

# NELSON MANDELA UNIVERSITY



## FishFORCE

A World Leader in  
Fisheries Law Enforcement Training



Norwegian Ministry  
of Foreign Affairs

# FishFORCE

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Fisheries Law Enforcement Training



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# Large-Scale Poaching in our Oceans is Organised Crime

*Overview by Professor Hennie van As*

Professor Hennie van As is an admitted advocate, Public Law Professor, the Director of the Centre for Law in Action (CLA) at Nelson Mandela University, and head of FishFORCE, situated in the CLA. Established in 2016 at Nelson Mandela University, FishFORCE is Africa's first Fisheries Law Enforcement Academy. Over the past four years, the University has established itself as a world leader in the training of fisheries law enforcement agencies and in research and advocacy aimed at combating organised crime in the fisheries environment.

Organised crime, with its link to the illegal harvesting, processing and trading of fish and seafood globally, is so huge that it is in effect a parallel economic system, undermining sustainable economic growth and posing a significant challenge to fisheries law enforcement agencies across the world.

Fisheries crime, or "multi-crimes" affecting the fisheries sector, range from illegal fishing and extraction of marine resources to human trafficking and forced labour, fraud, forgery, corruption, money laundering and tax and customs evasion.

Countries are being deprived of taxes; citizens of jobs, food and income; and fisheries and environments are being destroyed. Many developing countries are unable to effectively enforce fisheries laws and are therefore unable to manage their coastal zones. The result is fish stocks in sharp decline, instability, food insecurity, and the loss of livelihoods and state revenue. Africa is particularly vulnerable and loses more than US\$20-billion (R288-billion) per year. This is a battle we have to win.

In line with Nelson Mandela University's strategic decision to develop a strong marine and maritime institutional focus, the Fisheries Law Enforcement Academy (FishFORCE) – the first ever in Africa – was launched. Funded by the Norwegian Ministry of Foreign Affairs,

FishFORCE started its activities in 2016 and was officially launched on 8 November 2017 at the University's Ocean Sciences Campus in Port Elizabeth. Norway is proud to be supporting the FishFORCE Academy, providing us with funding of just under 24-million Norwegian kroner (R42-million) for the period 2016 to 2021.

We established FishFORCE in 2016 with the aim of improving knowledge and intelligence-led investigations and prosecutions of criminals engaged in fisheries crime in Africa and globally. It has buy-in from Interpol, the Southern African Development Community (SADC) and the United Nations Office on Drugs and Crime (UNODC).

In South Africa, we have appealed to our government to deal with the poaching and smuggling of our valuable marine living resources as organised crime. We are losing vital natural, economic and food resources through rampant fisheries crimes and yet insufficient attention is given to law enforcement in this environment.

Why are our marine resources not being protected in the same way that we protect our gold or work to protect our rhinos? While marine living resources are strictly regulated by law, the implementation, administration and enforcement, falls woefully short.

There are too few fisheries control officers and patrol vessels and the understaffed South African Police Service





Training in Tanzania. The FishFORCE Academy is helping to build fisheries law enforcement capacity along Africa's east coast.

“ Countries are being deprived of taxes; citizens of jobs, food and income; and fisheries and environments are being destroyed.”

(SAPS) does not see this as a priority crime. By and large the penalties for fisheries crimes – including the illegal catching and possession of fish and seafood species, and the operating of illegal storage and fish processing facilities – are not having a deterrent effect. South African fisheries are a target for organised crime and the country is losing a lot of revenue. Treasury and SARS must become more involved. Billions of rand and national marine resources are being lost.

Much of the illegal global multi-crime activity linked with fishing is happening off the coast of South Africa, Namibia, and the east coast of Africa. The fishing vessels don't need to go into our harbours, they make their transshipments offshore. It's all happening in front of us. We can actually see these vessels poaching in our Exclusive Economic Zone (EEZ) but we don't have the capacity to deal with it.



## The threat

With fisheries crime we are dealing with organised crime. We need to respond at this level.

Treating fisheries crime as an Illegal, Unreported and Unregulated (IUU) offence attracts low penalties.

This does nothing to eliminate organised crime, which includes a wide range of related criminal offences including fraud, corruption, money laundering, human trafficking and drug trafficking, and carries severe penalties.

**FishFORCE Prevention of Corruption training for Kenyan delegation, Port Elizabeth, South Africa, 4-8 March 2019.**

To date, many fisheries crimes, or what is officially referred to as Illegal, Unreported and Unregulated (IUU) fishing have been dealt with as an exclusive fisheries management issue, resulting in less severe penalties – regarded by transgressors as little more than a rap on the knuckles. In 2018 a notorious gangster, druglord and fisheries poacher from the Cape Flats, Livingstone Napoleon, instead of being jailed for poaching, was fined R1-million after entering into a plea bargain. The magistrate let him off, and his response: he stuck out his tongue in court.



// Much of the illegal global multi-crime activity linked with fishing is happening off the coast of South Africa, Namibia, and the east coast of Africa."



This kind of behaviour has contributed to poaching with impunity in some parts of the country, and the public has had enough of the lack of response from government and the police in apprehending the syndicate criminals operating at large. The feeling is that there is a lack of political will at the highest levels of government to implement the strategies required, which would include significantly increasing the fisheries patrol boats active in our Exclusive Economic Zone (EEZ), and far more successful convictions.

FishFORCE has been strongly advocating that fisheries crimes be addressed as a priority transnational crime and

prosecuted as organised crime and racketeering under the Prevention of Organised Crime Act, with severe penalties of 25 years to life. Interpol is advocating the same, given that large-scale fisheries crimes have a well-established connection to a gamut of other illegal activities: drugs, arms, rhino horn, counterfeit goods, smuggling, human trafficking and forced labour, fraud, forgery, corruption, money laundering, and tax and customs evasion.

It is encouraging that some of our courts are responding to the seriousness of these crimes. Three major abalone (perlemoen) racketeering cases in South Africa – State v Blignaut; State v Miller and State v Brown – have been

prosecuted as organised crime, with sentences of 18 to 20 years delivered in March 2018 and March 2019.

An analysis of trade routes by the international wildlife trade monitoring group TRAFFIC, suggests that between 2000 and 2016, up to 43% of the illegally harvested abalone was traded through a number of sub-Saharan African countries to Hong Kong; 21% originated from Mozambique, 7% from Zimbabwe and 6% from Zambia. None of these countries have abalone fisheries themselves, so the South African abalone is smuggled to them, where it is 'legalised' and exported to Hong Kong.

Research conducted by the UN Food and Agricultural Organization estimates that southern and east Africa lose in the region of R12.2-billion to illegal and unreported fishing every year. It further estimates that 85% of fish stocks worldwide are now fully exploited, and illegal fishing is one of the main contributors.

Overall, a considerable upscaling of governance and management of our living marine resources is required and we are seeking to collaborate with the Department of Environment, Forestry and Fisheries, SAPS, the Defence Force, South African Revenue Services, National Prosecuting Authority and Home Affairs to develop a combined offensive. Fisheries law enforcement is transdisciplinary by nature, requiring expertise in law, criminology, police science, fisheries science, fisheries management and marine living resources conservation.

Meanwhile, FishFORCE academics are backing up these efforts with research that includes the analysis and evaluation of law enforcement gaps, the development of national and international law and policies to promote collaboration in cross-border and international fisheries crime control, and how to achieve effective sentencing.

As well as training port security officers and their supervisors and managers in South African ports, FishFORCE is currently training Fisheries Control Officers

(FCOs), police officers and other law enforcement agencies such as border police, customs and revenue and prosecutors in South Africa and Kenya and in countries along the East African coastline and Western Indian Ocean. FishFORCE Academies, which are already established in Kenya and Tanzania, are also being opened in Namibia, Mozambique, Madagascar, Mauritius and Seychelles.

The training developed and delivered by FishFORCE is linked to formal qualifications, such as a Higher Certificate in Criminal Justice and a Diploma in Law Enforcement. This training has been specifically developed in order to promote fisheries law enforcement as a career choice by professionalising this sector.

Organised crime in the fisheries environment knows no borders, and neither do marine living resources, so FishFORCE is also assisting with training, research and collaboration along the Indian Ocean Rim, including countries like Indonesia. Over the past four years we have hosted and attended numerous conferences and workshops to foreground organised fisheries crime and what needs to be done about it. We are stepping this up considerably in the 2020 decade. On 9 and 10 March 2020 we are hosting an international dialogue on fisheries crime at Nelson Mandela University titled Tightening the Net 2.0.

Participants include crime intelligence and organised crime combating bodies from around the world, as well as top government officials and advocates from South Africa, Africa and the Indian Ocean Rim. International commissions such as the Indian Ocean Tuna Commission and the Benguela Current Commission will also be attending.

Time is not on our side and far more stringent laws, combined with specialised policing and intelligence gathering for fisheries organised crimes, as well as harsh sentences, need to be prioritised at a national and international level.

“ The training developed and delivered by FishFORCE is linked to formal qualifications, such as a Higher Certificate in Criminal Justice and a Diploma in Law Enforcement. ”



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Traders wait to sell their fish inside Mogadishu's fish market in the Xamar Weyne district of the Somali capital. Every morning Mogadishu's fishermen bring their catch ashore, where it is quickly unloaded and transported to Xamar Weyne's lively and chaotic fish market where it is sold for consumption on the local market and increasingly, for export to other countries. Credit: AU-UN IST/ Photo: Stuart Price.

## Transdisciplinary field

Fisheries crime law enforcement requires traditional policing methods and tools, but these must be adapted to the specific circumstances affecting the fisheries sector. It is a transdisciplinary field, and includes aspects related to law, criminology, police science, fisheries management and conservation. The aim is to achieve knowledge- and intelligence-led investigations and the prosecution of criminals engaged in fisheries crime. FishFORCE is working to achieve this.

FishFORCE's goals are:

- To facilitate research and innovation in the field of fisheries crime law enforcement
- To promote the sustainable utilisation of marine living resources
- To contribute to poverty reduction through the training of law enforcement officers
- To advance economic development by increasing the capacity of selected countries to investigate and prosecute fisheries crime.



The 6th Global Fisheries Enforcement Training Workshop, Bangkok, Thailand, 18–22 February 2019, was attended by FishFORCE Director Professor Hennie van As.



# Collective Ocean Action

*Message from the Vice-Chancellor of Nelson Mandela University,  
Professor Sibongile Muthwa*

The oceans cover 70% of our planet and are a critical source of oxygen, food, marine resources, employment, and subsistence. We know this and yet we have lost more than 40% of the biodiversity in the oceans during the past 40 years.



Professor Sibongile Muthwa

The oceans are under extreme pressure from relentless large-scale poaching and unsustainable resource extraction. At the same time, the latest International Panel on Climate Change report shows that since the 1970s about 93% of the excess heat from greenhouse gas emissions has been absorbed by the oceans. Coral reefs, the principal breeding ground for many marine species, are severely affected by this and other factors such as acidification. Activities such as overfishing and blast fishing also significantly contribute to coral reef destruction.

All this demands a crisis call for collective action. We need to know what is being done to protect and conserve our oceans and to ensure that the so-called blue economy is sustainably developed. To achieve this, we need new modes of thought and novel solutions that engage all our communities, locally and globally, and address poverty and inequality.

What is encouraging is that a growing network of outstanding research and innovation initiatives in South Africa, the continent and internationally are collaborating to better understand this vast body of water, to implement solutions for its protection, conservation and sustainable development and to proactively address fisheries crime.



FishFORCE is a unique institution in Africa, helping to build fisheries law enforcement capacity in developing countries to meet emerging threats and to build adequate and resilient law enforcement responses. The aim of the FishFORCE Academy is to establish a 'FISHFORCE' that can handle the increasingly complex investigations and prosecutions of fisheries crime throughout Africa and the world.

This requires close and ongoing international collaboration. Professor van As has mentioned the international dialogue on fisheries crime being held at our University in March 2020. This follows on from the first FishFORCE dialogue that was hosted in March 2019 and two pivotal international ocean sciences conferences held at our institution in March 2019: the

Second International Indian Ocean Expedition (IIO-E2) and SANOCEAN.

The IIO-E2 was hosted for the first time in Africa, and brought together partners from throughout the world, including the major ocean sciences nations. IIO-E2 is the single largest effort to study the Indian Ocean in a transdisciplinary manner, in order to advance our understanding and enable informed decision-making.

SANOCEAN is the South Africa–Norway Research Co-operation on Blue Economy, Climate Change, the Environment and Sustainable Energy. The long-term programmes in this partnership enhance the knowledge base for policies and decisions for the sustainable development and conservation of our oceans.

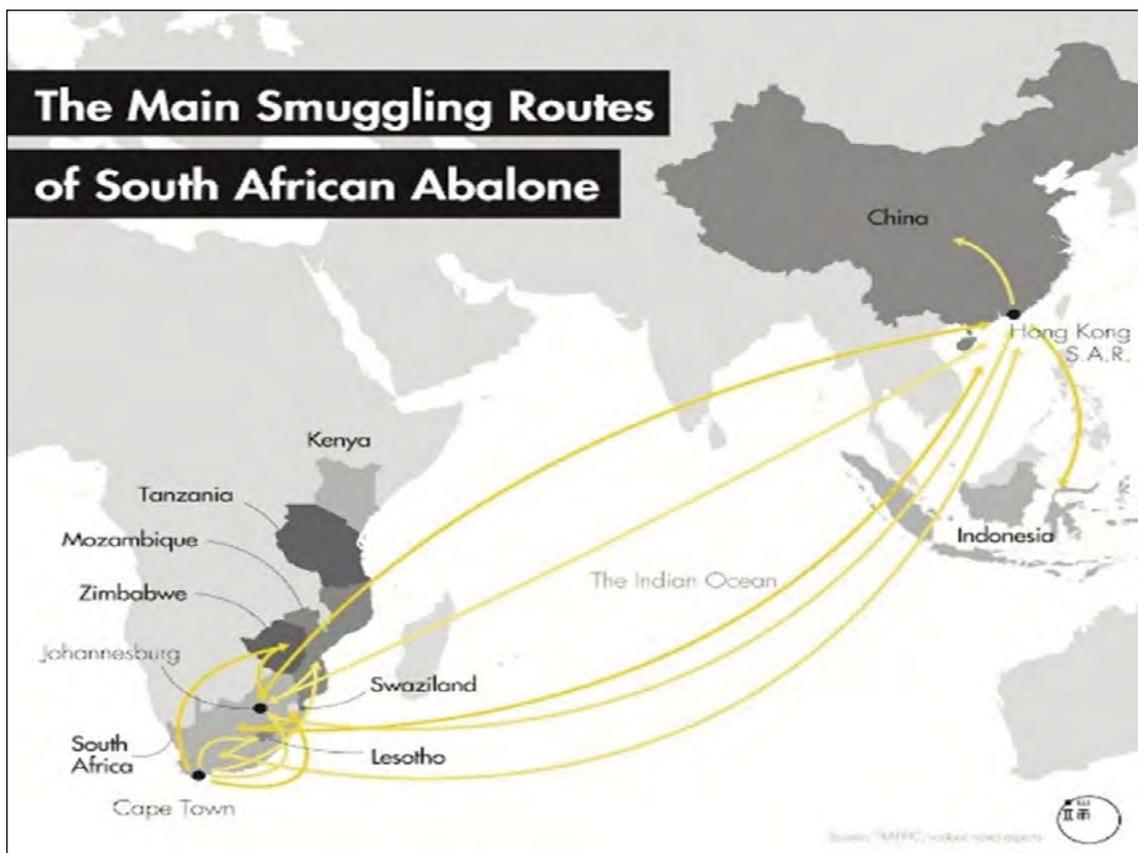


We are proud of the fact that Nelson Mandela University is positioning itself as the hub for the law of the ocean and ocean sciences in Africa and the Western Indian Ocean."





// FishFORCE is a unique institution in Africa, helping to build fisheries law enforcement capacity in developing countries ... "



TRAFFIC is a leading NGO working globally on wildlife trade in the context of both biodiversity conservation and sustainable development. Image: TRAFFIC



Local fisherman off the coast of Tanzania. Credit: Mike Markovina

The British High Commissioner and Norwegian Ambassador are good friends of Nelson Mandela University and attended the respective conferences. Our countries partner on several programmes and research chairs. FishFORCE was founded with funding from our University's partnership with Norway, with the aim of developing the processes required to combat organised fisheries crime.

Support for the FishFORCE Law Enforcement Academy is part of Norway's aim to be at the forefront of international efforts to promote sustainable use of our oceans and to ensure that they are clean and healthy, as well as bolstering the blue economy in developing countries. Fighting fisheries crime is one component towards achieving this.

South Africa shares Norway's strategic prioritisation of sustainable ocean use. This is exemplified by Operation Phakisa, South Africa's innovative and ambitious Oceans Economy programme.

Our University also collaborates with several Norwegian universities and institutions on ocean research, innovation and sustainable industry for the blue economy, including fisheries, aquaculture, offshore oil and gas, shipping, and marine plastic pollution clean-ups. These programmes are funded by government agencies, industry and European Union projects.

We are proud of the fact that Nelson Mandela University is positioning itself as the hub for the law of the ocean and ocean sciences in Africa and the Western Indian Ocean. We are a coastal university; we partner with the national and international marine and maritime research community and have strong collaborations with other coastal countries in Africa and globally. We also have strong partnerships with other South African universities, the Nelson Mandela Bay Metro, government and key industry players to propel a collective drive and collective solutions.

Our faculties and dedicated Ocean Sciences Campus (the first of its kind in South Africa) offer a range of qualifications and programmes to support ocean sciences development, conservation and a sustainable, well-managed blue economy.

We welcome the United Nations declaration of the Decade of Ocean Science for Sustainable Development: 2021 to 2030 ([oceandecade.org](http://oceandecade.org)). It will hopefully be the largest driver ever to protect the oceans and use them sustainably, to tackle ocean warming, and to bridge science, policy and practice, especially in addressing organised fisheries crime.

With South Africa's coastline spanning approximately 3000 kilometres, bordered by three oceans – the Atlantic, Southern and Indian Ocean – we are perfectly placed to play a significant role in the much anticipated 'Blue Decade'.





# The Rise of FishFORCE

*Foreword by the Executive Dean of the Faculty of Law,  
Professor Avinash Govindjee*

**Nelson Mandela University's Faculty of Law contributes to the institution's vision of being a dynamic African university, recognised for its leadership in generating cutting-edge knowledge for a sustainable future. The faculty strives at all times to maximise the practical learning possibilities for law students and boasts highly respected academic staff and committed support staff who combine to provide a top-quality educational experience for law students.**

**B**y providing a solid legal education foundation, coupled with deliberate and ongoing interaction with members of the legal profession, the faculty seeks to equip graduates with the necessary attributes for a successful career in law. As a result, students graduating with a Nelson Mandela University law degree have assumed leading positions at top law firms and other businesses in South Africa and abroad and made a meaningful contribution to society.

The faculty, and its students, are particularly engaged in South African society, and the faculty aligns itself with the promise of Service to Society that is the cornerstone of the University's intellectual and social project. This alignment is exemplified by the recent rise of FishFORCE as a best-practice example of a collaborative approach designed to build fisheries law enforcement capacity in developing countries to meet emerging threats and develop appropriate law enforcement responses.

FishFORCE is situated in the Faculty of Law's Centre for Law in Action (CLA). The CLA is a highly reputable and internationally connected entity that focuses on improving the levels of service delivery at various governmental levels and increasing access to justice for people in need. The CLA was established in 2002 with the main aim of being a training service provider for:

- a. Training of municipal and government employees and officials in the implementation and enforcement of legislation including municipal by-laws
- b. The improvement of policy and legislation



**Professor Avinash Govindjee**



The Centre's activities are well aligned to Nelson Mandela University's Vision 2020 and the Strategic Priorities of the University and Faculty of Law. The Centre is dynamic and responsive to market changes, community and government needs, as demonstrated by the FishFORCE Academy.

The CLA has increased its footprint from a provincial (Eastern Cape) impact to covering seven provinces and establishing an international presence – mainly in the fields of law enforcement and access to justice. In 2015 the CLA shifted its focus to include sea fisheries and related crimes in South Africa and a number of countries in the Indian Ocean rim.

The CLA is one of the Faculty's main platforms for engagement on a local, national and international level. It is adding value at both an undergraduate (teaching and learning) and postgraduate research level and is contributing to the Faculty's strategic projects. Since the establishment of the FishFORCE Academy its international engagement activities have expanded extensively. The Director, Professor Hennie van As, serves on a wide range of local, national and international committees linked to crime prevention. It has also expanded its activities internally and actively cultivated collaboration with institutional entities and other faculties, notably the Faculty of Science. FishFORCE is also part of research undertaken under the auspices of the One Ocean Hub, the Algoa Bay Community of Projects (CoP) and the Western Indian Ocean Community of Projects. The Director is also a member of the SADC Fisheries Task Team and the UNODC's Law Enforcement Training Network.

The Centre has excelled in terms of Engaged Teaching and Learning and serving as a resource to the Faculty

through its development of both formal and non-formal qualifications. It has developed a wide range of needs-based credit bearing short learning programmes that are linked to local government and fisheries law enforcement. It has also been instrumental in providing articulation opportunities into the formal programmes of the Faculty of Law as well as in the development of the Higher Certificate and the Advanced Diploma in Law Enforcement. The Centre is also contributing to the supervision of postgraduate students, conferences and scholarly outputs linked to fisheries crimes. The establishment of the FishFORCE Academy has resulted in the training activities of the CLA expanding exponentially at a local and international level.

FishFORCE closely collaborates on relevant research with the SARChI Chair in the Law of the Sea and Development in Africa. Established in 2013 the Chair focuses on the following three areas:

- South Africa and the Law of the Sea, including the legal regime governing the South African continental shelf and the exploitation of its resources.
- Development in Africa and the Law of the Sea, including relevant indigenous law research at an international and comparative level on:
  - The east coast of Africa and the Indian Ocean
  - The west coast of Africa and the Atlantic Ocean
  - The Southern Ocean and Antarctica.
- The legal aspects of marine tourism.

A number of master's and doctoral candidates are working with the Chair incumbent, Professor Patrick Vrancken, on research relating to the Law of the Sea. Prof Vrancken is the co-editor of a seminal 800-page book published in

“ Since the establishment of the FishFORCE Academy its international engagement activities have expanded extensively.”





Illegal nets and fish caught in one of South Africa's protected areas.

2017, titled *The Law of the Sea – The African Union and its Member States*. His co-editor is Emeritus Professor Martin Tsamenyi, former director of the Australian National Centre for Ocean Resources and Security (ANCORS) and an adviser to Ghana on issues relating to maritime boundaries and fisheries governance.

This book is the first work that attempts to systematically collate the legal aspects of ocean governance in African countries. Prior to its publication there was a heavy reliance on what was written on the Law of the Sea from

outside Africa, which was often unreliable, biased and incomplete.

The Faculty of Law is proud of the work of the SARCHI Chair in the Law of the Sea and Development in Africa, and of FishFORCE's impact on the continent and beyond. The collaborative approach adopted has enhanced the outcomes being achieved and contributed to affording the Faculty of Law a strong presence in the University's growing prioritisation of work in the broad area of the ocean sciences and ocean governance.

“ A number of master's and doctoral candidates are working with the Chair incumbent, Professor Patrick Vrancken, on research relating to the Law of the Sea.”

# Living Dangerously: Marine Crime

Substantive local and international research links the poaching of abalone, lobster and other marine species in South Africa to organised and transnational criminal syndicates. The presence of a large and highly efficient Chinese organised crime network in southern Africa with links to the illicit trade in these species and drug trafficking is well known and goes back many years.

## The Reality

In the 1980s, following the interception of a Chinese shipment of one million Mandrax tablets in a Durban warehouse, a former National Prosecuting Authority (NPA) Director spoke about the involvement of the secretive and violent Chinese triads in multi-crimes:

*“Chinese triads who were ravaging the country’s perlemoen (abalone) were also responsible for flooding the local drug market with Mandrax. ... They (the triads) exchange the mandrax for abalone, which is then exported to Taiwan and China where it is considered an aphrodisiac.”*

Over three decades later, in 2017, the Western Cape Standing Committee on Economic Opportunities tabled a report that found that abalone poaching is strongly linked to crime syndicates.

A wealth of research on organised crime over the years has been undertaken by the Institute for Security Studies (ISS). Two of the senior contributors are:

Peter Gastrow, senior ISS research consultant, lawyer and senior advisor, Global Initiative Against Transnational Organised Crime who, in 2013, published his paper titled: “Transnational organised crime: the stepchild of crime-combating priorities.” In the summary he wrote:

*Pressure from voters on politicians and the latter’s hope of re-election contribute to*



Fish on a Trawler





Checking fishing nets with a smaller than permissible size.

*crime combating strategies being short-term, uncoordinated and confined within national borders. Little attention is paid to transnational organised crime even though it is developing into a major international security threat. It has gone global, but effective global responses have not been developed. Undoubtedly, some of the battles against transnational organised crime are being won, but we are losing the war. The vulnerabilities of developing countries should make the warning lights for Africa go on even stronger than elsewhere. Through its regional organisations and the AU, Africa should start working on a coordinated regional approach towards countering transnational organised crime on the continent, because individual states will no longer be able to do so on their own.*

A second ISS contributor, Jonny Steinberg (freelance journalist and researcher), writing on the illicit abalone trade in South Africa, reiterates the presence of a large, longstanding and highly efficient Chinese organised crime network in the South African illicit trade of abalone. In 2005 he wrote:

*In the first 20 years following the introduction of a quota on abalone harvesting in 1970, poaching existed but was contained. This changed dramatically in the early 1990s. Within a couple of years, the illicit perlemoen trade had become a highly organised, multimillion-dollar industry, controlled by street gangs on the shoreline and by transnational enterprises on the trade routes to East Asia. As a result of this binge of illegal harvesting, South Africa's stock of wild perlemoen today stands on the brink of extinction.*

// Over three decades later, in 2017, the Western Cape Standing Committee on Economic Opportunities tabled a report that found that abalone poaching is strongly linked to crime syndicates."

# Chair of the South African small-scale fishers speaks out

*By Pedro Garcia  
Chair of the South African United Fishing Front*

**I'm from Cape Town, I'm Afro-Filipino, my grandfather was Filipino and I'm African. I started fishing about 40 years ago, mainly line fish and West Coast rock lobster, first on a need basis and later, on a number of occasions spread over many years, using it as a primary source of income.**

**M**ost of the men in our family are or were fishermen, both commercial and recreational, and the sea has always been part of our lives. I also have a naval background, I was a radio operator until 1980 and in 2003 I joined a National Skills Foundation initiative to provide training to small-scale fishers, including small boat handling and survival skills.

For two-and-a-half years, I spent several weeks in about 80% of fishing communities across South Africa's coastline, which gave me huge insight into the issues small-scale fishers face and the need for a body to represent them. That's how the South African United Fishing Front was formed and I became Chair. For me it's a calling.

We mainly focus on the small-scale coastal fishers and cooperatives in the Eastern Cape, KZN and the Western Cape, as well as the inland fishers in the Northern Cape. The legislation governing South Africa's small-scale fisheries sector is extremely complex and convoluted, as there are 22 different fisheries, each with their own set of permits, policies and legislation. This is compounded by 25 years of political indecisiveness in the fisheries sector.

Everyone is talking about sustainable fish and marine species harvesting but poaching is out of control in South Africa and it comes back to an absence of compliance and monitoring that is leading to indiscriminate

harvesting. The undue influence of the big seafood companies on government also needs to be urgently and seriously addressed, as does the abysmal neglect of small-scale fisheries.

Fisher communities need to be treated as equal partners in all fisheries policy and decisions, and in initiatives like FishFORCE, which we regard as a highly worthwhile platform if it is inclusive. It is important that the small-scale fishers get this recognition, and that we bridge the divide between academics, scientists and communities. It's equally important that when community consultations are done around Marine Spatial Planning (MSP) that the documentation is not in English when 99% of the people involved don't speak or understand English.



**Pedro Garcia**





**FishFORCE Specialised workshop on Fisheries Trade Monitoring and Compliance, Mombasa, Kenya, 4–8 November 2019.**

Small-scale fisher communities have a considerable amount of local and indigenous knowledge about what is happening in the oceans. This includes observing illegal operators; in certain parts of the Eastern Cape, for example, we regularly see large, foreign-owned ships coming over the horizon at dusk. Smaller boats are offloaded from them, which fish through the night and then return to the mother ship at daybreak, are loaded up again and the ships disappear back over the horizon. We report this to the authorities and nothing happens. The government could have communities doing monitoring and surveillance from the high cliffs of the Wild Coast, for example.

We are well aware of the shortfalls and challenges in fisher communities, but unless we build their institutional

capacity and their ownership and equity in the sector with the government's full support, we are not going to get their buy-in when trying to resolve issues like illegal fishing, organised fisheries crime, and the management of marine protected areas. Coastal communities are having to deal with numerous problems, including global warming, but the illegal fishing is something we can immediately collaborate on.

In Indonesia, for example, the fishing communities have the full support of the government and over 12 months they increased the small-scale fishers' catch value by 10% by taking decisive action against illegal activities, including sinking illegal vessels.

// We all know the poaching is out of control and the coastal communities are fully aware of the illegal activities taking place but it is not only the big guys poaching, many people are poaching because they can't get permits and they need to put food on the table."

// Fisher communities need to be treated as equal partners in all fisheries policy and decisions, and in initiatives like FishFORCE, which we regard as a highly worthwhile platform if it is inclusive.”



Traders at the fish market in the Xamar Weyne district of Mogadishu, Somalia. Credit: AU-UN IST/ Photo: Stuart Price.

In South Africa, the small-scale fishers are not held in such regard. Here, we have scientific working groups determining the allocations for each species annually for DAFF but the small-scale fishers' rights and access is in a total mess.

These rights allocations go back to 2005/6 when a lot of small-scale fishers were unfairly excluded in the process and it is still in a mess. The small-scale fisheries policy was gazetted in 2012 to try and sort out the problem but it is also highly questionable as there is so much mismanagement, corruption and political interference in fisheries in this country.

West Coast rock lobster, for example, is at 2% of its original population. Internationally this fishery would be closed down when it reaches 20% but there is big money in it here and huge pressure to keep it going. It is the

same with abalone, the legal allocation is  $\pm 100$  tons annually but we export 2000 to 4000 tons annually, so it raises questions around the science and the economics. We all know the poaching is out of control and the coastal communities are fully aware of the illegal activities taking place but it is not only the big guys poaching, many people are poaching because they can't get permits and they need to put food on the table.

The small-scale fishers have been made a lot of empty promises. For example, the policy stipulates that small-scale fishers should have access to a basket of species; but the basket includes species like snoek and yellowtail, squid and West Coast rock lobster, which have already been allocated to the commercial sector. They have rights that only expire in 2021 and beyond, so people have permits but no access.





I have a very good relationship with many of the people in DAFF, especially middle-tier management, but the major decisions are out of their hands. It is time to call a spade a spade and in my opinion the whole department should be put under administration. How is it that after 25 years our people have regressed instead of progressed? It's as a result of the mismanagement and wrongdoings in the department. Many of the systems have got worse. The Director General of Environmental Affairs is very concerned about this, as is the Minister. They well know that they have to take critical decisions soon because the trajectory we are following now for the small-scale fisheries is so problematic that it is heading for the worst embarrassment for the department ever. Major damage is being caused to our resources and communities.

Any area where you have abject poverty is exposed to exploitation of the worst kind and the poaching syndicates are strongly associated with drugs and drug

abuse. The syndicates offer people R2000 to be a carrier of illegal marine resources – this is the kind of money that many people have never had, and many fall for it. But what happens afterwards? The syndicates start providing the carriers with drugs and after a while the payment is changed to drugs with a devastating domino effect in the fishing communities, which are at the mercy of the syndicates.

It all goes back to lack of compliance and control of our resources. It is incumbent on government to start sorting this out as they have allowed it to get to this level. At grassroots level we simply do not have structures in place to address this. The government has to do its work and it goes back to ownership; if communities are given ownership of the resources they will protect them. I am having meetings to enhance capacity at grassroots level, but it will take a lot of hard work to undo the damage.



Boats arriving with daily harvest in Cayar, Senegal.

# The Link between Marine Living Resources and Organised Crime

This is an edited version of the article “The link between marine living resources & organised crime – you will be surprised!” by Professor Hennie van As, *Servamus Community-based Safety and Security Magazine*, Volume 112, Number 6, June 2019, p. 25–27 <https://hdl.handle.net/10520/EJC-16130f587c>

## Introduction

South Africa’s coastal waters are home to a large variety of valuable marine living resources that can provide both sustenance and industry to coastal communities, as well as contributing to the country’s economy. Unfortunately, as with any valuable resource, it is a magnet for abuse and exploitation. This generally takes the form of illegal, unreported and unregulated (IUU) fishing – a problem which until recently has been dealt with as an exclusive fisheries management issue. However there are calls for this to change. Interpol has appealed for increased “awareness of some types of illegal fishing as a form of transnational and organised crime”. In 2013, the organisation launched Project Scale, an initiative to enable member countries to identify, deter and disrupt transnational fisheries crime.

The connection between the smuggling and illegal importation of drugs, cigarettes and counterfeit goods into South Africa, and the smuggling of marine living resources out of it has been demonstrated. The link between the illegal export of poached abalone (*Haliotis midae*) and drug trafficking (mainly methamphetamine – commonly known as tik) is so strong that it has been called a “marriage of convenience”. This is not a new notion, as research conducted almost 20 years ago already linked the presence of organised criminal Chinese triad societies in South Africa with abalone poaching. At the time, Advocate Peter Gastrow of the Institute for Security Studies reported that: “The Taiwanese-linked criminal group active in Cape Town was referred to as the ‘Table Mountain Gang’ at that stage. Police soon discovered that members of these triad societies were also operating in the

Johannesburg/Pretoria area as well as in every harbour city in South Africa. Police investigations also revealed that the illicit trade in abalone constituted a major component of the Chinese organised criminal groups.

Ten years ago, other research indicated that a large illegal and highly organised network had developed from the urban centre of Port Elizabeth and systematically targeted the species across the entire Eastern Cape for transport inland and export to the Far East. The extent of abalone poaching in the Western Cape is well documented.

The most threatened and most widely smuggled marine living resources are abalone (*Haliotis midae*) and West Coast rock lobster (*Jasus lalandii*). According to a recent report the rampant illegal harvesting of abalone has resulted in the loss of a commodity worth approximately R628-million per annum, had it been legally harvested and traded. It is, however, difficult to calculate the cost to the economy since it is regarded as a “dark” (or unrecorded) crime.

Research conducted by the UN Food and Agricultural Organization estimates that between \$11-billion and \$30-billion (R165-billion to R450-billion) is lost annually to illegal fishing. Southern and east Africa loses in the region of R12.2-billion to illegal and unreported fishing every year. It further estimates that 85% of fish stocks worldwide are now fully exploited, and illegal fishing is one of the main contributors.

The extent of the illegal trade in abalone is illustrated by the fact that between the years 2000 and 2007, 74%





West Coast rock lobster is at risk of extinction and has been depleted to 1.9% of its original, pre-fished stock size.

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“ FishFORCE’s main purpose is to combat sea fisheries crime and related criminal activities through the provision of training to law enforcement agencies in South Africa, east African countries, Namibia and the small Indian Ocean States.”



of dried abalone were imported to Hong Kong from South Africa. This dropped to 39% between 2008 and 2015 as new restrictions were enforced, but at the same time exports of abalone from other African countries have increased. West Coast rock lobster, the other commodity that is popular among poachers and crime syndicates, are slow-growing, long-living crustaceans, making them susceptible to overfishing. The Worldwide Fund for Nature (WWF) estimates that the resource has declined dramatically over the last 50 years as a result of overfishing, to the point where it is approximately only 1.9% of its original, pre-fished stock size.

Organised criminals don’t necessarily have to be foreigners – South Africans are equally capable of fulfilling

this role. Arnold Bengis for example – prosecuted in 2013 for illegal harvesting and export of rock lobsters – was described as “the man who destroyed the West Coast rock lobster”. His company, Hout Bay Fishing Industries (Pty) Ltd, conducted fishing operations in South African waters for about four decades before ceasing operations in 2002. The illegally harvested fish was exported to the United States, the Far East and Europe.

### **The growth of the illegal fishery industry**

The main causes of the rise of illegal fishery and associated criminal activities have been identified as:

- A significant increase in demand for South African abalone in the Far East





**Species identification training with delegates from DAFF, SAPS & City of Cape Town officials, 29 July – 2 Aug 2019.**

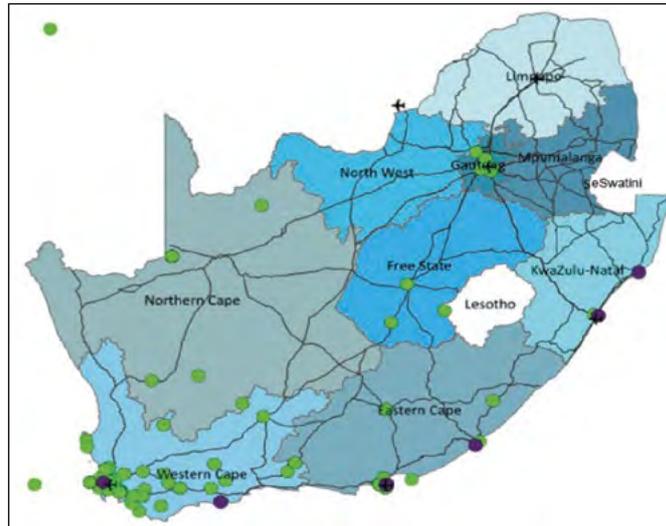
- A substantial increase in the abalone price in the 1990s that triggered an abalone fishing “goldrush”
- The failure of post-apartheid marine living resource reforms to accommodate many customary fishers, forcing them to operate illegally. The previously “informal” traditional fishery evolved to become a highly organised illegal fishery assisted by international syndicates exporting the product illicitly
- The weakening of the rand against the US dollar, making the export price of abalone attractive
- Weak control systems that allowed the free flow of illegal products across borders
- The low risk of detection and weak deterrence due to low penalties, as well as poor conviction rates
- Corruption.

are also permitted powers of search and seizure for any vessel they reasonably suspect is committing illegal fishing activity in terms of the Act.

The truth of the matter is, however, that although FCOs are granted extensive powers as far as vessels are concerned, the operational ability to exercise those powers is very limited, as the Department of Environment, Forestry and Fisheries (DEFF) is extremely under-resourced as far as ocean-going vessels are concerned.

The existing legislative framework is insufficient to effectively combat fisheries crimes. Knock-on effects, such as the DEFF’s failure to secure compliance, and the tensions with the communities in which FCOs operate,

“ What are considered to be instances of poaching are criminal acts that are linked to serious, organised crime, such as human and drug trafficking, the smuggling of contraband such as fake products, cigarettes and firearms, tax evasion, money laundering and a host of other activities.”



Map of where seizures took place in South Africa (2014–February 2018), highlighting major highways and ports within the country that are being used to transport or store abalone. Credit: Norwegian Ministry of Foreign Affairs.

have resulted in the entrenchment of poaching syndicates in these areas, leading to increased gangsterism. Furthermore, the failure to ensure compliance has been shown to have a negative effect on the delicate ecosystems that exist in South Africa's coastal waters, resulting in damage to other species, which in turn causes further difficulties to the local communities who rely upon the sea for livelihood and sustenance.

Another knock-on effect is that the powers of FCOs are weak, and that they are reliant upon the support of the South African Police Service (SAPS). While FCOs are able to enter vessels and premises, and to search and seize property, any confiscated evidence needs to be handed to the police as soon as possible. FCOs also have no powers to investigate, which in practice means that they apprehend suspects, complete statements and hand the case over to the SAPS. In many instances, they have no idea whether cases are progressing. This is exacerbated

by the fact that crimes relating to marine living resources are not considered priority crimes. The effect of this is demoralising.

Another factor is the proliferation of law enforcement agencies attempting to address abalone poaching. In the south-western Cape, these include the SAPS, DAFF, Cape Nature, SANParks, the Overstrand Municipality Law Enforcement Unit as well as the City of Cape Town with its marine units in the Metro Police as well as its Law Enforcement Department. These units often don't collaborate, don't liaise and don't have common objectives

### Declining stock – less crime?

It might be tempting to consider whether these entrenched organised crime networks will collapse if the available stock of abalone and rock lobster declines, but it seems not to be the case. The syndicates move



Truckloads of rays are poached daily in Mozambique.





## // The penalties for illegal possession of fish and seafood species and the operating of storage facilities and fish processing facilities are hopelessly inadequate.”

on to find other commodities, which is evident from a consignment of live mangrove or mud crabs (*Scylla serrata*) that was confiscated en route from George to Johannesburg. This species may not be sold, and it has an illegal value of R480/kg. In an attempt to quantify the extent of illegal harvesting, a fisheries scientist working at the then DAFF indicated that approximately 25 000 crabs were leaving KwaZulu-Natal per annum, mostly through neighbouring countries. The packaging, the routes and the information available clearly pointed towards organised crime.

South Africa needs to address this problem urgently, together with its National Prosecuting Authority, as these criminal networks act with increasing impunity. The reasons for the failure or ineffectual nature of prosecutions for fisheries related crimes must be established. The question is whether the problem lies with the prosecution itself, the lack of proper evidence collected or even inadequate legislation.

The penalties for illegal possession of fish and seafood species and the operating of storage facilities and fish processing facilities are hopelessly inadequate. Criminals are not discouraged from participating in these activities as they consider the penalties meted out as a slap on the wrist or as the cost of doing business. One example happened in February 2019, where a father and his two sons received “hefty” fines and suspended sentences in the Western Cape High Court for abalone poaching, money laundering and racketeering. The accused were linked to a syndicate that operated illegal abalone facilities. They entered into a plea and sentencing agreement with the State and the court sentenced each of them to five years’ incarceration, wholly suspended for

five years on stringent conditions, as well as a R50 000 fine each. Compare this to a case where a Port Elizabeth abalone syndicate poacher was sentenced to 20 years’ incarceration by the High Court sitting in Port Elizabeth. The syndicate generated a total of R30-million from their criminal activities, described by the judge as “the widespread plunder of abalone from our coastal waters”.

The inadequacy of penalties, resulting from the classification of offences, is further illustrated by a recent case in which two Taiwanese men were kept in custody, having been arrested for possession of abalone with an estimated value of R9-million as well as R120 000’s worth of cannabis, on a farm. The possession of the cannabis was the determining factor because despite its relatively low value, this is a Schedule 5 offence where bail is not as easily granted.

The determination of crimes under ‘schedules’ is done in terms of the Criminal Procedure Act 51 of 1977. Depending on the schedule under which the offence is grouped, bail may be granted, which often means the end of a case as arrested foreign nationals simply leave the country. It is important that the legislature realises that the value of the illegally obtained marine products should play a role in determining the factors relating to the schedule applicable for bail purposes.

### **The time to act is now**

It is time that the authorities paid more attention to this scourge of fisheries related crime. What are considered to be instances of poaching are criminal acts that are linked to serious, organised crime, such as human and drug trafficking, the smuggling of contraband such as fake products, cigarettes and firearms, tax evasion,



money laundering and a host of other activities. All of these activities can be seen to pose a threat to national security.

Nelson Mandela University's Centre for Law in Action, together with the Norwegian Ministry of Foreign Affairs and Operation Phakisa partnered to address this problem by establishing the FishFORCE Academy.

FishFORCE's main purpose is to combat sea fisheries crime and related criminal activities through the provision of training to law enforcement agencies in South Africa, east African countries, Namibia and

the small Indian Ocean States. FishFORCE conducts research and provides post-training support with the aim of enhancing intelligence-led investigations and increasing successful prosecutions of criminals engaged in fisheries crime. A large part of its work includes advocacy, nationally and also globally. It also enables law enforcement officers to obtain formal qualifications, with access to further academic qualifications. It is hoped that the work conducted by FishFORCE will not only provide an answer to many of the questions and issues raised here, but will also be at the forefront of the fight to strengthen South Africa's protection of its marine living resources.



South Africa's mud crabs are now being heavily targeted for the illegal fisheries trade.

// Another knock-on effect is that the powers of FCOs are weak, and that they are reliant upon the support of the South African Police Service (SAPS)."





# Africa Must Invest in the New 'High Seas' Treaty

With its vast coastline and high levels of organised crime, treaty negotiations must include Africa's priorities.

*By Agnes Ebo'o*

Agnes Ebo'o is the Regional Coordinator Central Africa, for the ENACT project, ISS. The ISS (Institute for Security Studies) is a non-profit organisation with offices in South Africa, Kenya, Ethiopia and Senegal. Their work covers transnational crimes, migration, maritime security and development, peacekeeping, peacebuilding, crime prevention and criminal justice, and the analysis of conflict and governance. The ENACT project builds knowledge and skills to enhance Africa's response to transnational crime.

**T**he world's largest crime scene is not in any specific country or region. It is the area known as the 'high seas' – those parts of the oceans that fall outside the national jurisdiction of coastal states. Governance and regulation are limited here, given the principle of the freedom of the seas.

As a result, fragile habitats have been damaged by deep-sea bottom trawlers (fishing vessels that scrape the ocean floor) and unique marine biodiversity has been destroyed. Species such as tuna have also been severely overfished.

Many of these crimes and activities have been attributed to organised criminal groups operating at sea, but legal sea users that carry out illicit schemes are also responsible. In 2012, the UN General Assembly noted the existence of "possible connections between transnational organised crime ... and fisheries in certain regions of the world".

A UN Office on Drugs and Crime study on transnational organised crime in the fisheries sector identified illegal fishing and overfishing, and the dumping of toxic waste and pollution from vessels as common criminal activities carried out by networks on the high seas. These are also called transnational fisheries crime, or transnational environmental crime.

## **The UN's 'Paris agreement for the ocean' is a welcome development, and not just for conservationists**

In September 2018, the UN launched formal discussions for a treaty to conserve the marine biodiversity on the high seas. The talks are a welcome development, and not just for conservationists.

It is hoped that this historic and long overdue agreement, which follows over a decade of debate, will be adopted in 2020. Already dubbed the 'Paris Agreement for the ocean', it would be the first international legally binding instrument to protect marine life in international waters.

The treaty will cover two marine areas – the high seas and the Area – as defined by the UN Convention on the Law of the Sea (UNCLOS). The high seas represent "all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State". The Area refers to "the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction".

Until now, under UNCLOS, "all States, whether coastal or land-locked, [have] freedom of navigation, overflight,



// A UN Office on Drugs and Crime study on transnational organised crime in the fisheries sector identified illegal fishing and overfishing, and the dumping of toxic waste and pollution from vessels, as common criminal activities carried out by networks on the high seas.”



Illegal nets

freedom to lay submarine cables and pipelines, to construct artificial islands and other installations permitted under international law, freedom of fishing, and freedom of scientific research”. The resources in the Area are viewed as the common heritage of humankind.

### **The exploitation of resources on the ocean floor is based on a first-come, first-served principle**

This has been a grey area in international law, leaving the high seas open to criminals. Particularly relevant to the proposed treaty are those forms of transnational organised crime committed at sea that have been identified by the UN Office on Drugs and Crime. These include vessel-source

pollution, such as the illegal and deliberate discharge of oil into the ocean, and fisheries crimes.

The latter often overlap with other forms of organised crime, such as drug smuggling and human trafficking. Legal loopholes have until now prevented the prosecution of those who commit these offences. The new high seas treaty is an opportunity to remedy that.

The future treaty won't replace or supersede UNCLOS or other relevant legal instruments, but will add to them by covering the conservation and sustainable use of marine resources in areas beyond national jurisdiction.



# No Single Nation Has The Resources

## Nelson Mandela University's partnership with Norway and collaborations and the FishFORCE team.

In 2016 the Norwegian government committed over R42-million over five years for the establishment of FishFORCE at Nelson Mandela University. At the signing by Norwegian Ambassador to South Africa at the time, Trine Skymoen, and Nelson Mandela University's Vice-Chancellor, Professor Sibongile Muthwa, Ambassador Skymoen said:

"Norway's economy is based on the ocean, and South Africa is the perfect partner with whom to collaborate and expand our marine and maritime cluster."

The current Norwegian Ambassador to South Africa, Astrid Helle says: "The price to society of organised fisheries crime needs to be clearly understood. This, together with climate change and marine pollution goes directly against sustainable ocean resources, which is a high political priority for both Norway and South Africa. The oceans represent a key source of income and food for many countries. Oceans know no borders and combating organised fisheries crime and the associated multi-crimes is in everyone's interest. We regard South Africa as a key partner in taking a leadership role in combating organised fisheries crime and in the global shift towards a sustainable ocean economy."

### FishFORCE collaborations

FishFORCE collaborates with the national and international marine and maritime research community and has strong collaborations with other coastal countries in Africa and globally. We also have strong partnerships with other South African universities, the Nelson Mandela Bay Metro, government and key industry players to propel a collective drive and collective solutions to the challenges facing our marine environment.

FishFORCE's collaborations include:

- 1. Indian Ocean Tuna Commission (IOTC): a regional organisation of the UN including 32 member states.** FishFORCE is currently in talks to formalise a partnership between an educational body, the Nelson Mandela University and the IOTC.



Norwegian Ambassador to South Africa, Astrid Helle.



FishFORCE Training with the Seychelles Fishing Authority included Species Identification, 16–24 October 2019.

// It is imperative that we work with other institutions and organisations locally and internationally and that collaborative plans are developed.” – Prof Hennie van As





## 2. Major international police organisations, including Interpol, as well as the Southern African Development Community and the United Nations Office on Drugs and Crime (UNODC).

The collaboration is part of a 'shared intelligence economy' regarding international sea fisheries and related crimes. FishFORCE uses training material from Interpol and UNODC as part of the fisheries crime curriculum offered at the FishFORCE Academy, and FishFORCE's research is shared with INTERPOL and UNODC.

## 3. One Ocean Hub. Nelson Mandela University is part of an ambitious new five-year research programme called the One Ocean Hub, funded by the UK Government through their Global Challenges Research Fund (GCRF).

The One Ocean Hub is led by the University of Strathclyde in Scotland. It was granted £20-million (±R358-million) to tackle threats to the world's oceans and address the challenges they pose, specifically in developing countries. These threats include overfishing, pollution, habitat destruction, ocean warming, acidification, rising sea levels, and the lack of integrated governance frameworks to address the threats.

FishFORCE is part of a significant number of researchers and postgraduate students from Nelson Mandela University who are working with a total of 50 partners to achieve the One Ocean Hub's three goals:

- Coherent and inclusive implementation of international law for sustainable ocean governance

- Effective and respectful integration of communities, women and youth's knowledge and views in ocean science, management and innovation
- Multifactor contributions to a circular blue economy that enhances the livelihoods of vulnerable people.

The project will focus on developing nations in southern Africa and the South Pacific: Fiji, Ghana, Namibia, Solomon Islands and South Africa.

An Ocean Hub leader, Professor Elisa Morgera, from the Strathclyde Centre for Environmental Law and Governance, says: "The One Ocean Hub will bridge the current disconnects across law, science and policy to empower local communities, women and youth – who are particularly impacted by decision-making – to co-develop research and solutions."

Nelson Mandela University staff members who are collaborating in the One Ocean Hub include: Professor Hennie van As (Director: FishFORCE and Centre for Law in Action), Professor Patrick Vrancken (SARChI Chair in Law of the Sea and Development in Africa), Professor Mandy Lombard (SARChI Chair in Marine Spatial Planning), Professor Rose Boswell (Executive Dean of the Faculty of Arts), Professor Janine Adams (SARChI Chair in Shallow Water Ecosystems), Dr Bernadette Snow (Director: Institute for Coastal and Marine Research), Dr Kerry Sink (CMR Research Associate and Marine Programme Manager at the South African National Biodiversity Institute).

// We regard South Africa as a key partner in taking a leadership role in combating organised fisheries crime and in the global shift towards a sustainable ocean economy." – Astrid Helle

# The Law: Treating Fisheries Crime as Organised Crime

Illegal fisheries vessels take advantage of the relatively lax approach to marine law enforcement and this has contributed to poaching with impunity. Fisheries criminals commit document fraud to under-report catches, they fish illegally and change their flags (because countries only have jurisdiction on the high seas over vessels that fly their flags) or they transfer illegally caught fish from one boat to another.

It must be mentioned that it is not always easy to deal with certain government departments, especially some of the sufficiently senior staff," says Professor Hennie van As. "In 2018, an article published by the news agency *GroundUp* revealed that the department was beset with corruption from the highest levels.<sup>1</sup> This appears to confirm a study conducted in 2016 involving public inspectors at the Compliance Directorate of DAFF (now DEFF), which found that there was "a uniform image of the almost endemic state of bribery" in the fisheries industry in South Africa and their dealings with the DAFF.<sup>2</sup> The result is that, especially in the beginning, the project often had to be protected against passive sabotage and exploitation for personal and political gain.

"In March 2018 alone, nine South African Fisheries Control Officers (FCOs) from Gansbaai (and eight others)

"The scientists say that if you want a healthy marine living environment, you look at levels; you start with a pristine level and then you have a sustainable level, and you must never go below 60% of your pristine level – with West Coast rock lobster we are now on 1.9%. And these things have a huge economic value," says Prof van As.

1 De Greef "Fisheries department rots from the top" (12 November 2018) [www.groundup.org.za/article/fisheries-department-rots-top/](http://www.groundup.org.za/article/fisheries-department-rots-top/) (Accessed 2018-12-01).

2 Sundström 2015 "Covenants with broken swords: Corruption and law enforcement in governance of the commons" *Global Environmental Change* 31, 253– 257 <https://doi.org/10.1016/j.gloenvcha.2015.02.002>.

were arrested by the Hawks for alleged involvement in abalone poaching. The Department of Fisheries did not handle the process well and a few days after the arrest they were back in the office. These are the same people inspecting the fisheries sector. How can the public or their colleagues trust them?

Abalone and West Coast rock lobster are currently the most poached species, but this does not stop syndicates from moving on to other species such as mud crabs once the abalone and West Coast rock lobster are poached beyond recovery.

FishFORCE has been strongly advocating that fisheries crimes be addressed as a priority transnational crime and prosecuted as organised crime and racketeering under the Prevention of Organised Crime Act, with severe penalties of 25 years to life.

## Reality according to case law

"It must be said that the alarming fact is that poaching of large quantities of undersized abalone continues unabated. The sentences handed down by the lower courts ... seem to have been no more than an occupational hazard taken into account by the unlawful enterprises as part of their necessary running expenses."

– *State v Miller 2018*

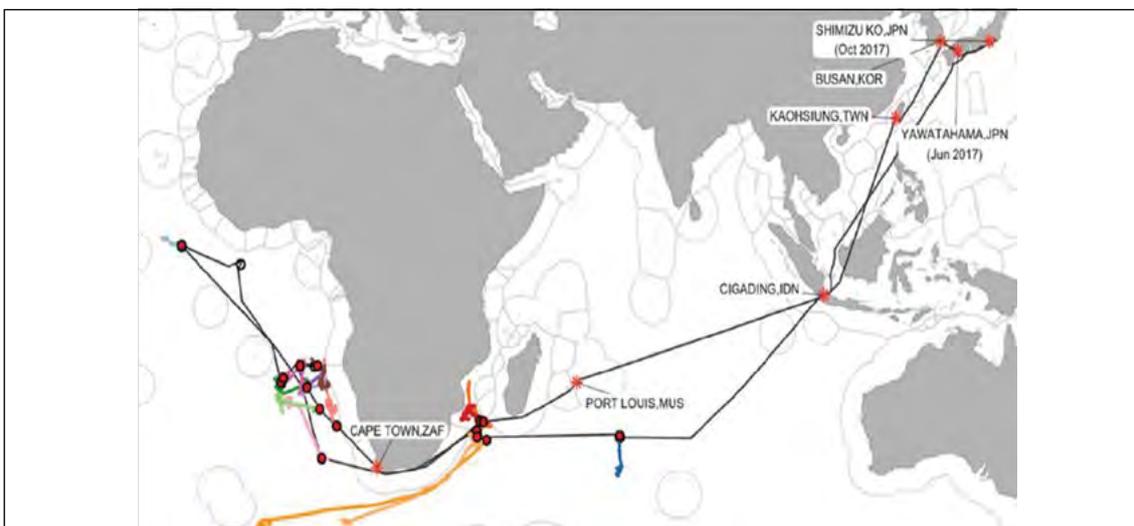




FishFORCE makes use of a transversal approach across all crime areas that originates from fisheries crime and pursues a multi-agency and cross-border model.



Professor Hennie van As presenting at the South African Judicial Education Institute (SAJEI) in Cape Town 27–29 November 2019. Forty senior regional magistrates attended. Presentations included South Africa's obligations in terms of international legal instruments. Prof van As dealt with the organised nature of the stripping of marine living resources, the international linkages, the impact on the environment, economy and social fabric. He also addressed the inconsistency in sentencing for fisheries crimes. The presentation was very well received and the feedback from the SAJEI is that new light was shed on the issue, with positive impact. The SAJEI was established in order to promote the independence, impartiality, dignity, accessibility and effectiveness of the courts through continuing judicial education as provided for in the South African Judicial Education Institute Act 14 of 2008.

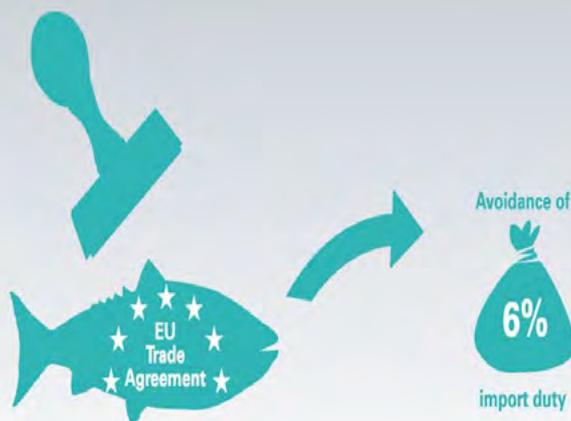


Global hot spots for transshipment of fish catch at sea

## December 2019

### FISHERIES CRIME AND TAX CRIMES

Detailed data on tax crimes in the fishing sector is currently limited as research in this area is still in its infancy. Nevertheless a few illustrative examples serve to highlight its potential extent. One method of tax evasion in the fishing sector is avoidance of import duty by disguising the origin of the fish concerned. For example, there have been reported cases, in which fish destined for the EU market is stated as having been caught in a country with which the EU has a trade agreement, whereas in fact it has been caught elsewhere, thereby evading the 6 per cent import duty that would otherwise have been charged.<sup>21</sup>



Former DDO Siphokazi Ndadane has hit back at accusations that she stole abalone worth millions. *Image: David Hlatshway*

A former deputy director-general (DDG) at the national department of agriculture, forestry and fisheries who was fired last week for the alleged theft of abalone worth R7m has resurfaced as a department accounting officer in the Eastern Cape.

Siphokazi Ndadane, who was DDG for fisheries management until last Friday, was announced by Eastern Cape premier Oscar Mabuyane as the new head of department for rural development and agrarian reform in the province on Wednesday - just five days later.

Ndadane has denied any wrongdoing.

According to a dismissal letter seen by TimesLIVE, Ndadane was shown the door from the fisheries department on November 29 after she was found guilty of stealing three tons of abalone, valued at approximately R7m.

The letter - signed by the director-general Mike Mntgana - states that the decision to sack Ndadane was arrived at after a disciplinary hearing that lasted four days.

Source: [www.timeslive.co.za/politics/2019-12-04-government-official-fired-for-theft-starts-new-job-in-ec-five-days-later](http://www.timeslive.co.za/politics/2019-12-04-government-official-fired-for-theft-starts-new-job-in-ec-five-days-later)

### 'Omkoper' vier jaar tronk toe gestuur

**HERMANUS.** – 'n Vermeende stroper van Hermanus is tot vier jaar agter tralies gevonnisd nadat hy 'n beampte van die departement seevisserye probeer omkoop het.

Die voorval het volgens hofofdokumente aan die begin van 2018 gebeur toe Johnny Schoultz 'n inspekteur van die departement landbou, bosbou en seevisserye R10 000 aangebied het in ruil vir elke stroperboot wat toegelaat word om by Robbeneiland te duik.

Zolile Nqayi, die departement omgewingsake se direkteur, kommunikasie, sê Schoultz het een van die beamptes genader onder die voorwendsel dat hy inligting het wat met teenstropery-operasies sou help.

"Dit het aan die lig gekom dat Schoultz 'n vorige veroordeling het in

verband met onder meer perlemoenstropery en daarom was sy aanbod verdag.

"Die polisie se speureenheid is gekontak en goedkeuring vir 'n seksie 252A-optrede is van die Nasionale Vervolgingsgesag verkry.

"Die uitvoering daarvan het tot die sukses van die saak gelei," het Nqayi verduidelik.

Nqayi het die beampte geprys. "Die departement prys die beampte wat geweier het om omkoopgeld te aanvaar vir sy lojaliteit teenoor die departement en die inwoners van Suid-Afrika deurdat hy die beskuldigde aan die kaak gestel het. Dit bewys dat ons wel beamptes met goeie morele waardes in die direktoraat het." – **Blanca du Plessis** (Hermanus Times)

Source: Die Burger

A critical aspect in the nexus between IUU fishing and organised crime is the distinction in institutions under whose mandate they fall and the different legislative instruments governing them. In the South African context fisheries management is under the Department of Environment, Forestry and Fisheries (DEFF), while organised crime falls under the South African Police Service (SAPS), with the Prevention of Organised Crime Act as the primary legislative instrument. The problem is that SAPS' approach is based on the fact that if a culprit is arrested, that is 'job done' in almost all cases. It is rare that the enquiry is taken further to establish whether there is a pattern and whether there are links with crime organisations.



# How the Term 'Organised Crime' is Defined and Applied in SA Law

*By Advocate Martin le Roux*

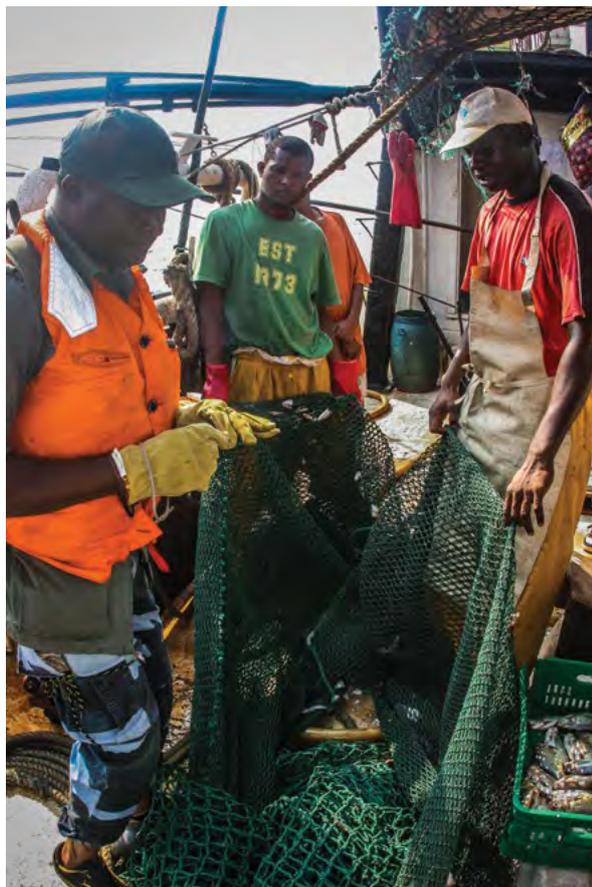
Advocate Martin le Roux is a Senior State Advocate employed by the National Prosecuting Authority (NPA) of South Africa at the Office of the Director of Public Prosecutions in Port Elizabeth. He was the prosecutor in *State v Blignaut et al CC 36/2017* and *State v Brown et al CC 18/2017*, both heard in the High Court in Port Elizabeth and both dealing with contraventions of the Prevention of Organised Crime Act of 1998.

In my view, the reason why Illegal, Unreported, Unregulated (IUU) fishing has been dealt with as an exclusive fisheries management issue is somewhat complex. It is born out of a general misconception of the phenomenon labelled "Organised Crime" and the law enforcement agencies' responses to it.

The category "organised crime" usually excludes crimes such as domestic violence and other crimes that yield no profit. Crime that pays forms the backbone of organised crime because its perpetrators are understood to direct their energy at criminal activities, such as drug-dealing, that yield profit for syndicate masterminds. It is the organisational element of the syndicate that needs to receive the attention of the law enforcement agencies and not only the outcome of the crime itself.

While this approach does establish some boundaries around the phenomenon, the key issue depends on how the term 'organised crime' is defined (and it has no statutory definition in South Africa), and how the term is applied within the law enforcement environment.

Notwithstanding an initiative launched by the National Prosecuting Authority (NPA) some 10 to 12 years after the Prevention of Organised Crime Act (POCA) came into operation, law enforcement



Illegal catch in Tanzania.

agencies are slow and reluctant to employ the tools provided in the Act for the combating of organised crime.

The UN's Palermo Convention on Transnational Organised Crime, which defines an organised criminal group to be "a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes in order to obtain, directly or indirectly, a financial or other material benefit

these agencies with competent people for the task. The demise of investigating bureaux such as the Scorpions has had a negative effect on policing organised crime. The challenge currently is to enable the different law enforcement agencies to talk to each other and create a multiskilled approach.

Section 2(1) of the Prevention of Organised Crime Act, Act No 121 of 1998, contains prohibitions regarding racketeering and consists of a number of sub-sections, of which the following are the most relevant in this case:

Sections, 2(1)(e) and 2(1)(f), require proof of the existence of an "enterprise" and "a pattern of racketeering activities" however, the two sub-sections vary with regard to the accused person's relationship to the enterprise and the pattern of racketeering activity. Both these concepts are defined in the POCA.

Section 2(1)(f) reads that any person who manages the operation or activities of an enterprise and who knows or ought reasonably to have known that any person, whilst employed by or associated with that enterprise, conducts or participates in the conduct, directly or indirectly, of such enterprise's affairs through a pattern of racketeering activity, commits an offence.

Section 3 contains the penalties for the contravention of any of these sub-sections and reads that; "Any person convicted of an offence referred to in section 2 (1) shall be liable to a fine not exceeding R1000-million (R1-billion) or to imprisonment for a period up to imprisonment for life."

### Defining an enterprise

The definition of an "enterprise" is wide and signifies an association that is substantially different from the acts that form the pattern of racketeering activity.

In order to establish the enterprise, there has to exist a common or shared purpose in a formal or informal structure whereby a system of authority ensures continuity. There are two separate categories of associations that come within the meaning of an *enterprise*. The first encompasses organisations such as corporations, partnerships and other "legal entities", and the second, covers "any union or group of individuals associated in fact, although not a juristic person or legal entity". The definition of an enterprise thus includes both legitimate and illegitimate enterprises within its scope.



for the group" is an approach that helps to understand the issue.

Understanding organised crime in this way will go a long way to an effective state response to organised crime by looking at the problem with an "organised crime" lens and focusing on how trends in those crimes committed by groups have evolved over time.

### The Prevention of Organised Crime Act (POCA)

Section 2 of POCA provides law enforcement agencies with the tool to do just that; the challenge is to cultivate the skill and, to a degree, the political will to equip



// Organised crime has no borders, so a working relationship has to develop that similarly has no borders."



Fisheries Law Enforcement vessel investigating blast fishing in Tanzania.

### The pattern of racketeering activity

Proof of a pattern of racketeering activity is required by section 2 of the POCA. Participation or involvement is required in a fashion that indicates continuity of an ongoing relationship with the enterprise. The activity ought to advance or benefit the business or goal of the enterprise to the ultimate benefit of manager.

### Success in the courts

In addressing the crimes of illegal, unreported and unregulated (IUU) fishing, the NPA managed to convince the SAPS Organised Crime Unit, Port Elizabeth to address the poaching of abalone through the lens of "organised crime". This meant that the SAPS investigation team had to work hand in hand with the Environmental Affairs (Fisheries) law enforcement team. The case of State v Blignaut in September 2018 was their first success, followed by the successful

prosecution in February 2019 of an abalone poaching syndicate led by 'kingpin' Julian Brown.

### The Brown Case

The following extract from court documents illustrates the organised crime focus in the prosecution of the Brown Case:

*"Due to the negative impact of the commercial over-exploitation of abalone together with the accompanying devastating effect on the abalone fishery industry the legislator made the fishing, collecting, keeping, controlling, possession, transportation and processing of abalone without a permit unlawful.*

*The high value of abalone together with the fact that it lives in the shallow intertidal waters makes*



*it a prime target for illegal exploitation. Abalone poaching has become a well-established and highly organised business. The people who exploit the country's abalone resource have means of supplying the growing black market in the Far East and involve the operation of syndicates to achieve this goal.*

*Accused 1, who was formally unemployed, made a living by means of managing an enterprise which engaged in the illegal fishing, collecting, keeping, controlling, processing, transportation and possession of abalone.*

*In order for the enterprise to engage in the illegal abalone trade accused 2, together with accused 1, gave instructions to employees of the enterprise such as Renier Ellerbeck and JP van Zyl with regards to the possession, transportation, keeping and processing of abalone in the execution of the business of the enterprise and as such managed affairs of the enterprise.*

*The affairs of the enterprise were manifested through racketeering activities being the planned, ongoing, continuous and repeated involvement and participation in abalone related offences.*

*The offences that were alleged to provide the predicates for the racketeering charge to stand, were also listed as substantial counts in the indictment and led to convictions, over and above the POCA [Organised Crime] contraventions.*

After conviction, Judge M Makula handed down lengthy sentences. Accused 1 has to serve an effective 18 years

imprisonment and the other two accused 15 years imprisonment each.

However, given that fisheries crime goes far beyond abalone and West Coast rock lobster, and IUU includes a wide variety of species and includes a transnational factor, the SAPS Organised Crime Unit and other law enforcement agencies are yet to use the organised crime approach for all fisheries crime cases. All SAPS and fisheries enforcement agencies should be required to apply an organised crime view in collecting court directed evidence and to train and equip officers accordingly. The primary objective ought to be to address organised crime and to understand that the IUU offences are the predicates for the enterprises that conduct the pattern of racketeering activities.

This further requires a far greater depth of understanding at the highest political levels as to what organised crime is and the effect it has on the country. We are familiar with the term "state capture", which in essence is no more than organised crime. Hopefully all this can be taken forward in partnership with organisations like FishFORCE. The approach is based on a good understanding of the problem and awareness that the world's food security is being threatened not primarily by IUU fishing but by the transnational organised crime that it hides.

Organised crime has no borders, so a working relationship has to develop that similarly has no borders. FishFORCE might be the forerunner of an international (UN controlled) training facility to stem IUU fishing with the tools in legislation such as POCA in South Africa and the Racketeer Influenced and Corrupt Organizations Act (RICO) in the USA.

**“**All SAPS and fisheries enforcement agencies should be required to apply an organised crime view in collecting court directed evidence and to train and equip officers accordingly.**”**



## Worldwide Fund for Nature (WWF) v Department of Agriculture, Fisheries and Forestry (DAFF)



On 26 September 2019, Judge Owen Rogers ruled in the conservation organisation WWF (SA)'s favour after the environmental NGO had petitioned the court over a Total Allowable Catch (TAC) that was more than double the scientifically recommended level even though the resource was at 2% of its historical pristine levels.

WWF approached the Cape High Court as an action of last resort after many attempts over several years to engage with the Department of Agriculture, Forestry and Fisheries (now the Department of Environment, Forestry and Fisheries [DEFF]).

The court held that DAFF failed to uphold its legal mandate of conserving South Africa's marine resources. Significantly, the court also found that when determining the TAC, the Deputy Director-General of DAFF had failed to take into account the best available scientific evidence as required in terms of international law.

In his ruling, Judge Rogers found that both national and international law required of DAFF to use the best available science to set the TAC while taking into account socio-economic needs, and that DAFF's determination of the total allowable catch for West Coast rock lobster for the 2017/18 fishing season be declared to be inconsistent with the Constitution as read with section 2 of the National Environmental Management Act 107 of 1998 and section 2 of the Marine Living Resources Act 18 of 1998 and it was accordingly declared invalid. The court also found that the DDG "failed to have regard for South Africa's international obligations".

Dr Theresa Frantz, head of the Environmental Programmes Unit at WWF SA, commented: "We are encouraged that the court has upheld our view that the decision to set last season's Total Allowable Catch for West Coast rock lobster at an unsustainably high 1 924.08 tons was irrational, unlawful and inconsistent with the Constitution, the National Environmental Management Act and the Marine Living Resources Act.

"Through this legal action, an important precedent has been set for future decision-making over the sustainable management of our marine resources. However, this is just the start of a process. We would like to see all stakeholders come together to work towards the common goal of restoring the WCRL fishery so that present and future generations can continue to benefit from this valuable resource.

"From a law enforcement perspective, the following has become clear in the matter:

- The Department is aware that it needs an urgent workable strategy to deal with poaching and that officials were unaware of the existence of such a strategy, and the head of the section could not provide evidence of such plans.
- The Department had not done much to address poaching since the 2016/17 season.
- The number of monitoring, control and surveillance staff members had been significantly reduced over the preceding five years. Compare this to the DDG's view, submitted to the court, that 'the primary problem for sustainability [of the resource] was the level of illegal fishing and that it was important to strengthen compliance and enforcement'.

"These facts, together with the findings of the court, provide a clear indication of where the root of the problem is. The government is the custodian of our national resources, but if these resources were children, they would be placed in care a long time ago."



# Cameroon can't afford to continue ignoring crime in fisheries sector

By Dr Maurice Beseng



Excerpts from this article published in *The Conversation Africa*, 6 October 2019, are included below. ([theconversation.com/cameroon-cant-afford-to-continue-ignoring-crime-in-fisheries-sector-124519](https://theconversation.com/cameroon-cant-afford-to-continue-ignoring-crime-in-fisheries-sector-124519))

Dr Maurice Beseng is a Visiting Research Fellow in Maritime Security at Coventry University's Research Centre for Trust, Peace and Social Relations (CTPSR). His research addresses three main intersecting areas: the anatomy of illegal, unreported and unregulated fishing, fisheries crime and other related maritime crimes, the human security dimension of maritime crime and the political ecology of maritime security.

Cameroon's maritime fisheries, both artisanal and industrial, are largely dominated by foreign fishers. Industrial fishing is carried out entirely by foreign trawlers, predominantly from China and Nigeria, in partnership with Cameroon fishing entrepreneurs. They are licensed to commercially exploit fish stocks beyond three nautical miles of the coastline. Their main catch includes croakers, oysters and a variety of shrimp species.

Similarly, about 80% of the documented 34 355 artisanal fishers are immigrants from Nigeria, Ghana, Benin and Togo. They operate from around 300 artisanal fishing ports along Cameroon's 402-kilometre coastline and are allowed to fish within three nautical miles of the coast. These artisanal fishers mainly target fish found in shallow depths, such as bonga shad, sardinella, prawns and shrimp.

While most of the industrial caught fish are destined for Europe and Asia, the artisanal catch is mainly sold in local markets. It's a vital source of animal protein, especially for communities that live along the coastline.

Cameroon's fisheries sector is of huge social and economic importance to the country. Fisheries make up 1.8% of the country's estimated US\$35-billion (R527-million) GDP. The sector employs more than 200 000 people and, since 2015, fishers catch an average of 205 000 tons of fish each year. The industrial sector accounts for about 9 000 tons of this. Despite its importance, the maritime fisheries sector is plagued with largely hidden, or ignored, fisheries crimes.

My research over the past three years tries to lift the lid on the types of crimes that are happening, the actors involved, their networks and how they operate. I looked at both the industrial and artisanal sectors.

My study documented numerous crimes involving people associated with the fisheries sector. But most go undetected. To tackle criminality in the fisheries sector, all concerned stakeholders – from fishers to policymakers – need to be able to identify and report on the different fisheries crimes they see.

## Endemic problems

I found that there's an endemic problem of corruption, fraud and the illegal exploitation of and trade in endangered marine species. I also found a link between the fisheries sector and wider transnational crimes such as the smuggling of contraband, weapons, immigrants, fuel, ivory, rice, fake bank notes and timber products.

While some fisheries crimes are carried out at sea, most occur on land; in government offices, fish landing sites, beach huts and coastal backwaters, sometimes by those who are meant to protect fish resources. It involves nationals and foreigners, some from as far as China.

## Corruption

Corruption was identified as a major problem. It manifested as bribery and abuse of office. It was systemic and permeated all aspects of the value chain from acquiring fishing permits, catching fish at sea, processing the catch and marketing the produce to consumers. This typifies the corruption landscape in the country as highlighted in other areas, such as the judiciary and police administration.



# Fisheries Law Enforcement Training & Career Paths in South Africa

**Many Fisheries Control Officers (FCOs) want to do their work properly but without proper training, education and professionalisation they will not be able to counter organised crime.**

The training developed and delivered by the FishFORCE Academy is linked to formal qualifications, such as a Higher Certificate in Criminal Justice and a Diploma in Law Enforcement, thus providing an articulation pathway for trainees. It covers basic and specialised training, including in the powers and functions of peace officers and FCOs, the handling of crime scenes and taking of statements. It also includes species identification and technical issues such as permits and quotas, where rights may not be overstepped (or the courts will throw out the case on a legal technicality), as well as the legal aspects of international smuggling and human trafficking.

For the future, FishFORCE is looking at augmenting its training with blended learning and, in a novel approach, the development of apps where learning can take place through gamification.

The FishFORCE training was specifically developed in order to promote fisheries law enforcement as a career choice by professionalising the sector. The Academy is advocating that the appointment and promotion of all law enforcement officers, whether they are employed by fisheries, national parks, municipalities or SAPS, should be linked to qualifications and experience.

During 2018/19, the FishFORCE Academy had a very successful year, exceeding its target by training 340 law enforcement officers. The objective is that increased law enforcement (which includes crime prevention) will reduce poaching and lawlessness and thus increase the availability of marine living resources and improve quality of life.

International collaboration is strengthened on a continuous basis through FishFORCE's links with WWF,

UNODC, LETrainNET of the UNODC, the International MCS Network, Fish-i-Africa.

## International training

FishFORCE is training Fisheries Control Officers (FCOs), police officers and other law enforcement agencies in South Africa and Kenya, and along the East African coastline and Western Indian Ocean, where it is opening FishFORCE Academies in Angola, Namibia, Mozambique, Madagascar, Mauritius and Seychelles. There are already Academies in Kenya and Tanzania. FishFORCE is also assisting with training in countries along the Indian Ocean Rim. "Organised crime in the fisheries environment does not know borders and neither do marine living resources," explains Professor van As.



Abalone/Perlemoen



Illegal catch seized in Tanzania

// The FishFORCE training was specifically developed in order to promote fisheries law enforcement as a career choice by professionalising the sector."





## Professionalisation through training

Professionalisation through training may result in:

- Possibility to become a specialised unit within DEFF or SAPS
- Will fix a number of issues, including:
  - The existence of grey areas relating to applications for warrants
  - Effective, career focused training
  - Extended powers of search, seizure and investigation
  - Greater oversight from bodies such as IPID
- Open the door for designation as EMI's which would allow extended powers such as :
  - The use of force in stopping vessels
  - The power to set up and conduct roadblocks
  - The express ability to apply for search warrants
  - Ability to issue compliance notices and conduct follow-up inspections

In 2018 FishFORCE trained 276 delegates through its Law Enforcement by Peace Officers (LEPO) short learning programme, at a success rate of 90%. The training was inter-agency and cross-border in nature, and focused on prevention of corruption, taking of statements as well as species identification and fisheries technology.



### Powers of Fisheries Control Officers (FCOs)

- Extensive, but in practice, weak
- Most operations are handed over to SAPS personnel
- There are holes in the Marine Living Resources Act (MLRA)
- While FCOs are able to enter vessels and premises with a warrant, it would appear they are unable to apply for warrants themselves
- As such, FCOs are very much dependent upon SAPS to function.

### Weaknesses in the system

- FCOs have no powers of investigation, matters must be handed over to SAPS
- FCOs are often in the dark on how cases are progressing, or whether they are even resolved once passed over to SAPS
- Weak inter-agency cooperation

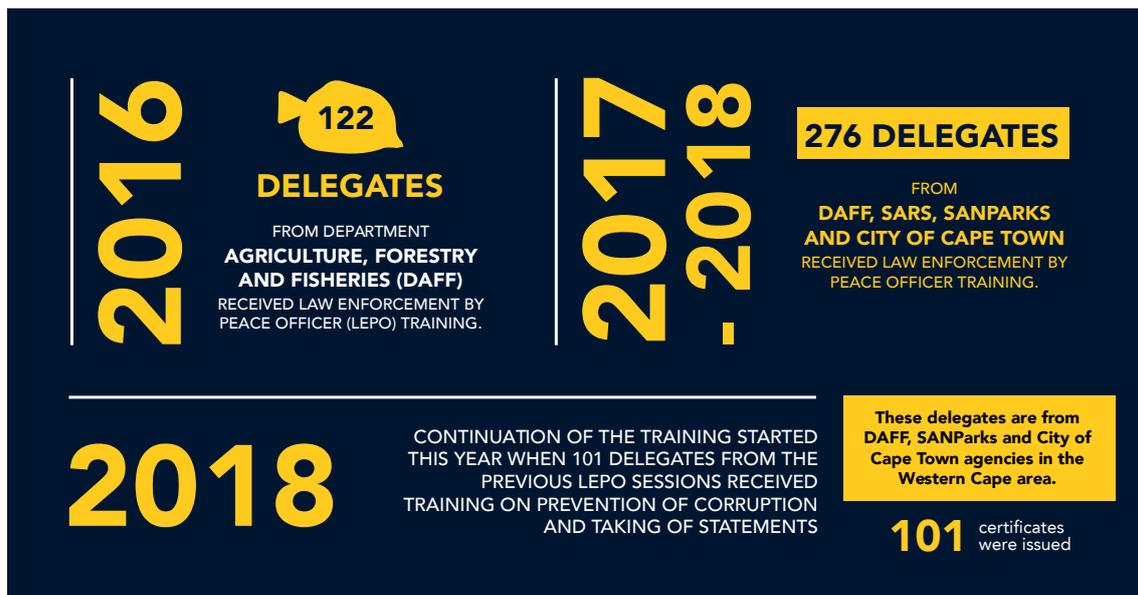
- Weak cross-state cooperation
- A proliferation of fisheries crime units throughout the country – In Cape Town alone:
  - SAPS, DAFF, Cape Nature, SANParks
  - Overstrand Municipal Law Enforcement Unit
  - City of Cape Town marine units
  - Various traffic police forces

### Legal reform is the only way forward to make FCOs more effective.

This can be done by:

- Clarifying already existing powers within the Marine Living Resources Act
- Extending powers of search, seizure and investigation
- Granting the power to set up roadblocks
- Setting minimum standards of training for appointment and promotion

# FishFORCE Training Statistics



# FishFORCE and the Signing of the StopGAP Agreement

One aspect of fisheries crime that many people may not be aware of concerns port security. Ports are actively used by organised criminals in a way that also involves threats to marine living resources. Ports are without a doubt key points of entry and exit for commodities associated with fisheries crime, for example the export of marine living resources and the import of drugs and firearms, and for other crimes such as human trafficking.

Port security officers are tasked with the control of goods entering and leaving harbours and they are on duty 24 hours per day. However, they are not trained to differentiate between species and to identify whether fisheries products that are leaving the country are illegal or not. They are also not trained to detect tampering (and possible smuggling) with vehicles and containers or to identify illicit substances such as drugs, which are often associated with the poaching of marine living resources.

FishFORCE wanted to do something about this and secured the financial support of the Norwegian Ministry of Foreign Affairs to train port security officers and their supervisors and managers in South African ports. The training of port security officers is a means towards reducing the fisheries crime problem by increasing detection capabilities. It will help to stop a gap in the way we fight fisheries crime.



Signing of the StopGAP Grant Agreement between Nelson Mandela University's FishFORCE Academy and the Norwegian Ministry of Foreign Affairs on 29 October 2018.

# Tackling crime on high seas



COMBINED FORCE: The bilateral naval exercise Ibanam II ended on a dramatic note last week, with a disaster exercise simulating a military incursion into a small coastal community that required the involvement of security personnel, firefighters and medical teams from Brazil, India and South Africa.

## Norwegian funds establish Fisheries Law Enforcement Academy at Nelson Mandela Metropolitan University

**INVESTING IN THE FUTURE**

**S**OUTH AFRICAN FISHERIES crime has increased significantly in the last few years. The National Prosecuting Authority (NPA) has reported that the number of cases involving illegal fishing and related activities has increased significantly. The NPA has also reported that the number of cases involving illegal fishing and related activities has increased significantly.

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**GETTING TOUGH** Three Maldivian fishing boats were destroyed, for illegal fishing in the Indian Ocean. The boats were destroyed by the Indian Navy. The boats were destroyed by the Indian Navy.

The boats were destroyed by the Indian Navy. The boats were destroyed by the Indian Navy. The boats were destroyed by the Indian Navy.

## Abuse of labour and slave labour is common

**CRIME ON THE HIGH SEAS**

CRIME ON THE HIGH SEAS: The number of cases involving illegal fishing and related activities has increased significantly. The number of cases involving illegal fishing and related activities has increased significantly.

The number of cases involving illegal fishing and related activities has increased significantly. The number of cases involving illegal fishing and related activities has increased significantly.



Members of the Indian Navy board a boat in the Indian Ocean. The boat was destroyed by the Indian Navy.



The UN report confirms rapid expansion of illegal fishing in the Indian Ocean. The report also highlights the need for stronger international cooperation.



UNEP report confirms rapid expansion of illegal fishing in the Indian Ocean. The report also highlights the need for stronger international cooperation.

Ports are actively used by organised criminals in a way that also involves threats to marine living resources.



## Operation Phakisa – Compliance and Enforcement



FishFORCE serves as a member of Operation Phakisa Initiative 5 – Compliance and Enforcement, a national initiative with a focus on the blue economy. Through its involvement with Operation Phakisa, a training needs analysis and report was prepared by the International Ocean Institute – African Region (IOI-SA) for the South African International Maritime Institute (SAIMI) and the Department of Environmental Affairs (DEA) with input from the FishFORCE Academy.

The purpose of the study was to conduct a skills audit for the Marine Protection and Ocean Governance (MPG) focus area to determine the current status and skills needs and to propose interventions to address those needs.

The report identified FishFORCE training courses under the “critical occupational cluster” and they have been widely welcomed by most of the relevant government agencies.

### Training initiatives

FishFORCE delivered a specialised training workshop titled: *Dealing with Limited Resources – “Doing the Impossible”* on 7 March 2019 at the Department of Agriculture, Forestry & Fisheries (DAFF) offices in Cape Town. The workshop was presented by Mr Cephass Ralph (Former Chair of the International MCS Network & Director Fisheries Enforcement of Marine Scotland).

Ralph is a monitoring, control and surveillance expert and the purpose of the workshop was to discuss improving land-based monitoring, control and surveillance (MCS) techniques within the South African environment, focusing on innovative solutions that require minimal enforcement tools. The training was well received by the agencies that attended, which included DAFF, SANParks, City of Cape Town, Cape Nature and SAPS.

Members of the FishFORCE Academy, as part of a partnership between Nelson Mandela University and the University of Wollongong from Australia, delivered two training sessions in “Ocean Management: Sustainable Fisheries and Governance” in Mauritius from 27–31 August 2018 and 6–10 May 2019. Delegates from FishFORCE and earmarked countries such as Kenya, Tanzania, Mauritius, Madagascar, South Africa, Namibia and Mozambique were in attendance. Professor Hennie van As (FishFORCE Director) and Advocate Philippus Snijman (FishFORCE Lead Facilitator) presented the two one-week long specialised training workshops.

“ The training of port security officers is a means towards reducing the fisheries crime problem by increasing detection capabilities.”

# Post-training Support

For post-training support, FishFORCE has established an electronic helpdesk through which support is given to SAPS, fisheries control officers (FCOs) and the National Prosecuting Authority.

The FishFORCE helpdesk has assisted with legal information for a number of cases, such as:

- Whether FCOs have powers to apply for and execute search warrants
- Fishing in tidal lagoons
- Formulation of charge sheets
- Prosecution of a case dealing with the drying of abalone without a permit in Port Nolloth
- Do's and don'ts in terms of section 48A of the Marine Protected Areas Act
- "Internal rules" as contemplated in terms of S52 of the Marine Protected Areas Act
- Regulation 75 under R 1111 under the Marine Living Resources Act (MLRA) highlighting the provision

dealing with prohibiting fishing in a Marine Protected Area

- Restaurant inspections: selling protected species at very cheap prices thus questioning the legality of the "catch" (West Coast rock lobster).

Professor van As also provides "real time" advice by WhatsApp to a group of law enforcement agencies operating on the Cape West Coast. From 2020, the helpdesk will officially migrate to the newly developed operational secure portal which will help to ensure greater success of the helpdesk as part of post-training support.

Other WhatsApp groups have been established to assist law enforcement with requests for assistance with regard

to suspect vehicles and people. Quite a few successes have been achieved through this in South Africa. The groups are also linked to scientists who can assist with species identification and natural phenomena such as shoals of juvenile fish moving up rivers. FCOs are then alerted and their presence prevents the large-scale harvesting of immature fish.



Juvenile West Coast rock lobster.



# Postgraduate Development & Transdisciplinary Research

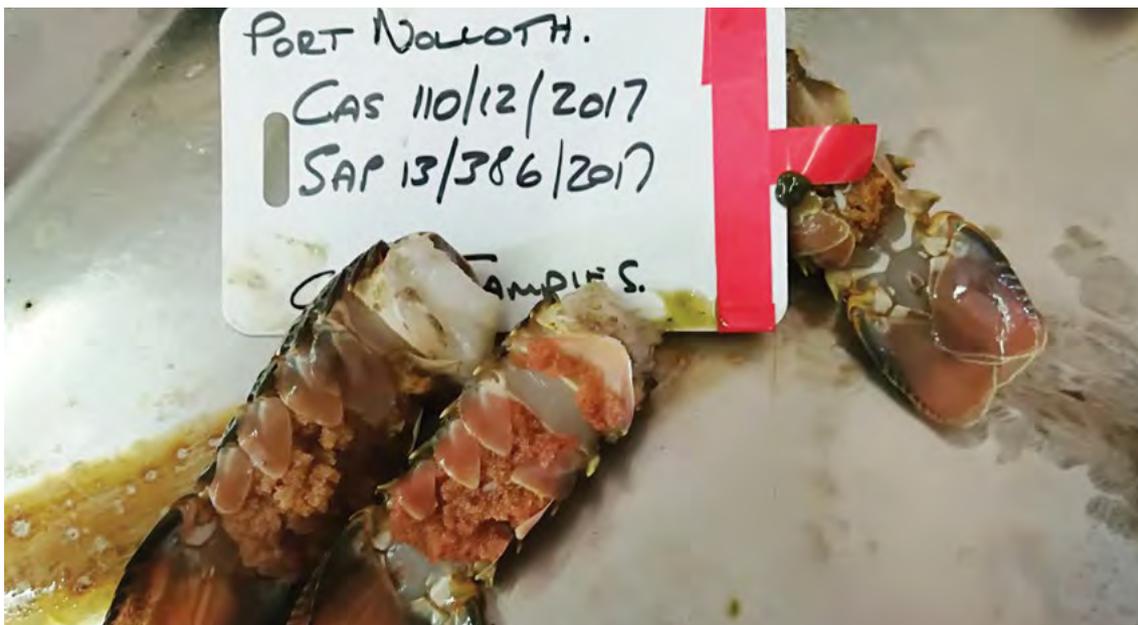
A cornerstone of the FishFORCE initiative is to facilitate research and innovation in the field of fisheries crime law enforcement.

FishFORCE's aim is to provide cutting edge and evidence-based training, giving fisheries law enforcement officers the advantage of the most updated information, techniques and tools available. The academy is therefore engaging a number of research associates and students at master's and PhD level to carry out multidisciplinary research projects which will include law enforcement gap analysis and evaluation, as well as focusing on the development of national and international law and policies.

In order to stimulate research and harness external expertise, a research agenda has been developed. The research agenda has also been made available to

prospective postgraduate students to promote research in fisheries crime.

There are currently three doctoral and three master's students conducting research in fisheries crime related topics. Professor Hennie van As, FishFORCE Academy Director, was also the external examiner for a doctoral candidate from the Australian National Centre for Ocean Resources & Security (ANCORS), at the University of Wollongong in Australia. The research topic was: *Illegal, Unreported and Unregulated Fishing and Transnational Organised Crimes: Perspectives of Legal and Policy Measures of Indonesia*. This reflects the far reach and internationalisation of the FishFORCE Academy.



Lack of respect for sustainability and the law as the harvesting of egg-carrying females is illegal.

# High-Level Conferences & Publications

Numerous research outputs have also been delivered in the form of papers presented at various conferences, such as:

- The 21st INTERPOL Police Training Symposium in Asia, Republic of Korea
- International IBA Conference on Environmental Law, Cape Town, South Africa
- The Sixth Global Fisheries Enforcement Training Workshop in Bangkok, Thailand
- Tightening the Net: A FishFORCE Dialogue in Port Elizabeth, South Africa
- The Growing Blue Conference in Maputo, Mozambique
- "Admission of guilt and criminal records: Severe enough to warrant legal aid? Fisheries crimes as a case in point" International Legal Aid Group Conference 17-19 June 2019, Ottawa, Canada.
- "Human trafficking as a component of organised crime in the marine fisheries environment" 2019 International Workshop on Strategies for Combating Human Trafficking, 25-26 July 2019, Taipei, Taiwan.

## Challenges and possible solutions

In 2019, FishFORCE Director, Professor Hennie van As, and Advocate Philippus Snijman, published an article titled "Challenges and possible solutions concerning the inspection / investigation dichotomy in the context of transnational organised fisheries crime: a South African perspective", in a special edition of the international journal, *Marine Policy* which focused on transnational organised crime.

### Abstract

This contribution aims to address transnational organised fisheries crime more effectively by addressing the fact that a number of prosecutions are unsuccessful as a result of non-compliance with constitutional imperatives originating from a failure to properly grasp the inspection/investigation dichotomy. The paper provides a short background to the intricacies of transnational organised fisheries crime with emphasis on their implications for investigations and prosecutions. In the context of South Africa, it discusses the powers of fishery control officers (FCOs) in terms of the Marine Living Resources Act, 1998 (MLRA), before turning to relevant case law. This discussion provides the background for a discussion on the correct exercise of the powers of FCOs and the impact of failures to correctly exercise legal powers. The final part of the essay looks at possible solutions to the challenges created by the dichotomy by proposing that a number of factors be considered to determine whether an inspection is in fact an investigation,

or has evolved into one. It will also propose amendments to the legislation to remove the existing ambiguities and to increase the number of successful prosecutions by reducing fatal 'legal technicalities'.

### Conclusion: towards a solution

States view marine living resources as part of their natural resources and employ legislative instruments to protect, regulate and manage them. The enforcement and administration of statutes and other regulatory measures form the purposes of the exercise of government authority by means of regulatory agencies. The primary means of measuring the levels of compliance with the regulatory framework are inspections and investigations, of which the inspection is the functional backbone as it is the primary method used to measure compliance.

It is a preventative measure, but also serves to ensure that conditions are complied with. In a number of cases, the authority to inspect has been challenged in court on the basis that it violates constitutionally guaranteed





rights. The basic question evolves around the inspection/ investigation dichotomy and whether, or at what stage, a warrant is required.

In the course of inspections, the powers of the FCOs are broad and compliance-based – the focus is not enforcement. An investigation, however, triggers an adversarial relationship between the State and the object of the investigation and raises rights-related issues. For that reason, it is important for an inspector to keep in contact with the person or company that is the basis of the inspection while determining if and when an inspection becomes an investigation. That is the moment when routine procedures become targeted ones and when the rules of the game change because the rights of the subject of the inspection/investigation can be infringed.

The main factors to keep in mind to determine whether a bona fide inspection has turned into an investigation and whether an adversarial relationship exists ab initio, (to determine whether an investigation was conducted under the disguise that it was an inspection – in which case an adversarial relationship already existed and in which case a warrant would be required) can be summarised as follows:

- Did the authorities take a decision to proceed with a criminal investigation?
- Was the purpose of the inspection to gather further evidence?
- What was the origin of the decision? As a point of departure, it should be accepted that, in the case where any person submitted a written or verbal complaint or provided information, the action triggered would be considered an investigation and not an inspection.
- Was the general conduct of the authorities consistent with that of officials conducting a criminal investigation?
- If there was an initial inspection, did the inspector transfer his or her files and materials to investigators?
- Could the inspector be perceived to be gathering evidence for the investigators?
- Is the evidence sought relevant only to the determination of penal liability?
- Are there any other circumstances or factors that can lead to the conclusion that the compliance inspection had in reality become a criminal investigation?

In addition to the tangled net of legal and interpretational issues that officials must navigate, national legislation often contributes towards uncertainties and gaps, making life difficult for those entrusted with protecting the State's natural resources.





// When evaluating the legality of searches without a search warrant, the courts should consider the concept of 'actual' or 'predominant' use of the property to determine whether a person has a legitimate expectation of privacy."

In South Africa, for example, a number of amendments to the Marine Living Resources Act (MLRA) would go a long way towards strengthening the hand of the FCOs.

The MLRA does make provision for the execution of a search warrant but does not explicitly state that an inspector can apply for such a warrant. A section should be included authorising any fishery control officer to apply for and execute a warrant for the purposes of the MLRA.

The provisions for warrantless searches and seizures in the South African Police Service Act, 1995, must extend to FCOs.

In terms of those provisions, police officials may, without a warrant, search any person, premises, place, vehicle, vessel or aircraft or any receptacle, and seize any article that is found and may lawfully be seized. The aim of such a search is to exercise control over the illegal movement of people or goods across the borders of South Africa and it should allow for searches to be conducted by FCOs:

1. At any place in South Africa within 10km, or any reasonable distance, from any border between South Africa and any foreign state
2. In the internal and territorial waters of South Africa
3. Inside South Africa within 10km of or any reasonable distance from such territorial waters
4. At any airport or within any reasonable distance from such an airport.

An FCO may apply to the National or Provincial Commissioner of Police for written authorisation in terms of the South African Police Service Act, to establish a roadblock or checkpoint beyond the 10-kilometre distance referred to in the previous paragraph. At such a roadblock an FCO should, within his mandate, have all the powers of a member of the South African Police Service. This means that a warrant and a reasonable suspicion are not required.

The MLRA does provide for inspection without a warrant of a fish processing establishment, or any other place where fish or fish products are kept or stored (e.g. restaurants, fish shops and supermarkets), but not private dwellings. Two issues arise here. Firstly, private dwellings in general must be excluded, based on the right to privacy. Secondly, reality is that, especially with regard to abalone, private dwellings or facilities on private property, zoned for residential purposes, are often used to process or store illegally harvested abalone on a big scale. In such instances, there should be no objection on constitutional grounds to such a dwelling, or the part of such a dwelling that is used for commercial fish processing or storing, being inspected. While it is accepted that private property and the right to privacy is almost sacrosanct, it is also true that criminals often abuse this right. When evaluating the legality of searches without a search warrant, the courts should consider the concept of 'actual' or 'predominant' use of the property to determine whether a person has a legitimate expectation of privacy. It is accepted that





**The Sarah Baartman, South African environmental offshore patrol vessel.**

a regulated business's right to privacy is attenuated the more its business is public, closely regulated and potentially hazardous to the public. The MLRA should be amended to include a definition of "private dwellings" in terms of which the "privacy" of the dwelling or a part thereof is dependent on its actual or predominant use.

The MLRA also does not provide for inspectors to inspect vehicles, vessels (e.g. an inflatable boat towed by a vehicle) or containers at border posts. Both commercial fish products, as well as recreational fishermen, often cross borders to neighbouring countries, and back into South Africa. The same applies to airports (there have been many occasions where abalone have been transported by plane to other countries). Currently the inspectors usually accompany police or customs officials that have the power to do such inspections but cannot do so on their own.

FCOs should be permitted to conduct without a warrant inspections of fishing vessels –

1. that are routine in nature
2. that may target specific activities or specific sectors;
3. at the request of another country based on South Africa's obligations in terms of an international or regional agreement;
4. at the request of an international or regional fisheries organisation; or
5. may be done based on a complaint, report or request received.

A provision such as this will make it much easier for South Africa to comply with its international obligations, such as inspections. It also attempts to cover the "grey" situation, that in certain cases such type of inspections might be constitutional. In the proposal above it allows that a complaint or report (e.g. from a member of the public) received, will not have the result that a search warrant is now required to do an inspection.

The purpose of such an inspection (which must be performed as an inspection, and not a search) is to ascertain whether there is substance in the complaint or report. In addition, the fact that any fishing vessel may in any event be inspected, makes it a bit absurd to argue that a search warrant must be obtained to inspect a fishing vessel if such an inspection is based on a complaint, report or request received. Also note that this power is limited to fishing vessels and does not include vessels in general. The term "fishing vessel" should however be defined sufficiently broadly, to include any vessel that is used in any fishing-related activity.

van As H.J and Philippus J. Snijman (2019) "Challenges and possible solutions concerning the inspection/ investigation dichotomy in the context of transnational organised fisheries crime: A South African perspective", *Marine Policy*, 105, 140–150

[doi.org/10.1016/j.marpol.2018.12.015](https://doi.org/10.1016/j.marpol.2018.12.015)



West Coast rock lobster and abalone/perlemoen.

// FCOs should be permitted to conduct without a warrant inspections of fishing vessels ... that are routine in nature; that may target specific activities or specific sectors ... "





# FishFORCE – The Year Ahead and the Next Decade

## FishFORCE Plans for 2020

- Expansion into countries such as Mozambique, Seychelles, Mauritius and Madagascar.
- Increasing the cumulative number of law enforcement officers trained to protect marine living resources and, through that, reduce poverty.
- Increasing the number of specialised training interventions (such as Trade Monitoring and Compliance

and Law of Evidence) and research outputs to support the sustainable utilisation of marine living resources.

- Looking at addressing organised crime through interventions in “market states” i.e. countries where the illegally harvested marine products are being sold.

In order to promote sustainability, FishFORCE enters into Memorandums of Understanding (MOUs) with universities in target countries to establish a FishFORCE Academy of their own. Each university is strategically selected based upon their ability to successfully launch a FishFORCE Academy within their law faculty. FishFORCE then delivers a “train the trainer” course in each of the respective countries in order to train and upskill the facilitators who will be used for FishFORCE courses. In terms of the MOU, FishFORCE provides the universities with the training materials and formal curricula developed in South Africa (and adapted for the different countries as per their legal framework) and allows the universities to offer these free of charge.

In order to harness external expertise, stimulate research and promote law enforcement in fisheries crime, the Academy developed an agenda that documents research requirements and focuses research efforts and resources towards meeting the innovation, information and operational needs of the fisheries law enforcement sector. The research agenda is considered a “living” document that is constantly monitored and adapted for the changing and dynamic landscape that is fisheries crime. The research agenda has also been made available to individuals interested in pursuing postgraduate studies in fisheries crime.

## The Good News

- Fisheries have now been linked to environmental management under the newly constituted Department of Environment, Forestry and Fisheries (DEFF)
- Environmental management in South Africa has a well-organised and well-trained law enforcement section and it is foreseen that closer collaboration with fisheries will assist the latter
- The ombudsman recognises fisheries crime as organised crime and is requesting SAPS to do the same
- There are indications that fisheries crimes are starting to receive attention as a serious crime
- Alternative law enforcement measures are implemented
- Apps to assist with identification, monitoring and enforcement are being developed.

# The FishFORCE Team

FishFORCE Director Professor Hennie van As works with a core group of staff and subcontractors, all highly knowledgeable in their fields.

## Professor Hennie van As

Professor Hennie van As is a Professor in Public Law and Director of the Centre for Law in Action (CLA). An admitted advocate, he obtained the degrees BJuris, LLB (*cum laude*) and LLD as well as a Diploma in Police Science. He completed his LLD at the University of Stellenbosch in 1998 under the supervision of Professor Steph van der Merwe with a thesis entitled *Regsverteenwoordiging as element van regstoeganklikheid* (Legal representation as an element of access to justice). He also completed a postdoctoral research project at La Salle University in Mexico in 2001. He is also responsible for the Refugee Rights Centre at the university.

Prof Van As is a member of a number of associations, organisations and research groups including the South African Legal Practice Council, LETrainNET (Law Enforcement Training Network of the UNODC), the International Legal Aid Group, the Algoa Bay Community of Projects (CoP), the Western Indian Ocean CoP, the international Marine Spatial Planning Research Network, the Fisheries Technical Committee of the SADC and the One Ocean Hub. He has also served on expert panels on fisheries crime for the UNODC and the Governments of Indonesia and Taiwan.

## Michael de Lange

Michael de Lange is the Chief Operating Officer (COO) of the FishFORCE Academy and the Centre for Law in Action (CLA). He has extensive experience in project

management, strategy and finance. Michael obtained his Master's in Business Administration (MBA) from the Nelson Mandela University Business School (*cum laude*). His interest in law enforcement originates from time spent in the United States where he took several university courses in criminal justice and homeland security whilst being certified by the Federal Emergency Management Agency.

## Tamrin January

Tamrin January is a Project Co-ordinator for the CLA where she has been for eight years. She co-ordinates and markets the Short Learning Programmes offered by the CLA and the work of the FishFORCE Academy including the development of FishFORCE's social media platform to create awareness.

## Niven Kops

Niven Kops is the Financial Administrator of the FishFORCE Academy and CLA where he has been for seven years. His responsibilities include financial and procurement matters, sourcing new revenue streams and leveraging new business.

## Megan Appollis

Megan Appollis is a Project Co-ordinator for the CLA where she has been for eight years. She is the Training Co-ordinator for the FishFORCE Academy and is in charge of organising events such as international conferences, workshops and high level stakeholder meetings.



// FishFORCE started its activities in 2016 and was officially launched on 8 November 2017 at the University's Ocean Sciences Campus in Port Elizabeth."



FishFORCE team from left: Michael de Lange (FishFORCE Chief Operating Officer), Tamrin January (FishFORCE project coordinator), Megan Appollis (FishFORCE project coordinator), Professor Hennie van As (Director) and Niven Kops (FishFORCE financial administrator).



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