



05 December 2023

Department of Forestry, Fisheries and the Environment  
Appeals and Legal Review Directorate  
Private Bag X 447, Pretoria, 0001  
c/o Director: Appeals and Legal Review  
Per email: [appeals@dfpe.gov.za](mailto:appeals@dfpe.gov.za)

*and simultaneously addressed to the parties cited at the end of this letter.*

Dear Sir / Madam,

**IN RE: FORMAL APPEAL AGAINST THE PROPOSED 3D SEISMIC SURVEY OFF  
THE SOUTHEAST COAST, SOUTH AFRICA (Ref. 12/1/045)**

1. This is a formal appeal in terms of the Regulations in terms of the National Environmental Management Act 107 of 1998.
2. The purpose of this correspondence is to draw attention to the animal welfare related aspects, which ought to be considered, but which have regrettably been sorely avoided in the preliminary assessment and other documentation.
3. The National Council of SPCAs (NSPCA) is a statutory body established in terms of the Society for the Prevention of Cruelty to Animals Act 169 of 1993. In terms of which, we are empowered to enforce our mandate, which is the prevention of cruelty to animals and their ill-treatment by man.
4. This specifically includes taking cognisance of the application of laws affecting animals and societies (SPCA's) and to make representations in connection therewith to the appropriate authority, which we hereby do.

**ANIMAL WELFARE IMPACT OF SEISMIC SURVEYING**

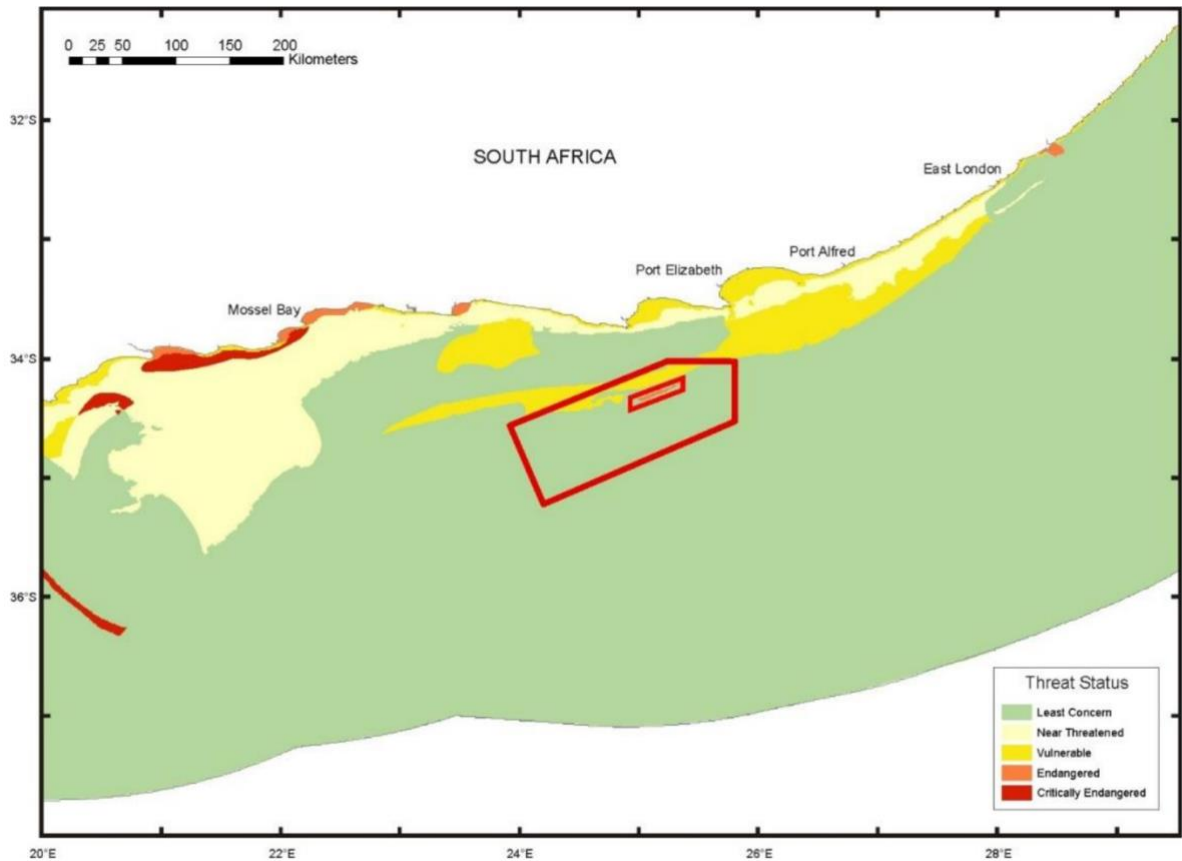
5. Although we commend those who will appeal on environmental grounds and even though our appeal is interconnected with environmental factors, the mandate of the NSPCA relates to animal welfare.
6. After reviewing the CGG non-technical summary, it is quite clear that the stakeholders who pursue this project for financial gain have taken a disingenuous approach. Much of



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the statements contained in the documentation are carefully worded to mitigate the inference of damage to the environment and adverse effect on animal welfare.

7. As a practical example, the survey area borders several threatened ecosystems in the geographical area, as per below:



**Figure 4: Ecosystem Threat Status**  
(Adapted from Holness *et al.* 2014 and Sink *et al.* 2019)

- 7.1. The proponents state that the “majority” of the survey area is rated as “least concern”, while the extreme inshore portion is rated as “vulnerable”.
- 7.2. The assessment, however, fails to address the impact of the survey outside the survey area, i.e., the travelling of the shock waves, sound disturbance and pollution – all of which may stretch to endangered and critically endangered areas.
- 7.3. The assessment also does not take cognizance of the fact that sea animals are not stationary objects – they travel throughout the area, often great distances at once, where they may be adversely impacted by the survey.
- 7.4. It is also quite laughable that the “endangered” portion of the survey area has been “excluded” from the survey, as if that area is automatically immune to the shock waves and sound disturbance.

7.5. This “excluded area” is also a Marine Protected Area (MPA), as per below. The proponents frame the assessment in a manner which could make the gullible believe that that MPA stands in isolation and has some sort of “dome” around it, guarding it from any adverse effects.

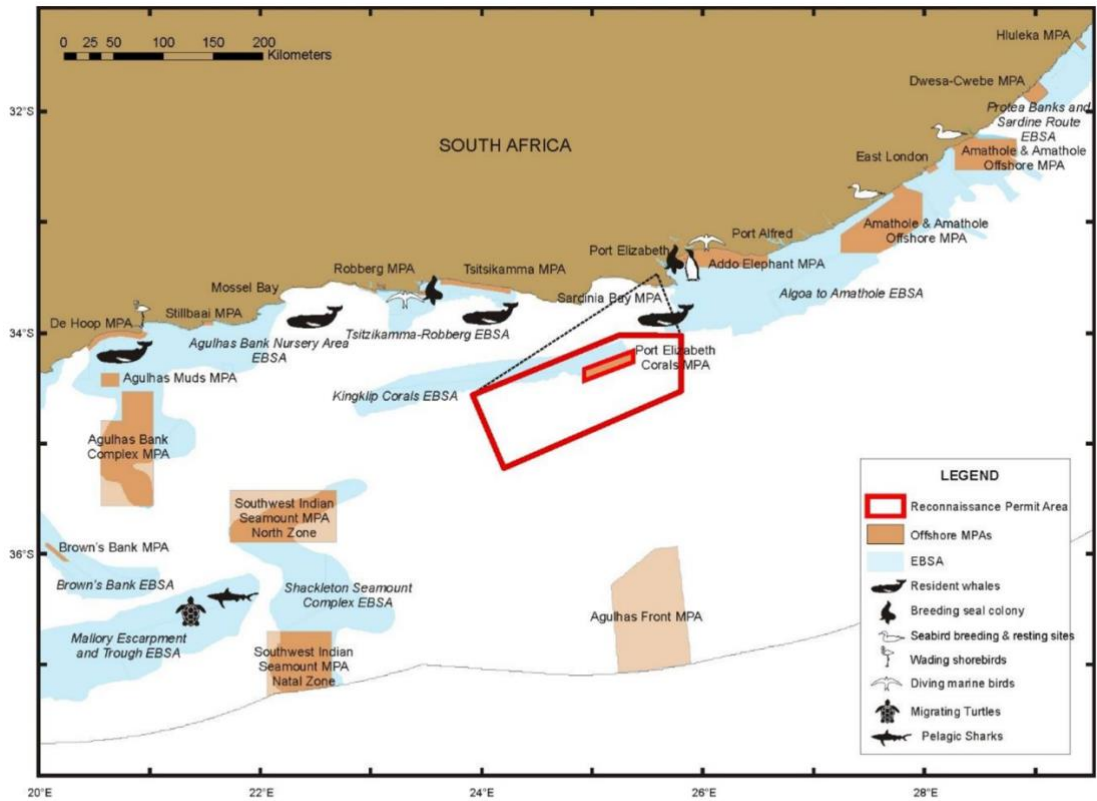


Figure 5: Survey area of interest in relation to EBSAs and MPAs (Source: Pisces)

8. Marine animals “rely on sound for their vital life functions”, including communication, location of prey, detection of predators, and “sensing their surroundings”.<sup>1</sup>
9. Various studies have confirmed that seismic blasts from airgun arrays have been found to cause deafening in several marine animals. Furthermore, seals tend to leave the area outside of natural migration patterns to protect themselves from the noise released by seismic airguns affecting their reproduction and habitat, whilst turtles experience temporary deafness.<sup>2</sup>

## LEGAL CONSIDERATIONS

10. It is quite concerning that the above factual considerations have not been addressed by the applicant or the Department. Our Courts have demonstrated that animal welfare

<sup>1</sup> G Prideaux & M Prideaux ‘Environmental impact assessment guidelines for offshore petroleum exploration seismic surveys’ (2015) Impact Assessment and Project Appraisal 13.

<sup>2</sup> Michaela Tafani, Seismic Surveys and Whales: An Animal Rights Response to Extractivism off the South African Coast, Mini-Dissertation (2022) University of Pretoria 21.

ought to be considered in terms of Section 24 of the Constitutional of the Republic of South Africa, which provides:-

"Everyone has the right-

(a) to an environment that is not harmful to their health or wellbeing; and

(b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that-

(i) prevent pollution and ecological degradation;

(ii) promote conservation; and

(iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development."

11. The Constitutional Court in ***National Society for Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another***<sup>3</sup> at para 56 in dealing with the powers of the NSPCA in instituting a private prosecution had the opportunity to consider the matter of cruelty to animals within the broader context of the constitutional values that stood at the doorway of our society as well as the connection between animal welfare and the right to have the environment protected. Its views are located in the recognition that animal cruelty was prohibited both because of the intrinsic values we place on animals as individuals but also to safeguard and prevent the degeneration of the moral status of humans.
12. Our Apex Court considered animals as '**sentient beings that are capable of suffering and of experiencing pain**'.<sup>4</sup> Yet, this consideration seems to be absent in all assessments conducted in respect of the survey and seem to be ignored by those who want to use the environment (and subsequently pose a risk to animal welfare) to their own advantage.
13. We should also remain mindful that the Court in ***National Council of the Society for Prevention of Cruelty to Animals v Minister of Environmental Affairs and Others***<sup>5</sup> reasoned that although a functionary may not have an 'animal welfare mandate', it falls on that functionary (i.e., the Department in this instance) to consider animal welfare implications.
14. The Supreme Court of Appeal in ***S v Lemthongtha***<sup>6</sup> held that "[c]onstitutional values dictate a more caring attitude towards fellow humans, animals and the environment in general."
15. All four *dictum* referred to above have been downright ignored by the proponents and the Department, letting animal welfare considerations fall by the wayside.

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<sup>3</sup> 2017 (4) BCLR 517 (CC).

<sup>4</sup> As above.

<sup>5</sup> 2020 (1) SA 249 (GP).

<sup>6</sup> 2015 (1) SACR 252 (SCA).

## OTHER IMPORTANT CONSIDERATIONS

16. The notification process undertaken herein leaves much to be desired. The so-called 'public meetings' failed to notify and involve key role players in the environmental and animal welfare sphere. This undoubtedly resulted in poor public participation, adversely affecting South Africa's participatory democracy.
17. South Africa as a whole lacks the requisite knowledge on marine habitats, species and ecosystems, particularly the cumulative impact that the survey will have on these aspects. Nowhere in the assessment does it consider that Total Energy's drilling site is adjacent to the survey area and the widened effect on the marine ecosystem.
18. Further to the above, it is concerning that such a large portion of the natural habitat will be occupied by industrial activities. As alluded to above, Total Energy is already occupying the area and the survey will no doubt decrease the ecosystem along the coast, sparking concern for the welfare of the animals occupying the coast.
19. Much of the proposed 'mitigations' are based on forecasts and modelled scenarios, purely because no sufficient research and data exists in this sphere. Quite frankly, the cart is being placed before the horse: we want to survey a marine ecosystem without actually knowing what detrimental effect it will have. Yet, we can learn from scientific studies (as outlined above) what detrimental effect seismic surveys have on animal welfare.
20. South Africa, especially in terms of Section 24 of the Constitution, cannot place economic gain above the environment and animal welfare. Both aspects should be considered equally, and a just and equitable result should follow – not one where economic growth is prioritised at the expense of the environment and animals, with a few feeble mitigating factors to protect same.
21. As a member of the United Nations, South Africa should heed to ***General comment No. 26 (2023) on children's rights and the environment, with a special focus on climate change*** (GC26), which places a specific focus on protecting children from detrimental effects on the environment, including cruelty to animals. GC26 gives authoritative guidance and clarity about how countries like South Africa must change policies, practices and laws to comply with the legally binding UN Convention on the Rights of the Child. In GC26, the Committee on the Rights of the Child considered that all member States should "***immediately take the following action***", *inter alia*:
  - 21.1. Equitably phase out the use of coal, oil and natural gas, ensure a fair and just transition of energy sources and invest in renewable energy, energy storage and energy efficiency to address the climate crisis;
  - 21.2. Conserve, protect and restore biodiversity; and

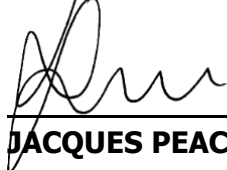
- 21.3. Prevent marine pollution, by banning the direct or indirect introduction of substances into the marine environment that are hazardous to children's health and marine ecosystems;
22. It is inconceivable how South Africa can be in compliance with the directive to "phase out the use of coal, oil and natural gas" if we embark on a seismic survey, of which the sole aim is to discover more opportunities to make use of these materials.
23. To avoid prolixity, we emphasise our stance proffered hereinabove on the effect on biodiversity and animal welfare, as well as preventing marine pollution, in relation to GC26 and South Africa's compliance.

## **CONCLUSION**

24. This formal appeal serves as a resolute call for a comprehensive reassessment of the proposed 3D seismic survey off the Southeast Coast of South Africa. The concerns outlined herein, specifically those related to animal welfare and environmental considerations, necessitate an urgent and thorough review.
25. The NSPCA, acting within its statutory mandate, underscores the critical need for the Department to take into account the far-reaching consequences of the seismic survey on marine life. The blatant disregard for animal welfare, evidenced by the insufficient consideration of seismic impacts on sentient beings, raises significant ethical and legal concerns.
26. The appeal highlights not only the potential harm to marine ecosystems but also the failure to uphold constitutional values that prioritize a harmonious balance between economic interests and the protection of the environment and its inhabitants. The cited judicial precedents make unequivocal statements about the interconnectedness of animal welfare, environmental protection, and the constitutional right to a healthy environment.
27. Moreover, the flawed public participation process and the absence of comprehensive research on the cumulative impact of industrial activities underscore the need for a more inclusive and informed decision-making process.
28. As a responsible member of the global community, South Africa should align its policies with international directives, such as General comment No. 26 (2023), emphasising the imperative to transition away from environmentally detrimental practices.
29. In the spirit of responsible governance and sustainable development, we urge the Department to reconsider its stance, prioritising the well-being of marine life, the environment, and the future generations who will inherit the consequences of our decisions.

30. This appeal echoes the collective call for a conscientious and equitable approach, where economic growth is not achieved at the expense of our precious environment and the sentient beings reliant upon it.
31. We have sought, to the best of our ability, to comply with this legal requirement by: copying the provincial and municipal authorities herein as relevant organs of state with an interest in this matter; and copying the Environmental Assessment Practitioner (EAP) for the application process herein. We request that this appeal be furnished by the EAP, who is already in possession of the database of I&APs and relevant distribution system, to any registered interested and affected parties, as it is not within our means and capacity to distribute the appeal to all the interested and affected parties, without incurring significant time and expense, which - we submit is not in the interests of justice. Kindly advise, however, if additional steps need to be taken by us, to address this.
32. We look forward to your favourable response.

Yours faithfully,



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**JACQUES PEACOCK**  
**Public Relations & Legal Liaison**  
**National Council of SPCAs**

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COPY TO: Department of Mineral Resources and Energy  
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c/o The Chief Executive Officer  
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AND TO: CGG Services SAS  
Per email: [cggsouthcoast@slrconsulting.com](mailto:cggsouthcoast@slrconsulting.com)

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**ENCLOSURE:** APPEAL RESPONSE REPORT