

Local Ocean Trust fights for whale sharks in Kenya

In the 1960s Rachel Carson asked her readers “...*whether any civilisation can wage relentless war on life without destroying itself, and without losing the right to be called civilised.*”¹ The environmentalist pondered this in the context of harmful effects of pesticides on all life forms; however, one cannot help and apply the same question to the state of humankind’s attitudes towards its surroundings today. Regrettably, even though some efforts have been made in terms of laws and regulations to preserve the environment from destruction Carson’s question is more urgent now than ever before.

The Local Ocean Trust (LOT), a marine conservation organisation based on the coast of Kenya, found itself in yet another struggle in February, this time opposing an application to establish an enclosure in the Indian Ocean for two juvenile whale sharks in a net measuring around 150 meters across and 10 meters in depth at low tide and 14 meters at high tide. The applicant’s idea is to entice tourists to pay a fee in order to swim with whale sharks. This scheme is proposed in the name of conservation through which, the applicant claims, the local impoverished community would be able to gain financially.

The terror of those concerned about wildlife in Africa is increasing with every hour. Due to Africa’s fairly weak animal welfare laws this vast continent is losing the war. Even though steps have been taken to protect elephants and rhinos from extinction, as I write this article, the International Rhino Foundation reported that by the end of April nearly 250 rhinos were poached in South Africa². In Chad, in one day, in mid-March, 86 elephants were slaughtered for their tusks; 33 of those were pregnant³. These examples come from a long list of unjustified and unconscionable slaughter. The devastation also extends to marine life. Reports of marine poaching and total disregard for the many endangered marine species are not widely reported. Even less would be known if not for brave and dedicated ambassadors such as the LOT. Over

¹ Silent Spring (2002 ed) p.99

² <http://www.rhinos.org/news-room?year=2013>

³ <http://www.africanconservation.org/elephant-news/item/poachers-in-south-west-chad-kill-86-elephants-including-33-pregnant-females>

the years, the Trust has had to hire security to protect turtle nests that would otherwise be destroyed by human activity. The organisation is spending a lot of time lobbying the national and local authorities to implement proper control of marine watching which is, without proper care, highly detrimental to coral reefs and species that live there. The LOT team bring attention to fish collectors who remove colourful species from their natural environment for the sake of someone's aquarium, shell collecting which destroys coastlines and marine chains of life, or ring netting which kills anything encompassed in the ring as trawlers move. And, then there is rubbish to deal with that not only pollutes the Ocean and the land but also kills turtles. Those are just a few worries that the LOT staff battle day in and day out.

The proposed whale shark enclosure is currently being considered by the National Environment Management Authority (NEMA). The Environmental and Social Impact Assessment Project Report (ESIA) submitted by the applicant only concerns inserting of a net in the Indian Ocean and what it purports to achieve in terms of advantage to Man. The welfare of this giant fish in the context of the environment in which the applicant proposes to place it appears to have been afforded little consideration. The ESIA fails to mention how the animals will be captured, looked after, fed or what the upkeep of the enclosure will entail.

Whale sharks are listed as vulnerable on the International Union for Conservation of Nature's (IUCN) red list.⁴ They are easily recognizable because of their flat heads and grey body which is covered in pale yellow spots and stripes. They are known for mostly solitary existence and for their migratory life in tropical and warm waters. Although whale sharks are often seen swimming close to the surface they are capable of diving to depth of at least 1,286 meters. An average adult whale shark measures around 10 meters, however, individuals measuring as long as 20 meters have been spotted in the past. Whale sharks are filter feeding on plankton and small fish. The Wildlife Conservation Society estimates that whale sharks live between 60 and 100 years.

⁴ <http://www.iucnredlist.org/search>

In its submission to NEMA LOT argued that illegality under the animal welfare legislation must clearly be a material consideration for the authority. Capturing and keeping whale sharks, as proposed by the applicant, would, it says, be illegal under the Kenyan law. Should this project be given a green light from NEMA, LOT believes that the applicant would commit an offence under the Prevention of Cruelty to Animals Act 1962.

Section 3(1)(c) of the 1962 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. Whale shark is a fish and thus protected under this legislation. When one examines the ESIA it appears that the applicant's undertaking would fall within all four offences specified in section 3(1)(c). Whale sharks would be conveyed from their location in the Ocean, carried during capture presumably on a boat or pulled by the side of the boat, and transported to the net where they would be confined and impounded for six months in the net. There is no doubt, based on the description of the proposed system, that whale sharks would unnecessarily suffer as a result of this project – they would not suffer if they were not captured and confined and forced to interact with tourists. In its submission the Trust stressed that NEMA should not grant permission for an activity which would be inherently illegal but time will show if the welfare of whale sharks will be given any consideration by the authorities.

The applicant has estimated that his enterprise will earn Ksh 315.000.000 over five-year period. To attain this the enclosure, in year five, would need to host 60.000 visitors in that year. This will mean that 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. Not only does this seem to be an overly ambitious prediction but it clearly fails to note what this activity will cause in terms of welfare implications for the fish such as noise from the boat engines and humans, stress of being confined, problems with feeding, pollution to the Ocean and the area. Again, the list of detrimental factors is long.

The question that inevitably arises in the context of this application is whether helping Africa getting rid of poverty inherently involves destroying the invaluable resources which are part of this fascinating continent and its people – many would argue that the opposite is the case. Rachel Carson is sadly no longer with us but one wonders whether she would say that we are getting ever so closer to not be able to call ourselves civilised.

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