

# To Catch a Fish Thief

## The *Bengis* Case: Lessons Learned And Thoughts Going Forward

Marcus Asner  
FishCRIME Symposium  
Cape Town, South Africa  
13 October, 2015

## Drug Trafficking – Common Themes

- Highly organized criminal networks
- Exploit corruption
- Money laundering
- Human exploitation
- Violence and intimidation
- Exploit gaps in border controls/law enforcement
- Challenge to prove mens rea (mental state)
- Bad guys engage in cost/benefit analysis



## Fish Trafficking – Common Themes

- Highly organized criminal networks
- Exploit corruption
- Money laundering
- Human exploitation
- Violence and intimidation
- Exploit gaps in border controls/law enforcement
- Challenge to prove mens rea (mental state)
- Bad guys engage in cost/benefit analysis



## Roadmap

- **Bengis Scheme**
- The Investigation and Prosecutions
- Going Forward

## South Africa Operation – Supply Side

- Rock lobster
  - West Coast rock lobster
  - South Coast rock lobster
- Patagonian Toothfish
  - Chilean sea bass



## South Africa Operation – Impact

- Massive overharvesting (1987 to 2001)
  - Circa 2000 – over 90% of WC lobster illegal
- OLRAC report
  - Cost of remediation – What it would cost South Africa to restore fishery
    - \$46.7 million
  - Market value of the poached lobster = (quantity of overharvested fish) x (prevailing market price)
    - \$61.9 million

# South Africa Operation – Impact

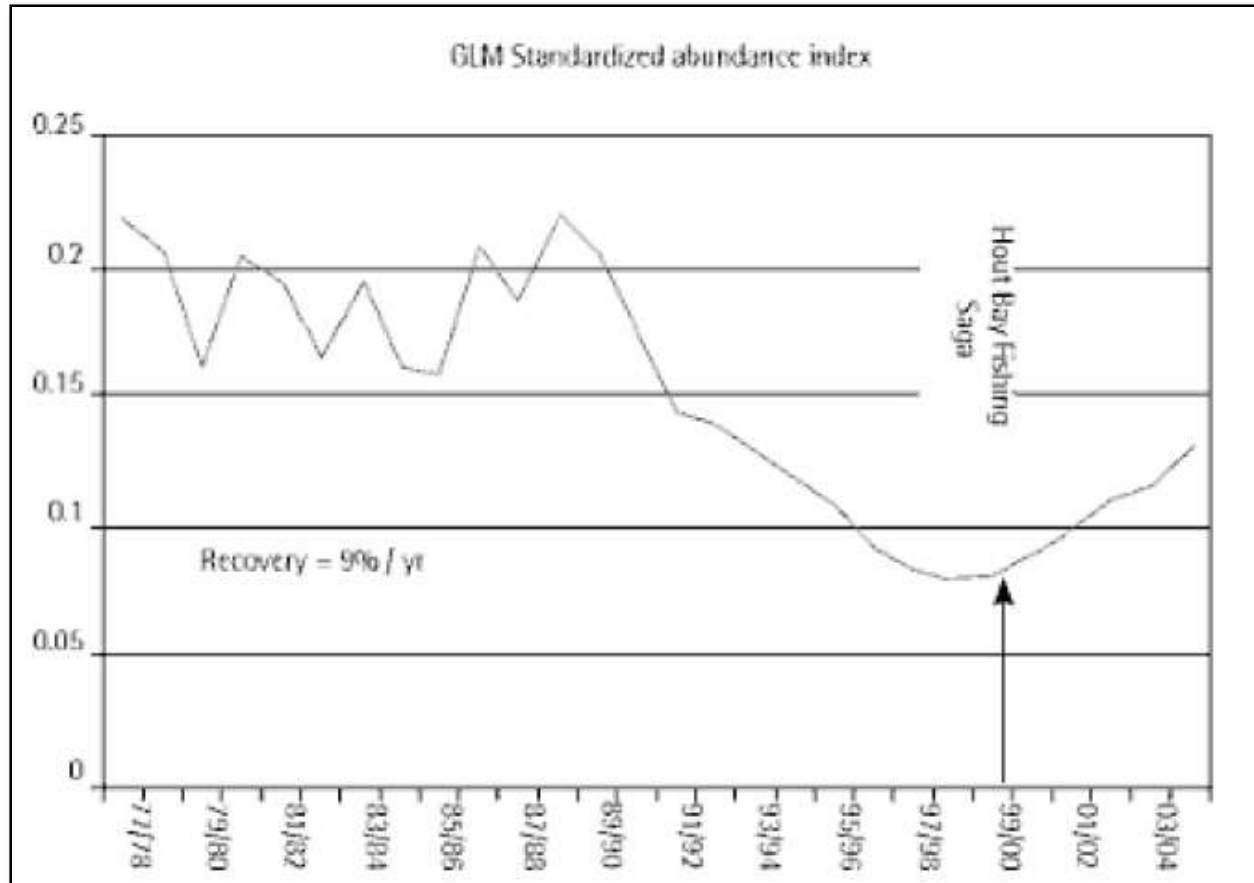


Figure 6. Recovery in the South Coast rock lobster stock after the Hout Bay Fishing saga.<sup>12</sup>

## South Africa Operation – Landing Stolen Fish

- Bribery of fishing inspectors/off-loading at night
- Reporting to Marine & Coast Management
  - “Stretching” the quota
  - “Sheet A”
- Paying the crew/managing the business
  - “Sheet B”
- Key Question: Where do they leave evidence?



## South Africa Operation – Exporting Stolen Fish

- Exportation to U.S. and Asia
- False export documents (type/quantity)
  - Hide overharvesting from Marine & Coastal Management
- Key Question: Where do they leave evidence?



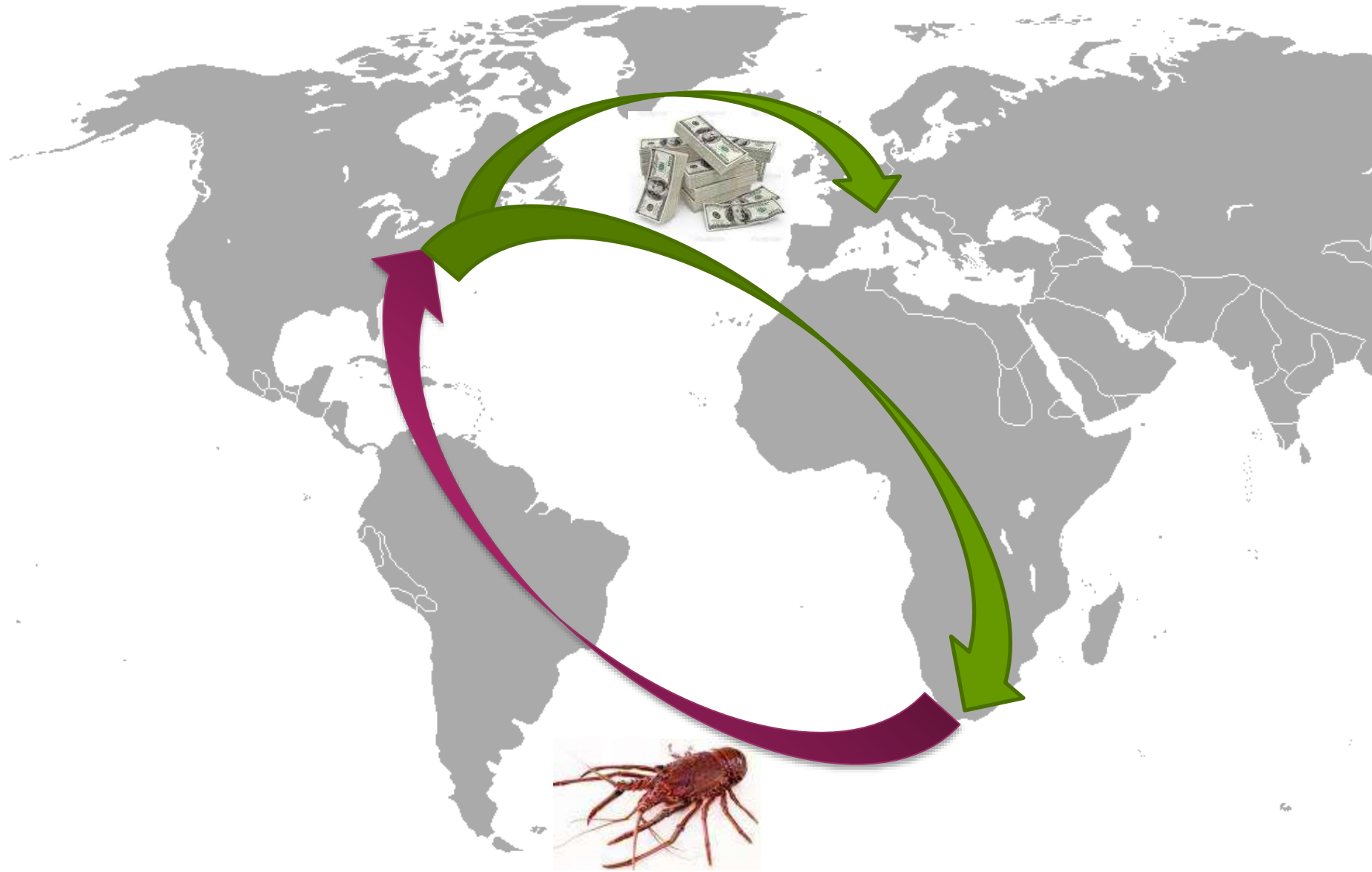
## United States Operation – Demand

- Ice Brand New York
  - Arnold Bengis and others
  - Importation and distribution
- Ice Brand Maine
  - David Bengis
  - Processing factory
- Import illegal product into US
  - Correct statements on documents (type/quantity)
    - Concern over US Customs inspections
- Key Question: Where do they leave evidence?



## Cross-Border Money Flow

- West Coast rock lobster fisherman
  - Independent fishermen, must be paid for catch
- Extra harvesting costs for South Coast rock lobster
- Extra processing costs
  - Hout Bay employees, etc.
- Extra profits
- Key Question: Where do they leave evidence?



## Roadmap

- The Bengis Scheme
- **The Investigation and Prosecutions**
- Going Forward

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA, :

- v. - :

ARNOLD MAURICE BENGIS, :  
JEFFREY NOLL, :  
GRANT BERMAN, :  
DAVID BENGIS, and :  
SHAUN LEVY, :

Defendants. :

FILED UNDER SEAL

INDICTMENT

S1 03 Crim. 308 (LAK)

-----X  
COUNT ONE

(Conspiracy to Violate the Lacey Act and to Commit Smuggling)

The Grand Jury charges:

Relevant Persons and Entities

At all times relevant to this Indictment:

1. HOUT BAY FISHING INDUSTRIES (PTY) LTD ("HOUT BAY")

## Investigation – South Africa Evidence

- Hout Bay search
  - Container inspected
  - Wage records
- Export documents
- Witnesses
- Competitors





## Investigation – Matching Project

- South Africa export documents
- United States import documents
- Container numbers/container seal numbers





## Mens Rea (Mental State)

- Actus Reus v. Mens Rea
  - Individualized proof
- Cooperating witnesses
  - How induce to cooperate?
- Efforts to conceal
  - wage records; shredding documents; sheet A/sheet B; money flow
- Defendant statements
  - “stretching quota”; “f\*\*\* you money”

## South African Prosecution

- Hout Bay operations manager
- Rock lobster fishermen
- 14 fisheries inspectors
- Seizures (lobster, boats, factory)
- Hout Bay Fishing Industries
  - Corporate plea
  - Fines



## United States Prosecution

- Arnold Bengis and 4 others – August 2003 arrests
- Lacey Act, smuggling and conspiracy charges
- Sentences (May 2004)
  - Bengis – 46 months
  - Others – time served to 30 months
  - \$7.4 million in forfeiture
    - Fish seized in U.S.; Ice Brand Maine
- Restitution for South Africa (June 2013) ~ \$29.5 million

# City tycoon jailed in USA

**MELANIE GOSLING**

Environment Writer

FORMER Cape Town fishing magnate Arnold Bengis, the mastermind behind an international lobster and Patagonian toothfish poaching and smuggling syndicate, has been jailed by a New York federal court for three years and 10 months.

Bengis, former head of the defunct firm Hout Bay Fishing (Pty) Ltd, and his co-conspirator, Jeffrey Noll, who was sentenced to 30 months' jail, were ordered to forfeit a total of \$5.9 million.

Bengis's son, David, was jailed for one year and ordered to forfeit \$1.5 million.

According to court papers, Bengis, 68, had told his sidekicks it was unlikely he would ever be prosecuted for his illegal fish

Patagonian toothfish, and then to import the fish illegally into the United States.

Bengis's sentencing is the culmination of a three-year joint investigation by the Scorpions, Marine and Coastal Management (MCM) and the US authorities into the criminal conduct of the organisation headed by Bengis.

Court papers say the US branch of Bengis's criminal organisation played a central role in his fish-trafficking scheme from 1987 to 2001.

The New York office, run by Arnold Bengis and Noll, "served as the brain centre" for the criminal organisation. The financial aspects of the scheme were run from there, where two sets of books were kept: one with the legal fish caught within the South African quota allocations,



without work permits, to work in their US fish factories where they were paid below the minimum wages.

Bengis also hired a private investigator to follow the US agents during their investigation in an effort to locate a container of stolen fish that the US authorities had seized.

A witness said that in 2000, more than 90% of West Coast rock lobster processed by Hout Bay Fishing was illegal.

Bengis and his co-conspirators had used various US banks to "funnel millions of dollars of criminal proceeds to themselves and their relatives", and to bank accounts in the Jersey Islands, Gibraltar and Switzerland.

About \$2.1 million was also forwarded to a law firm in London engaged by the Bengis organisation.



## Roadmap

- The Bengis Scheme
- The Investigation and Prosecutions
- **Going Forward**

## Going Forward – Criminals' Modus Operandi

- Exploit weaknesses in local fisheries enforcement and port inspections
- Exploit corruption
- Mislabeled cargo in customs documents
- Exploit challenges to international information sharing and coordination
- Money laundering to further scheme and to conceal criminal proceeds
- Cost/benefit analysis

## Takeaways – Challenges

- Cross-border cooperation and evidence gathering
- Incentivizing witnesses to cooperate (cone of silence)
- Establishing individual involvement
- Establishing mens rea – limits of criminal law
- Tracing the money
- Changing the cost/benefit analysis
- Catching the prosecutors' attention



## Takeaways – Going Forward

- Treat like a “real” crime
- Transparency into fish harvested and transported
- Cross border information sharing/cooperation
- Improving witness cooperation incentives/structure
- Follow the money
- Better criminal enforcement statutes – Lacey Act
- Prison and monetary sanctions
- Restitution/compensation as incentive for victim countries to cooperate with law enforcement

## Questions?

Marcus A. Asner

Arnold & Porter LLP

399 Park Avenue

New York, NY 10022

+1.212.715.1789

Marcus.Asner@aporter.com