

**The Local Ocean Trust**  
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**Public Hearing Submission**  
**24<sup>th</sup> May 2013**

With reference to ESIA File no NEMA/EIA/S/2/942  
'Whale Shark Conservation Project' on behalf of Seaquarium Ltd EIA, submitted to NEMA on 14<sup>th</sup>  
February 2013, by George Owuor, Operations Manager Environment Department, Gibb  
International / Gibb Africa.

**Comments for Waa Whale Shark Enclosure, Public Hearing (24<sup>th</sup> May 2013)**

**We will bear in mind that the Heading of the Project is 'Whale Shark Conservation Project'.** In view of this heading we have assumed that the **main reasoning** for this project is indeed, **Whale Shark Conservation.**

A public hearing has been called. This shows that this project has attracted a large amount of public concern and is highly unusual. As a precedent this project could have far reaching affects for both Kenya's marine life and affect the lives of other local and international marine stakeholders, especially along the East African Seaboard and in the Western Indian Ocean. If allowed it may even act as a precedent for the incarceration in small enclosures, of healthy wild marine animals and also terrestrial animals in Kenya. This would more than likely then negatively impact and change Kenya's present standing in world Wildlife conservation.

**Furthermore, should this project be allowed by 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.

In general we find a worrying lack of information and accountability in both the EIA report and the public consultations. There is little to show how this project will benefit the CONSERVATION of Whale Sharks, especially in Kenyan waters.

NEMA tells us to look at the following in an EIA:

**1. Project Background and Justification**

**Background**

- There are several **Whale Shark Research and Conservation projects in the WIO, yet none of these are consulted** nor their work, data or findings, with relevance to the Waa project are mentioned. They have not been asked to comment or endorse the project.
- Though the EIA talks about the plight of Whale Sharks world wide, there is little mention of the **state of the Western Indian Ocean (WIO) Whale Shark Populations.** This is obviously very relevant to this area and therefore this project.

Without this information it is impossible to understand the state of Kenya's whale shark population. This should have been an important base line for the background and justification of the EIA .

- **No data from EAWST's Whale Shark work and monitoring** (including Whale Shark population data and mortalities) has been provided other than in passing.
- Little is mentioned about how this '*Whale Shark Conservation*' project will **directly help to conserve** Kenya's and the WIO Whale Shark Populations. There is slight mention of building a **Cashew Nut Factory** to provide an alternative for fishermen to use on their boats instead of whale shark oil. There are, however, **no details of a possible site, the funding required for building the factory and how funds will be managed if they are set aside for this**. How and where the oil will be distributed to fishermen in order to contribute to whale shark conservation is also not mentioned.

## Justification

- **Whale Sharks are migratory creatures**. Though juveniles may stay in an area for extended periods, they are not confined to one particular spot. No justification is given as to **why capturing and incarcerating healthy, wild whale sharks - which have a large range and regularly dive to extended depths for periods of time - will directly benefit whale shark conservation**.
- **The intended enclosures are extremely small and shallow in comparison to their normal habitat and range**. How is this justified?
- The EIA shows little reasoning or justification as to **why Whale Shark Education and Awareness cannot be carried out in other ways, which would then not require wild animals to be captured and held in an unnaturally small enclosure**. This in itself may also have a negative affect on the public's perception of the 'conservation' of wild animals.
- Though the project title is 'Whale Shark Conservation' it is unclear why this project is going to be run by **Seaquarium Ltd, (a commercial company) and not the East African Whale Shark Trust, (a Whale Shark conservation project)**. Swimming with Whale Sharks in this enclosure is being promoted by Whale Shark Adventures. Mr Bassen is affiliated with both companies.

## 2. Project Description

- There is virtually **no information given on the physical characteristics** of the project.
- **There was no breakdown of the Project Cost and information regarding the investment available.**
- **There was no breakdown on how the local community would be remunerated in the 'profit sharing' scheme the project proposes.**
- How will the present poor services and infrastructure be improved to cater for this increased traffic? Who will pay?
- The project has not shown who will pay for the 'incidental' costs such as mitigation, provision for increased services – eg. car parks, shops, toilets-, relocation of people or existing services, etc). None of this has been accounted for.
- There is no mention of how the project will mitigate the effects of their forecasted vast increase in visitors to the area? What will be the impact on the local community in the area, the environment as well as other present and future tourism ventures. How will they manage this?
- There is no mention of Land use operation and construction costs. (eg. Change of user licenses for land based projects, licenses for water-based projects from relevant authorities.
- Main characterizes of implementation process. Eg. The effect on Natural surroundings, materials which will be used, equipment etc

- Waste, Air pollutants and emissions, noise, light pollution etc. How will these be handled and how will this affect the local community. How will they cope with 50+ visitors and the others that will accompany them? Who will be responsible for the inevitable negative influences that tourism will bring?

### **3. Public Consultation and Impact on Project**

Most of the public consultation involved comment on how the Company's profitability would benefit from the increase in tourism and the income generated from the whale shark enclosure. Then the apparent benefits for the local community are mentioned. There is virtually no mention of **Whale Shark Conservation**. As shown below the public consultation was inadequate.

- There was virtually no reference to anyone voicing concerns regarding the project. There is no valuable attempt to allay any fears; yet the public outcry has been of such concern, a public hearing has been called. This puts the EIA's public consultation in doubt.
- The EIA did not mention any in-depth consultation with Kenyan Marine Scientists regarding the projects merits and contribution towards **Whale Shark Conservation**. This includes the Fisheries Dept, KWS and KEMFRI. CORDIO and other Kenyan marine scientists who were not interviewed.
- No local Marine Conservation projects were asked for their opinion.
- No other BMUs, were asked for their opinions, including those on the South Coast. If this were allowed, other 'aquariums' might open along the Kenya coast, impacting marine stakeholders and the public.
- No marine tourist operators were consulted, such as Dive Companies and Goggle Boat operators, all of whom benefit from being able to show their clients whale sharks in the wild, when they are in the area.

### **4. Project EMP (Environmental Management Plan)**

There was no Environmental Management Plan

- There are no technical plans or details of the marine area where the project will be situated, nor the surrounding area.
- There are no details on the impact and effect the operation will have on the marine environment, the 60 mtr riparian zone and the local area.
- There are no details of the possible detrimental effects caused during the capture and the incarceration of the wild whale sharks and how these will be addressed.
- There are no proposed mitigation measures regarding the local people and the environment.
- There are no details of what employment positions will be made available at the project, what marine specialists may run the project and whether they will be Kenyan or foreign.
- Will the project employ a vet? If so will the Vet be full time or part time? If part time what measures will be taken when the Vet is absent? There are no marine vets in Kenya.
- There is no mention of which institutions might also be responsible for implementing parts of the project.
- There is no detail of any agreement with any local or international institution that may conduct research, eg. Universities, Research Centers.
- There is no allocation of a Budget for the set up costs of any facet of the project, the running costs and profit sharing benefits with the local community.
- **Running an 'Aquarium' of excellence requires enormous expertise and expense.**
- There are no timelines for the implementation of any part of the project.
- There is no mention of any monitoring, peer review and a report regime to relevant Scientific, Government or funding bodies.

## **5. Non Technical Summary**

The Non-technical summary did not provide information on the following:

- Designs and drawings of public amenities designed to cater for 50+ people per day were not given.
- No Project budget was provided.
- No alternative site was considered or mentioned.
- The EIA Expert did not discuss any Borderline Conditions.
- As previously noted - the conservation work, which the project hopes to achieve while keeping wild whale sharks captive was not discussed.
- There are no details of the site and land ownership of the areas on land, which will be used to facilitate the enclosure. Eg. Offices, Laboratory for research, building to store Whale Shark food, equipment, staff housing, boat moorings, car parks etc.
- There are no details showing that Licenses and agreements have been applied for to permanently commandeer an area of Ocean (Kenyan Territorial Waters).
- Has an assessment been done into how this project will impact the local BMU and their fishing?
- How will the local BMU be compensated for the loss of their fishing ground?
- What criteria will be used to catch individual whale sharks (sex, age etc?)
- How many whale sharks will be incarcerated? What criteria will be used for the size of net vs the number of whale sharks to be kept within the enclosure?
- No definitive explanation or time line was given regarding the initial size of the net and when it would increase in size.
- How will the net enclosure be maintained?
- What other marine animals will be incarcerated in the enclosure?