



From,
Josphat Ngonyo
Executive Director
Africa Network for Animal Welfare
P.O Box 3731-00506 Nairobi, Kenya

To Director General
Z.O. OUMA
National Environment Management Authority (NEMA)

Friday March 22nd, 2013

Dear Sir,

Ref: GAZETTE NOTICE NO. 3470
THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION ACT (No. 8 of 1999)
THE NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY
ENVIRONMENTAL IMPACT ASSESSMENT STUDY REPORT FOR THE PROPOSED
WAA WHALE SHARK SANCTUARY, IN WAA/KWALE COUNTY
INVITATION OF PUBLIC COMMENTS

With reference to Gazette Notice No. 3470 for the invitation of public comments on the Waa Whale Shark Sanctuary, in Waa/Kwale County, please find the detailed comments of Africa Network for Animal Welfare for your consideration.

Best Regards,

A handwritten signature in blue ink, appearing to read 'Josphat Ngonyo', is written over a light blue circular stamp.

Josphat Ngonyo
Executive Director
ANAW

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Promoting Humane Treatment of All Animals for Human Welfare



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Dear Sir,

With reference to the above subject, Africa Network for Animal Welfare (ANAW) is pleased to submit its comments on the proposed Waa Whale Shark Sanctuary project.

Brief Summary

As an animal welfare organization with hands-on projects, ANAW works directly in animal care and protection. In this regard, we embrace the philosophy and empirical evidence that animals are sentient beings and are therefore amenable to feelings just like human beings. In this regard, we believe that were the whale shark project to be allowed to proceed –which would therefore mean caging the animal(s)- negates this fundamental principle and would end up inhibiting the relevant animals from enjoying three of the five animal freedoms, which we promote. These are;

- Freedom from discomfort;
- Freedom to express normal behaviour;
- Freedom from fear and distress

Unfortunately, the ESIA submitted by GIBB International on the Waa Whale Shark Sanctuary Project does not comprehensively or effectively address the impact of method of capture and captivity on the Whale Shark, accordingly it fails to meet its objective of identifying “all potential significant adverse environmental and social impacts of the proposed Waa Whale Shark Sanctuary”. Furthermore, it makes no recommendations on mitigation measures other than to reiterate what is included in the project proponents brief. As such the ESIA should be rejected on the basis that it does not achieve one of the prime objectives of the document itself!

While there appear to be some merits to the project, including benefits to the community and conservation education, we also believe that the same results could be achieved without the incarceration of the Whale Shark.

Furthermore, we are appalled by the project proponents’ defamation of an entire tribe. The artisanal fisher folk of Lamu, Kenya have been duly painted as ruthless whale shark hunters without any

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concrete evidence. Lastly, we are extremely concerned that Kenya's reputation as one of the few places on earth where wildlife are free to roam unhindered will be completely compromised by a project which involves placing a wild animal in captivity for purposes of eco-tourism and conservation. There is no doubt in our minds that placing one marine animal in captivity will then lead to a series of enclosures dotting our coastline, as once that line is crossed there is no turning back. We would never do this for our terrestrial wildlife and we must ensure that we maintain the same standards for our marine wildlife. We therefore, urge NEMA to tread extremely carefully before making any decisions that could adversely affect our status as a respected wildlife conservation country.

Having said that, the community benefits and potential conservation benefits of eco-tourism projects cannot be ignored. Accordingly, we would like to make some key recommendations and changes to the proposal, which will allow Sea Quarium to reap the same benefits without capturing and enclosing the whale shark or any marine animal for that matter.

In the following sections, we will outline our points of concern with specific reference to the ESIA as well as detail the aforementioned recommendations.

1. Section A: Points of Concern Included in the ESIA – Page 4 – 17
2. Section B: Points of Concern: Not Included in the ESIA – Page 18
3. Section C: Recommendations – Page 19

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Specific Points of Concern

A. Included in ESIA

Section and Page Number	Quoted Text	Comments
Executive Summary: Page I	<ol style="list-style-type: none"> 1. In line with Kenya's vision 2030.. 2. To introduce community and investor collaboration in sustainable utilization of marine natural resources and help to conserve biodiversity 3. To introduce Whale Shark tourism in Kenya and put Kenya to compete in the USD 380,000,000 Whale Shark Tourism in the world and bring foreign exchange 4. ..to achieve the desired goal of biodiversity conservation and economic empowerment to the surrounding area and the country at large. 	<ol style="list-style-type: none"> 1. It must be recognised here first and foremost that 'The Vision' places above all things the protection of rights and freedoms. In this regard, we ask that our comments be taken into consideration and action taken thereto in mitigating what we feel could be an overall detrimental project for the people and the wildlife of Kenya. 2. Sustainable utilisation is a term currently still to be cleared in the proposed wildlife bill hence this should be deemed null and void. 3. Kenya is already part of the Whale Shark tourism market as several diving schools offer specific Whale Shark dives where the tourist can see the Whale Shark in its natural habitat. We therefore find this statement gravely misleading as Whale Shark tourism is already in existence in Kenya with several dive centres highlighting it already. 4. We find this to be in contradiction of the very definition of 'biodiversity' in that, it is defined as being "The variability among living organisms on the earth, including the variability within and between species and within and between ecosystems." This would in effect see the subjects of the proposed project removed

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		<p>from their ecosystem and displaced into an area where they are unable to interact as normal with other species, thus threatening the overall ecology of the area. Further to this, in studying the module by Ian Harrison, Melina Lavery, Eleanor Sterling on biodiversity, it is stated, “scientists use a broader definition of biodiversity, designed to include not only living organisms and their complex interactions, but also interactions with the abiotic (non-living) aspects of their environment.” In respect to this it must be noted that recent studies have shown a change in behaviour and signs of distress in whalesharks when subjected to human interaction in excess.</p>
<p>Executive Summary: Page II</p>	<p>5. Foreign Exchange Section: Comparison to Mexico and Australia</p> <p>6. Kenya would have a chance to brand itself as a country of the Big Six instead of the Big Five and easily compete in the International</p> <p>7. The Seaquarium will offer 'research opportunities' to local</p>	<p>5. The comparisons to Australia and Mexico should be deemed null and void as the whale sharks in Australia and Mexico are viewed in the wild, and not in enclosures. Divers follow a guideline set aside by governing body “PADI” which are followed strictly ethically.</p> <p>6. It must be noted that only divers will be able to see the whale sharks properly. Divers follow PADI guidelines and currently the dive community, local and international are against such a venture citing its unethical nature and unnatural setting, automatically negating the prospect of healthy tourism.</p> <p>7. It has been scientifically proven that studying wildlife in captivity adds</p>



	<p>universities and research institutions.</p> <p>8. Indeed MoU documents are being drawn up currently to formally link UoN, KEMFRI...</p> <p>9. The project proponent will have in its team qualified Marine Biologists and Veterinary Doctors to take care of the welfare of the whale sharks in the enclosure</p> <p>10. The Whale Sharks will be kept in their normal habitat in the open sea, not in a superficial environment</p>	<p>little if anything to research value as the traits and behaviour changes completely and unnatural observances are recorded.</p> <p>8. MoU documents are being drawn up prior to this EIA being passed and we feel this is in violation of our rights as a Kenyan and also puts undue pressure on authorities, to pass something in clear opposition.</p> <p>9. Currently there are no Marine Biologists or Veterinary Doctors on the team of Sea Quarium. There are also no trained Veterinary Doctors in Kenya for marine animals. The ESIA makes no mention of where these doctors and experts will come from or whether they have already been vetted and hired. It is imperative to note this whole project is designed to further Kenyan development which cannot be fostered if outside specialists need to be deployed as would be the case for 24/7 watch on whale sharks. Bringing in an expat to look after Kenyan wildlife is something we take issue with in recognising we have the capability as Kenyans to forego this task successfully in terms of research in the wild.</p> <p>10. An enclosure by default is a superficial environment. The Whale Shark will not be able to deep dive beyond 14m, when it is know to dive up to depths of 1400m. The Whale Shark will be forced to swim in circles as it will not be allowed out of the enclosure. Further it will be in close contact with humans for hours everyday. None of these are part of</p>
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		<p>their normal habitat. Furthermore the number of deaths of whale sharks in captivity outweighs the number of surviving ones greatly and this cannot be ignored. The statement is also misleading as the enclosure is made of unnatural material deeming the wildlife to be confined in a space it must be dragged to and is not naturally in already.</p>
<p>Executive Summary: Page III</p>	<p>11. Whale sharks are known to be highly migratory with studies demonstrating migrations of at least 13,000km over 37 months</p> <p>12. The project provides a very good avenue for research in migration patterns of the whale sharks as captured whales will be tagged and released after every 6 months.</p>	<p>11. Keeping the whalesharks in an enclosure of just 600m will greatly impede this ability and natural behaviour.</p> <p>12. The project may in very well fact confuse the migration patterns of these whales by keeping them captive for 6 months. Kenya is not a site where whale sharks congregate such as Mexico, Australia, they migrate through our waters. Whale Shark are in fact a global heritage and we will be abusing this by placing them in an enclosure where they are restricted. While the research may show that they stay in East African Waters, this research has been conducted by EAWST of which the main investor is also a trustee. There is no other source of information and further East African waters are also a large area and cannot be compared to a whale shark being enclosed in 150metres diameter enclosure. How can research be conducted on a species when its migration pattern is cut off.</p>
<p>Introduction; Page 1-1</p>	<p>13. Genuine eco-tourism means that the tourism will have no negative impact on eco-systems and that it positively contributes to the destination on a social</p>	<p>13. The project does not fit this definition as there are clearly negative impacts to the eco-system by enclosing a whale shark in captivity which involve disruption of</p>

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	and environmental level	migration routes, feeding habits etc which in turn affect the broader ecosystem that the whale shark traverses. By extracting a vital component of an ecosystem and placing it elsewhere in confinement the ecosystem is automatically disrupted, thus nullifying the credibility of this as ecotourism.
Introduction Page 1- 3	<p>14. It feeds on macro algae, plankton, krill, Christmas Island red crab larvae and small nektonic life such as small squid or vertebrates</p> <p>15. It is capable of diving to depths of at least 1,286m and is migratory (in ref. to whaleshark)</p>	<p>14. There have been no tests on the water in this ESIA report. No samples of water have been tested to show the substrate levels which would be imperative to determine the percentage of plankton in the water that would prevail. The lack of tests of water samples also show the lack of coherent and relevant research that has gone into the project. It has been suggested that plankton will be trawled for the whalesharks, where will this be sourced from?</p> <p>15. This clearly illustrates that the project proponent is aware of the whale sharks migratory and deep diving behaviour. Hence to call an enclosure 150m wide by 14m deep a natural environment for the whale shark is completely wrong</p>
Introduction Page 1-3	16. Whale Sharks migrate to feed and possibly breed	16. Stopping their migration by human intervention forces them to change their behaviour
Introduction Page 1-4	17. The Whale Shark is targeted by commercial fisheries in several areas where they seasonally aggregate	17. Supporting evidence must be provided for such claims. To date only one commercial whaleshark fishery has been documented, in Taiwan. Subsequently in recognising the illegalities of the practice and noting that the species was caught mostly as by-catch a report was released following a study to propose it be stopped.



	<p>18. The project will be implemented along the reef and up to a minimum water depth of 14m depending on tide</p> <p>19. The area is endowed with a high attraction of coastal and marine natural resources that include the fringing coral reef as well as a high diversity of marine life species. Some of the endangered species are also found here like that sea turtles, whale sharks, dolphins and coconut crabs.</p>	<p>18. This contradicts what is said in the Project Description section page 4-1. We quote: “The enclosure will be set in a circular pattern, and will be around 150m across and eventually 650m across. The average depth will be 10m at low tide with a maximum depth of 14m at high spring tide”. Whalesharks dive up to 1400m and this would impede its natural intrinsic behaviour and also pose significant risk to its physical wellbeing as injuries would be inevitable</p> <p>19. This in itself provides many opportunities without having to put a blight on Kenya’s image as a “world leader in conservation” in noting that captivity is not conservation and is in high protest around the world.</p>
<p>Justification of the Project 1-6</p>	<p>20. Some of the problems in the area include the decline of mangroves arising from land manipulation and uncontrolled harvesting, siltation of corals from upstream agricultural activities, decrease of water birds and turtle population due to loss of habitat and nesting ground and pollution of coral reefs from raw sewage due to inadequate treatment systems and unsanitary municipal solid waste disposal practices. Fisheries resources have also tremendously</p>	<p>20. How will the whale shark sanctuary address issues pertaining to solid waste management, deforestation, siltation etc? There are no solutions proposed to these problems.</p>
<p>Justification of the Project: 1-6</p>	<p>21. Most recent information on Whale Sharks in Kenya is that the number of whale sharks has</p>	<p>21. The source of this information is again the EAWST and there is a clear conflict of interest here. There needs</p>

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	dramatically decreased from 58 sightings over a period of 14 days in 2006, to 12 sightings over a period of 45 days in 2010	to be independent verification that sightings have indeed decreased and the reasons as to why studied
Justification of Project: 1-6	22. These huge marine animals have been targeted for their liver which is turned into shark liver oil that is used to impregnate wooden fishing boats against shipworm as commonly observed in Lamu's Pate Island	22. These claims are completely unsubstantiated. The only source for this information is the project proponents you-tube video. Furthermore Lamu fishermen are not directly benefiting from this project, through the community benefits and the project location is also not in their area so if they were actually fishing out the whale sharks it is not actually clear why this project would make them stop doing that. The introduction of cashewnut oil as an alternative can be provided without having to enclose to healthy whale sharks
Legislative Framework; Page 2-1	23. No mention is made of Prevention of Cruelty to Animals Act (CAP 360) in the legislative framework	23. This is a glaring omission as if the project is implemented the whale shark project will contravene some provisions in the Prevention of Cruelty to Animals Act (cap 360). This is the act of parliament enacted in 1962 which makes legal provision for the prevention of all forms of cruelty to animals. Specifically, the project is likely to contravene Part II on 'Offences in Relations to Animals' that identifies as an offence any act that "conveys, carries, confines or impounds an animal in a manner or position which causes that animal unnecessary suffering." By Confining the whale sharks in enclosures, the project proponent stands to contravenes this section and would hence be guilty of an offence and shall be liable to the penalties stipulated in the act (a fine not exceeding Ksh3,000 or imprisonment for six months or both

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International Conventions: Page 2-3	24. Convention on the conservation of migratory species of wildlife animals	24. Kenya is a signatory to the MOU on Sharks as part of this convention. Sharks are on Appendix 2 which means that they have an unfavourable conservation status but are not threatened to extinction as claimed by project proponents. As part of this MOU, signatories are asked “to identify, conduct studies of shark migration, aggregation, critical habitats, ecology, behaviour and life stages, and to the extent practicable, protect the sites”. None of these conservation objectives are met by the Sea Quarium project
Description of the Project Environment; 3-1 to 3-5	25. Entire Section	25. This entire section is irrelevant to the project in question. The whale sharks will not be housed in Shimba Hills and the fruit and vegetable produce and topography and shrub description of the area is irrelevant to the marine project to be carried out in the ocean waters and not on land. The study area and project environment is in the ocean and the tests done should have included water quality and substrate tests, coral reef damage assessment, effects of the cage material on the species in the area such as sea turtles, etc.
Public Consultation ; Page 5-2	26. Please refer to Table 5-1 List of Person Consulted	26. This list is focused primarily on community stakeholders or government stakeholders in the project and is therefore biased. There was no consultation of marine biologists, marine conservationists, diving institutions and whale shark conservation programs in the EA region that will duly be affected by this project. While KWS appears to have been consulted, the person in question “Tourism Warden” and “Assistant

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		<p>Research Scientist” did not have the credentials or knowledge to comment on such project</p> <p>WWF was also consulted, but again, the individual in question was not a marine conservationist or biologist who could comprehend the project in totality to be able to comment effectively</p>
5.2 Stakeholders Consulted; Page 5-4	27. Direct, Personal Interviews with selected informants	27. This indicates that there was a criteria for selecting interviewees which should not be the case
Public Consultation (c) Chief Waa Location 5-8 and Ministry of Lands and Physical planning	<p>28. The project area is currently used for deep sea fishing</p> <p>29. Fishing activities will be affected and this may affect the livelihoods of the communities depending on the activity</p>	<p>28. There are obvious ramifications if the area is then enclosed and the deep sea fishing is not allowed. This is not discussed or covered in the EIA</p> <p>29. There are no remarks made to counter this argument and the Kenya Marine and Fisheries Institute also raise this point on page 5-27 saying that the “Research station could obstruct the fishermen from their fishing grounds thus affecting their livelihoods”</p>
Public Consultation (d) Ass. Chief Kitivo sub-location	<p>30. Raises the concern of social evils attributed to the project as being an influx of drugs, prostitution and insecurity in Waa</p> <p>31. Another concern was raised in the felling of trees during construction</p>	<p>30. The project proponent responds with plans to have ‘public sensitization and education on the public health and safety’. This is not an adequate, efficient or appropriate mitigation measure and the prospect of HIV increase is one that must be taken into serious account for the sake of the welfare of the people of Waa.</p> <p>31. Project proponent responded saying cultural value of the trees would be considered. In noting that Kenya is aiming to increase forest cover by 2030 by a large percentage, this is in contradiction and</p>



		detrimental to the overall vision of the nation and further to this would be in violation of the constitution that protects Kenyans from environmental-caused degradation/ health concerns.
Public Consultation (c) Area Councillor (Waa Ward)	32. Expects challenges on negative social evils to be introduced to Waa	32. Project proponent proposes 'public awareness on the risks of social evils to be done in Waa to reduce cases. The project proponent plans to 'reduce cases' and not mitigate this alarming challenge and this could be a looming human welfare issue.
5.2.6 KWS; Page 5-19	33. The study team visited the Shimba hills national reserve in Kwale and visited 2 officers; the tourism warden and the deputy warden in charge of community	33. As aforementioned there is a serious issue with the fact that the Marine conservation unit was not engaged as this project is not terrestrial nor does it deal with terrestrial wildlife hence is not related in any way to shimba hills or any officers or conservationists thereto. Furthermore the marine licensing officer was not consulted in this matter. Lastly KWS senior veterinarian and scientists should have been consulted. Not officers from a terrestrial and unrelated park.
5.2.9 WWF Comments; Page 5-26	34. The proponent should ensure that the feeding and natural habitat of the Whale shark is maintained and brought to best fit the shark during captivity awaiting release during research	34. As aforementioned, the natural habitat of the Whale Shark is not being maintained in the enclosure due to the very nature of constraining it to certain width and depth. KEMFRI also duly comment on this saying that the "Feeding system used should be critically considered during operations". Even in optimal conditions, some experts contend, it's incredibly difficult to provide for the needs of migratory animals. (see appendix for referenced article published by Animal Planet)

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	<p>35. The ecological impact of destabilizing competition among the ecosystem should be considered during operation as other species depend on the Whale Shark for feeding and survival; there should be a mechanism to ensure ecosystem circulation to recondition the enclosure (habitat)</p>	<p>35. No mention of how the project will manage this is made. KEMFRI also comment on the fact that “Captive fish will be in an enclosed habitat so the quality of feed and habitat provided should be up to standard and ensure fertility of the water through eutrophication is maintained”. They also mention that an “indirect effect” could occur on fishermens livelihoods as “ecosystem change will result in an imbalance in the food chain and further the livelihoods of the fishermen”. None of these points have been competently addressed by the ESIA</p>
5.2.10 KEMFRI ; Page 5-27	<p>36. You can have an enclosed conservancy – such as the ones we have inland for elephants (walughanji sanctuary)</p> <p>37. It is important to study the behavioural ecology of the whale shark. The ecosystem should be studied as a whole during the research</p>	<p>36. This comparison is invalid as there are clear variants in feeding abilities. Furthermore Mwaluganje is vast compared to the proposed 150m enclosure and this statement does not address the depth that whale sharks are accustomed to diving to.</p> <p>37. The study of captive wildlife has been scientifically proven to have no value to conservation as the species behaviour is completely different as is the feeding.</p>
5.2.12 SCRA Workshop	<p>38. Substituting Whale Shark oil for Cashew nut oil</p> <p>39. Number of whaleshark currently in East Africa- will it increase with this project</p>	<p>38. Firstly there is no proof that whale shark oil is being used. However, this can still be done without having to capture and imprison a whale shark.</p> <p>39. Whale sharks have never been bred in captivity, in fact they have died in captivity so this project in my opinion will do nothing to help the purpose of population</p>



	<p>40. Stiffer penalties should be in place for anyone found killing whalesharks of elephants</p> <p>41. The universities are in support of the project as it would increase research and science on marine resources</p> <p>42. Pata island is where the whalesharks are killed mostly for liver oil</p> <p>43. The project will also host injured orphaned marine resources- animals. We have many orphanages on land but none in water</p>	<p>40. This was achieved in india without the need to subject any individual whale sharks to the trauma of captivity and public viewing</p> <p>41. This can be done with whale sharks in the wild with very professionally run tagging expeditions and adds more science and educational value also.</p> <p>42. This unsubstantiated claim is based on a possible isolated case and has no backing evidence to support the scale of fishing suggested. It incarcerates an entire community and this is a grave accusation by the project proponent.</p> <p>43. There are no known cases of ‘orphaned’ marine life as they are free-living and self-sustaining once they hatch. This is a misleading argument.</p>
<p>6.1.1 Assessments of Environmental and Social Impacts (6-4)</p>	<p>44. Whaleshark tourism first started in the late 1980’s at Ningaloo reef in western australia (Colman 1997b), and has since proliferated to at least 20 other locations around the world, including Seychelles, Mexico, Phillipines, Maldives, Belize, Honduras, Mozambique, Kenya and Djibouti (Norman unpub. Data).</p> <p>45. Paying up to US \$ 350 for a single encounter</p>	<p>44. This proves that whaleshark tourism is not new to Kenya.</p> <p>45. It must be noted that people pay up to \$350 to swim with a wild free-living whale shark, not a captive one. With Mexico and Australia being cheaper destinations to fly to, it may make little economic sense to fly to</p>

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	<p>46. As stated by Topelo and Dearden (2005) 'Knowledge of the economic value of shark watching can be used to gain public support for the protection of the sharks through the establishment of marine reserves and/ or restrictions placed on the fishing industry.'</p>	<p>Kenya to see a captive whale shark.</p> <p>46. It must be noted here that the economic value being referred to is in relation to the diving dynamics of swimming with wild and free-living specimens as opposed to captive ones.</p>
<p>Assessment of Environmental and Social Impacts: 6-5</p>	<p>47. "Moreover, whale sharks are not known to frequent any tourist location regularly when they are juveniles.."</p>	<p>47. The project intends to capture and enclose two juvenile male sharks. This research included in the ESIA shows that juvenile whale sharks do not like to frequent tourist areas regularly. Furthermore a study was conducted in Mozambique, which showed that Juvenile Whale Sharks engage in avoidance tactics 2/3's of the time when divers were close by, further indicating that they do not like to be in the presence of humans if it can be avoided. (included in Appendix)</p>
<p>8. Appendices</p>	<p>48. Revenue Estimates: In calculating the 5 year plan, if Seaquarium is expecting 250 visitors a month, this would mathematically translate into 8-10pax a day</p>	<p>48. 8-10 people wanting to view a whale shark everyday would in turn translate into about 8-10 hours of viewing a day, which will inevitably cause stress to the shark (see appendix for stress-related deaths in sharks evidence).</p>
<p>8 Appendices WWF Letter</p>	<p>49. Entire Body</p>	<p>49. In which capacity is WWF involved in this project that would warrant an official letter from the organisation? Is there any partnership with WWF in the design and implementation of the project? Another main concern is that the letter has been sent by one Elias Kimaru, a landscape project executant. It must be noted here that Mr. Kimaru is not a qualified marine</p>

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		ecologist/ biologist or a species specialist to be able to highlight that the project in his personal opinion is 'well thought through, researched and intended to support management of the conservation of the whale shark.'
Appendices; Summary Detail	50. The enclosure will be assembled in the factory and each net panel will be 100m long and each section will be set and joined by divers at the site. 3 panels have already been set and this took 3 days using 5 divers. All in all it will take 7-10 days to set the enclosure.	50. If part of the enclosure has already been set up, why was there no public call for comment on the part-construction/ test-phase? Where is the EIA for the enclosure that has already been erected? Is this not illegal?

B. Not Included in ESIA

Item	Observation
Method of Capture	<p>The method of capture of the Whale Shark is crucially missing from the ESIA. As capture is going to be inflicted upon 4 Whale Sharks ever year, this is a critical piece of the puzzle that has adverse impacts on the Whale Shark that have therefore not been covered by the ESIA.</p> <p>There are three methods of capture that could be used:</p> <ol style="list-style-type: none"> 1. Mouth Hook and Buoy: This involves hooking the shark through the mouth and then using buoys to ensure that the shark cannot deep dive to escape. The buoys keep the shark afloat and eventually it goes into a catatonic state and can be pulled to the enclosure. 2. Padded Tail Rope and Buoy: Instead of hook, they use a padded tail rope which is looped around the caudal (back) fin of the whale shark. Then buoys are used in much the same manner as above. 3. Net Enclosures: This involves drawing out a net with in the ocean and trapping the whale shark who will then struggle to free itself <p>All of the above induce stress on the shark, the two foremost methods so much so, as to cause a catatonic state. It is unclear which method the project proponent intends on using from the ESIA but it is a critical factor that should have been included</p>
Human Contact	While in the enclosure, the Whale Sharks, will be subjected to close scrutiny

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	from diving groups who come to view the Whale Shark. We know from studies of juvenile sharks that they tend to avoid human contact. This could induce stress on the sharks and ultimately lead to death, as happened in an extreme case in the USA (KMART CASE).
Distribution of Revenues	The distribution of the revenues earned from the Whale Shark sanctuary is not clearly laid out in the ESIA except to say that the community and EAWST are beneficiaries. It is further important to note that there is a huge conflict of interest as Volker Bassen the lead investor is also a member of the Beach Management Unit and a trustee at East African Whale Shark Trust who are both recipients of funds
Projects	As above, there is also, no clarity on what conservation projects will be undertaken by the BMU versus the EAWST.

C. RECOMMENDATIONS

As the ESIA states, Whale Shark tourism is a large market, which Kenya is already a small part of through our diving schools. However, we do agree that it is worthwhile to try and leverage this market more in order to bring in funds for conservation, research and community benefits. Accordingly, we would propose the following:

1. Set up Whale Shark Project with KWS: The Kenya Wildlife Service should be involved in whale shark conservation more rigorously than before in branding it the 6th big species to view and note it is viewable in the wild with ease. We must showcase the big six without caging them. Elephants roam freely and so do lions and rhino. We cannot set a precedent for double standards for whale sharks they should be equally enjoyed in the wild on a "Sea Safari" that KWS can manage. South Africa tried this concept with the Great White shark, caging the people not the shark, perhaps this could also be employed. Community and investors can collaborate in a community education program in line with universities during tagging expeditions and "sea safaris" as indicated above. The project proponent can engage KWS in collating data on whale shark aggregation sites and further demarcate a national reserve for the same to be utilised for shark watching when in season
2. Engage Seaquarium in drawing up a study program through the current tagging expeditions in the wild of whale sharks through East African Whale Shark Trust for students.
3. Kenyan marine biologists should be encouraged to work with wild whale sharks in a pioneer study that could benefit the global community at large. This can be done in collaboration with KWS and does not need to see income generation from wild whale sharks as it could be easily sponsored.
4. Explore the possibilities of having non-intrusive marine projects to benefit the local communities in and around Waa. There is the possibility of emulating the world-rekknowned and documented success of the Kuruwitu model.
5. Engage Cashewnut companies in CSR projects. Kenya nut company and nutfields can be engaged in a CSR program in collaboration with EAWST to donate cashew oil for fishermen's boats.

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6. Raise funds for Community projects such as the spread of sustainable fishing practices through engagement of organisations such as WWF (they have a specific program for sustainable fishing) or Sustainable Fisheries (Fish Forever).
7. Engage volunteer tourists to assist in coral regeneration, sea cucumber farming by harnessing the new trend in responsible travel and eco-tourism. Universities and research organisations could also be approached to engage and fund these programs.

All the benefits Sea Quarium proposes can be achieved via the above means but with the added benefit of not having to capture and enclose two healthy, migratory, deep diving Whale Sharks.

Therefore, we recommend that NEMA reject the proposal as it stands currently and work with Sea Quarium towards an approach that will be beneficial to all, including the Whale Shark.

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