

**Subject: Joint Statement by Parties Opposed to Waa Whale Shark Conservation Project**

**Re: NEMA Public Hearing on May 24<sup>th</sup> 2013 regarding Whale Shark Conservation Project by Seaquarium Ltd, EIA 942.**

Dear Sir,

Many thanks for inviting us to the Public Hearing for the ESIA on the Waa Whale Shark Sanctuary. Africa Network for Animal Welfare, Born Free Kenya, CORDIO, Diving Operators Association of Kenya, Local Ocean Trust, George's Legacy Fund, Raabia Hawa (KWS Honorary Warden) and South Coast Residents Association were pleased to submit both orally and in writing, our objections to the ESIA submitted to NEMA, as well as the project as a whole. At the meeting, several important issues came to light that we would like to ensure NEMA takes into account whilst making the final fair and just decision. Accordingly, we are submitting the following joint statement for your reference.

As groups concerned with the effective conservation and natural resource management, welfare of animals and proper application of laws in the country, we humbly submit that the ESIA as presented is incomplete and misleading and should thereby be rejected by NEMA on the following basis:

1. Legislative Framework: The ESIA is not compliant with the Environmental Management and Coordination Act 1999 and the Environmental (Impact Assessment and Audit) Regulations 2003. The following legislation will also be contravened if this project is allowed to proceed:
  - a. The Wildlife Conservation and Management Act: the project proposes to catch and keep in captivity a wildlife species identified as Vulnerable on the IUCN Red List, without due approvals and consultations with the relevant authority identified in this Act, the Kenya Wildlife Service.
  - b. The Prevention of Cruelty to Animals Act: By virtue of capturing and enclosing an animal the Waa Whale Shark Sanctuary will be in breach of Section 3 (1)(c) of the PCA; and
  - c. The Maritime Zones Act and the Continental Shelf Act: The Sanctuary is based of the Kenyan Coast in what are considered Territorial waters. No reference is made as to how permission to "build" the sanctuary will be obtained as this needs specific permission from the relevant Government authority, in this case the Kenya Maritime Authority.
2. No Alternatives are detailed or discussed. This is a key requirement for any ESIA to ensure that the project is in the best interests of the environment, conservation and community given options available. A proper cost/benefit analysis should have been submitted.
3. Potential impacts of the project are not assessed. Another key requirement for an ESIA is to summarize and rank potential impacts by their timeframe, degree of impact, reversibility and mitigation potential. This was not done.
4. Lack of detail on whale shark capture and ability to effectively monitor and take care of the whale sharks in captivity. The ESIA is woefully silent on issues concerning the welfare of the whale shark including the method of capture, transport and detail of

- who and how the safety of the sharks will be monitored during their capture and time in captivity. The lack of information extends to how these large filter feeders will be fed and cared for from an expert veterinary perspective especially considering that there are admittedly no marine veterinary specialists identified for the same by the project proponent. Ideally, lab tests on the water from the site should have been carried out over time to determine the levels of substrate present which would give some indication of the plankton levels, on which the whale shark feeds. All these aspects pertaining to animal welfare should have been covered in detail, however, we find this not to be the case.
5. The project is being billed as a conservation project, however, there is no clear conservation gain from placing East Africa's wild whale sharks in captivity. The statements made in support of the project at the Public Hearing all focused on tourism, but even in this respect, this project actually sets a clear precedent with respect to ignoring Kenya's reputation as a leading advocate of promoting tourism that is focused on maintaining wild, non-captive wildlife populations. This stance is already resulting in considerable negative feedback from tourists as can be seen through visiting 'Trip Advisor', and has the potential to drive tourists away from Kenya to places like Tanzania or Mozambique where diving with free, non-confined whale sharks is possible. It must also be noted here, that whale shark tourism currently is ongoing in Kenya itself, where dive centers often report sightings and tourists have had the opportunity to swim with wild whale sharks. Therefore the statement by the project proponent suggesting that this will be an introduction of such tourism, and a 'first of its kind' is gravely misleading. In addition, we observed that the 'social evils' were not adequately discussed with the community members. Most of those present seemed shocked to hear of the possibility of an influx of disease and drugs/ intoxicants into their location at an unprecedented rate.
  6. Mitigation measures provided are superfluous and do not go to the required level of detail to assure and ensure that the whale sharks will be well taken care of and the surrounding environment and community will not be harmed
  7. Lack of rigour on financial details: The project financials presented have not been rigorously scrutinized or adequately justified, to understand the sensitivity of the project to seasonal variations, economic downturns as well as proper understanding of break-even costs and funding sources. As presented it is a fee-paying venture by a business operator to local communities and government (willing buyer-willing seller), not a true partnership. Therefore, the revenues and profits that are presented are a best case scenario and may overstate the benefits to the communities.

The discussions at the hearing have made it abundantly clear that the envisioned project is actually a commercial enterprise and nothing to do with conservation, as purported. There are existing conflicts of interests as beneficiaries are directly related to the project proponent. In fact, there is also lack of clarity on how the community will benefit from the project. Lastly, it was quite clear that the community and several of the individuals who spoke in favour of the project hadn't read the complete ESIA, and did not know many details of the project.

In closing, please note that Africa Network for Animal Welfare, Born Free Kenya, CORDIO, Diving Operators Association of Kenya, Local Ocean Trust, George's Legacy Fund, Raabia Hawa (KWS Honorary Warden) and South Coast Residents Association do

recognize the need for true whale shark conservation and community benefits. We would be pleased to work together to promote a solution that is truly a conservation enterprise with clear and transparent benefits to the community.

Best Regards



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Aaron Nicholas  
Born Free Foundation



David Obura  
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Steve Curtis (Chair)  
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