



## Local Ocean Trust

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**Comments by the Local Ocean Trust, P O Box 125, Watamu, regarding  
ESIA File no NEMA/EIA/S/2/942; 'Whale Shark Conservation Project'  
by Seaquarium Ltd EIA, submitted to NEMA on 14<sup>th</sup> February 2013,  
by George Owuor, Operations Manager Environment Department,  
Gibb International / Gibb Africa**

The Local Ocean Trust (LOT) is a lead marine conservation organization operating from Watamu. Our organization is recognized for both sea turtle and marine conservation management work. Our Team comprises of qualified marine scientists, respected marine conservationists and wildlife managers. We are associated with several national and international marine conservation management agencies, including KWS, Fisheries Department, KEMFRI, KFS, ANWA, CORDIO, IOSEA, Sea Turtle.org, IOTN, Archie Carr Foundation, FFI, Disney Wildlife Conservation Trust, Tusk Trust and AFEW amongst others. We have followed the Seaquarium Ltd whale shark enclosure idea for some time and have regularly voiced our concerns through Kenyans for Wildlife and the Kenya Ecotourism Stakeholders Association (KESA) as well as holding discussions with KWS, SCRA and lead marine conservation organizations, including international marine scientists<sup>1</sup>. In response to the Environmental and Social Impact Assessment (ESIA) submitted to the National Environment Management Authority (NEMA) by Seaquarium Ltd for which public consultation was advertised in the Kenya Gazette Notice No. 2586 on 22 February 2013 we hereby submit our concerns and objections in relation to the proposed Waa whale shark enclosure.

LOT has previously objected to this application in a letter we sent to George G Owuor , Operations Manager, GIBB International, as well as the Director General NEMA, on 14<sup>th</sup> February 2013. We maintain our objection. LOT confines its objections to those aspects of the application, which fall within its areas of expertise. Our main objection is that allowing the proposed wild whale shark enclosure would be contrary to animal welfare legislation and act as a dangerous precedent that would also have a serious negative impact generally on Kenya's marine environment. We maintain therefore that permission should not be given to facilitate illegality.

Although our expertise focuses mainly on marine conservation we would like to express our concerns regarding the ESIA. We will also address policy and legislative frameworks which the assessment purports to have evaluated in its making.

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<sup>1</sup> Dr David Robinson, Shark Watch Arabia, Yasser Saied, Red Sea Marine Protected Areas,

## General concerns regarding the ESIA

On p.1-7 the ESIA Project Report states that the assessment is compliant with the Environmental Management and Coordination Act (1999) (EMCA) and the Environmental (Impact Assessment and Audit) Regulations 2003 (EIAAR).

EMCA defines 'environmental impact assessment' as '*systematic examination to determine whether or not a programme, activity or project will have adverse impacts on the environment.*'<sup>2</sup> (emphasis added) Based on the presented assessment we do not believe that the applicant conducted systematic examination of the adverse effects that will inevitably occur in the water, on land and to whale sharks as a result of this enclosure as we will explain later in our submission. Systematic examination means methodical and exhaustive account of a project, an honest and professional analysis of pros and cons of an undertaking. This is not what this ESIA offers.

The EIAAR offers the same definition of environmental impact assessment as the EMCA. It also tells us that a project report is '*a summary statement of the likely environmental effects of a proposed development...*' It is not clear to us why the applicant has only submitted a summary of ESIA and not a full presentation of his plans for the Waa enclosure. We would of course welcome the applicant's decision to disclose to the public a comprehensive assessment of his plans.

*Under Part II section 7 (1)(a-k) of EIAAR an applicant should provide the following information in a project report:*

- (a) the nature of the project;*
- (b) the location of the project including the physical area that may be affected by the project's activities;*
- (c) the activities that shall be undertaken during the project construction, operation and decommissioning phases;*
- (d) the design of the project;*
- (e) the materials to be used, products and by-products, including waste to be generated and the methods of their disposal;*
- (f) the potential environmental impacts of the project and the mitigation measures to be taken during and after implementation of the project;*
- (g) an action plan for the prevention and management of possible accidents during the project cycle;*
- (h) a plan to ensure the health and safety of the workers and neighbouring communities;*
- (i) the economic and socio-cultural impacts to the local community and the nation in general;*
- (j) the project budget; and*
- (k) any other information the Authority may require.*

So, even EIA or ESIA project report asks for thorough plans and step-by-step examination and reporting of what is going to happen before and during launching of a project. One does not need to reflect on the applicant's assessment long before realizing that the ESIA in this case does not satisfy the majority of the requirements set out under section 7(1) to the extent that the applicant is asked to do by law.

The concept of an EIA or ESIA is to provide the public and the authorities with a thorough understanding of how a project will be run, what it hopes to achieve and what the negative and positive impacts may be. It is supposed to be impartial and address any adverse factors, giving an indication of how these must be first addressed. In view of this, in our opinion, the ESIA has not sufficiently addressed issues, which are supposed to relate to 'Whale Shark Conservation'. Both the Ministry of Fisheries report and the ESIA are extremely disjointed, vague, repetitive and have very little content which relates to a Whale Shark

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<sup>2</sup> Part I p.4

Conservation Project. Much of the information refers to land issues, which are irrelevant given that this is supposed to be a report on a 'Whale Shark Conservation Project', which will take place in the Ocean. Because of this we have not followed the usual criteria for addressing an ESIA. We have instead decided to address relevant issues, which should have been tackled in the ESIA.

There is no data or reference to the site in the ocean other than an aerial photograph with GPS coordinates. All we learn from the assessment is that project is to be located in Mkokoni Village of Kitivo Sub-location in Waa location, Matuga Division in Kwale District in the county of Kwale<sup>3</sup> and that the enclosure is to be a circular area, around 150 meters across (eventually 650 meters across); the average depth will be 10 meters at low tide with a maximum depth of 14 meters at high tide. The enclosure is to be made of braided polyethylene.<sup>4</sup> The impacts the proposed project will have on the marine environment within the site and in the surrounding local area are not discussed. Again this is a marine project and the main environmental impact will be in the Ocean not the land.

The state of the Whale Sharks within the Western Indian Ocean, including Kenya is barely mentioned. Other than a small mention of whale shark sightings and vague references to the EAWST tagging project, there are no statistics regarding Kenya's whale shark population. There is no reference what so ever to other projects conducting specialized, scientific Whale Shark projects in the Western Indian Ocean. Without this information it is impossible to understand the state of Kenya's whale shark population.

There is no reference to, or any input from, any recognized marine scientist both within Kenya or the Western Indian Ocean region. Considering the enclosure will be in inshore waters within a reef area CORDIO for instance, Kenya's acknowledged Reef specialist organization, is not mentioned in the reports.

There is no reference to other marine stakeholders who will undoubtedly be affected by the proposed Seaquarium Ltd venture. No other BMUs, local dive companies, goggle boat operators, and local hotels have been interviewed or included in the ESIA. Recognized representative tourism bodies, such as KTB, KTF and even the MCTA were not consulted. In an Aljazeera article on 16<sup>th</sup> February 2013, Mohamed Hersi, Chairman of the Mombasa and Coast Tourist Association (MCTA) *said that keeping sharks and other animals in captivity is never a good idea – even if it raises money. The beauty of visiting Kenya and other African countries is that you see wildlife in its natural habitat.*

There is no reference to recognized marine conservation organizations within Kenya or the Western Indian Ocean. GVI in Shimoni and the Local Ocean Trust both have interests in the Diani area. The Baobab Trust, Kuruwitu Community Sanctuary, African Billfish Foundation, LAMCOT, the Kibodo Trust, Lamu Conservation Trust, WWF Marine are all recognized organizations involved in marine conservation. They have not been consulted. As whale sharks are highly migratory, the whale sharks, which will be targeted by Seaquarium Ltd for their enclosure, will be of interest to all these groups and we believe that the specialist input from those groups would be beneficial.

The title of the Gibb Africa ESIA is 'Whale Shark Conservation Project'. Given that Whale Sharks are highly migratory, the conservation of the WIO whale shark population is of concern to a wide reaching number of people and countries, which may feel they have joint responsibility for their well-being. If this were a genuine marine conservation project, the benefit and right of these countries and organizations to be included would have to be recognized. There is no input from any concerned entities within the WIO. This

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<sup>3</sup> 7-1 of the EIA

<sup>4</sup> 4-1 of the EIA

is confirmed in the report <sup>5</sup> ‘a whale shark could visit more than one destination and consequently its worth could be double or triple this single value (because of the value to other whale shark destinations)’

The ESIA tries to link the whale shark enclosure with a solution to the Waa community’s financial woes and in particular the Waa BMU, as well as an increase in tourism benefits. Whilst it is commendable that the EAWST is concerned about the well-being of the Waa community, their plight should not be a deciding factor as to whether this controversial project is allowed to proceed or not. The project should have stand-alone merits, which relate to the main concept of the project, which is presumably, as the title of the reports suggest, primarily Whale Shark conservation. The other factors, such as increased tourist revenue, and benefits for the local community can only be considered if the project achieves its primary goal of whale shark conservation.

## **Policy and legislative frameworks**

The assessment makes many references to policy and legislative frameworks, both Kenyan and international. It is our view that the ESIA offers a skewed interpretation of both types of frameworks and we are obliged to submit our response to this.

### **Kenya’s 2030 Vision**

The ESIA is on a number of occasions referring to the Kenya 2030 Vision (the Vision).<sup>6</sup> The authors suggest that the estimated earnings from the proposed whale shark enclosure will positively contribute to achieving the aims, which are set out in the Vision. As we will explain below this is a doubtful and exaggerated claim.

As the NEMA will know the Vision was launched by the Grand Coalition Government in 2008. It is the national long-term development blue-print that aims to transform Kenya into newly industrializing, middle-income country providing a high quality of life to all its citizens by 2030 in a clean and secure environment.<sup>7</sup> To achieve this the vision aims to focus on three key pillars: economic, social and political governance. And these purport to achieve the following goals:

*‘The Economic Pillar aims to achieve an average economic growth rate of 10 per cent per annum and sustaining the same until 2030. The Social Pillar seeks to engender just, cohesive and equitable social development in a clean and secure environment, while the Political Pillar aims to realize an issue-based, people-centred, result-oriented and accountable democratic system.’<sup>8</sup>*

The three pillars are anchored on the foundations of macroeconomic stability; infrastructural development; Science, Technology and Innovation; Land Reforms; Human Resources Development; Security and Public Sector Reforms.<sup>9</sup>

ESIA is not wrong in claiming that the proposed whale shark enclosure could fall within the aims of the Vision; a small number of projects specified in the Vision do indeed involve the environment and niche tourism.

However, what ESIA is proposing is based on estimates only, and high estimates at that, as we will explain below. The assessment is clearly failing to take into consideration that tourists may not want to take part in swimming with captured animals. Kenya is renowned for providing a genuine wild life experience. Tourists

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<sup>5</sup> p6-5

<sup>6</sup> For instance in the executive summary and background of the project

<sup>7</sup> <http://www.vision2030.go.ke/index.php/home/aboutus>

<sup>8</sup> <http://www.vision2030.go.ke/index.php/home/aboutus>

<sup>9</sup> <http://www.vision2030.go.ke/index.php/home/aboutus>

who will be able to pay this fee, estimated to be around USD100 per person per visit, would more than likely want to spend this kind of money observing wild animals in their natural habitat. That is why for instance Kenya's game parks and increasingly community conservation areas, such as Likipia, as the ESIA points out, are so popular. The Waa project, however, can not by any stretch of the imagination be compared to

According to the Ministry of Tourism most tourists visiting Mombasa arrive from the UK, Germany, Italy and the rest of Europe. Western Europe is highly conscientious when it comes to animal welfare and the environment; it is because of this that the European Union has recently banned the testing of cosmetics on animals in Europe. Similarly, Europeans do not want fur products coming from Canada where seals are cruelly killed for fur to be sold in Europe and further afield. There is a high possibility that tourists will not want to participate in an activity involving captured, wild juvenile whale sharks in a small net purporting to be a sanctuary and a research facility. It is a controversial project and we believe that it would negatively affect the reputation of the area and Kenya as a whole. LOT has many foreign visitors who frequently express their worry about the disintegrating marine environment. We believe that this project will fail; whale sharks will suffer and possibly die in captivity and the local community will not see the money they are promised. This would have very serious consequences for Kenya.

It also has to be noted that most of the tourists arriving on the coast near Mombasa are not rich and thus it is unlikely they will not easily pay the relatively high fee the applicant wants to charge (USD 100). The majority of people visiting for a week or two, in for instance Malindi, Diani or Mombasa, are middle class people coming on all inclusive charter holidays; the middle class in Europe are dealing with a recession and loss of jobs. They are unlikely to spend between USD100 and USD 400 per family to swim with captured sharks especially in the numbers given in the report.<sup>10</sup>

Furthermore, the revenue estimates, which are set out in the ESIA on p. 23, are very high. We strongly believe that they are not attainable. According to the spreadsheet the applicant predicts that the whale shark enclosure will have 15.000 visitors in year 1; 30.000 visitors in year 2; 45.000 visitors in year 3 and 60.000 visitors in year 5. The ESIA predicts an increase of 15.000 visitors each year. This will mean that in year 5 there must be an average of 200 tourists swimming with the whale sharks each day, 300 days a year (estimated season 10 months a year). A number, which would have to be considerably higher when seasonal fluctuations, are taken into consideration. We believe that this plan is overambitious, let alone the serious stress consequences of having this enormous number of people on a daily basis interacting with the corralled whale sharks.

### Kenya's Constitution

Under the legal and regulatory framework of the ESIA on p. 2-1 the applicant refers to the Kenyan Constitution notably Chapter Five: Land and Environment as being relevant to the project. We are given the GPS coordinates for where the whale shark enclosure will be situated. Part of the Indian Ocean is of course accepted to be a land under the Constitution. The assessment does not offer an explanation as to how this part of the Constitution applies. Chapter 5 Part 1 60(1) (e) states: '*Land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance with the following principles... (e) sound conservation and protection of ecologically sensitive areas.*' We say that the project, which is the subject of this consultation, does not offer sound conservation based on what we read in the ESIA and it will not protect the area where the enclosure will be created. We believe that apart from the suffering of whale sharks the area will have to deal with pollution both in the water and on land, noise and natural areas, some within the Kaya forests, will be destroyed to make space for parking lots, stalls and other

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<sup>10</sup> P.23

tourist facilities. Money should not come in the way of the environment and this project aims to disregard the environment altogether.

It is primarily Kenya's wildlife that attracts tourists to Kenya. The National Wildlife Conservation and Management Policy 2012 states that: '*...in the year ending 30<sup>th</sup> June 2011, wildlife accounted for 70% of the gross tourism earning, 25% of the Gross Domestic Product (GDP) and more than 10% of total formal sector employment.*'<sup>11</sup> There are many examples of not for profit sanctuaries that help different types of species whether turtles, elephants or monkeys. We do not believe that keeping juvenile sharks in a small closed environment, especially for financial gain, would be beneficial to Kenya's tourism. On the contrary. It is well known all over the world that Kenya is fighting especially, elephant and Rhino poaching which is constantly rising. It is Kenya's fight for the different species, as well as its friendly and reasonably stable safety, that are attractive to foreigners. We certainly do not believe that keeping two whale sharks captive will entice and increase in tourists to come and visit the 'Big Six', especially since it will be based on animals being kept in highly controversial circumstances. It is a fable statement.

Although the Constitution enshrined a fundamental right for Kenyans to be free of poverty, the proposed project is against other parts of the constitution dealing with the environment. The constitution does not suggest that the environment should be abused and experimented on, in order for people to overcome financial burdens. Indeed, if not for the wildlife, which Kenya offers, the national economy would suffer more.

We would like to refer you to one part of the Kenyan Constitution, which supports our view. Under 69 (1) (g) the State has an obligation to: '*eliminate processes and activities that are likely to endanger the environment.*' We say that should this enclosure be permitted it will endanger the environment; the whale sharks may well die in captivity and the area and waters will suffer badly.

NEMA is representing the State and it bears the responsibility on its shoulders for licence applications, which are inappropriate and based purely on financial gains, without giving consideration to the environment. In this instance it involves whale sharks as well as the beaches and surrounding protected Kaya forests. To allow this to go on would be against the spirit of the Constitution and what Kenya stands for. We are certain that the fathers of this Constitution in 2008 did not intend for this sort of deterioration of the environment under its auspices.

### **Legislative framework**

We also wish to submit our comments on international conventions, which are mentioned on p. 2-3 of the ESIA and claiming the enclosure to fall within the parameters of these frameworks. As we will show this is not an entirely accurate statement.

It is true that Kenya is a signatory to all the enumerated international conventions. However, seven of these are not relevant to the current project, and the spirit and purpose of the remaining three conventions protest against activities such as the Waa whale shark enclosure.

The Ramsar Convention, also known as the Convention on Wetlands of International Importance, aims to provide an impetus for the conservation and sustainable utilization of wetlands. There are six recognised wetlands in Kenya namely Lake Baringo, Lake Bogoria, Lake Elmenteita, Lake Naivasha, and Lake Nakuru. The Convention on the Wetlands of International Importance as Waterfowl Habitat is hardly applicable to

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<sup>11</sup> p. 1

this project. As the NEMA knows the Indian Ocean is not a wetland and whale sharks do not fall within the waterfowl species.

Similarly of little relevance is the United Nations Convention to Combat Desertification which aims to combat desertification and mitigate the effects of drought as well as the 1992 UN Framework Convention on Climate Change which purports to '*stabilize greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.*' The same goes for the Kyoto Protocol to the UN Framework Convention on Climate Change, the Convention on the Rights of the Child and Convention on the Elimination of all forms of Discrimination against women. Although all are very important obligations they do not apply to the proposed project in Waa. One should not be evaluating circumstances in terms of regulatory frame works which do not apply to one's situation.

The remaining three conventions, the Convention on Biological Diversity, Convention on the Conservation of Migratory Species of Wildlife Animals and the African Convention on the Conservation of Nature and Natural Resources, taken together ask that life whether it be plants, animals or microorganisms receive full protection and that states implement measures in order to allow these diverse creatures to habituate in their own environments. Conservation of species is a large part of these agreements. However, we do not believe that conservation per se, in its true sense, involves fishing and capturing of juvenile whale sharks and placing them in a net measuring around 150 meters across and 10 meters in depth at low tide and 14 meters at high tide. The ESIA fails to inform the public about any possible plans with regard to the welfare of these species.

According to '*Sustaining Life on Earth*' which was published by the Secretariat of the Convention on Biological Diversity '*[i]t is the combination of life forms and their interactions with each other and with the rest of the environment that has made Earth a uniquely habitable place for humans.*'<sup>12</sup> The preamble to the Convention asks the contracting parties to be '*conscious of the intrinsic value of biological diversity and of the ecological, genetic, social, economic, scientific, educational, cultural, recreational and anaesthetic values of biological diversity and its components.*' This agreement is concerned with various matters surrounding conservation among others endangered species such as adopting measures which help to conserve, provide facilities and research or public education and awareness, however, it also talks about minimising adverse effects that may arise as a result of human activities. This means that what is needed in this case is a balancing act involving all sides that will be affected by this project, not only humans, a balancing exercise which in our view is missing from the ESIA Project Report.

The Convention on the Conservation of Migratory Species of Wildlife Animals, also known as the Bonn Convention, is asking the signatories to "*pay special attention to migratory species the conservation status of which is unfavourable and taking individually or in cooperation appropriate and necessary steps to conserve such species and their habitat.*" This agreement asks the signatory parties to *pay attention* and to take *necessary steps*. In our view this requires careful planning and scientific expertise in order to take part in conservation of species. It is a process requiring time. At the moment we simply do not know what the applicant is planning to do apart from holding whale sharks in order to earn money.

Finally, the African Convention on the Conservation of Nature and Natural Resources recognizes that conservation of nature and natural resources is important, however, this Convention also acknowledges that '*...the natural environment of Africa and the natural resources with which Africa is endowed are an irreplaceable part of the African heritage...*' We believe that the proposed project cannot not be labelled as being respectful of nature and cannot be seen as a genuine conservation project.

Although the word conservation is mentioned on a number of occasions, the ESIA does not say how exactly how the applicant intends to implement his conservation practices of juvenile whale sharks, which he will capture and hold for six months before releasing them back to the open Ocean. We do not believe that such activity can be said to help preserve the species especially, as we will show below, not much is known about the species. Simply keeping two stressed animals in confined area will not provide proper scientific results that will be able to have a positive impact on the knowledge about whale sharks in Kenya and worldwide. Since whale sharks are on the list of vulnerable species meaning that in order to put their numbers up they would need to be bred, but based on the knowledge that we do have it is unlikely that breeding in confinement is achievable.

The ESIA is also talking about eco tourism and again in our view the applicant misinterprets this term. We strongly believe that eco tourism is about man visiting nature on nature's terms; interacting and connecting with animals on their own territory. This project is the opposite of eco tourism, with the estimated over 50 visitors swimming with these shy and solitary creatures in an unnaturally small environment, is mass tourism at its worst.

### **Illegality under the Animal Welfare Legislation**

Illegality is clearly a material consideration for NEMA. We believe that the system of keeping wild whale sharks as proposed by the applicant would be systemically illegal, under the Kenyan law.

#### **The Prevention of Cruelty to Animal Act 1962**

Should this project be given a green light from NEMA we believe that the applicant would commit an offence under the Prevention of Cruelty to Animals Act 1962.

Section 3(1)(c) of the Act creates an offence where a person causes unnecessary suffering to an animal by conveying, carrying, confining or impounding it in a manner which causes that animal unnecessary suffering. 'Animal' is defined in the Act as a living vertebrate animal including any mammal, bird, reptile, amphibian and fish. As NEMA knows well Whale Shark is a fish and thus protected under this legislation.

It is our view that the proposed enclosure will fall within all four offences specified in section 3(1)(c). Whale sharks will be conveyed and carried during capture and transport to the net and then confined and impounded for six months after that in the small enclosure. There is no doubt, based on the description of the proposed system that whale sharks will unnecessarily suffer as a result of this project.

A key factor in assessing whether suffering is unnecessary is whether it could reasonably have been avoided or reduced. A simple answer to this test is that whale sharks' suffering can be avoided or reduced by not allowing this project to proceed. We explain below in great detail why we think that the enclosure will be highly detrimental to the welfare of Whale Sharks.

It goes without saying that NEMA should not grant permission for an activity which would be inherently and systemically illegal.

### **Use of Kenya's territorial waters**



Though the report mentions that various Legislative Frameworks are relevant to the project<sup>13</sup>, there is no detail given regarding any agreement with the Kenya Government for the permanent usage and zoning off of what is deemed to be a public area within Kenya's territorial waters under, for instance the Maritime Zones Act, Cap 243 and the Continental Shelf Act, Cap 312,<sup>14</sup> both of which are both mentioned. We say this should have been an important element in the report. Without a legal agreement, a precedent will be set for other commercial ventures to hive off areas of our Ocean for their exclusive use to do as they please. This would have far reaching consequences for anyone living near or relying on the Ocean including fishing communities, tourism and other coast investors, as well as the public.

We say that this cordoned off marine area could also compromise the safety of vessels at sea, including restricting access to the land.

### **Whale Shark Welfare and Care**

The only mention regarding any sort of care to be provided to the whale sharks can be found on p.6-7 (6.2.1) The relevant passage states that:

*'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.'*

This vague statement does not suggest how the animals will be captured, looked after, fed or what the general upkeep of the enclosure will entail. There is no detail about the make up of the Team, whether this will comprise of whale shark specialists who will look after the whale sharks and whether they will be working at Waa on a permanent basis. This should have been a major component in the report.

### **Capture**

The ESIA fails to provide information as to the method of capture that will be used on the wild whale sharks and who will implement it. We are not aware of how the inevitable stress of capture will be mitigated. Nor are we told if the plan incorporates criteria that may be used for capturing the whale sharks; for instance minimum size and sex. There is no mention in the ESIA regarding the number of whale sharks that will be incarcerated in the enclosure at any one time. There is no mention of how large the catchment area will be and therefore what distances the whale sharks will be dragged before reaching the enclosure. In an article in Marine Science Today on the Waa Whale Shark project dated 18<sup>th</sup> February 2013<sup>15</sup> the method of capture is described thus *"The sharks will be caught with a padded tail-rope attached to heavy buoys that will prevent it from swimming away and will tire it out. Once it is exhausted, they will take it to the park."* The method of capture did not receive a mention in point 6.2 "Negative impacts of Whale Shark enclosure" where we say it should have been included.

### **Enclosure**

The ESIA states that the whale sharks will be kept in *'their normal habitat in the open sea not in a superficial environment.'* (P: ii Deaths of the whale sharks). A 12 meters deep, 600 meters wide circular enclosure cannot be described as being a whale shark's 'normal habitat'. This is confirmed later on in the report when it states that whale sharks are typically seen offshore, they are highly migratory, covering a

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<sup>13</sup> 2.1 Overview

<sup>14</sup> P2-2 Table 2.2

<sup>15</sup> <http://marinesciencetoday.com/2013/02/18/swimming-with-whale-sharks-beneficial-or-cruel/>

distance of at least 13,000 kilometers over a 37 month period and capable of diving to depths of at least 1,286 meters, spending more than half their time at depths well over 15mtrs.

There is scant reference to the upkeep of the enclosure in the long term, a crucial factor for the welfare of the whale sharks being held captive in the enclosure. Segments of nets enclosing ocean fish farms for instance, are changed roughly every 3 weeks to stop debris and bacterial build up. Though the mesh size of the whale shark enclosure may be larger, this kind of maintenance must still apply, yet no detail is given.

There is no detail given regarding the effects to the benthic area within the enclosure and near by. Large amounts of food, such as shrimp, will be unnaturally deposited in a relatively shallow area. This will undoubtedly have an affect on the natural inhabitants and the marine environment of the area, as will the movement of several very large animals in this shallow, confined enclosure.

## **Feeding**

Whale sharks are active feeders, targeting concentrations of plankton or fish. The project proposes to make the enclosure out of mesh and crucially it appears that it is to be situated in a tidal area. Although the enclosure might be bigger than some other marine aquarium enclosures it is still an exceptionally small area for large, migratory whale sharks. The ESIA does not specify how sufficient amounts of food will be kept within the large mesh enclosure to ensure that these enormous animals are fed correctly. We believe that this factor may be detrimental to the animals. There is nothing in the report, which refers to what food will be provided and the method of food collection, which also might have an environmental impact and affect the area's fisheries. Other whale shark tourist encounters such as in Osolob, Philippines <sup>10</sup>, where animals are fed to attract them close to shore for tourist ventures, are now experiencing serious problems with both the whale sharks and the local fisheries. In order to feed the whale sharks an unnatural amount of shrimp will be made available in the Waa area. No comment has been given, on the effect this will have on other species and even on other wild whale sharks that might visit the area naturally or because of this abnormal increase in food. Similarly, the assessment does not appear to have taken into account, that if the food will need to be brought into the area, how it will be stored before it is fed to the whale sharks.

We say these factors are crucial, which the ESIA should have investigated, and provided information about but distressingly it is nowhere to be found.

## **Abnormal behavior and disease**

In the Philippines biologists led by Dr Alessandro Ponzo, have raised concerns that feeding wild whale sharks unnaturally or in enclosed areas, could lead to those species developing abnormal social behaviors, such as increased aggression or competition between the animals. The close contact could also lead to the spread of disease and parasites. It is clear that the controversial feeding of wild whale sharks, even in the wild interaction in the Philippines, disrupts their natural behavior.<sup>16</sup> Moreover, a recent study that investigated human interaction with stingrays in the Cayman Islands, concluded that this inevitable closeness made stingrays 'lazy' and aggressive towards their own species. Clear behavioral changes were observed.<sup>17</sup> None of these points are discussed in the report. As a so-called whale shark conservation project these points and others should have played a major role in the ESIA.

## **Noise pollution**

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<sup>16</sup> <http://scienceblog.com/61410/tourist-fed-stingrays-change-their-ways/>

<sup>17</sup> <http://www.divephotoguide.com/underwater-photography-special-features/article/feed-not-feed-oslob-s-whale-shark-controversy/>

The ESIA on p. iii states that: ‘...[i]t is possible that high decibel sounds may negatively impact on Whale Sharks.’ In fact the inner ear of whale sharks is the largest known; with such large hearing structures it is likely that whale sharks are most receptive to long wavelength and low frequency sounds. We submit that the noise pollution that will arise out of the many boats that the project is planning to host and people who will be inside the enclosure, will have a serious impact on the whale sharks. This might will be acerbated due to the enclosure being in a relatively shallow area.

### **Kenya’s Whale Shark Research and Data**

We wish to direct NEMA to the following quotes from the East African Whale Shark Trust’s (EAWST) website which belongs to the applicant:

*‘Remarkably little is known about the biggest fish in the ocean. It is unknown where whale sharks go to breed or whether global populations are related. Their migration patterns remain a mystery.’*

*‘Whale sharks migrate to feed and possibly to breed.’*

*‘It is because of their wide distribution, highly migratory nature and their dependence on healthy oceans to sustain their huge appetite that this species can be considered a ‘flagship species’ for the health of the marine environment.’*

*“Currently there is no information available regarding threats to the migration patterns followed by whale sharks.”*

### **Migration**

The above would suggest that keeping wild whale sharks captive for 6 months, would by no means improve this impasse. Keeping wild whale sharks captive would stand to hinder research into migration patterns and populations, especially for juveniles. However, the project report claims that it will provide ‘a very good avenue for research in migration patterns of the whale sharks as they will be tagged and released after every 6 months as they migrate.’ We strongly dispute the claim that holding two whale sharks captive for 6 months prior to tagging provides a very good avenue for research in migration patterns. NEMA will know that investigating migration patterns would be best served via a sophisticated tagging navigation satellite system to monitor animals in the wild. EAWST (of which Mr Bassen is also a Trustee) has already run a satellite tagging system of wild whale sharks. The accepted scientific protocol would then see this information analyzed by a team of marine scientists and fed into centralized database where a trend could possibly be established over time.

Serious scientific whale shark monitoring in the Western Indian Ocean started around 2005 thus research into this area’s population is relatively new in comparison to other populations elsewhere. Dr Rachael Graham assisted with the EAWST tagging programme for a short while around 2009. The Shark Research Institute’s specialist whale shark researcher, Mathew D Potenski, spent several years researching the population at Mafia Island, Tanzania and has collaborated with the EAWST. Neither of these specialists, nor their work is mentioned in the report nor do they seem to be involved.

It has been said that the nearest ‘hot spot’ to Kenya where aggregations of whale sharks occur, is off Mafia Island, Tanzania. Mathew D Potenski states:

*“The whale sharks showed evidence of North-South movements along the Tanzanian coast and stayed mostly within Tanzanian waters. The largest range for a tract was covering approximately 1000 km of EA coastline, from Southern Kenya to Northern Mozambique. These sharks also spend a lot of time around Mafia Island and seemed to spend a lot of time in the shallower waters of the shelf.*

*As juvenile sharks they may have a limited range off Tanzania and may transition to a more pelagic and migratory lifestyle as they reach maturity.”*

EAWST’s own report confirmed that juvenile whale sharks in an ‘*earlier satellite tagging expedition undertaken in Kenya in 2007-2008 showed that about 70% of the whale shark population stayed in East Africa all year round.*’ The East African area is obviously an important area for juvenile whale sharks. Little is known about the value of the different periods in a whale shark’s life cycle. However, we strongly disregard the idea that taking individuals of a highly migratory wild species, out of their natural system for long periods of time, will benefit whale shark research or conservation.

The report also states: ‘*Firstly without knowing the intricacies of whale shark migration it would be speculative to assume that every whale shark returns to the same location each year. Moreover, whale sharks are not known to frequent any tourist location regularly when they are juveniles,*’<sup>18</sup>

The IUCN red list website<sup>19</sup> states the following:

*‘Ongoing studies on the population of Whale Sharks around Seychelles inner islands indicate that, although occasional shark sightings are made throughout the year, there are two seasonal peak sighting periods from June to August and October to November (Marine Conservation Society Seychelles, unpubl.). Similar patterns of infrequent year-round sightings and seasonal feeding aggregations of larger numbers (tens, to low hundreds) are recorded from many areas. Aggregations of whale shark occur in Indian coastal waters between December and April (Silas 1986), March? June in Tanzania (Yahya and Jiddawi pers. comm.), in Mozambique and northern KwaZulu-Natal (South Africa) from November to January (Beckley et al. 1997) and off the coast of Somalia in September.’*

To date there appears to be no evidence given by EAWST, or any other research body to suggest that there are whale shark ‘hot spot’ aggregations within Kenyan waters. What this does seem to suggest is that Kenyan waters have never had large aggregations of whale sharks, except in exceptional conditions, such as an El Nino event. El Nino saw a large increase in the likes of plankton and mantis shrimp in the area and therefore an increase in several species including whale sharks. This however is not the norm.

## **Scientific Research**

In spite of EAWST’s apparent collaboration over the years with various marine organizations and whale shark specialists, there is no mention of their work; nor comment from any lead whale shark expert regarding the Kenyan population or the Western Indian Ocean population. Without this information it is not possible to even begin to entertain the viability of the project and the effects of capturing healthy, wild individuals and keeping them captive for 6 months in a small enclosure. This should be the crux of this ESIA.

*‘The Seaquarium will offer research opportunities to local universities and research institutions.... This opportunity will offer immense exposure and value to these institutions. As noted elsewhere, revenues generated by the Seaquarium will be used to help promote research and conservation of whale sharks in the wild, particularly off the Indian coast of Kenya.’*

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<sup>18</sup> P6-5

<sup>19</sup> <http://www.iucnredlist.org/details/19488/0>

In spite of this rhetoric there is no concrete reasoning as to how the conservation of whale sharks will improve by keeping wild whale sharks in a small enclosure. What kind of beneficial research can be done on captive whale sharks that cannot be done in the wild? How will this enclosure offer immense 'exposure and value' to local universities and research institutions and at what price to the captured whale sharks? There is no mention in the report of what research local universities and research institutions hope to achieve from the captive whale sharks. There are numerous questions and concerns that should have been evaluated and provided to NEMA but for reasons unknown to us have been omitted from the assessment.

### **Threats to whale sharks**

Whale Sharks are on the IUCN red list as 'vulnerable'. Unlike other species they are not yet 'endangered' but without doubt they are in a precarious position. Of course increased efforts should be made to try and correct this situation, however, this goal should not be achieved by experimenting on wild whale sharks by keeping them in captivity.

The ESIA quotes commercial fisheries threats to whale sharks, relating to India, Australia, USA, Taiwan, the Far East and China. There is however, no mention of threats in the Western Indian Ocean. The only mention of threats relevant to the East African population is given in point 1.4:

*'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. '*

In a recent Aljazeera article the applicant blamed Bajuni islanders for hunting whale sharks, whom he says boil down their livers, using the oil to coat their wooden fishing boats. He said that about half the profits from his €1 million (\$1.33m) enclosure will be spent on discouraging locals from hunting the grey-brown animals to extinction. These accusations have incensed local fishermen along Kenya's coastline. In a joint statement given to the Local Ocean Trust the Lamu Archipelago BMUs stated:

*"We the Lamu fishing community from the Lamu archipelago including Faza Shanga to Lamu Shela declare our stand to the allegations of the Volker Bassen project at Waa for their own interest as witnessed in the EIA."*

The Lamu fishing communities witnessed by the county BMU leader Somo. M. Somo states that:

*'We further reiterate that, the allegations that the Lamu fishing community kill Whale sharks for the oil is a total lie and that Bassen has provoked the fishing community of Lamu merely for the purpose of substantiating his own project for business which is completely illegal as per the law.'*

*'We appeal to NEMA and the Ministry of Fisheries to quickly intervene before the scenario of our fisheries deteriorate further.'*<sup>20</sup>

The Watamu Beach Management Unit<sup>21</sup> say in the Stand of Watamu Beach Management Unit on the Whale Shark Sanctuary the following:

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<sup>20</sup> Somo. M.somo Lamu County BMU representative and chairman of Lamu BMU;Famau Shukury Shella BMU Secretary; Atwas BMU Secretary from Faza;Prof Ali Shaib Shakue Coast Province Fishermen; Abubakar Mohamed BMU Chairman from Pate; Athman Motte BMU Chairman from Shanga

<sup>21</sup> Vice Chairman: Abdi Hassan; Secretary: Luthfan Mohammed

*‘The Watamu BMU as stakeholders in the ocean are opposed to the enclosing of the Whale Shark in Waa by a group of individuals for their own vested interests. The Whale Shark or indeed any other marine wildlife should be let to swim freely as was intended.’*

We wish to note that the BMU was not consulted or informed of the project.

Watamu fishermen are artisanal and the sighting of Whale sharks often indicates an abundant fishing season since whale sharks swim with schools of fish surrounding them – a welcome sight to the fishermen of Watamu. The claims that the fishermen kill the whales is ridiculous as the artisanal fishermen lose all their nets if a whale passes by where they have left them, they do not see their nets. Leave alone the Whale shark!

Shali Mwalimu of Ngomeni BMU said:

*‘It is cruel and certainly not a good picture to enclose the whale shark. This means that we are not respecting and are going against the “right” of the animal. Whale sharks are also protectors of the fish swimming alongside from predators- there is a purpose why they are meant to be swimming freely and these intended enclosure should be stopped.’*

We also heard from Malindi BMU<sup>22</sup>:

*‘The enclosing of the whale shark is contrary to our wish and therefore we are against the project. Whale shark should be left free as should all wildlife. We reject the deduction that we are killing whale sharks for oil to preserve our boats and we would rather not have a whale shark in our nets because it will be destroyed completely. To us whales are a good indicator for abundance of fish. We use the inside of fish and sting ray to get oil which we use on our boats. The ocean and all life in it has been bequeathed to all and has been there since our fore fathers and claiming any of its life for “display” is inhumane.’*

Mr Bassen needs to publish his findings to substantiate his claims that the need to enclose wild whale sharks, is partly because North coast fishermen are killing them with impunity. His allegations are serious and detrimental to the North Coast fishing communities.

### **Whale Shark Tourism in Kenya**

Of the applicant’s own admission regular whale shark sightings have tended to be seasonal, or when climatic conditions have allowed an increase in food sources such as plankton, for instance after El Nino. One past comment still on the EAWST website homepage states: *‘Recently, there has been a significant increase (in whale shark numbers) which is perhaps related to the post El Nino mantis shrimp invasion’*.

Because whale sharks are not easily sighted in Kenyan inshore waters in great numbers, established daily whale shark tours have never really existed (unlike Dolphin watching tours). Rather they exist as and when whale sharks are around as a valued ‘add on’ to many other marine experiences (Reef Diving, snorkeling and dolphin watching). The applicant himself has been part of this. For several years EAWST used their whale shark tagging programme as a lucrative way to sell their whale shark tours.

This is what we found on the EAWST Blog: Research

‘9<sup>th</sup> March 2009

*“The boats have been full every day and people are so supportive of what we are trying to do. When*

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<sup>22</sup> Chairman: Ahmed Shikeli; Athman Ndora

*they don't see sharks they all look on the bright side and we haven't had a single complaint if they don't see sharks! People understand that whale sharks are wild and free (thank God) and if they don't show up there's nothing much we can do about it.* (emphasis added)

Furthermore, the applicant recently wrote on the Kenya Ecotourism Stakeholders Association Facebook page:

*“Our whale shark sightings have dropped from 58 whale sharks spotted in 14 days in 2006 (during an El Nino event) to 12 whale sharks spotted in 6 weeks last year 2012. We basically sat in a boat day in day out in 2012 without seeing whale sharks. From 4.7 whale sharks per day down to 0.2 sharks per day in 6 years. Conclusion: there is no way you can offer sustainable whale shark tourism with these figures. In fact, we will no longer offer members of the public to participate in our tagging expeditions simply because the disappointments seen and the “don't even bother, you won't see any whale sharks” statements from many people these last 3 years”*

Perhaps this statement gives us an insight into the real reason behind the whale shark enclosure. If wild whale shark tourism is not 'sustainable' in Kenyan waters, then it seems that Seaquarium Ltd, have decided that a whale shark enclosure could provide a solution. This is confirmed on Bassen's website [www.whalesharkadventures.org](http://www.whalesharkadventures.org) the applicant has been offering so-called if we may paraphrase 'Whale Shark Adventures-Africa's only guaranteed Whale Shark Safari'. This tag line is ironic as already discussed whale sharks do not naturally occur in great numbers or on a regular basis in Kenyan waters – this is confirmed by the applicant himself in quotes we provided above. There are certainly not enough of whale sharks in the area to ensure a 'guaranteed whale shark safari'. Obviously the only way this can happen is by keeping whale sharks in an enclosure.

After the 2006 El Nino there appears to have been a slight increase in whale sharks in Kenyan waters, however because the EAWST data is not part of the ESIA it is difficult to judge. The ESIA also states that:

*‘most recent information on whale sharks in Kenya is that the number of whale sharks has dramatically decreased from 58 sightings over a period of 14 days in 2006, to 12 sightings over a period of 45 days in 2010. Hence whale shark sighting are more sporadic and no longer predictable.’*

This time frame and the periods quoted can hardly justify scientific proof of the state of the whale shark population in Kenya, but they do give an indication. The EAWST tagging programme, was centered mostly around Diani. Again this does perhaps confirm that whale shark sightings along the Kenya coast, as the applicant pointed out, do not make whale shark tourism a viable option as a stand-alone business.

The report states: *‘without knowing the intricacies of whale shark migration it would be speculative to assume that every whale shark returns to the same location each year. Moreover, whale sharks are not known to frequent any tourist location regularly when they are juveniles..’* EAWST's own research claims that the majority of the 'Kenya' population may be juveniles.

### **Conservation or tourism ?**

Though the ESIA insinuates by its various headings that the main reasoning behind the Waa whale shark enclosure is 'conservation', the majority of the report's content refers to its commercial benefits. We maintain that the report does not explain at all what their conservation programme will entail or what the conservation benefits will be. If the heading of the report is 'Whale Shark Conservation Project' this should have been a major component of the report, as we have already pointed out. However sweeping claims, which are unsubstantiated in the report, claim that the whale shark enclosure will *'increase the number of*

tourists (to Kenya) and thereby result in an increase in flow of foreign exchange to the country' and that it will 'bring economic improvement to the community of Waa area of Kwale County and the country at large'.

The report repeatedly mentions that Seaquarium wishes to 'establish whale shark tourism' or 'introduce whale shark tourism in Kenya' and that the enclosure will 'mark the beginning of whale shark tourism in Kenya and Africa'. Viewing Whale Sharks in their natural habitat has been established in the Western Indian Ocean, on the East Coast of Africa and Kenya for many years and is nothing new. In fact, as we have already pointed out, EAWST were one of the main whale shark tourism players and presumably this is how they have come to the *Conclusion: there is no way you can offer sustainable whale shark tourism with these figures.*

### **A precedent?**

Viewing captive wild whale sharks in an enclosure is however a very new form of whale shark tourism, yet to be established in Kenya and most of the world.

All the examples of whale shark tourism encounters, quoted many times in the ESIA that make up the "US\$ 30,000,000" whale shark tourism industry,<sup>23</sup> refer to encounters with wild whale sharks; (though some undoubtedly include examples of areas which feed whale sharks). Whale shark enclosures are rare. Opportunities to swim with captive animals are limited to the Georgia Aquarium in the US and Okinawa Island in Japan. No mention is given to these enclosures, which is strange given that the Waa enclosure will resemble these and not the wild encounters. We think these examples should have been extensively explored in the report. This would provide crucial information, which would enable a better understanding of the pros and cons of keeping whale sharks in captivity and the effects of using the enclosure as a commercial tourist encounter.

Claims of the USD 380, 000, 000 worldwide whale shark tourism industry, is frequently touted in the ESIA, however this industry is almost exclusively wild whale shark tourism. This figure and Kenya's contribution would also only be relevant if there was a large enough whale shark population in the area to ensure that wild whale shark tourism was a viable big money earner. The applicant is therefore suggesting that as there are few whale sharks in Kenyan waters, they must be captured to ensure that his company alone, can benefit commercially from them and bring in the revenue. However, we question why Seaquarium Ltd should alone be allowed to benefit. If Seaquarium Ltd is allowed to open their Whale Shark enclosure, why not others along the coast line? The ESIA has not mentioned the effects of this project acting as a precedent for others to do the same and possibly with other species.

Virtually all marine enclosures and aquariums around the world are recognized primarily as tourist attractions. Many of those countries concerned have different wildlife ethics and justifications for allowing these attractions to exist. There is strong international pressure against many of these institutions<sup>24</sup>, especially those with whale sharks in their collections and many have released them because of this. The applicant's enclosure will be in Kenyan waters, so at this point, it is Kenya's wildlife ethics that we must address and not other nations.

Seaquarium Ltd's conservation argument however, seems based on reasoning that because a species may be under threat, any type of conservation measure justifies putting healthy, wild individuals in an enclosure for

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<sup>23</sup> Ningaloo Marine Park Australia, Phuket Thailand, Seychelles, Mexico, Philippines, Maldives, Belize, Honduras, Mozambique and Djibouti.

<sup>24</sup> [leisureboating.co.za/archived-articles/item/194-whale-shark-zoo.html](http://leisureboating.co.za/archived-articles/item/194-whale-shark-zoo.html), [blog.getaway.co.za/.../conservation-dilemma-whale-shark-marine-par...](http://blog.getaway.co.za/.../conservation-dilemma-whale-shark-marine-par...); [www.aljazeera.com/indepth/features/.../20132149933476592.html](http://www.aljazeera.com/indepth/features/.../20132149933476592.html); [thedivernet.com/xn/detail/6466258:BlogPost:11950?xg\\_source...](http://thedivernet.com/xn/detail/6466258:BlogPost:11950?xg_source...); [marinesciencetoday.com](http://marinesciencetoday.com) > Marine Biology



tourists to interact with. We do not agree with this. We are concerned that if this project is allowed a dangerous precedent will be set. Others could then justify the capture of any healthy, wild animal for a tourism attraction, including more endangered species under the auspices of 'conservation'. This is a loophole for unscrupulous commercial ventures.

The report states it '*will also host injured orphaned marine resources animals. We have many orphanages on land but none in the water.*'<sup>25</sup> This gives another indication as to what Seaquarium Ltd might be intending to do in the future. We would suggest that the Whale Sharks are the Trojan Horse which Seaquarium Ltd will use the enclosure to keep other marine species in a aquarium for commercial purposes, but under the auspices of conservation. Orphaned marine species do not exist by default unlike land species, except possibly cetaceans, but this would involve a highly specialized programme. Injured marine animals should mostly not be kept in the same enclosure as others for rehabilitation. We suggest that comparing a land orphanage to a marine 'orphanage' is ridiculous.

Kenya lacks serious marine management and there is often a notable lack of respect and understanding for our Ocean and marine life. It is important to look at the bigger picture of how this enclosure will affect Kenya's standing as a whole, in general wildlife conservation and tourism. Importantly it will question the integrity of Kenya's thus far respected stand for keeping wildlife in its natural habitat - in wild places; something we are famous for. It will also question the yardstick used for the future of Kenya's wild life tourism. By endorsing 'entertainment' ideas both on the land and in the Ocean, Kenya would dramatically shift their present wildlife emphasis. Whale Shark Adventurers claim the primary reason for the project is conservation. Serious consideration must then be given to the fact that capturing healthy wild animals, especially a migratory species and enclosing them in a very, very much smaller area than their natural habitat, for whatever reason (including conservation) is considered an abhorrent practice in international conservation circles, including other countries in the Western Indian Ocean.<sup>26</sup>

### **Community based tourism**

According to the assessment '*community based tourism concept is just taking root in Kenya.* In fact community based tourism has been around in Kenya for several decades and in many respects Kenya is a world leader in this regard. One such initiative is the Kuruwitu Community Conservation and Welfare Association<sup>27</sup>, the first community owned and run Marine Protected Area in Kenya set up in 2003. One of the main goals of the Kuruwitu-Vipingo marine area was to set up a 'no-take zone' to allow the marine ecosystem to recover from years of overfishing and damage to the coral. Subsequently an area of 30 hectares was closed off for this purpose. While reluctant to agree at first, the community has seen a huge improvement in catch and size of catch. The community is now fully supportive of this initiative and is starting to reap the benefits, not only from fishing but from tourism as well. The reef area has shown enormous improvements and an increase in fish stock. This project has helped improve Kenya's standing in marine conservation and is providing encouragement for other communities to follow suit. With scant official assistance for local fishing communities to better manage their marine resources, this kind of project really helps empower and encourage communities to take control of their future. This community had very similar problems to the Waa community. Why has this much more inclusive and low impact approach not been considered for the Waa community? This proves that there are alternatives to the 'Waa problem'. The

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<sup>25</sup> p5-29

<sup>26</sup> <https://www.facebook.com/KituKibluWhaleSharks?fref=ts>, <http://www.sharks.org/about-sri/officers/118-david-rowat.html>, [http://maldiveswhalesharkresearch.org/http://www.sharktrust.org/en/whale\\_shark\\_project](http://maldiveswhalesharkresearch.org/http://www.sharktrust.org/en/whale_shark_project), <http://largemarinevertebratesproject.blogspot.com/p/staff.html>

<sup>27</sup> <http://kuruwitu.org/>

report quotes the community conservation projects of Il Ngwesi, Tassia, Sarara, Shompole and Losikitok<sup>28</sup>. We would say that although all these are community projects, they are vastly different in design and goals to what seems to be proposed for Waa. All these projects revolve around very strict wildlife ethics, not in the least keeping animals in their natural habitat, in the wild, in as large an area as possible.

## **Conclusion**

For all these reasons, as well as those advanced by other objectors, LOT respectfully submits that NEMA should reject the application.

The UN General Assembly World Charter for Nature stated in 1983:

*‘Every form of life is unique, warranting respect regardless of its worth to man...[we should] accord other organisms such recognition [and] be guided by a moral code of action.’*

LOT strongly believes that should this project be approved the animals, the Ocean, the area as well as the local community will suffer and Kenya’s standing as a much respected wild life conservation leader would be greatly impacted.

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