

To Catch a Wildlife Thief

Case Study: *United States v. Bengis*

**East Africa Workshop on Wildlife Laws and Enforcement
Nairobi, Kenya**

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28 July 2015**

Wildlife Trafficking – Common Themes

- Highly organized criminal networks
- Public corruption
- Money laundering
- Human exploitation
- Violence and intimidation
- Exploit gaps in border controls
- Exploit law enforcement weaknesses
- Severe impact on natural resources and local economies

Bengis Case Study – Themes

- Special challenges in investigating and prosecuting an international trafficking scheme
- How an international trafficking investigation/prosecution actually works
- Where do the criminals leave evidence in an international wildlife trafficking scheme?
- How cross-border legal assistance works in practice
- How to successfully prosecute a trafficking ring

Roadmap

- **The Bengis Scheme**
- Investigation
- Prosecutions
- Takeaways

South Africa Operation – Supply Side

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



Hout Bay Fishing Industries, Cape Town



Hout Bay Fishing Industries, Cape Town



Hout Bay Fishing Industries, Cape Town



South Africa Operation – Impact

- Massive overharvesting (1987 to 2001)
 - Circa 2000 – over 90% of West Coast 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

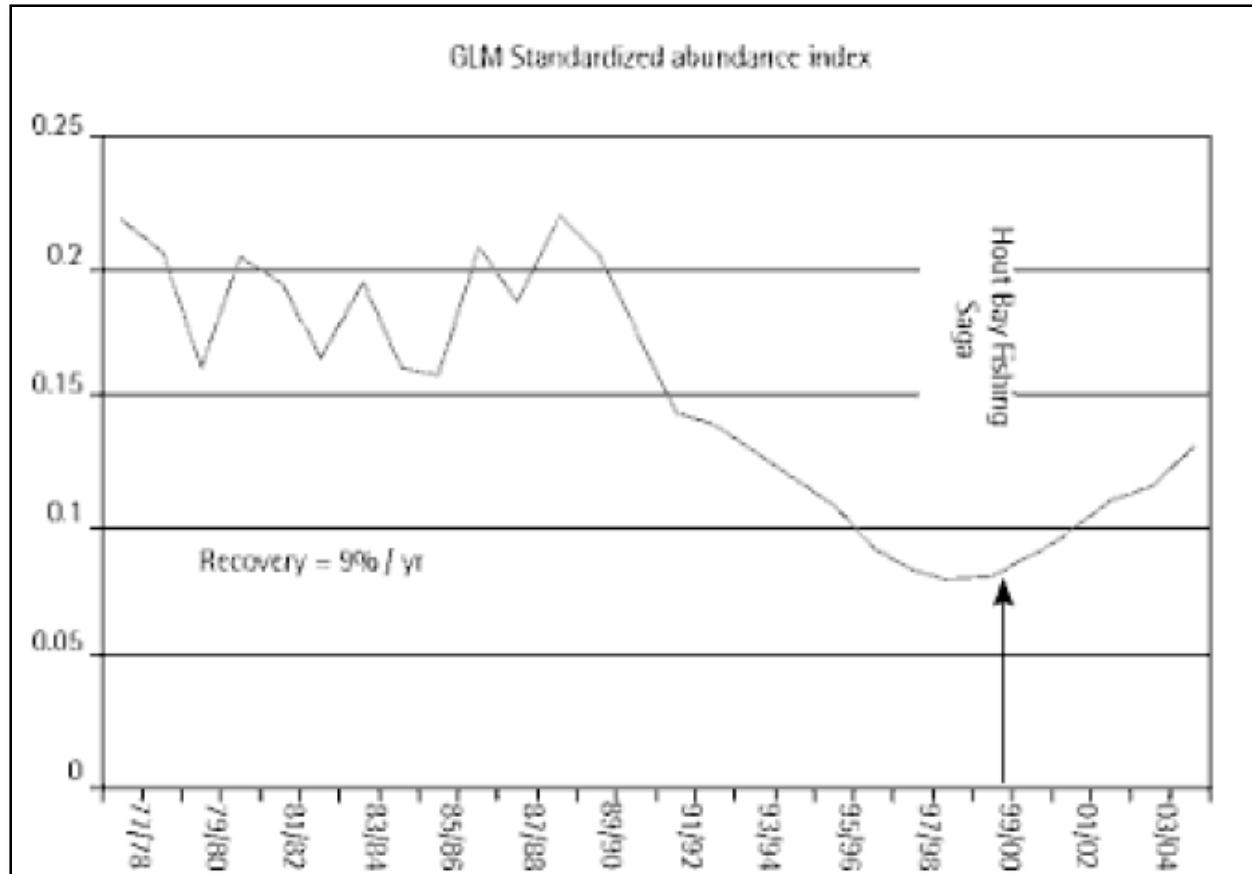


Figure 6. Recovery in the South Coast rock lobster stock after the Hout Bay Fishing saga.¹²

South Africa Operation – Landing Stolen Fish

- Bribery of fishing inspectors/off-loading at night
- Reporting to Marine & Coast Management (fisheries regulators)
 - “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 – Demand Side

- Ice Brand New York
 - Importation and distribution
 - Company books and records
 - Banking
 - Letters/faxes/email/telephone
- Import illegal product into U.S.
 - Correct statements on documents (type/quantity)
 - Concern over U.S. Customs inspections
- Key Question: Where do they leave evidence?



United States – Demand Side

- Ice Brand Maine
 - Processing factory
 - Distribute to consumers
- Exploiting South African workers
 - Brought to U.S. on research visas
 - Paid below minimum wage
 - In fact, worked in factory processing illegal lobster
- Key Question: Where do they leave evidence?

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----- x
UNITED STATES OF AMERICA :
- v. - :
: S1 03 Cr. 308 (LAK)
ARNOLD MAURICE BENGIS, :
JEFFREY NOLL, and :
DAVID BENGIS, :

to supermarkets in the United States. On at least one occasion (from approximately June 2000 through December 2000), the defendants also arranged for previously disadvantaged South African citizens without valid working permits to work for below minimum wage at their facility in Portland, Maine, where they were required to process illegal South African rock lobster.

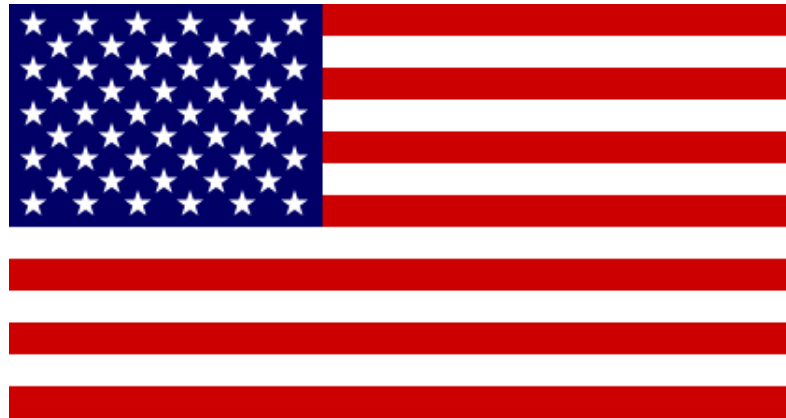
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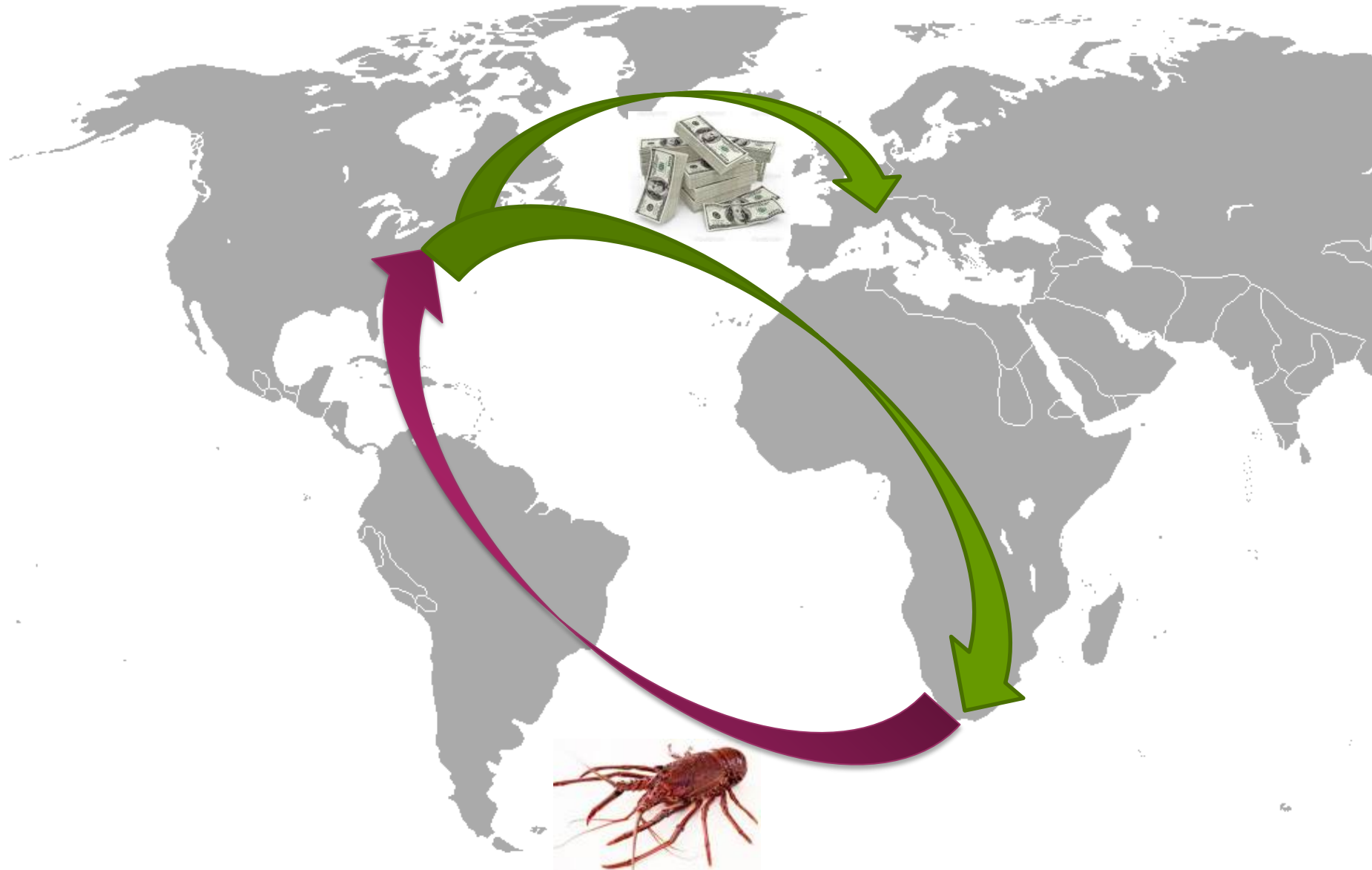
United States – Demand Side

- Impact on U.S. market
- Lower prices/undercutting U.S. competitors
- 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
- **Investigation**
- Prosecutions
- Takeaways

Investigation – South Africa Evidence

- Container inspected
- Hout Bay search
 - Crew wage records
- Fisheries documents
- Export documents



Investigation – United States Evidence

- Import documents
 - Sheet A/Sheet B
 - Garbage/shredded documents
- Ice Brand New York documents
 - South Africa – not excessive
 - Switzerland, Spain – extra \$

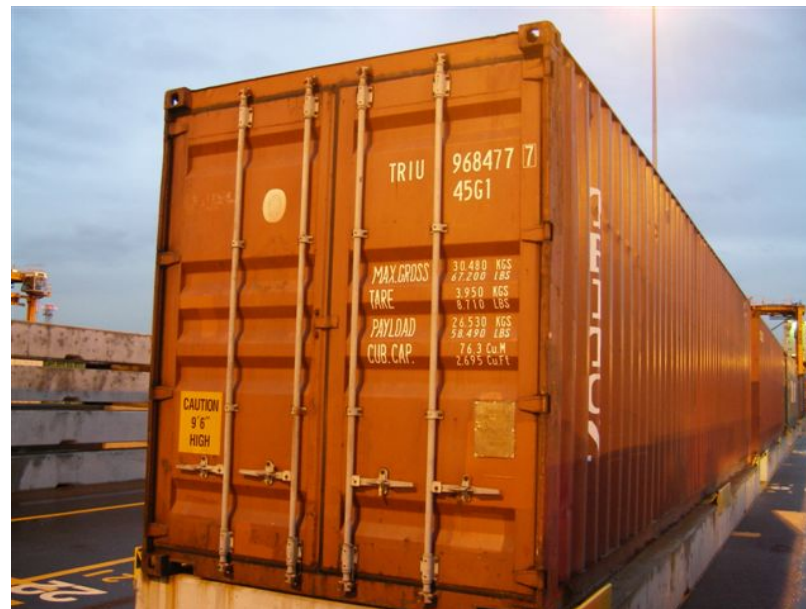


Investigation – Witnesses

- South African co-conspirators (Hout Bay employees)
 - Threats and intimidation
 - Witness Protection Program
- Cooperating witnesses at Ice Brand New York and Ice Brand Maine
- Exploited South Africans who worked at Hout Bay Maine
- Competitors in South Africa
- Competitors in United States

Investigation – Matching Project

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



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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

- v. - :

ARNOLD MAURICE BENGIS, :

JEFFREY NOLL, :

GRANT BERMAN, :

DAVID BENGIS, and :

SHAUN LEVY, :

Defendants. :

-----X

FILED UNDER SEAL

INDICTMENT

Sl 03 Crim. 308 (LAK)

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") was duly incorporated under the company laws of the Republic of South Africa, and its headquarters were located at East Pier, Table Bay Harbour, Cape Town, South Africa.

2. HOUT BAY was involved in the business of harvesting, purchasing, processing, marketing, selling, and exporting fish products from South Africa, including, but not

Catching the Prosecutors' Attention

- Viable targets (that is, targets who can be arrested)
- Severe impact to source state and local community
- Demand state market impact (competitors/consumers)
- Large monetary value to scheme
- Bad actors
- Potential press/deterrent effect
- Diligent law enforcement agents
- Close and stable cooperation between the two countries' law enforcement agents/prosecutors

“Double Barreled” Approach

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v. -

ARNOLD MAURICE BENGIS,
JEFFREY NOLL, and
DAVID BENGIS,

Defendants.

GOVERNMENT'S MEMORANDUM OF LAW IN
TO DEFENDANTS' JOINT MOTION FOR A
FROM THE APPLICABLE SENTENCING GUID

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Southern D

MARCUS A. ASNER
Assistant United States Attorney

- Of Counsel -

incorrect. During the course of the investigation, the South African and United States governments settled on a double-barreled approach to dismantling the Bengis organization. The South African authorities naturally focused their prosecutorial resources on prosecuting the various entities and individuals located in South Africa - including Hout Bay Fishing Industries itself; Hout Bay's operational manager, Collin van Schalkwyk; several fishermen; and fourteen of the South African fisheries inspectors who assisted the Bengis organization in return for bribes. The United States, in turn, focused its prosecutorial efforts on the various individuals and entities based in the United States - including Arnold Bengis, Jeffrey Noll, and David Bengis. This is the most efficient approach to prosecuting such an international criminal scheme. Notably, Arnold Bengis, Noll

South African Prosecution

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

F/V Portia 1 Seized by South Africa

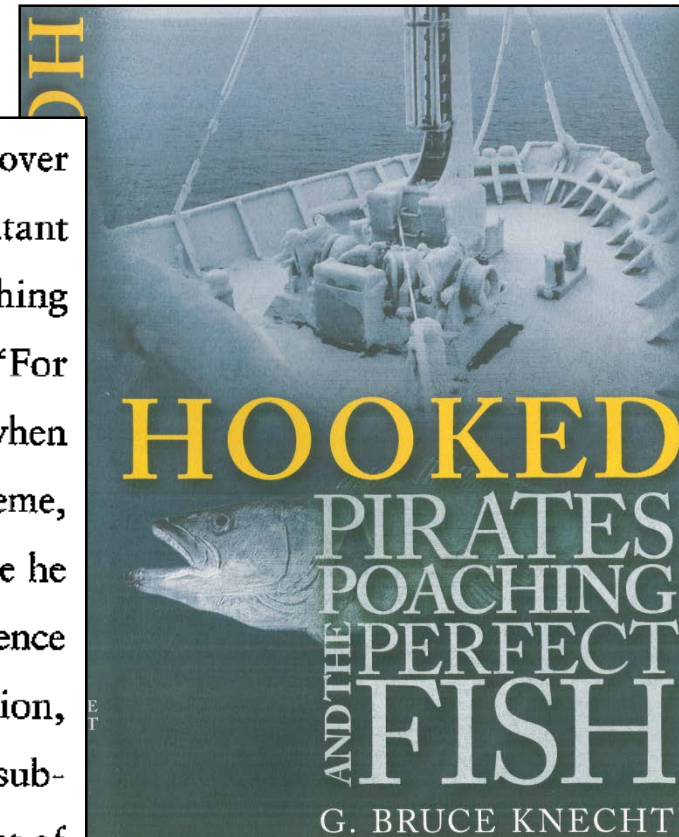


United States Prosecution

- 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 ~ \$29.5 million

Sentencing – May 2004

Judge Lewis A. Kaplan of the U.S. District Court, who presided over the case, was obviously outraged by what he viewed to be Bengis's blatant disregard for the law. "I view his behavior as evidencing an astonishing display of the arrogance of wealth and power," the judge said. "For example, I have before me—and it has not been contradicted—that when asked by his associates about the possibility of being caught in this scheme, Mr. Bengis responded that he was unlikely to be prosecuted because he has, and I quote, 'fuck you money.'" The judge went on to cite "evidence suggesting obstruction of justice by Mr. Bengis in this investigation, including the withholding of documents responsive to a grand jury subpoena, the use of a shredder to destroy documents, and the engagement of a private investigator to shadow U.S. government law enforcement personnel who were carrying out this investigation."



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.

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Net loss

We gave it all we've got, says legend after
Salford fail to make World Cup Page 16

Flour power

City chief Giorgio Napolitano World Peace
Championing in Italy Page 3



US COURTS RULE AGAINST HOUT BAY MAN

Lobster thief told to repay R294m

Arnold Bengis, 68, was sentenced to three years and 10 months in prison by a New York federal court for his role in an international lobster and Patagonian toothfish poaching and smuggling syndicate.

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.

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Zuma warns youth of freedom's victims

President Jacob Zuma has warned South African youth of the dangers of freedom fighters who are not prepared to die for their country.

Zuma, who is on a tour of the country, said that while freedom is a noble goal, it must be achieved through peaceful means. He warned that those who resort to violence and terrorism are not true freedom fighters.

Zuma said that the South African government is committed to the rule of law and the protection of the rights of all citizens. He urged youth to embrace their responsibilities as citizens and to work towards a better future for the country.

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Takeaways – How We Catch Them

- Focus on where criminals must leave evidence
- Cross border information sharing
- Cross border law enforcement cooperation
- Tracing of money trail
- Restitution/compensation as incentive for countries and local communities to cooperate with law enforcement
- Importance of trust and relationships

Questions?

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