



Our Ref: PAE/sv/4340

22 June 2011

Office of the Ombudsman

Private Bag 13211

Windhoek

Namibia

FOR URGENT ATTENTION: MR JOHN WALTERS

Dear Sir,

RE: SUMMARY OF ILLEGALITIES PERTAINING TO THE ANNUAL SEAL HARVEST IN NAMIBIA

As discussed on Friday 17th June 2011, please find a summary of points as contained in the legal opinion by Mr. Peter Edwards of Dawson Edwards & Associates.

- (1) **JURISDICTION OF THE MINISTER UNDER THE MRA (REFER PAGE 15 IN THE LEGAL OPINION)** – The Marine Resources Act of 2000 as well as the Sea Birds and Seal Protection Act of 1973 both state clearly that the jurisdiction of the designated minister under the act “ends at the high water mark” which clearly contradicts the requirement in the Regulations that the seals be “driven away from the sea” in order to be harvested. Therefore our submission is that the harvesting is taking place outside of the jurisdiction which has been allocated to the Minister. It is our submission further that the Minister of Fisheries is acting outside his jurisdiction in authorising the harvesting of seals as his lawful authority ends at the high water mark. In addition, it is our submission that the Ministry of Environment and Tourism is the lawful authority over the Reserve and further is the implementing body for the CITES Convention and therefore this department should be working with the Minister of Fisheries in preserving the wellbeing of the Cape Fur Seal species.

- (2) **SEALING REGULATIONS (REFER PAGE 22 IN THE LEGAL OPINION)** – The MRA Regulations prescribe the method by which the seal pups are to be killed. It is our submission that this method is **simply impossible** to implement at the Cape Cross Seal Reserve for the following reasons:

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- Our extensive research on the subject of identification of Cape Fur Seals has shown it impossible to identify the precise age of a pup which is less than one year old from visual confirmation only.
 - The regulations further require that an inspector be present during the harvest to oversee the killing process. Rather disturbing is the fact that video evidence shot of the harvest clearly shows that **no such inspector** was present and thus clubbed seals were not being checked for instantaneous death which amounts not only to a gross act of cruelty but further this is in violation of the Regulations.
 - The time frame in which the harvest takes place is further indicative that it is **impossible** to allow for the process of clubbing, checking and then piercing of 1000 seal pups within 90 minutes. This process cannot practically or reasonably be possible under the circumstances present at the Cape Cross Seal Reserve. For argument sake, even if the process was possible, it would be so time consuming that the harvest would not be commercially viable.

(3) **ANIMAL PROTECTION ACT OF 1962 (REFER PAGE 30 IN THE LEGAL OPINION)**

The Animal Protection Act of 1962 was promulgated in order to regulate and prevent acts of cruelty from being administered to domestic as well as wild animals which are under the control of any person. It is our submission that the current method of harvesting seal pups constitutes an offence in terms of this act for the following reasons:

- (1) The seals are being subjected to repeated clubbing by sealers (of which we have video evidence) in an effort to kill them (the APA prohibits animals from being beaten); certain older seals are being mistaken for pups (as identification is not possible by visual confirmation only) and are thus mistakenly killed (constitutes wanton, unreasonable and negligent doing of an act in terms of the APA).
- (2) A further point to note is that the Cape Cross Seal Reserve is a breeding colony which is home to thousands of seals of all ages. The disturbance that is created by the sealers during harvesting results in **unnecessary suffering, anxiety and fear** of the entire colony which is demonstrated by the mad rush of the seals to the safety of the sea (notably this includes **nursing** mothers with their pups).

(4) **TOTAL ALLOWABLE CATCH (REFER PAGE 27 IN THE LEGAL OPINION)** – The Marine Resources Act of 2000 provides for the "conservation of the marine ecosystem and the **responsible utilisation**, conservation, protection and promotion of marine resources on a



sustainable basis". We have been instructed that the Cape Fur Seal Population has, in past years, suffered from mass die off's resulting in unprecedented mass starvation and further in a high abortion rate amongst seal cows. In light of this, however, according to evidence presented to us, the annual TAC's have not been adjusted sufficiently to compensate for these events. One such example occurred in 2006, where a TAC of 85000 pups was allocated whilst the registered number of pup births was only 121462. This constitutes a TAC of 70% of the total pups born, which is not taking account the effects of jackal predation and natural mortality which may count for as much as 25-35% of pups born.

- (5) **THE CITES CONVENTION (REFER PAGE 35 IN THE LEGAL OPINION)** – The Cape Fur Seal Species is listed as an endangered species in Appendix II of CITES to which Namibia became a party in 1991. The Convention seeks to control trade in certain species in order to avoid overutilization which may result in extinction. The Directorate of Scientific Services (a branch of the Ministry of Environment and Tourism) is the "national implementing body for CITES" and therefore is the body responsible to regulate the trade and export of specimen at a level which will not be detrimental to the survival of that species. In light of the scientific evidence relating to the excessive TAC's and threat to the seal species, it is our submission that the Directorate of Scientific Services is NOT adhering to the principles of sustainability of a species which is already considered endangered.

Further to this, we would like to draw your attention to the wording of section 35 of the MRA as well as section 18 of the MRA Regulations. Section 35 states that NO harvesting may be undertaken without a right, exploratory right or fisheries agreement whilst section 18 of the regulations states that except under a right, exploratory right or exemption a person may not harvest any species of marine mammal **other than the Cape Fur Seal** which by legal interpretation would allow any person to harvest seals without any kind of authorisation. This cannot be correct. If such an interpretation was meant by the Legislature, then this would be in clear violation of the CITES Convention whereby the Ministry of Environment and Tourism must ensure that any export of species is not a threat to the survival of the species.

- (6) **REQUEST FOR FURTHER INFORMATION** - In June 2010, further information relating to latest seal population trends, mortality and harvesting rates since 2004 was requested from



the Ministry of Fisheries. In correspondence received from the Ministry of Justice on 30 July 2010 it was stated: "The Ministry requires about 2 weeks from today to put together a response to the requested information", however this information was never received. Our offices were only instructed by Mr Hugo in March 2011 and therefore only became aware of this request for information after that date. On the 8th of April 2011, a further request for the information was sent to the Ministry of Justice – Government Attorney. On the 26th April a letter was received at our offices from the Ministry which stated that the request had been forwarded to the Ministry of Fisheries and that the Ministry of Justice now awaits the information from them. To date no such information or any further correspondence relating to the request has been received.

(7) QUESTIONS RELATING TO THE OVER – UTILIZATION OF SEALS

We are instructed that the Minister of Fisheries increased the TAC for seal pups from 65 000 in 2005 to 85 000 pups for 2006 after which he was forced to acknowledge publicly following enquiries from the media that a further mass die-off incident was taking place during the sealing season of 2006. Further, the Minister acknowledged that a December 2005 pup population survey had revealed that the seals had still not recovered from the 1994 mass die-off incident, and were in fact 27% lower than the seal population in 1993 and to which a pup TAC of 48 000 was awarded then in 1993, which sealers were only able to fill 68% or 33 017 pups. The current pup TAC was therefore double that of the sustainable pup TAC of 1993 which sealers could not fill then, and to which the seal population is today 27% lower.

Further evidence can be found in the Media Briefing From Cabinet on the 27 June 2007 (ref 13/6/26), in which the Minister sought Cabinet approval for: "A rolling TAC for seals for 2007, 2008 and 2009 of 80 000 pups and 6000 bulls", that had never since been requested, on a declining seal pup population as evidenced by the reduced pup TAC from 85 000 to 80 000. In light of the mass die-off's suffered the previous year and the apparent vulnerability of the species, approval should not have been sought for a three year unchanged TAC that had only marginally been reduced by 5%.

Further, the sealers inability to sustainable harvest even 30% of the pups in order to fill their TAC quota, the Minister then extended the Sealing season to start **a month earlier**, facilitating the harvesting of even younger nursing seal pups, and in so doing **extended the length of the sealing season** from 109 days to 139 days.



In 2010, the Minister again sought a 3 year rolling TAC for seals, this in light of the 27-nation European Union total import ban on all seal products that year that came into effect. The revenue statistics placed before cabinet stated that the sealing industry of 81 seasonal part-time workers generates **2% of Namibia's GDP** implying it generates **N\$1,8 billion dollars**, whereas the entire fishing industry that employs **20 000 workers generates only 5 % of GDP**. Seal Alert-SA had to seek media assistance in obtaining verification of these statements made by the Minister which resulted in the Minister acknowledging that such statements were **incorrect and undertook to look into them but never did**. It is partly upon this basis that the Minister secured Cabinet approval for the seal harvest until 2012. The minister also admitted that figures he had given at a recent press conference, that **seal harvesting "contributed two per cent of Namibia's GDP", were wrong. "If fisheries' N\$4,6 billion is five percent of the GDP, then the two per cent from the culling can't be correct**

In 2000 the MFMR stated 'The Industry has already created 162 job opportunities' based on a TAC of 30 000 pups and 2000 bulls. Since then the Minister has **trebled the TAC to 91 000** [in light of mass die off's in 2000, 2002 and 2006], but surprisingly the industry has **seen a 50% decline in seasonal workers**, as per recent statements in 2010, "Anna Erastus, Director of Policy, Planning and Economics in the Ministry, figures released by Erastus in comparison showed that only 81 people are employed during the culling season and that the Government only generates about N\$1 million in fees every year. "Through quota fees payable by the right holders to the Ministry of Fisheries and Marine Resources, the government generates between N\$ 520,000 to N\$1 million from the harvesting of seals annually." **During the Seal harvest 81 people are employed**. Some are involved in the direct culling, while others are working at a Seal product shop based at Henties Bay".

Even the quota fees via levies the Ministry earned as fraudulently stated above was over **inflated by 100 - 400%**, for in 2007 MFMR stated in their presentation revenue earned was N\$206 000, and that the industry generated N\$5 million, which would **place its contribution to GDP at 0, 005%**. Claiming 2% or more, **over inflated the sealing industry by 40 000% fraudulently**. It is upon this basis the Minister secured cabinet approval to continue seal harvesting.

- Namibia's seal harvest contribution is **so negligible it is less than than 0,1% of Namibia's fishing**.
- Government earns a levy of N\$2 a seal pup and N\$6 per bull.



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Further statements of much needed foreign investment, are also somewhat questionable, where it was claimed that, "negotiations regarding the setting up of a value-adding seal processing factory by Turkey are still ongoing. The factory will be in a position to employ an additional 100 to 150 people", such evidence is disputed with the **signed offer to sell the sealing industry, and have it shut down received in 2009** (copy of the letter attached in legal opinion) or to the reply from the Minister. [We have attached correspondence between our client Mr. Francois Hugo and Mr. Hatem Yavuz concerning a purported buyout deal].

Attached as an annexure to this summary is a document entitled 'Sustainability' which highlights crucial issues relating to the seal population in Namibia. The document was drafted by our client, Mr. Francois Hugo, following his extensive research into the topic.

Mr. Walters, you will no doubt appreciate that this is merely a summary of the points as per the legal opinion. Based on the evidence presented to you we are of the opinion that there are sufficient grounds on which to obtain an urgent interdict preventing the Minister from commencing the harvest pending further investigation into the legalities of it.

We look forward to the outcome of this complaint and should you require any further information or evidence please do not hesitate to contact our offices on (021) 462 4340.

Yours Faithfully

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In reply to Seal Alert-SA/Advocate Coleman's letter, Minister Esau wrote, "Conclusion: The 2010 and beyond seal harvesting seasons will go ahead as usual until such time that it could **be proven beyond reasonable doubt that the sustainability of the Cape fur seal in Namibia is being compromised**".

The question therefore is in what forum would "proven" evidence be submitted when Namibian seal biologists are threatened or fired, scientific data denied, meetings tasked by the Prime Minister ignored and in general the Ministry refuses to discuss the matter?

Dr BJ Van Zyl, Deputy Director of Marine Resources in 2000 stated, "These data are used in a model which predicts the ideal harvest levels for maintaining sustainable yields. Recommended pup harvests may be **as high as 30% of pups born in each seal colony**" (<http://www.iwmc.org/sustain/2ndSymposium/issues/issues-14-3.htm>).

The peak of the Cape fur seal population occurred in 1993 which recorded 220 212 pups. The Minister since 1990 has awarded seal harvesting TAC's for Cape Cross and Wolf/Atlas Bay. Cape Cross seal colony is Namibia's largest breeding colony for Cape fur seals.

In 1993, Cape Cross seal colony produced 61 891 pups. To which a pup TAC of 22 700 was awarded or 37% of the pups born. Sealers were unable to fill this TAC and only harvested 15 673 pups or filled 59% of TAC.

It would therefore appear as the only reason sealers were unable to fill the TAC was that there was **simply no more pups to harvest**. If the combined natural mortality and predation by jackals is taken into account of around 65% of pups during the preceding months from birth to start of sealing season several months later, the balance of **surviving pups** would equate to around **22 000 pups left** and strangely that figure equals the TAC of 22 700 pups. In other words, far from claims of



sustainable use, the intention of the harvest is to cull the pups to prevent any further growth of the species.

MFMR senior seal biologist Dr JP Roux wrote, "From January 1994, pup growth was very low. Pups were losing weight in March and pup mortality increased. By July 1994 researchers of the Marine Mammal Section estimated that less than 5% of the 200 000 strong 1993/1994 cohort would survive to the weaning stage. In mid-June the average mass of the few surviving pups was just over 8,6kg, nearly 5kg less than the average for the previous seven years. At the time thousands of adults were washed ashore in an unprecedented mass starvation. Adult mortality seemed to peak during mid-winter but continued until end of October. Both sexes and all age groups were affected. An estimated 300 000 seals died during 1994, nearly a third of the total population. From August (start of the sealing season) to November 1994, the body conditions of the remaining adult females had deteriorated badly and abortions were widespread. Researchers estimated that around **40 000 females aborted during this period at Cape Cross alone**. There was no improvement during the following breeding season. Sixty per cent less pups were born in Namibian colonies than during the preceding years. Pup growth was again very poor during most of 1995. The Namibian seal population is estimated to have been reduced by between one third and one half. This includes a 40% drop in foraging population and the breeding stock since 1993 and the near total eradication of two cohorts of pups".

It is therefore unbelievable that Minister of Fisheries awarded an **increased pup TAC of 28 000 pups for Cape Cross in 1994** during this die-off, up from 22 700 in 1993. The following incident bares witness, "A minister has launched a police investigation into the "theft" of an "internal discussion document" leaked to the media. The document - written by a government seal expert - recommended there should be no harvest of Namibian seals this year. The expert's advice was ignored, and the government authorised the largest seal harvest in the country's history, sparking heated public debate, and outrage from conservationists. It was then that the expert's report was anonymously given to the media, prompting Fisheries Minister Helmut Angula to call in the police to investigate a charge of theft. "Let there be no doubt my Ministry and our Government will do everything possible to flush out such moles amidst our ranks, also those presumably planted by the press...", Mr Angula said in a statement issued on August 31 1994. Emphasising his "commitment" to media freedom, Mr Angula said the government would continue to inform the public "through established channels" on matters of "public interest". But "there was no reason at all, except with ill intentions to the detriment of Namibia, to reveal to the media an internal discussion document" (http://www.africa.upenn.edu/Newsletters/free_prs.html).



In 2005, Cape Cross recorded 54 548 pups, a decline of 11% from 1993 levels, to which a pup TAC of double 1993 levels was awarded of 50 000 pups to be applied in July 2006. Exceeding the maximum sustainable pup TAC limit of **30% of pups born and recording a three-fold increase to a record 92% of pups born TAC**. Such a pup TAC was **clearly over-exploiting** the seal colony and was clearly **beyond all reasonable doubt not sustainable**.

Cabinet therefore should **not have approved** the increased TAC in 2006 of 85 000 pups in which 50 000 pups was allocated to Cape Cross. Particularly **as during the 2006** seal harvest, "**The mass mortalities and abortions of the Cape Fur seals along the Namibian coastline are a result of starvation due to scarcity of food**, the Ministry of Fisheries and Marine Resources has confirmed". The high numbers of deaths and abortions are not unique as the same problem was experienced in 1988, 1989, **1994, 1995, 2000 and 2002**.

With the problem of insufficient food, the ministry will continue to sustainably manage the utilization of seals, Maurihungirire said. "We will keep appropriate numbers and ensure the eco-system is in balance," he added. When seals were first reported to be dying in large numbers, the ministry was not certain whether this problem was a result of starvation or pathological viral infection. Fisheries Permanent Secretary Nangula Mbako two months ago said seal pups were not getting enough milk and that their **chances of survival after weaning were almost zero**. Monitoring by the ministry's researchers shows that seal adult males and females were depicting reduced weight and that their condition was very poor. The deaths imply that population numbers of these mammals have reached a stage where their current food source has become insufficient to sustain their livelihood. Various researches have also been done on the Namibian seal resource through routine pup ecological and population dynamic studies. These studies reveal that the 2006 winter pup growth rate declined from a long-term average of **30 g a day to 2 g a day** at the southern colony of Wolf and Atlas Bay. Mbako reiterated that the poor growth rates in the south could be due to the fact that the pups are not getting enough milk from their mothers. It has also been found that 48 percent of males and 51 percent of females of the total pups at Wolf and Atlas Bay are below a threshold of post-weaning survival mass of 11 kg. At **Cape Cross, only 12 percent of males and 11 percent of females are below the threshold**".

In light of Dr JP Roux statements above for 1994/1995 and further releases by MFMR that 2000 was similar if not worse, a further die-off in 2002, and now the latest mass die-off taking place in 2006. That the Minister would **reduce the seal pup quota by only 5% from 85 000 to 80 000 pups for 2007 sealing season**. Even stranger, the Minister claims **Cape Cross increased** after



the mass die-off in 2006 by a **whopping 22%** to record 65 073 pups. Historically marine scientists documented seal pup growth per annum at 2 to 3%.

Although rationally these figures appear **complete fabrication**, serving only to show a **recovering or artificially increasing seal population**, in order to simply maintain a continuing seal harvesting policy. Nevertheless such TAC quota of 50 000 pups for Cape Cross on a pup production of 65 073 in 2007 to be harvested, would still equate to an **unsustainable TAC of 77% of the pups born**. Exceeding **twice** the maximum harvest levels recommended by Namibia's own scientists.

When the natural mortality of 30% is applied to the pups during the several months leading up to the start of sealing season on 1 July and a further 35% of these pups from jackal predation at Cape Cross. **The number of seal pups surviving by 1 July would be around 22 000**. It is **absurd that the Minister continues to apply a 50 000 pup quota** for Cape Cross.

Although sealing season runs from 1 July to 15 November, a 139 days of seal harvesting. Seal Alert flew over Cape Cross on 10 August 2007, and recorded **after 40-days not a single pup or any seal remained in the seal colony at Cape Cross (has documented proof)** after just 40 days of daily sealing activity. The seal colony was completely deserted, and tourists were filmed standing where seals once occurred days earlier.

If this is not proof beyond reasonable doubt that the sustainability of the Cape fur seal in Namibia is being compromised, **then what is?**

The reliability of the Minister's population surveys since the mass die-off recorded in 1994 appears to be somewhat unreliable. For it shows that 9 years after the mass die-off incident the Cape Cross seal colony had declined by 40% to record 37 394 pups in 2002. Following a further mass die-off in 2006, it is claimed Cape Cross no longer declined, which is scientifically impossible, but in fact, increased 75% within 4 years to record the highest pup population production at Cape Cross ever recorded of 65 073 pups in December 2006, months after a mass die-off – which is scientifically an impossibility.

Although repeated requests for latest population data have been made, and assurances given in writing that such data will be supplied, such population data is still being awaiting for 2007 to 2011. An international workshop in 1997 recommended a move away from **annual population censuses to conducting censuses every three to four years**. It has now been **several years**



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since any verified population censuses has been made public. Bare in mind this recommendation was before the mass die-offs in 2000, 2002 or 2006.

It is therefore inexcusable that Cabinet is approving data dating back to 2006, and approving rolling three-year TAC's of 80 000 pups until 2012. Particularly as the Minister has extended the sealing season, from 109 days to 139 days, for sealers to kill even younger seal pups in an attempt to fill these quotas/TAC's and in addition as further proof of sealers inability to fill said TAC's, now granting exploratory rights within the same TAC to harvest other seal pups on nearby seal colonies, in a further futile attempt to fill the TAC.

It appears the **Minister is desperate to prove the TAC's can be filled**, in whatever way possible, whether they are pups or ALL the pups or unlawfully older seals, in violation of the sealing regulations, and to extend the harvesting to other seal colonies and the harvesting season itself, in a futile attempt to dispute **Seal Alert-SA's allegation in 2007 to the Prime Minister that sealers cannot fill even much lower TAC's in the past with a higher seal population.**

The evidence is **beyond any reasonable doubt that the seal harvest in Namibia is no longer or in fact has ever been sustainable.**

For the Seals
Francois Hugo Seal Alert-SA