

# NELSON MANDELA UNIVERSITY



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**Presented by: Prof H. van As**

# POACHING OF MARINE LIVING RESOURCES AS A COMPONENT OF ORGANISED CRIME

Complexity of the problem ...

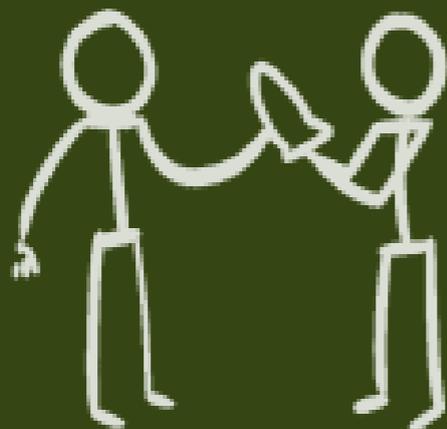


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GIVE A MAN A FISH, AND  
YOU FEED HIM FOR A DAY.



TEACH A MAN TO FISH, AND YOU  
FEED HIM FOR A LIFETIME.

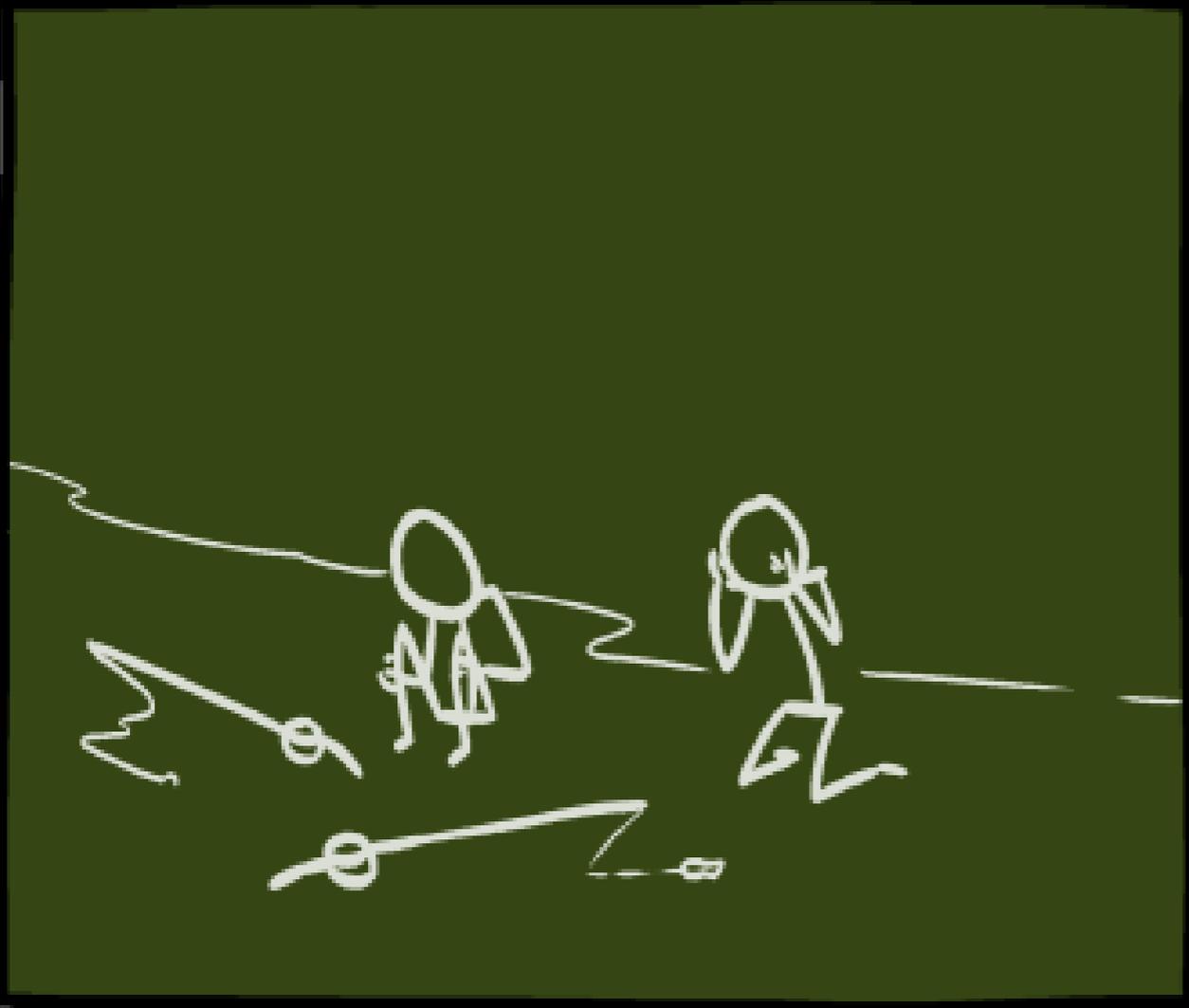


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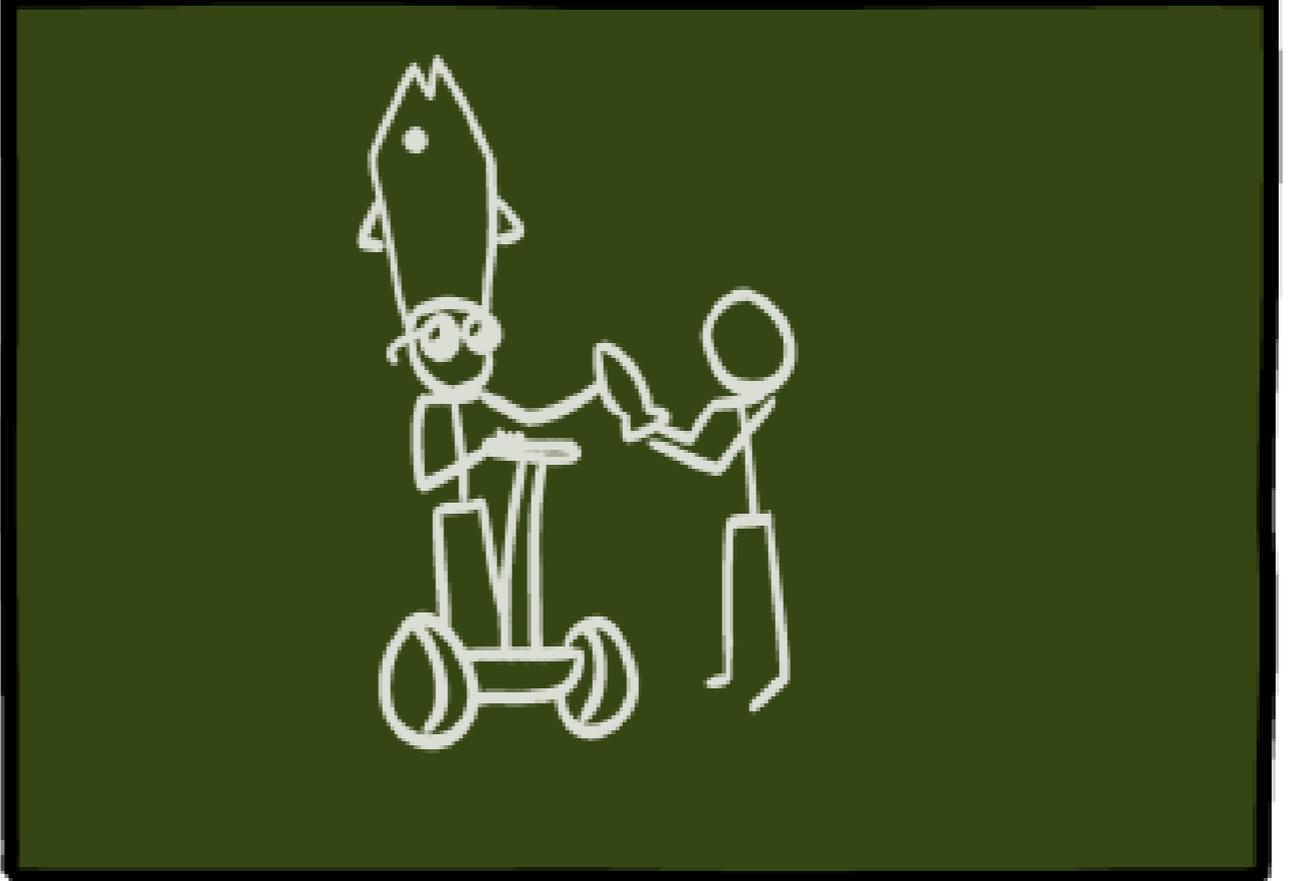


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TEACH EVERY MAN TO FISH,  
AND YOU WILL FEED THEM  
ALL, UNTIL THE FISH  
POPULATION COLLAPSES.



TEACH A SMALL RESTRICTED  
GROUP OF MEN HOW TO  
FISH REALLY WELL, AND YOU  
WILL FEED MOST PEOPLE,  
BUT WILL CREATE MASSIVE  
INEQUALITY.

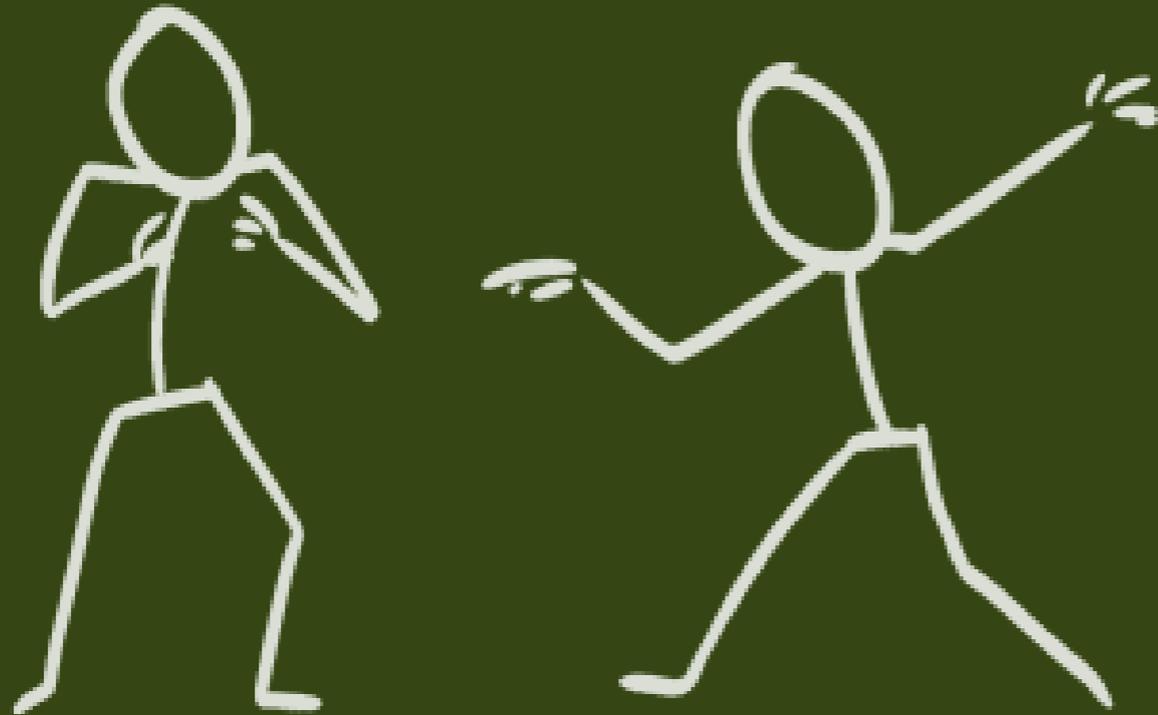


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TEACH EVERY MAN TO FISH  
AND TEACH EVERY MAN ABOUT  
COMMON-POOL RESOURCE  
MANAGEMENT, AND YOU WILL  
FEED THEM UNTIL SOCIAL  
TRUST BREAKS DOWN.



TEACH AN ETHNICALLY  
HOMOGENEOUS GROUP  
TO FISH, AND -

PROFESSOR!



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# The problem:

We are dealing with organised crime, but we look at it through an IUU (illegal, unreported and unregulated) fishing lens which is more aligned to fishery management and compliance (by applying the techniques of MCS) thus attracting low and usually administrative penalties rather than eliminating organised crime which includes a wide scope of related criminal offences including fraud, corruption, money laundering, human trafficking and drug trafficking.



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# The reality according to research

The involvement of organised criminal syndicates in the smuggling of poached abalone out of South Africa has been known for years.

There is a presence of a large and highly efficient Chinese organised crime network in the South African illicit trade in abalone.

*“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 and 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”*

The WC Standing Committee on Economic Opportunities, Tourism and Agriculture in 2017 tabled a report on the public hearings which were held to determine the impact of abalone poaching on the small-scale fishing communities in the Western Cape. The report found that abalone poaching is strongly linked to crime syndicates.



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# Reality according to case law

“[I]t 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.”

- *S v Miller* 2018 (2) SACR 75 (WCC) par [53] per Gamble J



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# Reality closer to home

- 9 Persons arrested, including 2 Chinese citizens (who claimed to be economic migrants)
- One of the accused testified in the Regional Court to the involvement of syndicates from China and Hong Kong
- “The scale of the enterprise’s activities extended far beyond provincial boundaries and establishes the reach of its organisational tentacles”
- Substantial amount of the abalone originated in the WC
- “The time had arrived for a complete reassessment of sentencing options ... The plunder continues unabated and the stage has been reached for appropriate sentences to stem the poaching tide” – 20 years

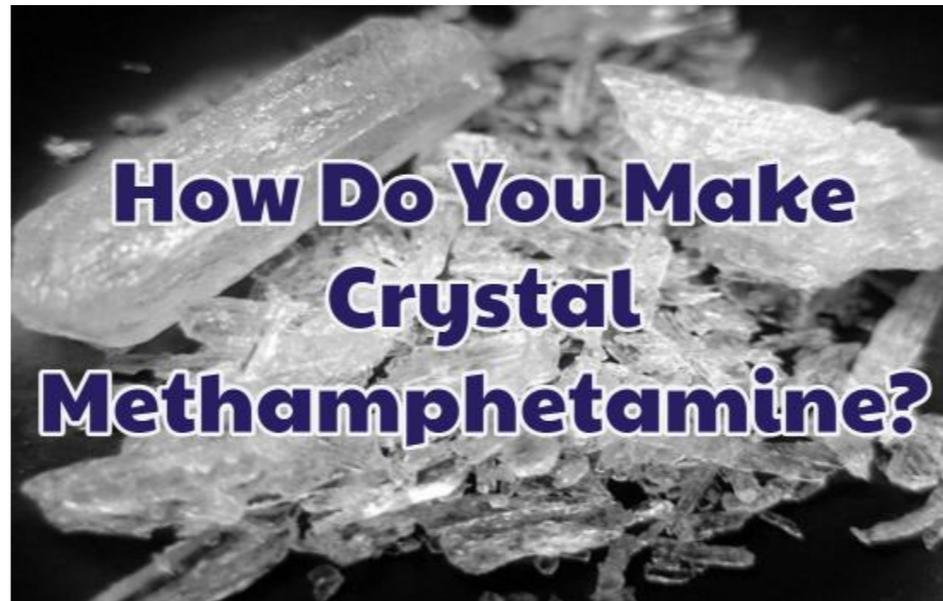
- *S v Blignault High Court ECLD Case no: CC20/2018*



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9 Fishery Control Officers (and eight others) arrested by the Hawks for alleged involvement in abalone poaching  
March 2018



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Where are we in this compliance model?

**ATTITUDES TO COMPLIANCE:**

Have decided not to comply

Don't want to comply, but will if we pay attention

Tries to but don't always succeed

Willing to do the right thing

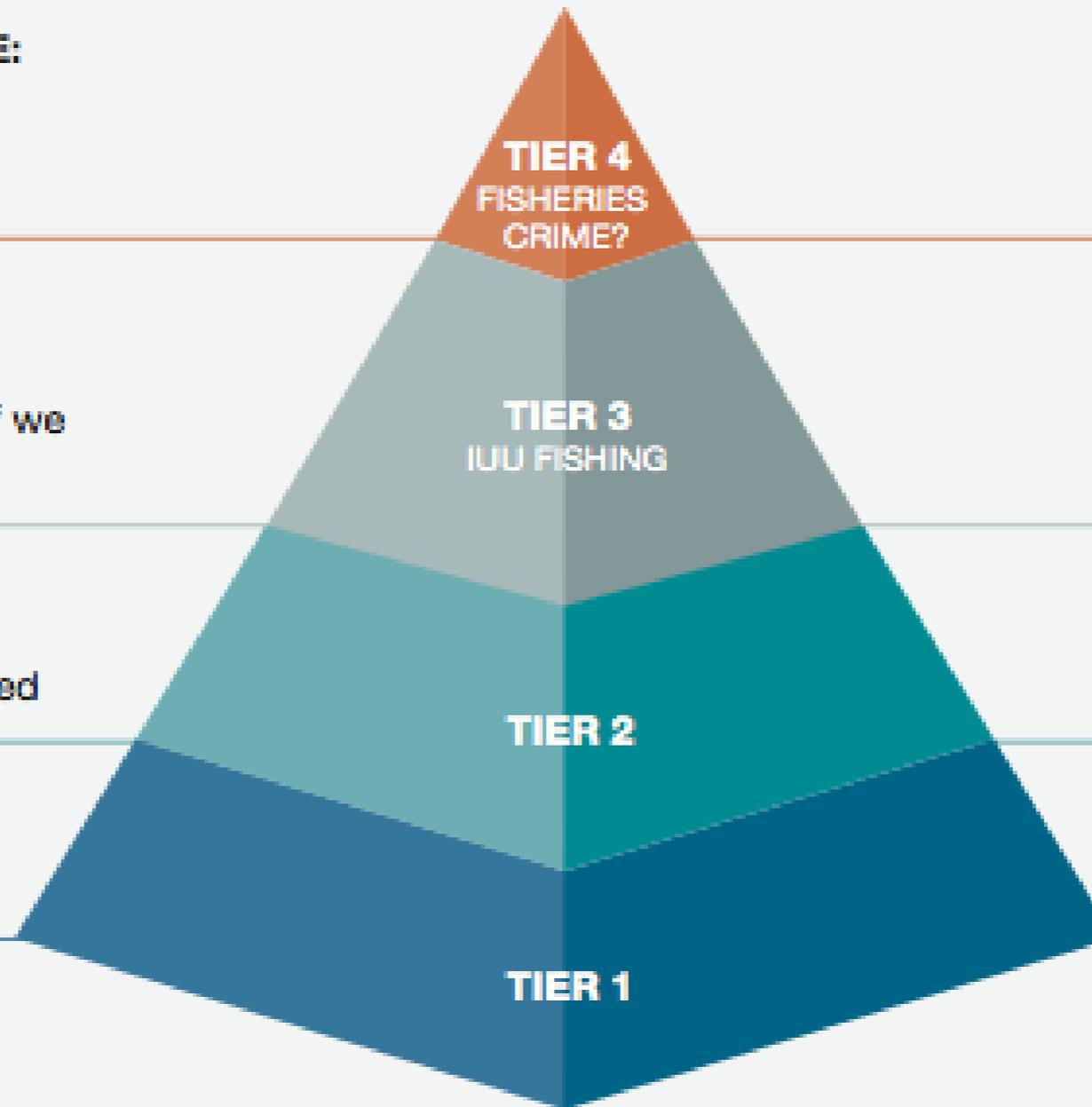
**COMPLIANCE STRATEGY:**

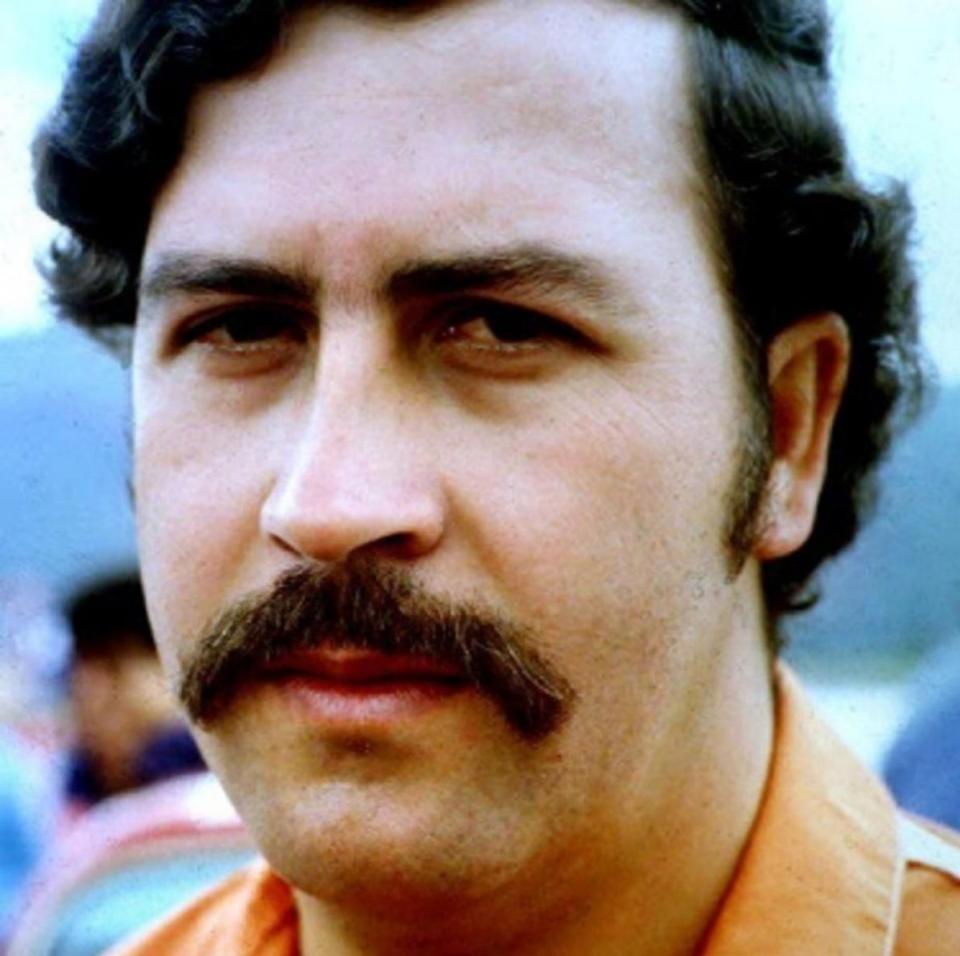
Use full force of the law

Deter by detection

Assist to comply

Make it easy





# Remember this guy ...?



He was nicknamed 'Robin Hood' after handing out money to support the poor

# Fisheries crime/IUU fishing?

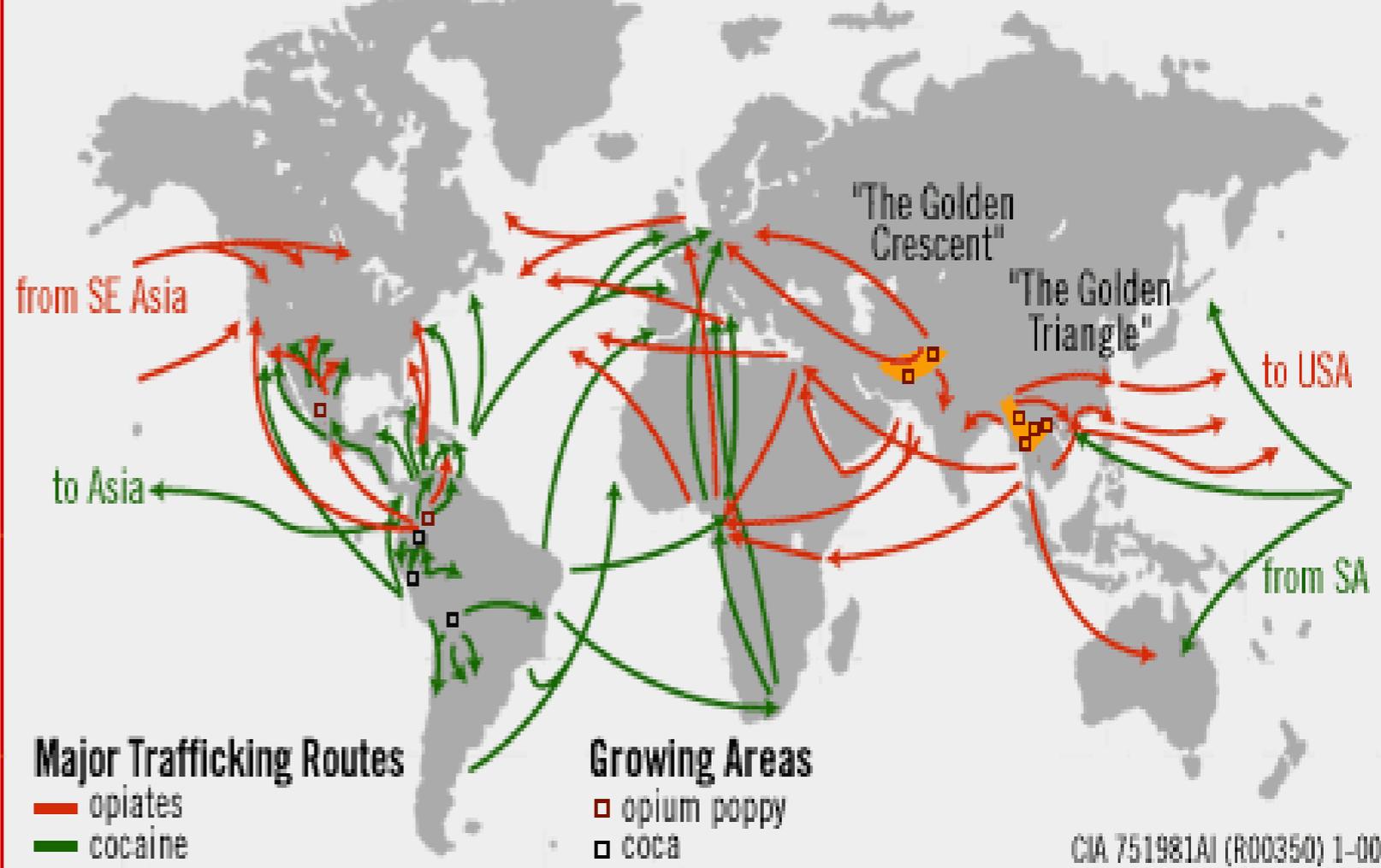
- Moves away from the traditional approach that regards illegal fishing as a conservation or fisheries management problem and where it is known as IUU fishing
- Comprises a **range of illegal activities**, serious offences and includes economic crimes
- Not limited to illegal fishing *per se*, but includes a wide scope of **related** criminal offences
- **Transnational, multifaceted** phenomenon which comprises a range of crimes, which can be committed at **any point** along value chain
- **Examples**



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# HUMAN TRAFFICKING

“You may choose to look the other way, but you can never say again that you did not know.”

- *William Wilberforce*



**SEX  
TRAFFICKING**



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- Body of work indicates abalone and lobster poaching in South Africa is **linked to organized and transnational crime**
- **Gastrow** (ISS) - the involvement of organised criminal syndicates in the smuggling of poached abalone out of South Africa has been known for years.
- **Steinberg** - there is a presence of a large and highly efficient Chinese organised crime network in South African illicit trade of abalone
- **Gastrow** “Triad Societies and Chinese Organised crime in South Africa” established a link between triads and abalone poaching:

*The Taiwanese-linked criminal group active in Cape Town was referred to as the ‘Table Mountain Gang’. Police soon discovered that members were also operating in Johannesburg/Pretoria as well as in every harbour city in South Africa. Police Investigations revealed that the illicit trade in abalone constituted a major component of the Chinese organised criminal groups”.*



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- Following interception of a Chinese shipment of one million Mandrax tablets in a Durban warehouse, former NPA Director Bulelani Ngcuka, lifted the veil on the involvement of the secretive and violent Chinese triads when he confirmed:

*“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.”*



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- **“Organized criminal group”** = 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** or offences established in this Convention, in order to obtain a benefit;
- **“Serious crime”** = offence punishable by a maximum deprivation of liberty of at least four years;
- **“Structured group”** = a group not randomly formed for the immediate commission of an offence and that does not need formally defined roles for its members or a developed structure





# POCA

means

Prevention of Organised Crime  
Act

by [acronymsandslang.com](https://www.acronymsandslang.com)

- Main purpose is to provide for measures to combat organised crime, money laundering and criminal gang activities.
- This includes the creation of the offence of **racketeering** and processes to **seize and forfeit** both the **instrumentalities** as well as the **proceeds** of unlawful activities
- A “**pattern of racketeering activity**” is *the planned, ongoing, continuous or repeated participation or involvement in any offence referred to in Schedule 1 and includes at least two offences referred to in Schedule 1...*”
- Offences under the MLRA not specifically listed, but included via *any offence the punishment wherefore imprisonment exceeding one year without the option of a fine may be imposed*



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- A feature of the nexus between IUU fishing and organised crime is the distinction in institutions under whose mandate they are and different legislative instruments governing them.



- Same holds true in SA context – fisheries management is under DAFF, while organised crime falls under SAPS with POCA as the primary legislative instrument.

In order to successfully prosecute in terms of POCA, you have to build a chain, link by link



Treat poaching as organised crime – that is what it is ... make the links



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# EXAMPLE

- In the abalone [fisheries] environment 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.



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Vivian Lopez  
Associate

Brandon Garcia



## EXAMPLE

- 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.
- 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 organizer



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# The Main Smuggling Routes of South African Abalone



Source: TRAFFIC; various news reports





Jim  
Rock  
Horn

