The link between marine living resources & organised crime

By Prof Hennie van As *

Introduction

South Africa’s coastal waters are home to a large variety of valuable marine living resources that can both provide 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. Haenlein (2017) for example, views large-scale IUU fishing as transnational organised crime that must be recognised and treated as such. Interpol (2014) also appeals for increased “awareness of some types of illegal fishing as a form of transnational and organised crime”. In 2013, Interpol (2017) launched Project Scale, an initiative to enable member countries to identify, deter and disrupt transnational fisheries crime.

In 2017, Hübenschle demonstrated the connection between the smuggling and illegal importation of drugs, cigarettes and counterfeit goods into the country, and the smuggling of marine living resources out of the country. 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” (Hübenschle, 2010). 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 when Gastrow (2001) found 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, Raemaekers and Britz (2009) found that a large illegal and highly organised network 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.

This research is backed up by case law. In the recent case of S v Blignault (CC20/2018) [2018] ZAECPEHC 57, the court stated that “[t]he scale of [this] enterprise’s activities extended far beyond provincial boundaries and establishes the reach of its organisational tentacles”.

The most threatened and most widely smuggled marine living resources are abalone and West Coast rock lobster (Jasus lalandii). According to a recent report (Okes, Bürgener, Moneron and Rademeyer, 2018), the rampant illegal harvesting of abalone has resulted in the loss of a commodity worth approximately R628 million per annum, should this resource have been legally harvested and traded. It is, however, difficult to calculate the cost to the economy since it is regarded as a “dark” crime. In United States v Bengis two options for calculating restitution were submitted to the court. The first option focused on the cost of remediation and amounted to over $46.77 million, and the second on the market value of the overharvested resource, which amounted to just under $62 million (R874 million).

Research conducted by the UN Food and Agricultural Organisation estimates that between $11 and $30 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 (www.pescadolorus.org/).

The extent of the illegal trade in abalone is illustrated by the fact that between 2000 and 2007, 74% of dried Haliotis midae 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 (Lou, 2018). An analysis of trade routes by Traffic suggests that up to 43% of the illegally harvested abalone were traded through a number of non-abalone-producing sub-Saharan African countries to Hong Kong between 2000 and 2016; 21% originated from Mozambique, 7% from Zimbabwe and 6% from Zambia (Okes et al, 2018). The latter two countries are landlocked and the analysis shows that the commodity is transported from South

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A significant increase in demand for South African abalone in the Far East (Raemaekers and Britz, 2009); 

- the substantial increase in the abalone price in the 1990s that triggered an abalone fishing “gold-rush”; 

- 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 (Raemaekers and Britz, 2009); 

- the weakening of the Rand against the US dollar makes the export price of abalone attractive; 

- weak control systems 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 (Snijman, 2005); and 

- corruption (Bengis case). 

In 2015, Sundström interviewed senior fisheries officials on the prevalence of corruption within the ranks of FCOs and it was cited that “respondents give a uniform image of the almost endemic state of bribery”.

The principal tool to address the pillaging of marine living resources is the Marine Living Resources Act 18 of 1998 (the MLRA), which gives the Minister the power to appoint Fishery Control Officers (FCOs). Their powers are defined in section 51 of the MLRA. These FCOs can enter, search and seize the property of “any vessel” with a warrant, and they are granted extensive powers that they are able to exercise without having to obtain a warrant from the courts. This includes the power to stop vessels, muster the crew, require the master to produce a licence and records of fish caught, and escort a vessel to port for the purposes of investigating. They are also permitted powers of search and seizure for any vessel they reasonably suspect is committing illegal fishing activity in terms of the Act. 

Truth of the matter is 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 Agriculture, Forestry and Fisheries (DAFF) is extremely under-resourced as far as ocean-going vessels are concerned. 

The existing legislative framework is insufficient to effectively combat fisheries crimes. This has several knock-on effects such as that the failure of DAFF to secure compliance and the tensions with the communities in which FCOs operate has 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 (Pariona, 2017). These knock-on effects would result in damage to other species, which would in turn cause 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 SAPS in the fulfilment of their duties. While FCOs are able to enter vessels and premises, search and seize property, any confiscated evidence needs to be handed to the police as soon as possible. FCOs are also restricted in other respects, for example the question of whether FCOs are able to apply for a search warrant in terms of the Criminal Procedure Act 51 of 1977 is still unclear (Snijman and Van As, 2018). This demonstrates that FCOs are dependent upon the SAPS to properly exercise their law enforcement function. This is exacerbated by the fact that crimes relating to marine living resources are not priority crimes. 

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 most instances, they have no idea of how, or even if cases are progressing. The
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Editor’s notes

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The time to act is now

It is time that the authorities pay more attention to this scourge. What is 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. A recent study by RUSI (2017) clearly indicates the threat that these activities pose 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. The Norwegian government has agreed to fund an academy called FishFORCE at the University and an amount of approximately R40 million was allocated to the 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 to enhance intelligence-led investigations and increase 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 in this article, but also be at the forefront of the fight to strengthen South Africa’s protection of its marine living resources.