Building a chain link by link: Constructing a solid case against organised crime in the fisheries environment.

Thank you for the opportunity to be part of this event.

Centre to this presentation is the idea of a “chain” that per definition is a series of objects, passing through one another, or events connected one after the other, used for the purpose of supporting or confirming connected facts or events as a something constituting a complex unity.

Organised Crime is somewhat more difficult to define, as I could not find a definition acceptable but the “chain-idea” is of some value in understanding organised crime. It [refers](https://www.collinsdictionary.com/dictionary/english/refer) to criminal activities, driven by profit, which involves large [numbers](https://www.collinsdictionary.com/dictionary/english/numbers) of people but controlled by a small group of people.

The criminal activities, normally by the large group of people, supply the building blocks for the small group to generate large profits.

These criminal activities often has close links with environmental crime, which sometimes cannot be contained within jurisdictional boundaries, especially with regard to fisheries crime.

Fisheries crime refers to the range of serious offences committed along the entire fisheries value chain and the contraventions labelled “fisheries crime” is be to found in national, provincial legislation, regulations and by-laws. The sustainable use of the environment to the benefit of all people, through the protection and conservation, provide just cause for the need for effective enforcement with all the tools available.

It is a well-known fact that environmental crime syndicates all over the world generates millions of US dollars in illegally gained profit. It is said that organised crime, world-wide, generates a third of the world’s monetary turnover, an economic activity that exceeds the gross income of many countries. Fisheries law contraventions in the Fisheries environment has been for some time a worthwhile opportunity for criminal enterprises to generate huge profits.

The exploitation and illegal trade in abalone is a good example of this. The price on the Eastern markets is about R2000, 00 per kilogram, a kilogram being a few adult abalone. The diver, who unlawfully harvest the abalone, will receive about R200 per kilogram. The scale of enrichment for a small group of people is huge and the crimes are committed in a highly organised fashion that makes the investigation difficult.

The investigation of the activities of these syndicates [enterprises] necessitates the involvement of the Organised Crime Unit of the South African Police Services and prosecutors of the National Prosecuting Authority. A helpful tool in the combat of organised crime in the fisheries environment is the Prevention of Organised Crime Act, Act 121 of 1998, commonly referred to as the POCA.

In order to successfully prosecute in terms of the POCA, a chain has to be build, link by link and

in order to develop the “unity” in an organised crime case one have to understand the links in the chain to establish the unity. Section 2 of the POCA consists out of eight sub-sections, each an offence, but to understand underlying theory looking at section 2(1) (e) and (f) will help.

Any person who [2(1) (e)] whilst managing or employed by or associated with any **enterprise**, conducts or participates in the conduct, directly or indirectly, of such enterprise's affairs through a **pattern of racketeering activity** is guilty of an offence and

[2(1)(f) 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 is guilty of an offence

Any person so convicted, shall be liable to a fine not exceeding R1 000 million, or to imprisonment for a period up to imprisonment for life.

The offences created in this section are commonly referred to as “racketeering”. This term stems from the definition of a “pattern of racketeering activity” as found in section 1 of the POCA and it merely means the planned, ongoing, continuous or repeated participation or involvement at least two particular offences within the time period of 10 years.

The proper identification of the enterprise {syndicate} is important. An enterprise includes any individual, partnership, corporation, association, or other juristic person or legal entity, and any union or group of individuals associated in fact. The term syndicate does have a criminal connotation but for in racketeering case the enterprise can be legitimate. The offence is the **conduct** of the business of the enterprise if it is done **through a pattern of racketeering activity.**  Thus, “racketeering” is to manage, be employed by an enterprise which enterprise keeps busy by *inter alia* conducting a certain pattern of criminal activity.

In order to explain …………… there must be

1. A relationship between the enterprise and the pattern of criminal activity. It must be clear that the offences benefit the enterprise.
2. A relationship between the accused and the enterprise. This relationship can be one of management and or employee/employer. The manager’s relationship with the pattern of the criminal activity can only be through the enterprise. The manager does not commit the predicate offence. [The building block]

The relationship of the employee is vested in his or her participation in the criminal pattern and in order for that to happen the employee must be involved in two or more building block offences.

Enterprise

Accused

Pattern of

Racketeering

Activity

Having regard to the idea of a “chain”, as being events connected one after the other constituting a complex unity let us examine the links of this organised crime chain.

There have to be more than two events connected to the enterprise in order to form the pattern of racketeering activity. This is the so called “predicate offences”. Part of the predicate offences will be the commodity in which the alleged criminal enterprise is conducting its business. Predicate offences committed in the furtherance of the purpose of the enterprise also forms part of pattern. The predicate offences must show the relationship between the pattern and the enterprise. The pattern must reflect the business affairs of the enterprise. The perpetrators of the predicate offences can and not necessary stand in a relationship with the enterprise. Their roll will become important in identifying the accused persons in the case.

In the abalone [fisheries] environment the contravention of the section 58 of the MLRA and the abalone regulations will the starting point. Investigations need to connect the events to each other that will establish a link with a criminal enterprise. The illegal abalone trade is a good example as the different levels of criminal activities are interlinked. The diver, the transporter, the store man, the fish-processing establishment, the buyer and exporter all work together on a need to know basis. The search is to find the common denominator that will expose the enterprise, the small group of people making the large profits.

This chain has to be put together by going beyond the facts of each incident. The illegal diver has to be investigated beyond the waist bag he was caught with. He has to get rid of the commodity, who pays him, who transported and weighed his catch? Answers to these questions supply the connection between the offence and the organiser. In this way investigation has to go through all the link until the enterprise is clear by association of all the facts.

There are tools available to assist in this exercise such as the use of entrapment as regulated be section 252A of the Criminal Procedure Act.

Once the factual matrix is established, the accused must be identified. The first step is to identify the manager and the members of the enterprise. Section 2(f) of the POCA reduces the culpability of a manager to negligence, as the manager ought reasonably to have known that any person, whilst employed by or associated with that enterprise, conducts or participates in the affairs of the enterprise.

Usually employees of the enterprise commit the predicate offences and if did so more than twice [in order to fall within the definition of a pattern] they are “racketeers” in terms of section 2(1) (e) of the POCA.

The construction of the case as per an indictment will look something like this;

**WHEREAS** the Prevention of Organised Crime Act, No 121 of 1998 (hereinafter referred to as the POCA) defines in section 2 thereof various criminal offences in respect of racketeering; and

**AND WHEREAS** the POCA defines an “**enterprise**” in section 1 as to be and “…including any individual, partnership, corporation, association, or other juristic person or legal entity, and any union or group of individuals associated in fact, although not a juristic person or legal entity”; and

**AND WHEREAS** the POCA, in section 1, defines “**pattern of racketeering activity**” as the planned, ongoing, continuous or repeated participation or involvement in any offence referred to in Schedule 1 of the Act and includes at least two offences referred to in the said Schedule, of which one of the offences occurred after the commencement of this Act and the last offence occurred within 10 years (excluding any period of imprisonment) after the commission of such prior offence referred to in Schedule 1;

**AND WHEREAS** Section 2(1) (e) of the POCA provides that any person whilst managing, or employed by, or associated with any enterprise conducts or participates in the conduct, directly or indirectly, of such enterprise’s affairs through a pattern of racketeering activity is guilty of a criminal offence; and

**AND WHEREAS** Section 2(1) (f) of the POCA provides that a 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, is guilty of an offence.

**AND WHEREAS** section 77(1) of the Marine Living Resources Act 18 of 1998 (hereinafter referred to as the MLRA) provides that the Minister may promulgate regulations regarding

*(a)*   any matter required or permitted to be prescribed in terms of this Act; and

*(b)*   generally all matters which are reasonably necessary or expedient to be prescribed in order to achieve the objects of this Act.

**AND WHEREAS** the Minister of Environmental Affairs and Tourism has in terms of section 77 of the MLRA on 2 September 1998 promulgated regulations that were published under Government Notice R.111, and published it in Government Gazette No. 19205 and have since been amended.

**AND WHEREAS** regulations 36 to 40 of the regulations as promulgated under Government Notice R1111 and published in Government Gazette no. 19205 of 2 September 1998, contains various offences pertaining to the fishing, collecting, keeping, controlling, transportation of, and or the possession of abalone without a permit;

**NOW THEREFORE** the State alleges that the accused 1 and 6 were associated in fact and thus formed an enterprise as defined in section 1 and as intended in sections 2(1) (e) and 2(1) (f) of POCA. The purpose of the enterprise was to engage in the fishing, collecting, keeping, controlling, transportation of and/or the possession of abalone without a permit, in order to enrich themselves.

**NOW THEREFORE** the State alleges that the accused and other persons, known and unknown to the State, and directly or indirectly involved therein, conducted, participated and or managed the enterprise and or participated in conduct of the affairs of the enterprise by engaging in the illegal fishing, collecting, keeping, controlling, transportation of and/or the possession of abalone.

**AND** that such conduct and or operation and or management and or involvement in and or employment by and/or participation in the conduct of the affairs of the enterprise occurred through a pattern of racketeering activities as set out in counts 3 to 9 which forms part of the indictment.

**AND** that the offences upon which the accused are arraigned were committed in order to benefit the enterprise, its managers, members, employees and persons directly involved therein.

As can be seen three separate interrelated links or events forms a unity.

