of neither being able to hunt underwater or swim effectively – life without the seal harvest or jackal predation or desert heat is not easy for a seal.

Off Luderitz, there is 3 islands, the smallest, is called Seal island. Its been extinct for over 100 years. It 44 ha in size or 800m by 600m. A pin-prick in Namibia's 1500km by 200km fishing zone. Yet this tiny island rock, can accommodate the entire population of Cape fur seals for both SA and Namibia. How? Well if 16 000 pups or 64 000 seals can live on 2 ha, then 22 times this, can accommodate 320 000 pups or 1,2 million. This is the total seal population. So in reality, considering that this island is already extinct. Have we not lost sight of the bigger picture. Can a pin prick on a map, really be a threat to fisheries. Somewhat like we used to think the earth was flat and we would fall off the horizon. I have rescued over 10 000 seals, and each one I have witnessed their dire suffering and difficulty to just survive. Starved so thin from lack of food, that even the fat around their tiny heart is consumed to survive or blinded for life as the eyes are one of the first organs to go from acute starvation. Dealing with this everyday, you just see that what seals are being accused off, and therefore killed for – is just not right and I dearly wish Namibia one day sees this.

Seals are in fact fleeing refugees on Namibia desert beaches, driven from their homelands the islands – and nobody cares. Consider this, an animal is required to consume about 6% of bodyweight to survive each day. Fish eat fish. If the 500 000 tons of fish caught annually by Namibia's commercial fishing fleet, each consume 6% of their body weight by eating other smaller fish, then each day these fish consume, 30 000 tons or annually 10 million tons of fish. Now does the Minister harvest fish because they consume 10 million tons. No because this would be stupid, so then why seals, who in the bigger picture only consume 7% of what other fish eat.

If we removed the fish consummation excuse. Then seals on islands become one of Namibia biggest tourist attractions and assets, generating tens of millions in much needed foreign exchange. The seal population has never been counted, simply because it can't. Only pups have been counted, and where has all growth in pup numbers occurred, since sealing started, in the very seal harvested colonies, earmarked for population reduction or culls. All growth for the seal population is from the harvested seal colonies of Kleinsee (SA), Wolf/Atlas Bay and Cape Cross. Seals left alone on islands have shown no growth after 3 decades of counting. Does this not mean something? That perhaps current seal management is wrong and could be increasing pup production?

All I can say is that I hope the seals die quickly and painlessly, without suffering, and that the mainland colonies collapse quickly and get it over with. Because then and only then, will we realize what terrible deeds we have sown and what suffering we have caused, and how senseless it all was. Ask the Minister to please protect and preserve what is left of the seal islands, let the seals go back to seal island and possession island, and protect them there and their waters, as these are the foundations of this species future survival. I would ask the Minister to start a Seal Rescue facility, to help in research of this species. To document in reality, what the figures claim. See how many seals are in need of rescue annually, and tell me if you still think the population is healthy and keep a dead-seal database, and see just how many are dying and compare these to population numbers. A facility on Luderitz, seal island would be an excellent start.

Francois.

5. WTO – EU Seal Ban Dispute of 2013

The EU legislation being challenged by Norway and Canada is known as the 'EU Seal Regime' which effectively bans the import and placing on the market of seal products in the EU. After a massive public outcry about the cruelty involved in seal hunts and the rejection of the EU citizens to accept these products on the EU market. The EU then decided to harmonise the policy at an EU level.[408]

Norway and Canada are the complainants and the EU is the respondent in the matter. Argentina, Namibia, China, Columbia, Ecuador, Iceland, Japan, Mexico, US and Russia are third parties seen as observers of the case due to their interest in the matter.[409] The Chairman of the panel is Mr Luzius Wasescha from Switzerland and the other members are Ms Mary Elisabeth Chelliah (Singapore) and Ms Patricia Holmes (Australia).

The first hearing was held on 18 to 20 February 2013 in Geneva and the second was scheduled to take place on 29 to 30 April. The report of the panel is expected to be released during October/November 2013. If the EU appeals the decision made by the WTO the final judgment may be delivered in the spring of 2014.[410]

Canada and Norway will most probably rely on the following provisions to lift the restrictions on it by the EU on the import of seal products:

1. GATT: Article XI:1 (import restrictions), Article I:1 (most favoured nation principle) and Article III:4 (national treatment principle) and
2. TBT Agreements in respect of the most favoured nation and national treatment principles and necessity.

The EU might rely on the following principles to prove its case:

1. GATT: Article XX focusing on public morals, animal health and the conservation of exhaustible resources.[411]

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408 IFAW. 2013. *WTO – EU Seal Ban Briefing.* Available at http://www.ifaw.org/sites/default/files/World-Trade-Organization-EU-WTO-Seal-ban-briefing-Jan-10-2013.pdf; last accessed on 10 October 2013, p. 2.

409 IFAW (2013:3).

410 *Op cit.*

411 Lester, S. 2010. *The WTO Seal Products Dispute: A Preview of the Key Legal Issues.* Available at http://www.asil.org/insights/volume/14/issue/2/wto-seal-products-dispute-preview-key-legal-issues; last accessed on 10 October 2013.

If the WTO rules in favour of the EU it would confirm that countries are entitled to introduce trade restrictions on the basis of 'public morality' and 'animal welfare', provided that the rules of the WTO is complied with.[412] If the WTO finds in favour of the complainants the EU does not necessarily have to repeal its legislation and it has the option to bring it into compliance with the WTO ruling; however the EU can also decide the to keep the law as it is.[413]

412 *Op cit.*

413 *Op cit.*