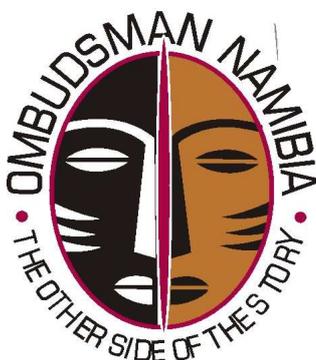
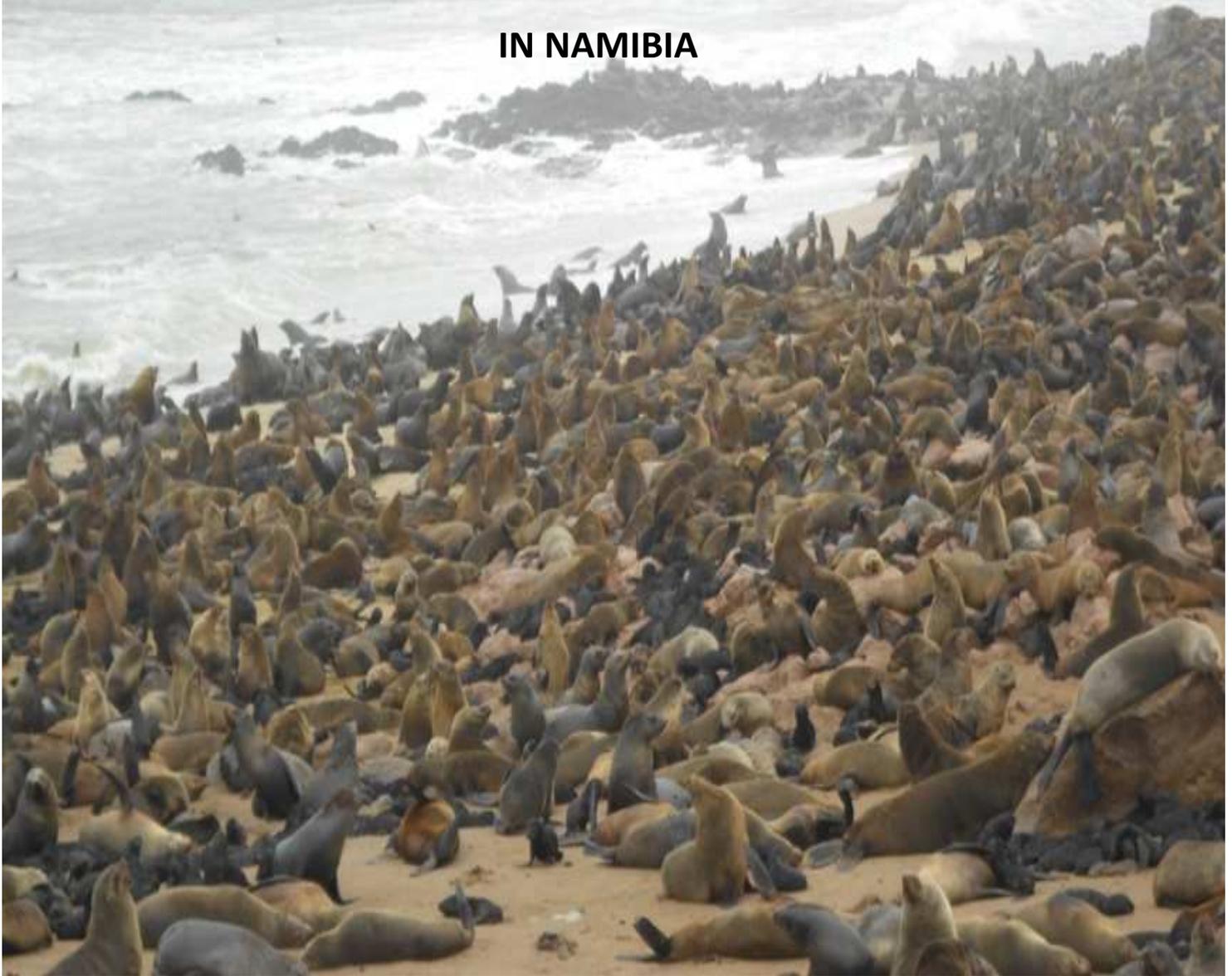


**REPORT ON THE COMPLAINTS BY  
CIVIL SOCIETY ORGANISATIONS, NON GOVERNMENTAL  
ORGANIZATIONS, INDIVIDUALS AND OTHER GROUPS ON THE  
ILLEGALITIES PERTAINING TO THE ANNUAL SEAL HARVEST  
IN NAMIBIA**



**COMPILED BY:  
ADVOCATE JOHN WALTERS  
OMBUDSMAN NAMIBIA  
22 JUNE 2012**

# INDEX

	<u>Page no</u>
1. INTRODUCTION.....	3
2. HISTORICAL BACKGROUND.....	3
3. INTERNATIONAL OBLIGATIONS.....	5
4. THE COMPLAINTS.....	5
5. THE INVESTIGATION.....	6
6. JURISDICTIONAL ISSUES.....	7
7. OVER-EXPLOITATION OR SUSTAINABLE UTILISATION? THE SEAL HARVEST VIOLATES THE PRINCIPLES OF SUSTAINABLE UTILISATION CONTAINED IN THE CONSTITUTION AND THE MARINE RESOURCES ACT (MRA)	8
8. THE NAMIBIAN SEAL HARVEST VIOLATES THE ANIMAL PROTECTION ACT (APA)	11
9. METHODS USED FOR KILLING SEALS IN NAMIBIA: ARE THE MRA REGULATIONS IMPOSSIBLE TO IMPLEMENT?	16
10. CONTRADICTIONS IN THE MRA AND ITS REGULATIONS.....	18
11. THE SEAL HARVEST VIOLATES NAMIBIA'S OBLIGATIONS UNDER THE CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA (CITES)	18
12. THE ECONOMICS OF SEAL HUNTING AND SEAL WATCHING IN NAMIBIA.....	20
13. DISCUSSION OF THE FACTS.....	20
FINDINGS.....	21
RECOMMENDATIONS.....	22
<u>References</u> .....	24
<u>Annexure A</u> : Wickens et al: Harvests and Pup Numbers of SA Fur..... Seal (1900-1990)	27

# 1. Introduction

- 1.1 Before I discuss the complaints, I believe we should all have a clear picture of the history of seal harvesting and its regulation in Namibia. The information which I am going to share with you may be familiar to many, but I believe reiteration thereof will be a good starting point.
- 1.2 Thereafter I will set out the complaints, identify the themes under which views were expressed in the Dawson Edwards Opinion and other submissions, discuss each of the themes in turn and express a view on the correctness or otherwise of the expressed legal interpretation, refer to Namibia's international agreements, examine the facts and then return to the question whether Namibia should stop the harvesting of seals. I will conclude with my findings and recommendations.

# 2. Historical Background

- 2.1 The hyper-arid and inhospitable Namib Desert extends along the entire coast of the Northern Benguela. Consequently the coast has always been sparsely populated and there is no evidence that indigenous people were ever engaged in artisanal fisheries.
- 2.2 The first large scale commercial exploitation of marine resources in the Northern Benguela started about three centuries ago with the development of sealing and whaling activities by North American and European vessels; the operations were unregulated and indiscriminate and resulted in the rapid depletion of the targeted stocks.<sup>1</sup>
- 2.3 The South West African industry dates back to 1884 when it was the monopoly of the Deutsche Kolonial-Gesellschaft who held all rights to capture and kill seals along the coast between the Orange River and the Kunene River. The company hired sealing rights on 12 named islands off the coast over which the British Government had sovereignty, from the Government of the Cape Colony and exploited them together with the **seal colony at Cape Cross**<sup>2</sup> (my emphasis).
- 2.4 Cape Cross became more known for its colony of seals than for the cross planted there in 1484 by the Portuguese navigator, Diego Cao.
- 2.5 After occupation of South West Africa by Union military forces during the First World War, no sealing was allowed and the rights on land at Cape Cross, still held by the Deutsche Kolonial-Gesellschaft, was cancelled.<sup>3</sup>
- 2.6 Government regulation of sealing started at the beginning of this century.
  - 2.6.1 The first measure to control sealing and to protect seals was introduced by the Government of the Territory with the enactment of Proclamation No 18 of 1922, which prohibited the

pursuing, capturing or killing of seals except under a licence. Boats had to be registered and licensed.

- 2.6.2 Pursuant to these measures, the tender for the sole right to operate at Cape Cross was awarded to Herman Offen of Swakopmund. In 1927 the sole right to capture and kill seals on the unnamed islets and rocks over which the Territory had jurisdiction, was awarded to Judel Lurie from Lüderitz. At that time, seals had not yet taken the mainland at Wolf and Atlas Bay.<sup>4</sup>
- 2.6.3 In 1949, the Sealing and Fisheries Ordinance No 12 of 1949 was passed which repealed Ordinance No 18 of 1922. Control over the exploitation of seals were tightened and the mere possession of the skin of a recently killed seal by a person charged with killing, pursuing or capturing of seals was made *prima facie* evidence that an offence had been committed.<sup>5</sup> The maximum fine of £500 or one year imprisonment or both were prescribed for contravention of the Ordinance or the Regulations.
- 2.6.4 According to Keun, I.J. the Regulations promulgated in terms of the Ordinance did not overlook the humane side of the activity and the methods permitted to be used in the killing, were prescribed.<sup>6</sup> However, I could not find the prescribed methods in the Regulations.<sup>7</sup>
- 2.6.5 In 1973, the Sea Birds and Seals Protection Act, no 46 of 1973 repealed previous legislation for Namibia (Sealing and Fisheries Ordinance) and South Africa and specified in the Regulations the age, size and sex to be killed and the locations for sealing.
- 2.7 Shortly after independence, Namibia declared its authority over a 200 mile exclusive economic zone (EEZ)<sup>9</sup> in accordance with the United Nations Convention on the Law of the Sea. The aim of proclaiming an EEZ was to prevent further depletion of its potentially valuable fishing resources.
- 2.8 On 19 February 1991, the Ministry of Fisheries and Marine Resources was established and the Namibian Government promulgated the Sea Fisheries Act, 1992 (No 29 of 1992); *"To provide for the conservation of the marine ecology and the orderly exploitation, conservation, protection and promotion of certain marine resources; for that purpose to provide for the exercise of control over sea fisheries..."*
- 2.9 Namibia became a signatory to a number of international instruments on responsible fisheries, hence it was necessary to update its legislation pertaining to fisheries management. As a result the Marine Resources Act, 2000 (No 27 of 2000) (MRA) was promulgated in December 2000 and repealed both the Sea Birds and Seal Protection Act 1973, and the Sea Fisheries Act, 1992.
- 2.10 A year later the Regulations relating to the Exploitation of Marine Resources were made under Section 61 (1) of the Marine Resources Act.<sup>10</sup>

### 3. **International Obligations**

3.1 Namibia is a signatory to the following international instruments:

- The United Nations Convention on the Law of the Sea
- The Rome Declaration on the Implementation of the code of conduct for Responsible Fisheries
- The Reykjavik Declaration on Responsible Fisheries in the Marine Ecosystems
- The Convention on the Trade in Endangered Species of Fauna and Flora (CITES).

3.2 Roux and Shannon argue that above measures demonstrate the commitments Namibia has made to the management of its living marine natural resources and provide clear signs that together with the principle of sustainability, ecosystem interaction are to be taken into account.<sup>11</sup>

### 4. **The Complaints**

4.1 A legal opinion by Dawson, Edwards and Associates (the Dawson Edwards Opinion) on behalf of Seal-Alert SA, alleging certain *"illegalities pertaining to the annual seal hunt in Namibia"*, was sent to me with the following request:

*"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 investigation into the legalities of it".*

4.2 In addition Seal-Alert SA, the International Fund for Animal Welfare (IFAW), Windhoek Society for the Prevention of Cruelty to Animals (SPCA), South African Seal Saving Initiative, Sea Sheppard Conservation Society, National Council of SPCA – South Africa (NSPCA), World Society for the Protection of Animals (WSPA), Seals of Nam and many other individuals and groups raised grave concerns about Namibia's annual seal harvest because, in their respective opinions:

- it is contrary to Namibian law and Namibia's obligations under international law;
- Namibia's law regulates it inadequately;
- it violates the principle of sustainable utilization contained in the Namibian Constitution and the MRA;
- the MRA and the Regulations are contradictory and together inadequately protect seals;
- the Regulations are impossible to implement;
- it violates the Animal Protection Act, no 71 of 1962 (APA);
- it violates the *"right"* of seals and the brutal killing of seals negatively affect sealers; and
- the Minister of Fisheries and Marine Resources, in authorising seal harvest in areas not governed by the MRA, exceeds the jurisdiction of his powers (jurisdictional issues).

## 5. **The Investigation**

5.1 The investigation into the complaints was divided into three parts, namely:

### 5.2 **Stakeholders Consultative Meeting**

5.2.1 The purpose of the meeting was to provide stakeholders and concerned persons and organizations an opportunity to make presentations to me based on facts which would support their respective view points.

5.2.2 The consultative meeting took place in Windhoek on 20 September 2011 and the following organizations made oral presentations and submitted written representations and documents:

- Windhoek Society for the Prevention of Cruelty to Animals; (SPCA)
- International Fund for Animal Welfare (IFAW);
- South African Seal Saving Initiative
- Seal-Alert SA
- Seal Products (Pty) Ltd
- Sea Sheppard Conservation Society
- The Seals of Namibia
- National Council of SPCA – South Africa (NSPCA)
- World Society for the Protection of Animals (WSPA)
- The Ministry of Fisheries and Marine Resources

### 5.3 **Site Visits and Interviews**

- A visit by me to Cape Cross to observe the shooting of male seals;
- A visit by Ms Rakow, Director in the Office of the Ombudsman and I to the seal factory in Henties Bay; interviews were also conducted with the owner of the factory, Mr Gys Cilliers and ten of his employees;
- A visit to Cape Cross by Ms Rakow and I to observe the seal colony after the cows gave birth;
- A visit to Seal-Alert SA's seal sanctuary in Hout Bay and a visit to Seal Island on invitation by Mr Francois Hugo of Seal-Alert SA,

### 5.4 **Desk Research**

In addition to the above submissions and information submitted to me, I also received hundreds of e-mails from concerned individuals and groups and I found all the submissions to be of great assistance. A considerable amount of time was also spent on the thorough scrutiny of a number of laws, publications and other related materials.

5.5 I have identified the complaints under which views have been expressed in the written submissions and during the interviews and I will now discuss each of these complaints and express my view.

## 6. Jurisdictional Issues

6.1.1 In the Dawson Edward Opinion (p.12), it is argued that the Minister of Fisheries and Marine Resources in authorizing seal harvest in areas not governed by the MRA (and previously by the SBSP Act), on the mainland, i.e. at Cape Cross, Atlas and Wolf Bays, is exceeding the jurisdiction of his powers and therefore acting unlawfully and as a result the seal harvest has been in contravention of the provisions of the MRA.

6.1.2 It appears that the argument is based on the premise that the jurisdiction of the Minister of Fisheries and Marine Resources under the MRA, extends only over the Namibian waters and only up to the high water mark.<sup>13</sup> Under the Regulations, the seals must be "*driven away from the sea and killed on land*" (Regulation 20 (2), and such practices are authorized under the MRA which fall outside the Minister's jurisdiction.

6.1.3 After examining the Dawson Edwards Opinion and Namibian legislation, DLA Cliffe Dekker Hofmeyr expressed the view that "*the powers of the Minister of Fisheries in respect of the management and utilisation of seals in Namibia extends over Namibia waters and Namibian land, including Cape Cross Seal Reserve. He/she therefore does have jurisdiction over the management and utilization of marine resources, including seals, whenever that may occur in Namibia, including on land under the control of other Government departments. We therefore do not agree with the argument put forward in the Dawson Edwards Opinion regarding the Minister of Fisheries exceeding his/her jurisdiction.*"<sup>13</sup>

6.1.4 It is my view that the harvest of marine resources (including seals) is not limited to Namibia waters only. The MRA applies to the control of marine resources including their management, protection and utilization "....in Namibia and in Namibian waters...."<sup>14</sup>

6.1.5 The MRA in Section 32 (1) and (2) further provides:

(1) "*No person shall in Namibia or in Namibian waters harvest any marine resource....*

(2) *... no person shall in Namibia or in Namibian waters harvest...." (my emphasis)*

6.1.6 The MRA does not define Namibia, but in my view "*in Namibia*" means any place which forms part of the territory of the Republic of Namibia. The "*territory of Namibia*" in turn is defined by the Constitution: "*The national territory of Namibia shall consist of the whole of the territory recognised by the international community through the organs of the United Nations as Namibia, including the enclave, harbour and port of Walvis Bay, as well as the off-shore islands of Namibia and its southern boundary shall extend to the middle of the Orange River*"

6.1.7 The Attorney-General of Namibia is of the opinion "*that harvesting of marine resources and the jurisdiction of the responsible Minister extends to the Namibian waters, as defined in the Marine Resources Act and without limitation to the sea bed up to the high water mark and anywhere in Namibia, which in our opinion,*

taking account of the definition in clause 4.7, includes off-shore islands. We therefore submit that the allegation of Seal-Alert SA in this regard is not correct".<sup>15</sup>

## 7. **Over-exploitation or Sustainable Utilization? The Seal Harvest violates the principles of sustainable utilization contained in the Constitution and the MRA**

- 7.1 It is alleged in the Dawson Edwards Opinion that *"scientifically it has been peer reviewed and accepted that prior to human exploitation of seals, no mainland seal breeding colonies existed..... It is thus clear that seals have been forced to seek safer habitats following the continued disruption of their preferred habitats (being islands) which has resulted in these animals being forced to choose mainland as an alternative notably, islands which historically were home to thousands of seals are now extinct, which in turn further raises the concern that if sealing activity is allowed to continue on the mainland in line with the MRA, the seal colony may collapse in the same manner which defines all principles of sustainability. It is our submission that in light of the evidence presented to us in respect of the annual seal harvest in Namibia; this principle is not being observed or implemented"*.<sup>16</sup>
- 7.2 In its presentation, the International Fund for Animal Welfare (IFAW) alleged that *"there is currently no assurance that Namibian Cape fur seal hunt is being conducted in a manner that is biologically sustainable.... Despite claims to the contrary we can find no scientific evidence that the Cape fur seal population is growing rapidly..... There is no available evidence that would suggest the current levels of exploitation in Namibia are biologically sustainable"*<sup>17</sup>
- 7.3 It is further alleged that the total allowable catch (TAC) determined by the Minister of Fisheries and Marine Resources has not been rationally linked to the seal population numbers and which has resulted in unsustainable harvesting.<sup>18</sup>
- 7.4 Dictionaries provide more than ten meanings for *"sustain,"* the main ones being to *"maintain," "support" or "endure"*. The most widely quoted definition of sustainability and sustainable development is that of the Brundtland Commission of the United Nation on 20 March 1987: *"sustainable development is development that meets the needs of the present without compromising the ability of future generation to meet their own needs"*.<sup>19</sup>
- 7.5 It is common knowledge that the principles of living natural resources (including seals) utilization in Namibia are enshrined in the Namibia Constitution<sup>20</sup> and need not be repeated.
- 7.6 Namibia's policy of sustainable utilization of living natural resources is not only enshrined in its Constitution but received world wide approval at the first Earth Summit held in Rio de Janeiro. The provisions of Agenda 21 made it clear that the policy of the Namibia Government is in line with the agreed policy of the Earth Summit.<sup>21</sup>
- 7.7 The principles of sustainable utilization is also provided for in the Preamble of the MRA and Section 2 which empowers the Minister of Fisheries and Marine Resources to determine

policy with regard to the conservation and utilization of marine resources in Namibia, "in order to realize the greatest benefit for all Namibians both present and future."

7.8 Namibia does not *cull seals* – it *harvests* them. The concise Oxford Dictionary defines cull as "to reduce the population of (a wild animal) by selective slaughtering" and harvest as the "season's yields or crop". Dr J-P Roux puts it as follows: "...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 (as well as other 'non-consumptive' uses like tourism). A cull would in contrast be defined as killing seals for the purpose of decreasing the population for one or another the answer is indeed that we exploit/harvest seals because they are a renewable commercial resource"<sup>22</sup>

7.9 Shortly after Namibia's independence, the national policy objectives for the fisheries sector were clearly stated in the White Paper Policy document entitled: "Towards Responsible Development of the Fisheries Sector (December 1991) which states inter alia:

*"The Government's main objective for the fisheries sector is to utilize the countries resources on a sustainable basis and to develop industries ..... seals are considered to be exploitable resources and will be utilized through culling, but conserved at safe sustainable level".*

7.9.1 Following the 1994/1995 mass mortality event, the policy regarding seal utilization appears to have moved away from above policy.

7.9.2 In an effort to clarify the policy on seals, the Namibia Government issued a press released through the Ministry of Foreign Affairs which stated inter alia:

*"As a matter of fact the seal population has flourished to such an extent that they represent a very real threat to other marine life with an equal right to protection and sustainable exploitation..... Despite this real threat, the seals are not being harvested at the behest of the fishing industry merely to reduce their numbers. The Namibian Government's approach to the question of seal harvest is guided by the same principles which apply to the utilization of any other natural resources falling within its jurisdiction namely, that these be utilized on a sustainable basis, to the benefit of the inhabitants of the country..... Namibia's seal population had increased to the point where they exceeded by far the carrying capacity of the environment. It must surely be agreed, therefore that it is more humane to curb the unrestrained seal population to a level where they can be sustained by the environment"<sup>23</sup>*

7.10 Assessment methodology for the Namibian seal population:

- The seal population is assessed by an age and sex disaggregated models;
- The population is assessed as a whole and not by colonies;
- Data from aerial surveys are part of model input data;
- Aerial surveys are conducted every third year;
- Current seal population stands at around 700 000 individuals and current 3 year rolling TAC stands at 6000 males and 80 000 pups per season. The TAC is revised annually;
- The harvesting is done in line with the Ecosystem Approach to fisheries (Johannesburg Summit on sustainable utilization, 2001);

- The seal population in Namibia is in a healthy growing state and is in no way threatened with extinction.<sup>24</sup>

7.11 Kirkman, *et al* are of the view that the decline in the population growth of seals during 1993 to 2004 was mainly due to the scarcity of food.

7.11.1 *"The distribution shift in the seal population in Namibia is likely in response to shifts in the geographical distribution of prey (van der Lingen et al. 2006). This is supported by the fact that the decline in Region 2 was not confined to the mainland sites of Wolf and Atlas bays as would be expected if effects of harvesting were driving the changes, but was also evident at offshore locations. Harvesting at these two mainland sites throughout 1993-2004; at these sites pup counts in 1998 and 2004 were 81% and 73% of their 1993 levels respectively. The corresponding count offshore colonies in Region 2, where no harvesting took place, were 71% and 65% of their 1993 levels, suggesting a common cause for the decline on both the mainland and the islands – probably prey availability"*<sup>25</sup>

7.11.2 Effects of continued harvesting in Namibia may have contributed to the decline in the growth rate of the population. However, circumstances support the view that the main cause of the reduced rate of increase during 1993-2004 compared with 1972-1993, is the effect of reduced prey availability on the carrying capacity.

7.11.3 It appears that the ban on seal harvesting since 1991 in South Africa is not the only cause for the stabilization in growth of the seal population during 1993-2004, but limited breeding space may have contributed. In South Africa seal breeding occurs on small offshore islets or rocks which provide little or no space for further growth of the existing colonies. *"Therefore, the combination of limited breeding space and spatial shifts in the availability of prey in the Southern Benguela may have contributed to the perceived stability in growth of South Africa's population during 1993-2004 compared with 1972-1993"*<sup>26</sup>

7.11.4 *"In summary, numbers increased significantly from 1972-1993, both in Namibia and South Africa, with mainland colonies accountable for most of the growth....However there appears to have been little change in the overall population since 1993 when it was estimated at about 2 million animals"*<sup>27</sup>

7.11.5 *"The fur seal population is dependent on the abundance of prey, mainly composed of epic and meso-pelagic organisms' particularly bearded goby, lantern fish, juvenile horse mackerel, juvenile hake and squid. Changes in the size of the fish stock, density or availability of fish to seals because of depth or geographic distribution and the distance from breeding colonies, affect the seal population....for the seals the next series of bad years', 1994 and 1995, the effects of the abnormal environmental conditions were more widespread and more drastic in amplitude.... The seal population was effected quite drastically by those events. From January 1994 pup growth was very low due to lack of prey availability to the lactating females. An estimated 300 000 seal died during 1994, nearly a third of the total population"*<sup>28</sup>

7.12 After examining the evidence presented in the Dawson Edwards Opinion that seal harvesting has been and continues to be unsustainable, DLA Cliffe Dekker Hofmeyr concluded that *"it is not possible to assess or verify the facts presented regarding seal population or habitats and the effect on them of historical and current harvesting. In our view, in order to attempt to persuade the Namibian authorities of the unsustainable utilization of seals, contrary to the constitution and the MRA and*

possibly in contravention of CITES, current scientific evidence is required to be produced which indicates that the current TAC for seals is not rationally linked to population numbers and will result in population numbers being reduced to a level from which they may not recover. It would assist to show that the TAC is not based on 'the best scientific evidence available,' as required by the MRA. Without such evidence, arguments for the unsustainability of the seal harvest lack substance."<sup>29</sup>

7.13 Despite my oral and written requests for the outcome of the 2011/12 aerial survey of seals by the Benguela Current Commission and other information, the Ministry of Fisheries and Marine Resources did not respond.

7.14 I am unable to make a definite finding on the two opposing accounts of whether Namibia is "guilty" of unsustainable utilization of its seals or not. I can only agree with DLC Cliffe Dekker Hofmeyr "that current scientific evidence is required which will indicate that the current TAC is not rationally linked to population numbers and will result in population numbers being reduced to a level from which they may not recover".

## 8. **The Namibian Seal Harvest Violates the Animal Protection Act (APA)**

- It is common cause that the APA criminalizes a number of inhumane practices, including beating, terrifying and causing suffering.<sup>30</sup> It protects animals, but does not confer rights on them. I agree with Judge Cameron where he states the following in his minority judgement:

*"The Act and the SPCA Act are both animal welfare legislation. Though not conferring rights on the animals they protect, the statutes are designed to promote their welfare. The statutes recognise that animals are sentient beings that are capable of suffering and pain. The statutes thus acknowledge the need for animals to be protected from human ill-treatment"*<sup>31</sup>

- Animals are defined in the APA as "domestic animals and wild animals in captivity or under the control of any person"<sup>32</sup> (my emphasis) But the Act does not define "under control" and neither were the words the subject of judicial interpretation.
- The MRA Regulations provide that the seals to be harvested must be driven away from the sea and allowed to settle down before clubbing begins.<sup>33</sup>

### 8.1 **The position of Seal Alert SA**

8.1.1 The Dawson Edwards Opinion alleged:

- Whilst the sealers are trying to identify the pups which need to be killed, they are simultaneously causing disruption of the entire colony and naturally the seals scramble for the sea (my emphasis).
- The pups are rounded up in a group (whereupon they scramble to get on top of each other presumably due to fear) and the clubbers then beat these pups to death whilst in the group.<sup>34</sup>

## 8.2 The position of Seals of Namibia

- The majority of the animals targeted are pups which are still nursing from the teat..... They are exceptionally agile on land, *can move almost as fast as a man* and over rough terrain. Aside from their dense occurrence and the fact that *Fur seals will flee from advancing human*, their locomotive abilities enable *these animals to take evasive action*, reducing the likelihood of an accurate strike capable of effectively stunning them (my emphasis).
- Such prolonged interference results in chronic stress, leads to the disruption of the physiological function, the suppression of the reproductive and immune system and regular self aborts from pregnant cows are not uncommon.
- The Seals of Nam is of the opinion that the annual harvesting of seals in Namibia is in clear violation of the Animal Protection Act 71 of 1962. <sup>35</sup>

## 8.3 The position of the South African National Council of SPCA's (NSPCA) and the World Society for the Protection of Animals (WSPA):

- Regulation 20 of the MRA is inadequate to ensure humane slaughter and compliance with international best humane standards
- The Namibian Seal harvest fails to comply with regulations and leads to the inhumane, unethical and cruel slaughter of seals
- The seal harvest in Namibia, falls within the definition of wild animals in that at the time of the harvest they are under the control of persons, because prior to the clubbing they are herded into groups; *for the seals there are no escape* other than being clubbed. (my emphasis)
- In short, the two organizations allege that the harvest is in breach of Section 2(1),(a), (f), (r); that the clubbers do not have the necessary knowledge of the aging process of seals for the proper identification of pups; because of the limited time of harvesting (06h30 – 8h30), it is impossible to implement the three steps killing process; the chaotic nature of the hunting process causes a stressful disturbance to the breeding colony <sup>36</sup>
- *"WSPA (2007) included an additional potential animal welfare concern: pups and other seals are subjected to witnessing the killing of co specific, which may cause additional stress in animals that have already been traumatized by being driven up to the beach and confined prior to stunning. There are however, little data to support this hypothesis from other species such as pigs (Gradin, 1975) and rodents, and none is available for seals."*<sup>37</sup>

## 8.4 Position of the Windhoek SPCA

8.4.1 The Windhoek SPCA is convinced that seals fall under the definition of animals as defined in the APA and would like the harvesting to cease on ethical grounds. They are further of the opinion that if the harvesting is done properly it should be possible to kill them quickly without causing pain but expressed the reservation that it is:

- difficult to hit *moving animals* accurately; (my emphasis)

- some animals may be injured before being killed;
- separating pups from mothers is distressful;
- herding frightens and stress pups;
- breeding colonies are disturbed.

8.4.2 The SPCA, represented by an independent veterinarian and biologist observed the first harvest of 2010 and confirmed that they did not see any breaches of the Regulations and concluded that *"the SPCA could not claim that the method was less humane than slaughtering cattle in an abattoir is meant to be,"* although they have reservations that this is the norm because the killing took place in their presence the Minister and other officials.<sup>39</sup>

8.4.3 On an application by the Windhoek SPCA, the Magistrate of Swakopmund apparently ruled that seals do not fall under the definition of animals in the APA.<sup>40</sup> It further appears that the SPCA did not challenge the Magistrate's interpretation of the law in the High Court.

## 8.5 The position of IFAW's

- There is sufficient evidence that the hunting of seals in Namibia should be ended on the basis that it does not meet internationally recognized requirements for human killing;
- as pups at the age of slaughter *are highly mobile*, they often attempt to *run away from the hunters*, and several strikes may be necessary to ensure that an animal has been rendered unconscious. Since the probability of accurate striking *moving target* is lower than for a more stationary one, there is a high likelihood of ineffective stunning. (my emphasis);
- bulls are killed via a shot to the head, but as the first bullet may not always kill, a struck animal may flee.<sup>41</sup>

## 8.6 The Thomson position

Mr Ron Thomson, who according to him, investigated and attended Namibia's on-going seal culling programme concluded that: *"The culling exercise I witnessed was extremely well executed and very humane. I have been working in the national parks and wildlife management professions now for more than 50 years; and I have considerable experience in the culling of wild animals. Consequently, I wish to state that I believe the actual seal harvest (the killing of seals) that I witnessed at Cape Cross in Namibia, could not have been better accomplished in any other way. The same conclusion was also reached by an international group of veterinarians several years ago"*.<sup>42</sup>

## 8.7 The position of the Ministry of Fisheries and Marine Resources

- Seal harvesting in Namibia is done in line with the provisions of the Constitution and the operations are governed by the Marine Resources Act;
- the methods of harvesting used in Namibia have been tested any practiced all over the world. However, the Ministry welcomes anybody with a better harvesting method to come and share it with them.<sup>43</sup>

## 8.8 Position of individuals and other groups

- It is impossible to summarize the views and opinions of the many individuals and other groups who wrote to me on these issues; it suffices to quote from a letter received from a certain Mr Morehead:

*"I must take particular issue with the statement of the Minister that the seal cull is humane. This is both false and preposterous. Despite tireless efforts by your government, there is not a single reputable "expert", "animal welfare group" or "veterinary group" that has observed the cull or photos and videos of the cull, and called it humane". And then comes the threat which appears in so many of the letters: "Your failure to act responsibly regarding my request will leave me with only one alternative. To join a global campaign to boycott Namibia's tourism...." <sup>38</sup>*

## 8.9 The position of the Rights Holders and Sealers

8.9.1 Interviews with Mr Gys Cilliers and ten of his employees<sup>44</sup> revealed the following:

- Mr Cilliers is a seal rights holder since 1999, a shareholder in Seal Products Ltd and the owner of the seal factory in Henties Bay;
- two of his employees have been working in the seal harvest industry since 1972 and one for more than 30 years. Between them they have more than 110 years of experience in seal harvesting;
- all employees receive training before the seal harvest season starts;
- there are 18 clubbers and 6 stickers and they start at 06h30 every day and leave Cape Gross before 10h00;
- when they herd a group of seals inland and allow the bigger ones to escape, there are between 50-100 pups left;
- they can easily identify the pups that must be killed, because they are the ones that were born the previous December and are the smallest;
- they kill an average of 500 pups per day;
- the skull of a pup is very soft, like an egg and needs only one strike with the club to shatter its skull, but sometime a second strike is necessary because the pups move around and to ensure death;
- there is no better way to kill the pups;
- all the pups in the group are killed and not a single one is allowed to escape;
- they do not hurt or injure a pup unnecessarily;
- Mr Cilliers or a supervisor, together with two fisheries inspectors who rotate every second week, are always present during the harvesting process;
- every Tuesday and Thursday scientists of the Ministry are present to collect data;
- the most experienced clubbers accompany the shooters to point out the bulls to be killed;
- only professional hunters are used; two of the shooters are employed since 1999;
- if a second shot is necessary, the bull is killed before it can escape in the water;
- the allowable error margin is 1%;

- the quota for Cape Cross for the three right holders, is 40 000 pups, which is seldom filled because of many factors, like bad weather conditions, limited time during harvest days, harvesting usually only starts at mid- July, power failures in Henties Bay which prevent harvesting because the seals cannot be processed at the factory. It is certainly not a matter of not enough pups;
  - every part of the seal is processed in the factory;
  - during the harvest season ±69 workers are employed and their combined monthly salary is ±N\$130 000,00. The gross salary for October 2011 of the highest paid worker, was N\$ 6859-50 and the lowest N\$ 753.16, but he only worked for 95 hours;
  - on a question on what impact the killing of seals have on them, one of the clubbers, after his first clubbing experience, remarked that *"it was not nice, it bothered me a bit, but after the fourth harvest it was like killing a sheep"* (cutting its throat);
  - they do not see them as seals but as bread; it does not bother them to kill seals; it is their work and they must work to survive;
- before exportation, the seal products are examined by the Head State Veterinarian in Walvis Bay.

8.9.2 The question which arises is whether a person can have wild animals like seals under his control if they are *unrestrained and nearly always in motion; running towards, past and away from the clubbers when they are struck<sup>45</sup> or naturally scramble for the sea, <sup>46</sup> or can move as fast as a man, will flee from advancing humans, their locomotive abilities enable these animals to take evasive action;<sup>47</sup> they are highly mobile and striking a moving target.<sup>48</sup>*

8.9.2.1 Whether seals could be said to be *"under the control of any person"* and therefore to fall within the definition of *"animal"* under the APA, where the said Act does not define *"under control"*, is a matter of judicial interpretation. Dictionaries define *"control"* *"to command or direct", the power of directing, and restraining, means of regulating, means of restraining."* *"Under control"* is defined as *"being controlled; in order"* and the opposite; *"out of control"* is defined as *"no longer subject to containment, restraint or guidance"*.

8.9.2.2 It is the duty of our courts to interpret the statutes and in the absence of such interpretation and taking into consideration the circumstances described in 8.1.1, 8.2 and 8.6, it cannot be said that seals are under the control of the clubbers during harvesting. Therefore, the sealers and by extension, the authorities who permit the 'cruel treatment' of pups, cannot be in breach of any of the provisions of the APA.

8.9.2.3 However, where a holder of a quota harvests seals in contravention of any condition prescribed under the MRA he would in terms of section 52(3)(c) of the Act be guilty of an offence. In addition, in terms of section 52(4) (b) of the Act any person who harvest seals in contravention of section 47 and the regulations, is guilty of an offence.

8.9.3 I agree with the conclusions of the EFSA Opinion<sup>49</sup> in regard to the methods used for killing seals in the Namibian harvest, in so far as the Opinion concludes it as a possibility that:

- both targeted and non-targeted animals *may* sustain injuries before they are killed or escape during the pup hunt;
- some non-targeted animals *may* sustain injuries before being released or escaping;
- not all animals which are clubbed or shot are killed or rendered irreversibly unconscious, therefore sticking and bleeding-out is required to ensure death;
- reportedly, pups are frequently not properly bled out after stunning, resulting in some animals regaining consciousness or remaining conscious for considerable periods of time.....because without adequate sampling that is representative of the entire hunt with respect to sample size and design, it is not possible to establish reliably the exact proportion of animals that are killed outright, or that are irreversible unconscious, or that are reversibly unconscious, or that are conscious at the various stages of killing and skinning process; i.e. uncertainty is high in obtaining relevant and representative data for a specific sea hunt.

8.9.4 Common sense dictates that sealing activities that continue nearly uninterrupted for four months in a breeding colony may cause considerable disturbance and fear distress to animals.

8.9.5 I am of the view that seal pups are not allowed to settle down before clubbing begins. It is indeed impossible to comply with this part of the Regulations because pups are unrestrained and constantly in motion.

## 9. **Methods used for killing seals in Namibia: Are the MRA Regulations impossible to implement?**

9.1 In the second century BC, the Greek writer Oppian described an ancient encounter involving the Mediterranean monk seal: "*.... the fishermen bring it (seal) near the land; there, with trident and mighty clubs and stout spears, they smite it on the temples and kill it, since destruction comes most swiftly upon seals when they are smitten on the head.*"<sup>50</sup>

9.2 In the 20<sup>th</sup> century, Regulation 20(2)(b) of the MRA provides for a similar method, namely that a clubber must kill a pup by clubbing it on the head with a seal club.

9.3 There are of course many ways of killing a seal pup and many of those have been tried locally as well as in other countries (particularly USA, Canada and Russia). However, all these trails have come up with the same conclusion: However gruesome it may sound, if clubbing is done properly and accurately it is indeed the most effective method to dispatch of a pup in the quickest way, rendering the pup unconscious and '*brain dead*' virtually instantly and in the process minimising suffering and stress. In addition, at a semi-industrial scale, when several hundreds of pups are killed in a short period of time, it is also the most practical

method if not the only one applicable. Of course, all of this is valid only 'if it is done properly' as mentioned above; hence, the Regulations we have on how this should be done and how inspectors should monitor this. As was mentioned at the meeting with Mr Hugo, there is always room for improvement and one should be vigilant to uphold the standards of killing methods, the skills and training needs of the sealers and the reporting process by inspectors.<sup>51</sup>

- 9.4 The Panel on Animal Health and Welfare observes that "*sealing clubs are used in Namibia during the hunt for Cape Fur seal pups, which are aged between about 7 and 10 months at the time of the hunt. At this age, all the important sutures of the skull are still open (Rand, 1956). Generally, pups are running towards, past or away from the clubbers when they are struck. An accurate, forceful strike with a club can, nevertheless, render a pup unconsciously immediately. In the case of an ineffective strike, it is possible for the clubber (or another clubber) to follow up with repeated blows, provided the hunting operation follows the stipulated procedure.*"<sup>52</sup>
- 9.5 The Panel further observes that the method used for killing of pups in Namibia, namely the "*stun*" and "*stick*" method has been the subject of much controversy because it is regarded by many as inhumane (David 1989). Unlike adult males, to hunt the pups with rifles is impractical because of the relatively small size of the head and their tendency to congregate in groups. Other *alternative killing methods* which have been investigated have been found by scientists and veterinarians *to be neither adaptable to fur seal hunt nor more humane than stunning and sticking* (Keyes, 1980).<sup>53</sup> (my emphasis)
- 9.6 The Report of the North Atlantic Marine Mammal Commission Expert Group concluded that:
- different types of hakapik and clubs exist and are used as primary tools for stunning and/or killing young seals (less than 1 year), and are known to be effective tools in this respect;
  - the methods applied for stunning and killing seals belong somewhere between the methods used for free roaming mammals and some of the stunning and killing techniques used in slaughter houses;
  - when using the hakapik or club to stun young seals in the large scale seal hunt, the operator is situated very close to the animal and will, as in a slaughterhouse operation, be able to stun the seal by directing the stunning device (blow) to the brain and then kill the animal by bleeding out.....also, in general, there are no known killing method that can guarantee a 100% instantaneous stun and kill of animals....no official criteria of death have been formulated for animals except for whales. <sup>54</sup>
- 9.7 In 2005, the World Wildlife Fund (WWF) commissioned the Independent Veterinarians Working Group Report. With reference to video evidence, the Report states: "*Perception of the seal hunt seems to be based largely on emotion, and visual images that are often difficult even for experienced observers to interpret with certainty. While a hakapik strike on the skull of a seal appears brutal, it is humane if it achieves rapid irreversible loss of consciousness leading to death.*"<sup>55</sup>

- 9.8 I am of the view that clubbing is the most practical method of killing seals and the only one applicable in the Namibian harvest, provided it should lead to irreversible loss of consciousness and death.
- 9.9 I am further of the view that training and enforcement should aim to meet the three steps of effective hitting/shooting, effective monitoring and effective bleeding out.
- 9.10 I am further of the view that the Regulations are not impossible to implement, but agree with Dr Roux that there is always room for improvement and I also agree with the DLA Cliffe Dekker Hofmeyr opinion that *"appropriate remedy would be to lobby for the amendment of the MRA 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."*<sup>56</sup>

## 10. **Contradictions in the Marine Resources Act (MRA) and its Regulations**

- 10.1 Section 32(1) of the MRA provides that commercial harvesting of marine resources, which include seals in Namibia and Namibian waters may only be done under a right, an exploratory right or a fisheries agreement and section 32(2) provides that where quotas are set, harvesting must be undertaken in terms of it.
- 10.2 It is argued in the Dawson Edwards Opinion (p.20) that Regulation 18(1) of the MRA Regulations is in conflict with above prerequisites for harvesting where it provides that *"except in terms of a right or exemption a person may not harvest any species of mammal other than the Cape fur seals..."* It would appear that this provision exempt a person from obtaining a permit to harvest seals.
- 10.3 Seal harvesting is undertaken in terms of rights and TAC's granted under the MRA and the provisions of the MRA take precedence; as the Regulations are secondary and based on the MRA.
- 10.4 Although the practical effect of the inconsistency between the provisions is limited, I agree with the Dawson Edwards Opinion that such inconsistency is undesirable and creates uncertainty. I am of the view that the Regulations should be amended.

## 11. **The seal harvest violates Namibia's obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)**

- 11.1 Namibia is a signatory to the CITES and as a state party to the Convention, it is under an obligation to comply with the requirements of the Convention.

- 11.2 Seals are listed under Appendix II, which includes species not necessarily threatened with extinction, but in which trade must be controlled in order to avoid utilization incompatible with their survival.
- 11.3 The International Union for Conservation of Nature and Natural Resources (IUCN), the global authority for red listing species of conservation concern, lists the Cape fur seal as of "least concern".
- 11.4 Seals of Namibia argues that the recent mass die-offs, a 90% loss in preferred natural habitat and their listing under Appendix II of CITES, is reason enough to take immediate and decisive action in protecting and conserving the species.<sup>57</sup>
- 11.5 It is argued in the Dawson Edwards Opinion that the seal harvest violates Namibia's obligations under CITES because Namibia is failing to manage seals in a sustainable manner under the MRA as required by the Convention.
- 11.6 I agree with the conclusion of DLC Cliffe Dekker Hofmeyr that if there is evidence that the seal harvest is unsustainable, because seal specimens are exported, Namibia may be failing to meet its CITES obligations.
- 11.7 It is further alleged in the Dawson Edwards Opinion "*that CITES requires a management authority to ensure that any export of such species are not a threat to the survival of the species or harvest in violation of any laws protecting seals in Namibia. Given the fact that when the relevant provisions of the MRA and the Regulations are read together, one may come to the conclusion that seals may be harvest in a manner which is essentially unregulated and not subject to a right, exploratory right or fisheries agreement, it is our submission that it is in contravention of the terms of CITES and ultimately unlawful.*"<sup>58</sup>
- 11.8 As discussed in para 10 above, the seal harvest is undertaken in terms of rights and TAC's under the MRA and the provisions of the MRA prevail over those of the Regulations. As pointed out further in para 10, the practical effect of the inconsistency between the provisions is of limited effect. It is my view that the harvest is not in contravention of the terms of CITES and surely not unlawful.
- 11.9 It is further alleged that the Ministry of Fisheries and Marine Resources and not the Ministry of Environment and Tourism, which is the management and scientific authority under CITES for Namibia, issue export permits for seal products.<sup>59</sup>
- 11.10 No evidence is provided to prove that the Ministry of Fisheries and Marine Resources issue export permits for seal products; on the contrary, Mr Cilliers provided us with a copy of an export permit, no 104604, dated 13/10/10 and issued by the Ministry of Environment and Tourism as well as a copy of a CITES export permit, no 0027222 dated 15/10/2010.

## 12. **The economics of seal hunting and seal watching in Namibia**

- 12.1 I did not research the economics of seal hunting and seal watching in Namibia and cannot comment thereupon, except to say that I agree with the Report: The Economics of seal hunting and seal watching in Namibia: Economists at large; where it *inter alia* states: "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."<sup>60</sup> The current unemployment rate in Namibia is 51% - a few jobs make a difference.
- 12.2 If tourists will be shocked to find that a seal they photograph one day may be killed the next morning (as stated by Clair Bass), the same applies to a rhino, a whale, a dolphin, elephant, cheetah, lion; too many to mention. I believe I do not have to remind her of what Jacques Cousteau said in 1978: "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".

## 13. **Discussion of the Facts**

- 13.1 What follows hereunder is a highlighting of some of the contradictions between the different versions, which makes it extremely difficult to assess or verify the facts presented.
- 13.2 The Dawson Edwards Opinion (p.5) alleged that no mainland seal breeding colony existed and only after 1940 when the seal population was less than 50%, mainland seal breeding colonies developed unnaturally. This statement is contradicted by others who claim that seal harvest at Cape Cross started as early as 1884. The data in table III (Annexure A) clearly shows the number of seals harvested during 1924 – 1927 at Cape Cross.
- 13.3 It is further alleged (p.6-8) that seal harvesting has been and continues to be unsustainable in the sense that it results in significant reduction in numbers; the seal population has effectively declined by more than 90% from pre-exploitation levels and since Namibia's independence by a further 35%.
- 13.3.1 The Dawson Edward Opinion further claims that in South Africa, where seal harvesting has ceased since 1990, pup production increased from 74620 – 80897 with no mass die-offs or annual harvesting of seal pups. In the same vein it is argued that seal harvesting is responsible for the growth of the seal population. Seal-Alert SA puts it as follows: "It is clear that harvesting pups clearly leads to an unnatural increase in pup production."<sup>62</sup>
- 13.3.2 In an interview with Yana Smith, Mr Hugo said; "If not culled (the Namibian seal population) would have been 14 400 pups instead of 250 000 – 300 000. Ms Smith remarked "The above statement is dismissed by all the scientists spoken to as 'utter nonsense'".<sup>63</sup>
- 13.4 Sealers must identify the seals to be killed as those in the first years of life. The Dawson Edward Opinion (p.24) alleges that the sealers who are undertaking these activities are not experienced harvesters, nor are they citizens with any knowledge of the aging process of a

seal or the identification of a seal pup. But according to the most experienced sealers, they have between them more than 110 years of experience in seal harvesting plus the 13 years experience of Mr Cilliers. According to them, when they herd a group of seals inland and allow the bigger ones to escape, between 50 – 100 pups remain. They can easily identify the pups that must be killed, because they are the ones that were born the previous December and are the smallest in the colony.

- 13.5 According to the Dawson Edwards Opinion (p.28), previous submissions on behalf of the sealers themselves have shown that they kill on average 1000 seal pups in a morning. The sealer's version is that they kill on average 500 seal pups during a morning.
- 13.6 The Dawson Edwards Opinion (p.23) alleges that in the video evidence submitted to them, there was no clear indication of any inspector that was overseeing the activities of the sealers. Further on in the Opinion (p.32) they allege that in the video evidence that they have been presented with, there was only one inspector present. According to the sealers, Mr Cilliers or a supervisor, together with two fisheries inspectors who rotate every second week, are always present during the harvesting.
- 13.7 It is alleged that the seal harvest in Namibia can never comply with the domestic regulations or the international standards. On the contrary, two experts who observed the first harvest in 2010, when 260 pups were killed, certified that not a single regulation was breached. They were satisfied that the slaughter was as humane as that of slaughtering cattle in an abattoir. In my view this shows that with proper implementation, the seal harvest can comply with the domestic regulations and international standards.
- 13.8 It is alleged that the TAC determined by the Minister of Fisheries and Marine Resource has been inconsistent with population numbers which resulted in unsustainable harvesting. The TAC for 2006 was 85000 which amounts to 70% of the total pup population. It is further aggravated by the fact that the natural mortality of seal pups born as well as the effect of jackal predation which accounts for 25 – 32% and 25 – 35% respectively; this leaves an almost non-existing pup population (p.28-29). On the other hand, the Ministry's position is that the seal population is in a healthy growing state; the current seal population is ±700 000 individuals; the TAC stands at 600 males and 80 000 pups per season. According to Mr Cilliers, factors which adversely affect the harvest, cause that they never actually fill the allocated quotas.

## **FINDINGS**

Having considered all the submissions and information received from various concerned organisations as well as my own research, site visits and interviews, I find that:

- the exploitation of Cape fur seals along the Southern African coast represent one of the oldest commercial fisheries in the region and dates back more than three centuries;

- despite the early years of uncontrolled and indiscriminate exploitation, seals are still with us and will be with us for a long time to come if we are careful;
- seal harvesting at Cape Cross started in 1884 when it was the monopoly of the Deutsche Kolonial-Gesellschaft;
- the legal framework which the Namibian 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 harvesting of seals are lawful; the Minister of Fisheries and Marine Resources does not exceed his jurisdiction and his power in respect of the management and utilization of seals in Namibia, extends over Namibian waters and Namibian land, including Cape Cross and Wolf and Atlas Bays;
- seals, when harvested, are not under the control of the sealers because they are unrestrained, always in motion and run towards, past and away from the clubbers;
- seals, as wild animals, do not fall within the ambit of the definition of animals in the Animal Protection Act (APA); the sealers, and by extension "the authorities who permit the cruel treatment of pups", can thus not be in breach of any of the provisions of the APA; the APA does not confer rights on seals, but does protect them from cruelty;
- pups are not allowed to settle down as required by the Regulations; as wild animals they can only settle down when confined;
- however gruesome it may sound, the stunning and sticking method used for killing pups is the most practical and the only one applicable to the harvest in Namibia;
- a club strike on the head of a pup (although it may appear brutal) is humane if it achieves rapid, irreversible loss of consciousness and leading to death;
- the Namibian harvest does not always comply with the "four steps" method of effective hitting/shooting, effective monitoring, effective bleeding out and effective implementation;
- the Regulations do not place an upper limit on the size of the group of pups to be held before clubbing begins and do not specify a time limit between stunning and sticking;
- the Regulations do not require that male seals should be bled-out after shooting;
- Regulation 18(1) is in conflict with section 32(1) of the MRA; such inconsistency is undesirable and creates uncertainty;
- the Ministry of Environment and Tourism issues CITES export permits and not the Ministry of Fisheries and Marine Resources;
- the Regulations do not require that sealers should be trained and competent in the procedures they use, including killing methods, monitoring death, etc.
- the state veterinarian inspects seal products before they are exported;
- the Ministry of Fisheries and Marine Resources is very reluctant to part with information (which is in any event in the public interest), even to the Ombudsman.

## **RECOMMENDATIONS**

From the facts placed before me I do not have adequate and sufficient grounds in law and fact to recommend to the Namibian government to stop the annual seal harvest; however, I do believe that the following recommendations may address the concerns relating to seal harvesting in Namibia:

- Regulation 18(1) of the MRA Regulations should be amended to bring it in line with section 32(1) of the MRA.
- Regulation 20 should be amended by adding the following requirements:
  - After being killed by shooting, adult seals should be bled out;
  - seals (both pups and adults) should be bled out as soon as possible, preferably immediately after they have been successfully stunned or shot, and they should be checked to ensure that they are irreversibly unconscious or dead;
  - compelling rights holders to erect temporary enclosures where pups, not exceeding 100 at a time, can be confined to settle down before they are released and clubbed;
  - rights holders should ensure that each harvest complies with the “four steps” method of effective hitting/shooting, effective monitoring, effective bleeding out and effective implementation;
  - sealers should be trained and competent in the procedures they use, including killing methods, monitoring death, unconsciousness and rapid bleeding.
- The Minister should consider independent monitoring of harvests (without commercial/industry or NGO links) to provide certain critical information on seal killing and stunning from a welfare prospective.
- It is in the public interest that data (information) regarding the total number of the seal population, the size of the quotas, the actual number of pups and male seals harvested, etc be published annually.
- If the Minister did not publish the texts of all conservation and management measures adopted under any international agreement to which Namibia is party, in the Gazette, it should be done without delay.

I am indebted to all who provided me with valuable information which enabled me to draft this report; it assisted greatly in making my journey from the unknown to the known much easier.

I trust my Report with its findings and recommendations will ensure better compliance with domestic legislation, international agreements to which Namibia is a party and ensure a seal harvest more humane than that of slaughtering of cattle in abattoirs.

## **REFERENCES:**

1. **Roux, J P & Shannon, J:** *Ecosystem approach to fisheries management in the Northern Benguela: The Namibian experience.* African Journal of Marine Science, 2:1 79-93.
- 2,3,4,6. **Keun, I J:** Sealing; SWA Annual 1990: 129-135
5. Section 9 (1) + (2) of the Ordinance
7. Regulations published in Official Gazette No. 1444; dated 15/08/1949; GN 215/1949
8. Sealing Regulations, published under Government Notice R 1933 in Government Gazette 5317 of 22 October 1976
9. *Territorial Sea and Exclusive Economic Zone of Namibia Act, 1990* (Act No. 3 of 1990)
10. Regulations published under Government Notice 241 in Government Gazette No. 2657 of 7 December 2001
11. **Roux, J P & Shannon, J:** *Ecosystem approach to fisheries management in the Northern Benguela: The Namibian experience.* African Journal of Marine Science, 2:1 79-93.
12. "Namibia Waters" is defined under the Definitions of the MRA and means: "the internal waters, the territorial sea, the contiguous zone and the exclusive economic zone of Namibia as defined in the Territorial Sea and Exclusive Economic Zone of Namibia Act, 1990 (Act No. 3 of 1990) and includes the seabed up to the high water mark."
13. **DLA Cliffe Dekker Hofmeyr (2011):** Review of opinion on the legalities of the annual seal harvest at the Cape Cross Seal Reserve in Namibia; p 14.
14. Section 3(2) of the MRA
15. **Dr. A Kawana, Attorney-General: Namibia (2011):** Legal opinion regarding the annual seal harvest at the Cape Cross Colony in Namibia; p 5.
16. Dawson Edwards Opinion; p 4-6.
17. **Fink, S (2011):** Notes for a presentation to the Office of the Ombudsman, Namibia, Windhoek; 1-10.
18. Dawson Edwards Opinion; p 28-29.
19. Wikipedia: Sustainability; 1-13.
20. Article 95(21).
21. **Mulongeni, B (1993):** *Seal culling or sustainable utilization of living resources?* Namibia Review; 17-20.
22. **Smith, Y (2007):** *Seal harvesting: We are right.* Space Magazine p4
23. **Van Zyl, B J (1999 ):** Culling of seals in Namibia: A conservation necessity: A paper delivered at IWMC World Conservation Trust 2<sup>nd</sup> Symposium on sustainable use of Wildlife Resources November 1999.
24. **Iilende, T ( 2011):** Presentation to the stakeholders meeting concerning seal harvesting in Namibia.
- 25, 26, 27. **Kirkman, S P et al (2007):** Making sense of censuses and dealing with missing data: Trends in pup counts of Cape Fur Seal *Arcocephalus pusillus pusillus* for the period 1972 – 2004; African Journal of Marine Science 29:2, 161-176.
28. **Roux, J P (1998):** The impact of environmental variability on the seal population; Namibia Brief No. 20, October 1998.
29. DLA Cliffe Dekker Hofmeyr p. 7.
30. Section 2 (1) Act 71 of 1962.

31. *National Council for Societies for the Prevention of Cruelty to Animals v Openshaw* 2008 (5) SCA at 350-351.
32. Section 1 of the APA.
33. Regulations 20 (2).
34. Dawson Edwards Opinion; p. 26.
35. **Dickens, P (2011):** A presentation to stakeholders meeting concerning the illegalities of the annual seal harvest, exploitation of the living natural resources and the method of killing seals in Namibia; 3-11.
36. Representation on behalf of the NSPCA and WSPA to the Constitutional Ombudsman of the Republic of Namibia in respect of the Namibian seal harvest: Stakeholders meeting, Windhoek 2011: 7-15.
37. **EFSA (2007):** Scientific Opinion of the Panel on Animal Health and Welfare on a request from the Commission on the Animal Welfare aspects of the killing and skinning of seals. The EFSA Journal 2007; 610: 64-122.
38. **Morehead, K (2011):** Letter dated August 29, 2011.
39. Windhoek Society for the Prevention of Cruelty to Animals and the harvest of seal pups: A presentation to the Ombudsman, 2011.
40. Dawson Edwards Opinion; p. 33.
41. **Fink, S (IFAW) 2011:** Notes for a presentation to the Office of the Ombudsman, Namibia, Windhoek; 1-10
42. **Thomson, R (2011):** The Cape Fur Seal with reference to the conference on seals and seal culling; 1-8 (Mr. Thomson qualified as an ecologist and was registered as chartered biologist with the EU for 20 years. Altogether he has 52 years of hands-on experience in wildlife management affairs in Africa).
43. **Iilende, T (2011):** Presentation to the stakeholders meeting concerning seal harvesting in Namibia.
44. The interviews took place on 3/12/2011 at the seal factory; Ms Rakow, Director in the Office of the Ombudsman recorded the discussions, the factory was inspected and thereafter we went for a site visit at Cape Cross.
45. **EFSA (2007):** Scientific Opinion of the Panel on Animal Health and Welfare 610: 41-122 and 63-122.
46. Paragraph 8.2
47. Paragraph 8.3
48. Paragraph 8.7
49. **EFSA (2007):** Scientific Opinion of the Panel on Animal Health and Welfare 610: 91-122.
50. **Lavigne, D M:** Marine mammals and fisheries: The role of science in the culling debate. Chapter 2; 21-47.
51. **Roux, J P (2007):** *Seal Harvesting: We are right*. Space Magazine; p.4.
- 52 + 53. **EFSA (2007):** Scientific Opinion of the Panel on Animal Health and Welfare 610: 41-122 and 62-122.
54. Report of the NAMMCO Expert Group meeting on best practices in the hunting and killing of seals (2009) Denmark; 1-28.
55. Independent Veterinarians Working Group Report August 2005: Retrieved from Wikipedia: Seal Hunting

56. **DLA Cliffe Dekker Hofmeyr**; p. 11.
57. **Dickens P.** (2011): A presentation to stakeholders meeting concerning the illegalities of the annual seal harvest, exploitation of the living natural resources and the method of killing seals in Namibia; 3-11.
58. **Dawson Edward Opinion**; p 21.
59. **Dawson Edwards Opinion**; p 41.
60. Economists at Large (2011) The Economic of seal hunting and seal watching in Namibia p.69. Report Commissioned by Human Society International *et al.*
61. **Hugo F**; Seal Alert SA (2011): Cape Fur Seal pup population survey.
62. **Smith Y** (2007): Seal Harvesting : We are right: Space Magazine; p 8.

Table III: Harvest figures for South African fur seal colonies on the Namibian coastline, 1900–1990 (see text for sources of data). From 1900 to 1972, only pup figures are shown. Bull totals are presented in Table IV. From 1973 to 1990, the figures for each colony are given in the form pups/bulls. In the three years when cows were killed, the numbers are shown in parentheses. Between 1902 and 1906, some harvests were of unknown age/sex and these are shown in italics, but are assumed for the total in Table I to be pups

Year	Sinclair Island	Albatross Rock	Long Islands	Wolf/ Atlas Bay	Lüderitz Islands	Hollams Bird Island	Cape Cross
1900	...	-	...	-	...	...	...
1901	-	-	-	-	...	...	...
1902	<i>530</i>	-	<i>1913</i>	-	...	...	...
1903	2 626 <sup>1</sup>	-	2 626 <sup>1</sup>	-	2 626 <sup>1</sup>	2 626 <sup>1</sup>	...
1904	2 319 <sup>1</sup>	-	2 319 <sup>1</sup>	-	2 319 <sup>1</sup>	400	...
1905	1 354 <sup>1</sup>	-	1 354 <sup>1</sup>	-	1 354 <sup>1</sup>	1 354 <sup>1</sup>	...
1906	1 310	-	2 113	-	...	29	...
1907	107	-	70	-	...	...	...
1908	-	-	-	-	...	...	...
1909	-	-	-	-	...	...	...
1910	-	-	-	-	...	...	...
1911	752 <sup>1</sup>	-	752 <sup>1</sup>	-	752 <sup>1</sup>	752 <sup>1</sup>	...
1912	1 512 <sup>1</sup>	-	1 512 <sup>1</sup>	-	1 512 <sup>1</sup>	1 512 <sup>1</sup>	...
1913	3 784 <sup>1</sup>	-	3 784 <sup>1</sup>	-	3 784 <sup>1</sup>	3 784 <sup>1</sup>	...
1914	...	-	4 174	-	...	...	...
1915	-	-	-	-	...	...	...
1916	-	-	-	-	...	...	...
1917	5 111 <sup>1</sup>	-	5 111 <sup>1</sup>	-	5 111 <sup>1</sup>	5 111 <sup>1</sup>	...
1918	6 241 <sup>1</sup>	-	6 241 <sup>1</sup>	-	6 241 <sup>1</sup>	6 241 <sup>1</sup>	...
1919	6 476 <sup>1</sup>	-	6 476 <sup>1</sup>	-	6 476 <sup>1</sup>	6 476 <sup>1</sup>	...
1920	7 479 <sup>1</sup>	-	7 479 <sup>1</sup>	-	7 479 <sup>1</sup>	7 479 <sup>1</sup>	...
1921	...	-	9 343	-	...	...	...
1922	8 234 <sup>1</sup>	-	8 234 <sup>1</sup>	-	8 234 <sup>1</sup>	8 234 <sup>1</sup>	...
1923	...	-	8 152	-	...	...	...
1924	...	-	7 197	-	...	...	2 533
1925	...	-	8 681	-	...	...	2 094
1926	...	-	8 124	-	...	...	1 529
1927	...	-	8 144	-	...	...	-4 014
1928	12 643 <sup>1</sup>	-	12 643 <sup>1</sup>	-	...	...	...
1929	2 602	-	5 022	-	...	1 606	...
1930	...	-	-	-	...	...	...
1931	...	-	-	-	...	...	...
1932	...	-	-	-	...	...	...
1933	2 717	-	6 804	-	...	...	...
1934	...	-	-	-	...	...	...
1935	...	-	-	-	...	...	...
1936	12 095 <sup>1</sup>	-	12 095 <sup>1</sup>	-	...	...	...
1937	3 393	-	8 904	200	...	...	...
1938	1 819	-	8 107	...	...	34	...
1939	3 104 <sup>1</sup>	-	3 104 <sup>1</sup>	...	...	...	-4 000
1940	3 000	-	-	...	...	...	-4 000
1941	6 228 <sup>1</sup>	-	6 228 <sup>1</sup>	6 228 <sup>1</sup>	...	...	-3 800
1942	7 664 <sup>1</sup>	-	7 664 <sup>1</sup>	7 664 <sup>1</sup>	...	...	-3 900
1943	9 834 <sup>1</sup>	-	9 834 <sup>1</sup>	9 834 <sup>1</sup>	...	...	-4 000
1944	7 720 <sup>1</sup>	-	7 720 <sup>1</sup>	7 720 <sup>1</sup>	...	...	4 000
1945	3 412 <sup>1</sup>	-	3 412 <sup>1</sup>	3 412 <sup>1</sup>	...	...	5 000
1946	4 608 <sup>1</sup>	-	4 608 <sup>1</sup>	4 608 <sup>1</sup>	...	...	5 000
1947	6 063 <sup>1</sup>	-	6 063 <sup>1</sup>	6 063 <sup>1</sup>	...	...	4 870
1948	...	-	1 566 <sup>2</sup>	1 566 <sup>2</sup>	...	...	4 941
1949	3 918 <sup>1</sup>	-	3 918 <sup>1</sup>	3 918 <sup>1</sup>	...	...	5 149
1950	4 642 <sup>1</sup>	-	4 642 <sup>1</sup>	11 101	...	...	5 202
1951	1 683	834	2 728	15 257	...	270	5 394
1952	1 642	1 078	2 070	16 707	28	-	5 871
1953	2 736	353	1 373	15 195	135 <sup>3</sup>	174	6 100
1954	2 514	941	1 908	14 952	-	-	6 459
1955	2 728 <sup>1</sup>	768	1 622	19 597	-	-	6 690
1956	3 959	1 446	2 387	20 758	-	-	8 054
1957	2 244	1 021	2 588	24 438	-	-	8 424
1958	2 524	1 424	2 220	15 327	-	-	4 821

Table III (continued)

Year	Sinclair Island	Albatross Rock	Long Islands	Wolf/Atlas Bay	Lüderitz Islands	Hollams Bird Island	Cape Cross
1959	2 027	1 195	2 523	17 966	-	-	6 215
1960	3 452	914	3 169	22 150	-	-	5 360
1961	4 787	1 097	1 723	25 272	-	-	8 054
1962	5 008	1 436	2 042	21 396	-	-	8 236
1963	4 694	392	3 019	27 986	-	-	7 800
1964	5 781	1 021	483	31 261	-	-	6 948
1965	2 959	748	1 347	38 937	-	-	7 770
1966	688	-	-	29 698	-	-	8 424
1967	451	755	1 478	41 056	-	-	7 126
1968	2 819	827	1 734	41 833	-	-	7 043
1969	3 054	812	2 672	43 115	-	-	6 902
1970	1 923	397	2 045	50 657	-	-	8 707
1971	2 006	325	2 320	40 055	-	-	9 750
1972	2 233	126	2 048	42 227	-	-	7 470
1973	454/-	224/-	1 543/-	45 891/1 002	+	+	7 353/1 164
1974	+	+	3 740/-	31 506/62	+	+	6 399/1 089
1975	4 222/-	1 668/-	5 282/-	35 616/-	744/-	+	9 691 <sup>4</sup> /421
1976	4 294/-	1 125/-	3 831/-	30 968/-	1 689/-	1 879/-	11 095/-
1977	5 117/423	1 567/204	4 189/472	35 823/-	+	+	14 631/-
1978	4 062/636	1 510/206	1 883/460	36 964/-	230/206	+	9 439/1 294
1979	4 288/-	1 503/-	3 861/-	38 628/-	+	+	9 147/-
1980	+	+	+	39 912/-	+	+	6 596/800
1981	4 020/-	1 693/-	5 012/-	42 136/-	+	+	12 992/-
1982	3 544/-	1 504/-	5 564/-	42 775/-	+	+	12 075/-
1983	+	+	+	40 580/2 693	+	+	2 139/1 327
1984	+	+	+	34 126/7 006	+	+	6 207/1 108
1985	-/470	+	-/303	25 037/4 952	+	+	6 118/210
1986	+	+	-/321	14 151/3 574	+	+	4 495/830
1987	+	+	+	4 937/688	+	+	-/2 012
1988	+	+	+	+	+	+	3 322/3 625(2 632)
1989	+	+	+	+	+	+	6 190/3 293(9)
1990	+	+	+	3 124/1 218	+	+	6 668/694(25)

<sup>1</sup> = Combined total for Sinclair Island and Long Islands, and some years including Hollams Bird Island and Lüderitz Islands or Wolf/Atlas Bay

<sup>2</sup> = Combined total for Long Islands and Wolf/Atlas Bay

<sup>3</sup> = Includes 75 seals from Black Rock (Namibia)

<sup>4</sup> = Includes 148 seals from Cape Frio (Namibia)

... No data

- No harvest