

CHAPTER ONE

INTRODUCTION AND OVERVIEW OF THE STUDY

1.1 Background to the study

South Africa, being a maritime country, has a vitally important fishing industry. The industry employs about 27 000 people and produces fish with a total wholesale value of over R1 000 million¹. South Africa hosts a predictable 16 percent of the total amount of marine fish species in the world, most of which have at some time or other been over-exploited.²

The abalone industry in South Africa originated in 1949. The sought after abalone species is known as *Haliotis midae*. South Africa has one of the oldest commercial abalone fisheries in the world,³ and ranks as one of the top five to ten wild abalone fisheries in the world, after

Australia and Japan.

The South African fishery industry remained relatively stable between 1972 and 1995, with abalone catches totaling between 600 and 660 tons annually. This was the case until 1996, when initial distributions of only 400 tons, later adjusting to 550 tons, were caught for that season. Although this was a result of over-exploitation, biological uncertainty and political pressure, this dramatic cut indicated the seriousness of the problem.⁴

By 2003, global abalone production levels fell to less than 10 000 tons, about one-third of the level three decades previously. By 2005, the scale of abalone fishing had grown tremendously, with a task force of 30 purpose-built vessels harvesting

¹ Fuggle, R.E. and Rabie, M.A. (1999:318-25).

² Fuggle, R.E. and Rabie, M.A. (1999:318-325).

³ Tarr, R.J.Q. (1992: 438-447).

⁴ Tarr, R.J. Q, Williams, P.V.G and MacKenzie, A.J. (1997:319-323); Hauck, M. (1997:285).

1 000– 2 000 tons of abalone, an attaining an export value of US\$35–70 million per year.⁵ South Africa has 13 abalone farms which currently produce a total of about 1000 tons of abalone per year. While abalone fishing is among the smallest industries in South Africa, as regards yield, it is the most lucrative in unit value.⁶

The over exploitation of abalone in South African marine waters is exacerbated by the fact that abalone harvesting and trading is legal in China, where the demand for abalone is high, given its presumed aphrodisiac properties. But it is expensive. The annual turnover in China for the sale of abalone coming from the Western Cape is about R1 billion per year. According to Redpath “[t]he South African government has been trying to negotiate a bilateral agreement with China to limit the unlicensed, illegal trade.”⁷

According to the Department of Environmental Affairs and Tourism (DEAT), abalone farming “generates more income and employment than any other farmed fish product in the marine aquaculture sector. Besides providing gainful employment to more than 800 people – 80% of the total employed in the marine aquaculture sector – abalone harvesting generated more than R141 billion in revenue in 2006.”⁸

The uncontrolled fishing has reduced the stock of abalone drastically. This has had a direct impact on the marine environment, threatening the long term sustainability of

⁵ Raemaekers, S. J -P.N. Peter J. Britz. (2005:211).

⁶ “In 1999, live unshucked abalone fetched some R192 (US\$32.00) per kg whole mass in the Far East (which translates to approximately R580 per kg for the meat). Although the value varies according to the type of processing, the fishery has a minimum annual gross value of around R70 million and employs some 300 people directly.⁶ Recent reductions in the total allowable catch (TAC) of around 100 tons represent a loss of at least R13 million to the fishing industry. The high value of abalone, together with the fact that it lives in the shallow intertidal, makes it a prime target for illegal exploitation.” See www.icesjms.oxfordjournals.or (last accessed on 23 October 2012).

⁷ Burger, A. (2007). ‘Of Abalone, Drugs, Dwindling Populations & Economic Empowerment’ <http://www.triplepundit.com/2007/10/of-abalone-drugs-dwindling-populations-economic-empowerment/> (last accessed on 10 August 12). A report in the *Cape Argus* in 2007 stated the following: “There are presently 302 rights holders (40 legal entities and 262 individual divers in the form of close corporations) functioning in the sector with about 800 jobs, including the individual divers. These are families and people this decision will impact on the most.” Burger, A (2007). See “Of Abalone, Drugs, Dwindling Populations & Economic Empowerment” <http://www.triplepundit.com/2007/10/of-abalone-drugs-dwindling-populations-economic-empowerment/> (last accessed on 10 August 2012).

⁸ See Status from South Africa Reserve Bank <http://www.statssa.gov.za/links/links.asp> (last accessed on 11 Nov. 2012).

the abalone resource. According to Raemaekers and Britz, “[t]he failure of the state to issue fishing rights and conduct effective sea based compliance, combined with the incentives to fish abalone (high price, low cost, ease of access) created the conditions for a full scale illegal fishery to emerge very rapidly.”⁹

Chinese organised crime groups, known as triads, with their international networks, are key to the continuing profitability of marine poaching. They treat their buyers well to ensure a constant supply of the product that their culture demands. However, due to the secretive nature of these syndicates and the precision with which they work, law enforcement officers find it difficult to intervene in their operations.¹⁰ Whenever the law enforcement officers raid an illegal abalone storage facility, or when people are caught transporting abalone illegally, the media report about this in a dramatic way. But very little, if anything, is said in the press about the outcomes of such cases.

It is against this background that this study is being undertaken. The intention is to establish how the South African criminal justice system is responding to this menacing criminal activity.

1.2 Significance of the study

The South African public is not ignorant of the fact that abalone poaching takes place on a large scale along the Western Cape coast. There are intermittent reports in the press and on television which draw attention to the problem of marine poaching. But this reporting occurs mainly in relation to persons being arrested for suspected poaching of abalone. Until now, there has been no coherent study on how the cases are processed through the criminal justice system. The importance of this study lies in

⁹ Raemaekers, S. Britz, P.J. (2009:183-195).

¹⁰ UNODC United Nations Office on Drugs and Crime, “*TRANSNATIONAL ORGANIZED CRIME IN THE FISHING INDUSTRY*” See <http://www.unodc.org/6BC9EB98-3B86-40...per> - TOC in the Fishing Industry.pdf (last accessed 13/09/2012).

the fact that it attempts to describe more comprehensively how abalone related cases are dealt with in the course of criminal proceedings. More importantly, the thesis attempts to determine the kind of difficulties the State has to deal with when prosecuting such cases and how these difficulties manifest themselves in public.

The author has been motivated to undertake this study because, as a court interpreter, she has had the opportunity to experience at close range criminal trials involving abalone poaching. She has also had access to the dockets of decided cases, which will serve as one of the primary sources of this study.

1.3 Research question

The question this thesis will attempt to answer is this: What are the main obstacles to the successful prosecution of accused persons charged with poaching of abalone?

1.4 Methodology

This study will utilize both primary and secondary sources. These will include laws, cases, reports, textbooks, journal articles, electronic sources, media reports and basic data related to abalone poaching.

1.5 Scope of the research

This research is limited to abalone poaching in South Africa and related organised criminal activity in the Far East. ¹¹

¹¹ The main importers were Hong Kong Special Administrative Region, Japan, Singapore and Taiwan (Province of China).

1.6 Chapter structure

The study consists of the following chapters:

- The first chapter provides an introduction explaining the goal and method of the study. It also gives some background information on the subject of abalone poaching, and why the specific research problem was selected.
- This second chapter looks at important laws dealing with fisheries/abalone poaching, as well as the international instruments relevant to the topic.
- The third chapter discusses the origins and history of abalone poaching in South Africa, and the way in which the criminal justice authorities have dealt with the problem.
- This fourth chapter analyses the present state of affairs regarding abalone poaching, and describes the profile of offenders. Specific crimes associated with the Chinese Triad organized criminal groups are identified and discussed. The potential threats that the criminal activity pose to the economy of South Africa are also examined.
- The fifth chapter studies the difficulties that the criminal justice authorities encounter to prevent poaching and to bring the criminals to book. Difficulties include those related to police, witnesses, penalties, language barriers, etc.
- The sixth and final chapter concludes the study, and suggests a set of recommendations that could be implemented to combat the problem of abalone poaching. Besides a summary of the main findings and conclusions that arise from the research, some tentative recommendations are provided and suggestions for future research are made.

CHAPTER TWO
INTERNATIONAL AND REGIONAL INSTRUMENTS RELEVANT TO
FISHERIES/ABALONE POACHING AND IMPORTANT SOUTH AFRICAN
ENACTMENTS RELATING TO FISHERIES /ABALONE POACHING

The study focuses on abalone, which is one of the many marine resources, the exploitation of which is governed by both international instruments and national laws in this regard.

2.1 International instruments and protocols governing protection of marine life.

2.1.1 *Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)*

In 1973, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) was implemented at a members' meeting of the International Union for Conservation of Nature (IUCN). CITES lists 30 000 species, 5 000 Fauna and 25 000 Flora from across the world. South Africa is a member country of CITES and signatory since 31 March 1975. CITES is not International law, and the CITES secretariat can only advise, make requests to, or influence countries.¹² Each country creates its own law to give effect to CITES. At present 176 countries are signatories to CITES.

Although the extent of compliance varies, in terms of the Convention, States that refrain from taking measures to protect endangered species are subject to growing international pressure, which can ultimately lead to trade sanctions being imposed on these States.¹³

¹² Randi E, Tabarroni C. and Rimondi S. (2002:5).

¹³ Michael W. Lodge, Andersan, D. Løbach, T. Munro, G. Sainsbury, K. Willock, A. (2007:1-160) Recommended Best Practices for Regional Fisheries Management Organizations. See: www.oecd.org/sd-roundtable/papersandpublications/39374297.pdf (last accessed on 11 Dec.2011).

CITES lists species in danger of extinction in three Appendices. Appendix 1 deals with species threatened with extinction and are offered full protection under the Convention. Appendix 1 species are prohibited for commercial trade. Species in Appendix II are not necessarily endangered with extinction, but could be threatened by unlimited Trade. Commercial trade in Appendix II species is thus permissible, but closely controlled.¹⁴

TRAFFIC has recommended that South Africa consider listing perlemoen under Appendix III, which includes species that are protected in at least one country, which has requested other CITES participants to contribute in trade control. By listing perlemoen under Appendix III, South Africa could ask its neighbouring countries to forbid the export of perlemoen that do not have a CITES export permit. Consumer nations, in turn, would be entreated to inhibit the import of abalone consignments without a CITES export permit.¹⁵

South Africa categorises its endemic abalone species, *Haliotis midae*, under Appendix III of CITES. The country thus has taken a conclusive step towards stemming the illegal harvesting of and trading in abalone. The listing, with effect from 3 May 2007, stipulates that all consignments of *Haliotis midae*, have to be supported by CITES documentation in international trade.¹⁶

At present *Haliotis midae* is being illegally poached to a great extent, causing its population to decrease at an alarmingly rapid rate. Fishing abalone has proven to be a profitable trade, and it is not likely that even a complete ban on fishing would end the

¹⁴ Abensperg-T. M. (2011: 1-5-176) "CITES and CBNRM - European Commission"
See: http://ec.europa.eu/6BC9EB98-3B86-409...t/cites/pdf/symposium_proceedings.pdf
(Last accessed on 11 Dec.2011).

¹⁵ Hoare A. (2007) The Growth and Control of International Environmental Crime.
See www.illegal-logging.info/sites/.../Intenvcrime2007backgroundpapers.pdf (last accessed on 15 July 2012).

¹⁶ TRAFFIC Bulletin report on Abalone, See: <http://feike.co.za/traffic-bulletin-report-on-abalone/> (last accessed on 10 Feb 2012). Feike: natural resource management advisor.

illegal poaching. South Africa would benefit from listing the abalone with CITES because it would thereby require the assistance of other countries in ensuring the legality of shipments.¹⁷

As stated above, species can be listed in three Appendices. Commercial trade is prohibited for species listed in Appendix I. Limited commercial trade is allowed for species in Appendix II, and both an export permit and an import permit are required. In the case of species in Appendix III, only an export permit and a certificate of origin are required. CITES permits are issued in South Africa, either by the provincial conservation authorities or by the Department of Environmental Affairs and Tourism (DEAT).

Whereas listing a species in Appendices I and II requires a decision by the member countries, a species can be unilaterally placed on Appendix III provided certain requirements are met. *Haliotis midae* was listed in CITES Appendix III by South Africa on 3 May 2007, but then deleted on 24 June 2010.¹⁸

TRAFFIC reported that the de-listing of the species from CITES in 2010 was because of South Africa's failure to implement the listing effectively as well as the lack of vigilance and awareness both among the neighbouring countries through which the poached abalone is laundered and in various other significant importing countries.^{19, 20} Until very recently, South Africa incorporated the CITES in provincial laws. The reason for this is that in the past, generally speaking, fauna and flora were protected only under provincial and not national laws. An example is the Western Cape Nature

¹⁷ UNDOC Issue Paper (2011) "Transnational Organized Crime in the Fishing Industry" See: www.unodc.org/.../Issue_Paper_-_TOC_in_the_Fishing_Industry.pdf (last accessed on 23 March 2012).

¹⁸ See www.unep-wcmc.org (last accessed on 25 Feb 2013).

¹⁹ TRAFFIC (2010).

²⁰ Groenewald, Y (2009) SA 'losing abalone war' Mail and Guardian; <http://mg.co.za/article/2009-02-04-sa-losing-abalone-war> (last accessed on 25 July 2012).

Conservation Ordinance 19 of 1974 (as amended in 2000) which incorporates Appendices I and II (but not Appendix III) into certain provisions.

2.1.2 *the 1982 Convention on the Law of the Sea*

The First United Nations Convention on the Law of the Sea in 1958²¹ resulted in vague conservation measures for high-sea living resources. It was ultimately deemed a failure since none of the nations which fished the high seas became parties to the Convention.²² A Second Convention took place in 1960, but did not make any significant advances on the First Convention.²³ In 1982, the United Nations held its Third Convention on the Law of the Sea in Montego Bay, Jamaica.²⁴ This Convention resulted in an agreement signed by over 150 nations.²⁵

December 10, 2002 marked the 20 anniversary of the Convention on the Law of the Sea, dubbed the “new constitution for the oceans.”²⁶ The Convention's purpose was to address issues of international maritime and admiralty law. One of the key issues covered by the Convention is the state of global fisheries.

In the Convention, the international community acknowledged that the inexhaustibility of marine resources, particularly fish stocks, was no longer the best approach to ensure continued long-term availability. The Convention,, therefore, set out broad guidelines and obligations for both coastal and landlocked nations to follow in order to utilise marine resources better and in a sustainable way.²⁷ This was the first serious push for an international shift from a paradigm of inexhaustibility to one of sustainable use with respect to marine resources.

²¹“United Nations Conference on the Law of the Sea, opened for signature” Apr. 29, 1958, 17 U.S.T. 138.

²² See Craig, *supra* note 7.

²³ See Segar, *supra* note 4, at 22.

²⁴ “Third United Nations Conference on the Law of the Sea: Final Act, opened for signature Dec.10,1982.

²⁵ American Society of International Law (1985:24).

²⁶ Charlotte de Fontaubert (1996:23).

²⁷ See UNCLOS III, *supra* note 18, arts. 61-70.

The Convention was the result of many years of international negotiation, beginning in 1958 at the Geneva Conventions on Oceanic Law. At the conclusion of the Third Convention in 1982, a broad framework for maintainable use of living and non-living marine resources, based on the idea of the world's oceans as the “common heritage of mankind”²⁸ emerged.

A major advance made by the Convention was the establishment of a 200-mile Exclusive Economic Zone (EEZ) for coastal nations, which gives coastal nations the exclusive right to decide the capacity and authority to harvest the waters up to 200 nautical miles off their coastlines. The EEZ provisions in the Convention establish a bright-line rule for international fisheries: any fishing activity within 200 nautical miles of a nation's coast is under the full authority of that nation. Outside the EEZ line, fishing activities are largely unregulated, except for general principles of conservation and co-operation.²⁹ However, this places the majority of living resources at the disposal of coastal nations since more than 90 per cent of all marine harvests occur within 200 nautical miles off-shore. International co-operation is nevertheless essential to world fisheries management due to the extensive movement of many of the most commercially valuable fish species.³⁰ Coastal nations are expected to conserve living resources, using the most accurate and recent scientific information available to preserve or reinstate population levels of harvested species.³¹

2.1.3 The Convention on Biological Diversity

The Convention on Biological Diversity (the Biodiversity Convention) deals with the preservation of biological diversity, including genetic diversity.

²⁸ Holmila, E. (2004). “Common Heritage of mankind in the law of the sea”
See: http://www.martens.ee/acta/1/187-205_Holmila.pdf (last accessed on 15 Aug 2012).

²⁹ See UNCLOS III, supra note 18, arts. 56, 57.

³⁰ David, C. H. (1983:11).

³¹ UNCLOS III, supra note 18, art. 61.

Over 145 countries are Parties to the Biodiversity Convention, a legally binding agreement released for signature at the Earth Summit in Rio de Janeiro in 1992. The Convention aims to conserve biological diversity (biodiversity), “the sustainable use of biodiversity's components and the equitable sharing of benefits derived from genetic resources”.³² The Convention defines biodiversity as “the variability among living organisms from all sources, including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part: this includes diversity within species, between species and of ecosystems.”³³

The Convention requires States parties, inter alia, to implement special measures to protect customary resource uses as well as indigenous and local and communities' traditional knowledge, innovations and practices, in which they carry on sustainable traditions.

The Convention also provides for an international formation to promote sustained international cooperation and to support national accomplishment. This includes a permanent Secretariat, a Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA), to support scientific and technical cooperation and a Clearing-House Mechanism (CHM). The Parties occasionally meet at the Conferences of the Parties (COPs) to discuss and elaborate on matters concerning the Convention, for example negotiating protocols (follow-up treaties on specific issues), or creating and revising annexes concerning scientific or technical matters. Every Party has to submit reports on its implementation of the Convention to the COPs. Moreover, the Global Environment Facility (GEF) runs a multilateral fund, which is sustained by developed countries to assist in financing the implementation of the Convention in developing country Parties.³⁴

³² Rodney V. Salm, John R. Clark, Erkki Siirila (2000). “Marine and Coastal Protected Areas” See: http://www.martens.ee/acta/1/187-205_Holmila.pdf (last accessed on 20 Sept. 2012).

³³ “Convention on Biological Diversity” See : <http://www.cbd.int/convention/articles/default.shtml?a=cbd-02> (Last accessed on 20 Sept. 2012).

³⁴ See <http://www.thegef.org/gef/sites/thegef.org/files/documents/Dernbach93-GEFFinDevNations.pdf> (last access on 13 Sept.2013). The Global Environment Facility: Financing the Treaty Obligations of Developing Nations by

The Convention includes a new international framework for the transfer of “genetic resources”, which are defined as “genetic material of actual or potential value”.³⁵ The Convention provides that every Party has the right to gain and control access to its genetic resources, while calling on Parties to facilitate access for other Parties. It furthermore requests that the Parties who use inherited sources should endorse the sharing of benefits with the suppliers of those resources.³⁶ The related South African nationwide legislation is the National Environmental Management: Biodiversity Act 10 of 2004 and the Genetically Modified Organisms Act 15 of 1997.³⁷

2.2 The Regional Protocol

2.2.1 The Southern African Development Cooperation (SADC) Protocol on Wildlife Conservation and Law Enforcement

This Protocol has been ratified by South Africa, but is not yet in force. This is one of various protocols under the 1982 Treaty of the Southern African Development Community (SADC) to which South Africa became a member after the transition to democracy.³⁸

The Protocol aims to co-ordinate wildlife conservation and law enforcement within the SADC. The definition of wildlife included animals and indigenous plants, too. Under the Protocol, the word “taking” is defined as the hunting, killing, injuring, capturing,

John C. Dernbach.

³⁵ See: <http://www.cbd.int/doc/emerging-issue...icBiologyGapsOverlaps-20130626-en.doc> (Last accessed on 15 May 2012). “New and Emerging issues relating to the conservation and sustainable use of Biodiversity-Synthetic Biology: Possible Gaps and overlaps with the applicable provisions of the convention and its protocols.”

³⁶ “Convention on Biological Diversity” See : <http://www.cbd.int/convention/articles/default.shtml?a=cbd-02>. (Last accessed on 20 September 2012).

³⁷ See www.environment.gov.za “Biodiversity Act 10 of 2004” (last accessed on December 2011).

³⁸ TEBU,P.W. (2000:12) SOUTHERN AFRICAN DEVELOPMENT COMMUNITY FOREIGN POLICY BEHAVIOUR: THE CASE OF TRADE WITH EXTERNAL ACTORS
See: <http://eprints.ru.ac.za/6BC9EB98-3B86...A765463C39/3145/1/TEBU-MA-TR01-95.pdf>. (last accessed 11 Feb 2012).

harassing, collecting, picking, uprooting, digging up, cutting, destruction and removal of any species of wildlife and including any attempt to engage in such conduct.

2. 3 South African National Laws Governing Marine Resources

2.3.1 Maritime Zones Act 15 of 1994

The Maritime Zones Act, which was enacted to delineate South Africa's different maritime zones, incorporates definitions and demarcations as prescribed by UNCLOS III.³⁹ This includes the UNCLOS III definition of South Africa's EEZ as 200 nautical miles from the country's coastline.

The EEZ does not form part of South African territory, but South Africa has exclusive jurisdiction in respect of all natural resources found in the EEZ. This includes marine living and mineral resources. Generally speaking, the area beyond the EEZ which does not fall under the jurisdiction of any country is referred to as the high seas (and is also so defined in section 1 of the MLRA).

2.3.2 The Marine Living Resources Act 18 of 1998 (MLRA) and Regulations for the Protection of Wild Abalone (*Haliotis midae*)⁴⁰

This MLRA regulates the conservation and exploitation of fish. 'Fish' is defined in section 1 as including all living organisms in the sea and includes mammals like whales, reptiles such as turtles, and all sea plants and algae. The only species which are excluded are sea birds and seals, which are dealt with under the Sea Birds and Seals Protection Act.

³⁹ Synopsis of Maritime Zones Act (15 of 1994) 4-8.

⁴⁰ Government Notice R.62 in Government Gazette 30716 of 1 February 2008.

The additions and amendments to the Act were brought about by the Regulations for the Protection of Wild Abalone, R62 in GG30716 of 1 February 2008, which suspended abalone fishery and introduced a diving ban in certain areas. They also repealed Regulation 39(1) (a) in R1111 (fishing or possession of abalone for commercial purposes).⁴¹

Although the MLRA does not address highly migratory fish species directly, it does seek to regulate fishing on the high seas, an area where highly migratory species are often found. It also seeks to regulate certain methods of fishing, such as long lining⁴² and the use of driftnets.⁴³ Licensing requirements are also established. The penalty for violation of these requirements or provisions of the MLRA in general is a fine of up to two million rand or imprisonment for up to five years.⁴⁴ The penalty for violation of high seas licensing requirements is a fine of up to three million rand.

2.3.3 National Environmental Management: The Biodiversity Act 10 of 2004 (Biodiversity Act)

The Biodiversity Act provides for the management and conservation of biological diversity, and the various components of such biological diversity.⁴⁵ It is a specific environmental management Act under NEMA. The Act does not mention CITES by name, but it is clear that the provisions of Chapter 4, Part 3, dealing with trade in threatened or protected species, were enacted with the purpose of giving effect to the provisions of CITES on a national level. South Africa will, therefore, in future also use national legislation to meet its obligations in terms of CITES, and further regulation in

⁴¹ See also the promulgation of regulations relating to boat based whale watching and the protection of turtles (GN R725 in GG 31212 of 04/07/2008) and the regulations on white shark cage diving (GN R724 in GG 31212 of 04/07/2008).

⁴² Marcia Kline, *Business Day* (South Africa), 2000: 2; Ingrid Salgado, *Business Times* (South Africa), (2000: 7).

⁴³ MLRA 18 of 1998: 47.

⁴⁴ MLRA 18 of 1998: 58.

⁴⁵ Biological diversity refers to the "variability among all living organisms and the ecological complexes of which they form part, and includes diversity within species (often referred to as genetic diversity), between species and of ecosystems. An ecosystem is the dynamic complex of animal, plant and micro-organism communities and their non-living environment interacting as a functional unit." Definition adapted from section 1 of the Biodiversity Act.

this regard is expected.

The criminal offences revolve around the concepts of “*restricted activities, listed threatened or protected species, alien species and listed invasive species*”, concepts which will be defined in the discussion of the criminal offences in chapter 3. It is, however, important to note that ‘listed threatened or protected species’ include those listed by the Minister in terms of 56(1), and therefore include species described as ‘critically endangered, endangered, vulnerable and protected’.⁴⁶

Section 102 (2) (b) of the Act provides for a maximum fine equal to three times the commercial value of the specimen of a listed threatened or protected species in respect of which an offence was committed.. Although it still does not provide for increased jurisdiction, it might have the effect of increasing the maximum fine in a Regional Magistrates’ Court to R300 000. It needs to be borne in mind that Sec 34(3) of NEMA makes provision for a fine additional to the monetary value of any advantage gained through the offence in the case of offences listed under Schedule 3, although NEMA and the SEMAs are not yet listed in Schedule 3.

2.3.4 The Prevention of Organised Crime Act 121 of 1998 (POCA)

POCA was enacted to combat the rapid growth of organised crime in South Africa, and because South African law has failed to incorporate and implement the various international regulations dealing with organised crime, money laundering, racketeering and criminal gang activities.⁴⁷

POCA regulates, in particular, the crime of money laundering and various organised crimes such as the prohibition of racketeering and the criminalization of activities

⁴⁶ Section 1 of the Biodiversity Act.

⁴⁷ Law review project as Amicus Curiae (2007:2) SACR 145 (CC) para.[144]. “Organised crime A study from the Cape Flats - Institute for Security Studies” BY STANDING A. (2006) See: http://www.issafrica.org/uploads/Book2006OC_CapeFlats.PDF (last accessed 03 October 2013).

associated with gangs.⁴⁸ The Act was established to combat organised crime, with a focus on organised crime syndicates.

Moreover, POCA focuses on the regulations concerning the recovery of the proceeds of unlawful activity; the civil forfeiture of assets that have been used to commit a crime and the forfeiture of property that has been used to finance terrorist activities.⁴⁹ In addition, the Act provides for the establishment of a Criminal Assets Recovery Account.

The problem with the fight against organized crime, and economic crimes in general, is that they are crimes that are hard to police and to prosecute. There are, for example, very few money laundering cases that have either been brought before the courts or successfully prosecuted. Money is laundered in various convoluted ways, which makes detection very difficult. This is especially the case in South Africa, where the crime of money laundering is relatively new, and where police lack the resources to cope with ordinary crime, let alone sophisticated economic crimes.

Conclusion

All the above-mentioned instruments are meant to combat the illegal harvesting of abalone. South Africa has implemented some of them. But the illegal poaching of abalone continues. It is therefore instructive to find out why abalone continues to be poached, and this will be the focus of the next chapter.

⁴⁸ Prevention of Organised Crime Act 121 OF 1998 [Assented to 24 Nov.1998].

⁴⁹ Prevention of Organised Crime Act 121 OF 1998 [Assented to 24 Nov.1998].

CHAPTER THREE

ABALONE POACHING IN SOUTH AFRICA

This chapter examines the origins and history of abalone poaching in South Africa, and why the criminal justice authorities have difficulties with the problem. The chapter also looks at the reasons for the increase in abalone poaching and at how the quota system, as it is practised today, gives rise to poaching.

3.1 General Information relevant to abalone in South African territorial waters

3.1.1 Introduction

The South African seashore stretches to about 3000 km, joining the east and west coasts of Africa. These coastlines are rich in biodiversity.⁵⁰

The previous chapter mentioned the maritime zones provided for in UNCLOS, as incorporated into the Maritime Zones Act. These zones are made up as follows:

- **Internal waters:** These constitute all waters landward of the determined baselines (more or less corresponding to the low water mark), and include harbours. Internal waters form part of South African territory and the normal rules of jurisdiction apply.⁵¹

- **Territorial waters:** These extend seaward to 12 nautical miles from the base lines. Although not claimed as South African territory by the Constitution (as UNCLOS allows), Section 4(2) of the Maritime Zones Act determines that 'any law in force in the Republic...shall also apply in its territorial waters...' ⁵²

⁵⁰ DEAT (2004) Transformation and the South African Fishing Industry: The TAC controlled Fisheries. Department of Environmental Affairs and Tourism, Pretoria, South Africa.

⁵¹ Section 3 of the Maritime Zones Act 15 of 1994.

⁵² Section 4 of the Maritime Zones Act 15 of 1994.

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