CHAPTER 2

CONSERVATION CRIMINOLOGY – A VIABLE CRIME CATEGORY
2.1 INTRODUCTION

With regard to environmental rights, section 24 of the Constitution\(^1\) of South Africa reads;

‘Everyone has the right –

(a) to an environment that is not harmful to their health or well-being; and

(b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that –

(i) prevent pollution and ecological degradation;

(ii) promote conservation; and

(iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development’.

The Constitution, therefore, provides an important mechanism whereby natural resource issues can be addressed, and furthermore, empowers citizens to act [individually] in the interests of nature. In essence, obtaining *locus standi*\(^2\), and consequently, also easier recourse to justice for environmental concerns/violations (Stacy 1999:51). Due to the introduction of this clause, it could certainly be inferred that more natural resource issues will be brought to the fore, which should not only make a significant (albeit slow) contribution to environmental justice in South Africa, but should additionally assist in prioritising [harmful] natural resource issues, so easily overlooked in the past, and elevating them to their rightful status in society. It should eventually, as Kidd (1997:14) postulates, lead to the mainly anthropocentric reasons for conservation, i.e., the regarding of nature solely as an economic asset for the benefit of humans, becoming increasingly regarded as inadequate, and the justification of the conservation of nature in its own right, gaining momentum and acceptance.

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\(^2\) *Locus standi* - standing to sue (Kidd 1997:28).
The application of criminal sanctions, to promote compliance with natural resource orientated legislation and give effect to the prescriptions of section 24 supra can, given the current state of lawlessness in South Africa, lack of respect for the rule of law, and the largely deficient ‘environmental ethos’ prevalent amongst the general populace (Herbig 2001:5; Kidd 1997:24, 1998:190), be regarded as a management tool that will always have to remain an important [but not only] device for promoting the sustained conservation of natural resources.

There is currently a surfeit of legislation in South Africa dealing with natural resource protection and/or regulation, much of which, although ultimately having the same objective, is not uniform and, furthermore, often unnecessarily complex and fragmented. Although this situation in itself is undesirable, the legislation is essentially conservation orientated and has as its primary objective the preservation and management of natural resources. Ironically, however, most, if not all, prosecutions initiated under conservation related legislation will originate and ultimately terminate at the South African Police Services (SAPS) by the payment of an admission of guilt fine, or quite frequently, be finally disposed of by the Department of Justice in a magistrate’s or regional court.

It is regrettably at this important juncture where a significant amount of conservation-orientated impetus is potentially lost, chiefly due to the lack of significance customarily attributed to natural resource crime issues by the SAPS. Although the Endangered Species Protection Unit (ESPU) of the SAPS attributes a high priority to addressing natural resource crime, it is essentially only concerned with the illegal trade in endangered species on a reactive basis. According to Benson (2002), the ESPU attaches a high priority to environmental crime issues, but the SAPS, as a whole does not, due to crimes of violence, and the so-called more serious [conventional] crimes, receiving precedence.
This fact, which simultaneously advances the issue of crime categorisation/classification, is substantiated by the fact that natural resource crime is not separately categorised by the SAPS (Koegelenberg 2002).

Natural resource crime tends to be marshalled/allocated arbitrarily to any one of a number of legislative subcategories, depending on the police station and the functionary on duty. According to Van der Merwe (2002a), ESPU generated cases are deemed to be organised crime cases, partly due to the fact that the unit is attached to the organised crime bureau, and partly because there does not exist a specific category for natural resource crime in the police milieu. West (2002), Williams (2002) and Van der Pol (2002) confirm that nature conservation related crime is generally classified by the SAPS under “B” category crimes. “B” category crimes are, in terms of SAPS crime classification, less serious crimes (Damonse 2002). This fact, it is submitted, is not only confirmation of the lack of recognition for, and support of, the status assigned to natural resource issues by the Constitution, but is also symptomatic of the lack of importance attributed to natural resource crime issues by the SAPS, which, in the final analysis, tacitly condones the lack of conservation dedication displayed by many, if not most, police functionaries, countrywide.

The categorisation of crimes is, however, no mean feat and presents the aspirant categoriser with certain unique and interesting challenges. One of the most demanding aspects of this competence is the placement of crimes within categories that are mutually exclusive. Shortcomings in historic categorisation attempts are plain to see. Crimes such as rape, murder, assault, and robbery, for example, can all be classified under the category, violent crime, due to the commonality of violence. Rape can, however, also be categorised as a sexual crime and robbery, additionally as a property crime. The category of violent crime is, therefore, by no means mutually exclusive.

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3 The terms categorisation and classification, as used in this thesis, respectively denote [crime] type, in a macro sense, and [crime] arrangement, in a micro sense.
In the subsequent sections to this chapter, the issue of categorising and classifying natural resource crime will be examined and arguments presented for the categorisation of the aforementioned phenomenon in a [crime] category of its own, namely, conservation crime - the study of which should ecumenically be termed conservation criminology.

### 2.2 WHY CATEGORISE/CLASSIFY?

According to Stevens (1990:148-9) knowledge of specific crimes is crucial in order to combat and prevent them, and entails, according to Naudé (in Stevens 1990:148-9), the ordering of given facts into certain classes on the basis of their similarities or common features. Stevens *supra*, goes on to state that classification [under a particular crime category] can be seen as an aid to describe and explain a fixed phenomenon in the community in order to diagnose, clarify and predict it, and furthermore, to serve as a foundation for the treatment and prevention of the specific phenomenon. The converse is, therefore, also implicit in this statement, namely that crimes which are ambiguously categorised and/or classified do not receive the attention that they deserve, subsequently being inadequately addressed as, it is submitted, is historically and presently the case with natural resource crime.

Categorisation, can thus essentially be seen as a mechanism offering a functional, practicable and descriptive basis, enabling the researcher, in spite of the ever-present generality, to familiarize him/herself, with the complexities and dynamics of the typical and general patterns of criminal behaviour and is, therefore, a valuable vehicle for the criminologist.

### 2.3 CURRENT CRIME CATEGORIES

An examination of the criminological literature reveals an overabundance of divergent viewpoints and approaches to the issue of crime categorisation/classification. It is, however, necessary to succinctly examine certain more prominent viewpoints in order to place into perspective historical
and current categorisation trends and methodologies, and to identify limitations, specifically with a view to highlighting the imprudence of not addressing natural resource crime categorisation issues more prominently hitherto. Although far from exhaustive, Stevens (1990:149-153), highlights a number of different methods and approaches to the issue of crime classification [categorisation], which, amongst others, include:

- Bonger’s classification, namely: economic, violent, sexual and political crimes;
- Stumpfl’s classification, namely: heavy and light criminality, crimes committed at an early and late age, conflict and habitual crimes;
- Carey’s classification, namely: violent crimes, conventional and professional crimes, political crimes, crimes against the social order and crimes committed in a profession (white-collar crime);
- Schafer’s ‘life trend’ typology, namely: occasional criminals, professional criminals, abnormal criminals, habitual criminals and convictional criminals; and
- Reid’s typology, namely: violent crimes, property crimes, business crimes, organised crime and terrorism.

Glick (1995:34-5), states that the FBI’s Uniform Crime Reporting Programme divides crimes into two categories, namely Part I, and Part II crimes. Part I crimes encompass the more serious offences against persons or property, also known as felonies or index crimes, with Part II crimes referring to the less serious types of offences.

Leonard (1986:91-2) maintains that crimes can be classified in several ways, the most common categories of which include the following:

- Classification according to the seriousness of the crime [in descending order of seriousness] – felonies, misdemeanours, petty offences and infractions;
- Classification by identifying criminal acts as either Malum in se or Malum prohibitia offences. The former classification referring to crimes
which are wrong in themselves, and the latter referring to crimes established by legislation in order to regulate social intercourse, and

- Classification depending on the kind of social harm involved, for example, crimes against the person, crimes against property, offences against the habitation, crimes against morality and decency, and crimes against the executive, legislative, or judicial authority.

According to Hirschowitz, Buwembo, Serwadda-Luwaga and Nasholm (1998:8-9), Statistics South Africa (Stats SA), previously known as the Central Statistical Service (CSS), divides crime into two main categories, each with various subclasses, and utilises the same terminology as that of the United Nations Interregional Crime Research Institute (UNICRI):

- Household crimes, i.e., those crimes, which are committed against people living together, eating together and sharing resources. This category can further be divided into violent household crimes (killing, murder, hijacking of motor vehicles, etc.) and non-violent household crimes (theft of livestock, theft of motor vehicle, housebreaking, burglary, etc.); and

- Individual crimes, i.e., those crimes that affect a single person rather than an entire household. This category can further be divided into violent incidents (sexual offences, robbery involving force, assaults and threats of assault and all violent individual ‘contact’ crimes) and non-violent incidents (fraud, corruption by public officials, theft of personal property and all non-violent individual property crimes).

Prior to its name change in 1998, the Central Statistical Service in South Africa (CSS) classified crime into six main categories, each with various subclasses. This categorisation system was known as the Code List of Crimes, and read as follows (South Africa 1998):

Class A: State security and good order (e.g. terrorism);
Class B: Social life (e.g. child abuse);
Class C: Personal relationships (e.g. murder and assault);
Class D: Property (e.g. burglary, theft);
Class E: Economic affairs (e.g. crimes in factories); and
Class F: Social Affairs (e.g. traffic offences).

Snyman (1991:305) divides crime into four broad categories, namely crimes against the state and administration, those against the community, those against the person and those against property. Each of the categories is then further subdivided, for example, crimes against property is subdivided into crimes relating to the appropriation of property (theft, robbery, etc.), fraud and related offences, crimes relating to damage to property (arson, malicious injury to property, etc.) and extortion.

The South African Police Service, much the same as the FBI, places crimes into two main categories, namely Category A and Category B crimes (Damonse 2002). Category A crimes are regarded as the more serious type of offences and include, for example, murder, rape, armed robbery, aggravated assault, stock theft and so forth, and Category B crimes are deemed to be less important offences and include the following subclasses; traffic violations, drunk and disorderly conduct, environmental crimes and a host of Provincial and Municipal regulations and By-Laws (Damonse 2002). Ironically, stock-theft [essentially of domesticated animals such as sheep, and cattle] is regarded as a Category A offence, but the over-exploitation and defilement of natural resources as a B Category offence. Hirschowitz et al. (1998:80), regard the current system used by the SAPD to classify and code crimes as highly complex and difficult to compare to other terminologies.

In terms of the National Crime Prevention Strategy (NCPS)\(^4\), certain forms of crime are prioritised on a national basis. The NCPS’s chief objective is to focus immediate attention on the following categories of crime, identified as having the most damaging effects on the community.

- Crime involving firearms;

- Drug trafficking;
- Endangered species;
- Organised crime;
- White collar crime;
- Gender violence and Crimes against Children;
- Violence associated with inter-group conflict;
- Vehicle theft and hijacking; and
- Corruption within the Criminal Justice system.

It is heartening to see that the NCPS identifies and prioritises, although not in the true sense of the word, natural resource exploitation [in the form of endangered species] as a specific category of crime. This crime category is, however, addressed [reactively] by a negligibly small conservation orientated and sensitised police component in, what can only be described as, a species biased and unbalanced fashion, which is certainly not conducive to the holistic and/or sustainable management/regulation of our country’s natural resources. In the opinion of the researcher, the establishment of this unit and the “prioritisation” of this form of deviance are but token gestures by a government largely insensitive to conservation issues.

According to Damonse (2002), the average police functionary is blissfully unaware of conservation issues and is similarly indifferent towards the policing thereof. SAPS prime directives emphasise conventional crime issues and cause the average police functionary to approach the issue of community policing, including the so-called sector policing initiative, in a stereotypical, conditioned context.

Apart from those specified above, numerous other categories of crime exist that would, at face value, seem to be sufficiently adequate so as to include the extent of natural resource crime, for example, the category of invisible crimes. According to Davies, Francis and Jupp (1999:3-4), invisible crimes include:

- Crimes committed by employees against organisations;
- Crimes perpetrated by organisations against their employees;
- Crimes regarding fraudulent behaviour;
- Green crimes, including pollution; and
- Cyber or computer related crimes.

Davies et al. (1999:5) admit, however, that the category of invisible crimes is not mutually exclusive by stating that the various subsections (listed above) exhibit degrees of invisibility, or put in another way, relative invisibility.

The categories alluded to in the above exposition, although far from exhaustive, provide an adequate representation of the crime categories traditionally found in the criminological milieu. They are, however, singularly or mutually, in the opinion of the researcher, far from comprehensive enough to accommodate the entire ambit and essence of natural resource crime, and in most, if not all cases, fail to sufficiently recognise the nexus and synergy between the natural resource and human components. They, therefore, fail to negate the need for the formation of a separate and feasible crime category.

With regard to the subject of crime categorisation, it would certainly seem to be a case of, as many different authors, as many different viewpoints. What is, however, immediately evident from a perusal of the historical and current crime categorisation ensemble is the absence (with the negligible exception of the NCPS and invisible crime categories) of any distinctly identifiable category for natural resource related transgressions.

This fact, serving to corroborate a statement made elsewhere in this chapter that natural resource crime issues are regarded as being of secondary significance in relation to the more conventional forms of criminality.

2.4 CONSERVATION CRIME/CRIMINOLOGY – SEMANTICAL ISSUES

Before the issue of crime categorisation, in the context of this thesis, can be addressed in earnest, it is necessary to examine and evaluate the existing
and more commonly used terminologies to portray natural resource crime/vitiation issues, so as to elucidate the motivation for selecting *conservation criminology* as the most representative expression for the scientific study of the phenomenon at hand.

### 2.4.1 THE SAGE DICTIONARY OF CRIMINOLOGY

In order to, at the outset, gain objective input concerning the popular idiom pertaining to natural resource crime, it was deemed beneficial to consult a recent influential criminological publication in this regard. McLaughlin and Muncie (2001, s.v. ‘environmental criminologies’) refer readers seeking more information about environmental criminologies to the sections dealing with the Chicago School of Sociology, Geographies of crime, and Social Ecology. Invariably, these sections provide a succinct exposition of the relationship between environmental and spatial (ecological) factors within, specifically, urban communities and crime, but do not in any way define or even address natural resource crime issues.

The publication, furthermore, makes no mention of the popular expression ‘green crime’ and seems to imply that natural resource crime (in any form) does not warrant a place between its covers, or in the criminological literature for that matter. It is, therefore, regarded as extremely inadequate, not only for the purposes of seeking elucidation for natural resource crime semantics, but also as a criminological aid within a post-modern society where natural resource crime is rapidly becoming an important global social and economic concern.

### 2.4.2 ENVIRONMENTAL CRIMINOLOGY

Although the term environmental criminology, might to the uninitiated, seem to adequately describe the study of criminality directed at the natural environment, it is in fact quite the opposite. In criminological circles environmental criminology is a growing field, which explores how actual
criminal events involve an interaction between motivated individuals and the surrounding social, economic, legal and physical environment (Brantingham & Brantingham 1998:31). Stated another way, the term ‘environmental’ within criminology is still principally employed in studies of ‘place’ and the spatial patterning of crime (South 1998:212). The focus is, in essence therefore, on understanding the criminal event and how it relates to individual motivation, to victims and targets, and to the legal, social, psychological and social milieu.

Kennedy (1990:239) states that environmental criminology can contribute to crime prevention through analyses of spatial patterns in crime, perceptions and awareness spaces of potential criminals, criminal mobility patterns, and the processes of target selection and decision to commit a criminal act. The term environmental criminology, therefore, clearly relates to the study of crime in a context, other than in the context of the natural environment, which is commonly ascribed to it. The original or traditional context in which the term was, and still is being used, has, it is submitted, acquired “ownership” of the term. The term environmental criminology, could therefore, if used interchangeably, quite easily, it is further submitted, lead to unnecessary confusion and uncertainty, specifically due to it being used historically in another connotation – chiefly one which is synonymous with spatial patterns of criminality. Its use other than for this purpose in criminological circles is, therefore, best avoided.

**2.4.3 ECOLOGICAL CRIMINOLOGY**

As with the term environmental criminology, ecological criminology is, according to (Brantingham & Brantingham 1981:13), primarily associated with the study of spatial patterns of crime in an urban context. Van Heerden (1988:177), states further in this regard that the ecology of crime refers to the distribution of crime, particularly with regard to urban areas, the influence of the temporal and spatial distribution of people and human institutions upon behaviour patterns and the hypothetical distribution of crime distribution in terms of differentiated association and social organisation.
Cloete (1990:89) is of the opinion that the ecological approach is meaningful in discussing the role of the social structure vis-à-vis crime, and Williams and McShane (1999:54) postulate that an ecological study allows researchers to transcend individuality and, through the collection of social data, gain a sense of the characteristics of large groups of people. Once again, it is submitted that “ownership” of the term has, through the customary and traditional use of the word, been “claimed” by this denotation. It would, therefore, similarly, be unwise to use the term interchangeably.

2.4.4 GREEN CRIMINOLOGY

Although often referred to as green criminology, specifically in the USA (South & Beirne 1998:147), the use of this term to collectively describe the study of crime impacting negatively on natural resources can, at least, be considered misleading. Firstly, green criminology might easily, and incorrectly, be associated with the so-called “greenies” or “bunny huggers”, terms often used to describe the fanatical, over zealous and activist conservation fringe. Green criminology also immediately conjures up images of the militant environmentalist group Greenpeace. Conservation criminology purports to be well balanced and does definitely not favour any particular shibboleth within the natural resource/conservation realm.

Secondly, conservation criminology deals with a more focused range of issues than those traditionally and simplistically labelled ‘green issues’, inter-alia, animal rights, animal abuse/cruelty [specifically regarding domesticated and companion animals], ecological spirituality, eco-feminism (Agnew 1998:177-9), and so forth. Conservation criminology, as will be argued in paragraph 2.4.5 infra deals with, amongst others, the dynamics and nexus between humans and [biotic/abiotic] natural resources, the impact/trauma of the criminal manipulation of natural resources on the receiving environment [as a casualty/victim], and the extent to which natural resource crime encroaches/impacts on the limits of acceptable change with regard to any particular natural resource, or collection of such resources.
Swanepoel (1997:48) even talks of green environmental criminology – confirming, it is submitted, the ambiguity of these terms and illustrating that a combination of already vague and non-specific terms does nothing to promote a focused approach of the issue at hand.

**2.4.5 CONSERVATION CRIME/CRIMINOLOGY**

For various reasons, some already alluded to above; the study of natural resource crime from a criminological perspective is considered most appropriately explicated by the term conservation criminology. This terminology is proffered as the most acceptable, for amongst others, the following reason, which can best be articulated by examining an existing crime category, namely violent crime.

A number of different crimes are classified and arranged under this category, for example, murder, rape, robbery, assault with intent to cause grievous bodily harm and so forth, with the golden thread running through them all, being violence. The consequences/repercussions of the crime on the family of the affected party (ies), on his/her occupational environment, or even the community is not recognised as a factor when categorising these crimes as violent crimes. Violence, and its concomitant aggression, in essence therefore, encompassing all these issues.

Similarly, if one looks at natural resource crime, the effect of the crime on the ecology or ecological processes should not be treated as the critical issue when categorising, nor should it be the impact of the crime on the environment per se, thus omitting the use of the essentially restrictive words ecology, green and/or environment for categorisation purposes. The current trend to use these terms (often interchangeably) to describe the category of crime being investigated is hence, fundamentally flawed.

The core component/central theme running through natural resource crime is in fact conservation.
Conservation, in the sense that all natural resource crimes impact negatively, to some or other degree, in a conservation context, on the receiving environment [whether it be of a natural, human or mutual origin], as well as the fact that intervention measures are essentially united in their reason for addressing natural resource crime, namely the preservation and/or conservation of a particular resource or group of resources.

As the term violence encompasses the negative consequences of such crime, so the term conservation crime, embodies the various criminal activities associated with natural resource effacement and unambiguously identifies the pivotal theme inherent therein. In the light of the foregoing, it then logically follows that natural resource crime should be categorised as conservation crime, and the study thereof termed, conservation criminology.

**2.5 DEFINITION OF CONSERVATION CRIME/CRIMINOLOGY**

Having discussed the semantical issues surrounding the terminologies used to describe natural resource crime in the preceding section, it is perhaps prudent to provide a definition of conservation crime at this stage. Conservation crime can, in the opinion of the researcher, be defined as ‘any intentional or negligent human activity or manipulation that impacts negatively on the earth’s biotic and/or abiotic natural resources, resulting in immediately noticeable or indiscernible natural resource trauma of any magnitude’. For obvious reasons conservation crime can, therefore, be considered the vanguard to conservation criminology.

**2.6 ELEMENTS/FEATURES OF CONSERVATION CRIME/ CRIMINOLOGY WITHIN EXISTING/CURRENT CRIME CATEGORIES**

Due to the fact that conservation crime deals with so many diverse aspects of the natural resource ~ human interface, it is logical to assume that sections thereof will fall within the ambit of other crime categories.
Almost without exception the crime categories expounded upon above, cannot be considered mutually exclusive, unless they are defined in such a broad sense so as to render them largely ineffective for anything but the most superficial categorisation exercise.

In order to progress towards the identification and delineation of functional conservation crime/criminology parameters, it is necessary at this point to examine the precedence and concentration of conservation crime issues within existing and commonly used crime categories.

An in-depth perusal of current crime categories reveals that conservation crime, as defined in this study, can, to a larger or lesser extent, fall within the following existing crime categories:

- White-collar crime;
- Corporate crime;
- Organised crime;
- Invisible crime; and
- Property (economic) crime.

### 2.6.1 WHITE-COLLAR CRIME

According to Conklin (2001:77), white-collar crime can be defined as ‘any illegal act, punishable by a criminal sanction, that is committed in the course of a legitimate occupation or pursuit by a corporation or by an otherwise respectable individual of high social standing’. Conklin (2001:78) goes on to list the following major forms of white-collar crime:

- Deceptive advertising;
- Antitrust violations;
- Securities violations;
- Mail and wire fraud;
- Tax fraud;
• Bribery of political officials;
• Unsafe workplace conditions;
• Production of dangerous products;
• Environmental law violations;
• Embezzlement and employee theft; and
• Expense account fraud.

Environmental law violations include, according to this author, crimes such as air pollution, and the dumping of toxic waste.

Glick (1995:317-319), is of the opinion that white-collar criminality includes the following environmental issues, namely: water contamination, such as the eutrophication (excessive build up of phosphates and nitrates) of water bodies through industrial plant and sewage emissions as well as oil pollution at sea, and air contamination, through the discharge of millions of tons of pollutants (carbon monoxide, hydrocarbons and volatile organic compounds) into the atmosphere and the concomitant acid rain which causes damage to streams, lakes, aquatic life, forests, monuments and buildings.

Schmalleger (1996:342) maintains that environmental crime is a relatively new area of corporate and white-collar criminality embodying violations of the criminal law, which although typically committed by businesses or by business officials, may also be committed by other persons or organizational entities, and which damage some protected or otherwise significant aspect of the natural environment. This author lists whaling, in violation of international conventions, intentional and negligent pollution, such as the Exxon Valdez debacle, and the intentional setting of fires by the retreating Iraqi Army during the Gulf War, which impacted globally on pollution levels and negatively affected fossil fuel reserves in the Middle East, as examples of environmental white-collar criminality.

Although evident from the above discussion that white-collar crime encompasses an eclectic variety of crimes, it is clear that natural resource
crime overlaps to a certain extent with white-collar crime, but also that it gravitates decidedly towards environmental pollution of some or other kind. It is, furthermore, abundantly clear that conservation crime, in the context of certain pollution issues, falls squarely within the parameters of this category of crime and visa versa.

It should, however, be borne in mind that not all environmental pollution crimes can be classified as white-collar orientated/motivated and that indeed many, if not most, pollution crimes would not be able to be classified under this category.

One could take littering by the general populace as an example here. Although individual littering (a distinct source of pollution) can generally be considered insignificant when compared to, for example, intentional toxic waste disposal on a global scale, these insignificant amounts can reach gargantuan proportions, but could most definitely not be categorised as white-collar criminality. The conservation crime/criminology category then, in terms of mutual exclusivity, is then only to a negligible degree impinged upon by the category white-collar crime.

**2.6.2 CORPORATE CRIME**

Corporate crime is regarded by Glick (1995:313) and Hagan (in Stevens 1990:128) to be a form of white-collar crime and will, subsequently, not be discussed separately in this thesis.

**2.6.3 ORGANISED CRIME**

According to Hagan (in Stevens 1990:161), organised crime includes any group of individuals whose primary activity involves violating criminal laws to seek illegal profits and power by engaging in racketeering activities and, when appropriate, engaging in intricate financial manipulations. Organised crime can, therefore, be seen as an umbrella term encompassing divergent gang
activities, such as blackmail and conspiracy, illegal gambling, drug trafficking, organised theft, etcetera.

Organised criminal activities could, for example, include conspiring to illegally dispose of hazardous waste, essentially a white-collar crime, while simultaneously a conservation crime, or even the committing of rapacious crimes such as kidnapping, robbery and/or murder (Glick 1995:325; Stevens 1990:162), many of which could, it is submitted, more prudently be classified as violent crimes.

One of the most prominent examples of organised gang activity in the conservation criminology domain would be that of abalone (and to a lesser extent rock lobster) smuggling on the Cape’s south-western coast. Syndicates working in an organised, criminally proficient, but often confrontational and violent manner, illegally exploit large quantities of these marine commodities for export to the Far East, where tremendously high prices are realised (Hauck 1999:213, 220; Naudé 2002:28).

The question can, however, be raised as to when is crime categorised as organised, and when is it not? If gang/syndicate activities are directed at, lets say murder, for perhaps some or other fiscal gain, when is such a crime categorised as a violent crime, and when is it categorised as organised crime? When does a gang/syndicate qualify for status as a gang/syndicate? How many characteristics of any particular crime must be present before it can be categorised in that particular crime category – where is the line drawn, and what are the deciding criteria, if any?

The precincts of this category of crime are thus, to say the least, ambiguous and could, depending on the angle of interpretation, violate the categorisation parameters of most existing crime categories. The organised crime category is, due to the vagueness and ambivalence mentioned above, consequently not considered to overlie the category conservation crime/criminology to anything but the slightest degree.
2.6.4 **INVISIBLE CRIME**

Davies *et al.* (1999:3) are of the opinion that, amongst certain others, green crimes fall within this category of crime. South, (in Davies *et al.* 1999:3) suggests that green crimes, which include the pollution of the environment by industrial organisations [white-collar crime?] extend across international boundaries, and raise important issues regarding enforcement, regulation and control at the end of the twentieth century. This author cites, as an example of [invisible] green crime, the increase in the smuggling of toxic waste and chlorofluorocarbons (CFC’s), rumoured to destroy the earth’s ozone layer.

Davies *et al.* (1999:4-5) maintain that the commonality of invisible crimes is firstly, that they are all infractions of the law, and secondly, that the criminal acts are not transparent or readily observable. The gist of the category invisible crime is that certain crimes exhibit degrees of invisibility [an inherent weakness of the approach?] and that these degrees can be judged against a number of characteristic features, to wit, no knowledge, no statistics, no theory, no research, no control, no politics and no panic.

In terms of this category’s overlap with conservation crime (or visa versa) there seems to be several issues raised that could apply to the conservation crime phenomenon. Much, if not most, conservation crime is committed clandestinely (out of the public eye), with the result that there is little civic knowledge/awareness of the crime phenomenon itself. Because of this lack of knowledge there is little (albeit growing) appreciation for conservation deviance in both the political and public arenas, reinforcing the notion that natural resources are infinite and unyielding.

Furthermore, little research has historically been done with regard to this form of deviance and there has subsequently been inadequate theory generated. Control has also traditionally been neglected, with most policing efforts being channelled towards the more conventional crime issues in society. Notwithstanding the foregoing, various crimes (listed in paragraph 2.3) are
included under the caption invisible crimes, most of which, it is submitted, could just as easily, and perhaps more prudently, have been categorised under appropriate existing crime categories, for example, cybercrime/computer crime as white-collar crime. It seems, therefore, that crimes were included in this category for speculative and superficial, rather than utilitarian reasons.

Interestingly also, is the use of the term infractions, instead of the terms violations or felonies. As indicated elsewhere in this chapter the term infraction is generally found at the lower end of the [crime] significance scale and would therefore, seem to imply that the crimes classified as invisible are relegated to this side of the crime seriousness continuum, promoting in essence the perception that they have a lower status or crime priority.

Most crimes can, however, considering that degrees of invisibility apply, be classified as invisible, and even highly visible crimes could from time to time be committed invisibly as well as visa versa. Murder, rape, child or spouse abuse as well as certain property crimes, to name but a few, are often committed surreptitiously as well as hesitantly reported and could therefore, just as easily be incorporated in this category.

In the opinion of the researcher, this attempt at categorisation might just as well have been approached from the angle of degrees of visibility as opposed to degrees of invisibility. For this reason, conservation crime is not considered encroached upon by this quasi-category and, furthermore, that the value of this categorisation attempt is negated by its generality and concomitant oversimplification.

**2.6.5 PROPERTY (ECONOMIC) CRIME**

Natural resources, such as wild animals, fish and plants are tangible commodities found in nature, which in essence belong to nobody yet
everyone, and it seems logical to assume that their illegal exploitation and/or appropriation could subsequently be regarded as a property crime.

According to Kidd (1997:108) and Snyman (1991:477), however, wild animals and birds (and by implication therefore, also wild plants and fish) are regarded as *res nullius*, that is, things that belong to nobody although they can be the subject of private ownership. These authors are of the opinion that aforementioned things cannot be stolen unless they have been caught and are in private ownership (a *res in commercio*).

Kidd (1997:108), maintains that wild animals within the confines of a properly fenced off protected area, a game farm for example, are the property of that landowner until such time as the animal escapes from the fenced area. In terms of the common law, if an animal escapes from such a refuge and, therefore, is no longer under the physical control of a person (the crux of the matter being this *animus domini*) it is no longer protected from being hunted, killed or captured by any other person (Kidd 1997:108).

The category property crime does, therefore, overlap to a certain extent with the crime category conservation crime, but because, by far the majority of natural resources occur in the natural environment, unfenced and beyond the possibility of physical control, the category conservation crime is only violated by the category property crime to a infinitesimal extent.


Bearing the preceding sections of this chapter in mind, it would be expedient at this stage to provide a detailed exposition of the conservation crime/crininology category so as to effectively demarcate, and place on record, the parameters of this phenomenon.

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5 *Animus domini*: A person claiming ownership of an unowned thing must have the intention to become the owner and must exercise physical control over the thing.
Conservation criminology, as the definition suggests, covers a relatively wide range of conservation related deviance. The subsequent exposition of this crime category, which can best be embodied by means of a schematic representation, will however, eliminate any ambiguities that might exist and attempt to depict and fuse the complexities of this crime category in a pragmatic, succinct, integrated and lucid manner.

**CONSERVATION CRIME/Criminology**

![Schematic representation of conservation crime components](image)

**Figure 2.1:** Schematic representation of the principal components into which conservation crime can be divided.

As can be seen from a scrutiny of the above representation, conservation crime is essentially divided into two chief components, namely biotic and...
abiotic natural resources, representing in essence, the entire natural world. The biotic (organic) natural resource component is further broken down into two sub components, namely crimes involving natural faunal resources or wildlife, in their various milieus, and crimes involving natural floral resources or wild vegetation/plants, in the various milieus in which they exist. The term wildlife does not, according to *The South African Pocket Dictionary* … (2001, s.v. ‘wildlife’), include plants/vegetation and refers only to wild animals as a collective, hence the distinction in the above organigram. The abiotic (inorganic) resource component consists of only one adjunct, namely crimes involving natural resource contamination, or in layman’s terms, pollution.

The chief components of this model are, however, in no way mutually exclusive and a crime committed in respect of abiotic natural resources can thus also impact on the biotic environment, whilst nevertheless remaining firmly within conservation milieu constructs, transcending as it were, other crime categories in this very important respect. The above categorisation exposition adequately, it is submitted, captures the quintessence of conservation criminology and can suitably accommodate most, if not all, conservation related deviance. This essentially non-esoteric, comprehensible categorisation scheme precludes certain issues often [mistakenly] believed to be conservation orientated, namely heritage/archaeological/palaeontological crime and/or crime involving domesticated animals. The latter cannot, however, be regarded as a natural resource, as in most cases; these animals are the product of human manipulation and genetic mutation, and do not occur in wild natural populations per se. Crime involving domesticated animals such as sheep, chickens and cattle is already classified as stock theft (a theft sub type) by the SAPS, and is, somewhat ironically, perceived to be of more importance than conservation crime, consequently being assigned a higher status, both in terms of policing priorities and crime classification, by this entity. Other crime involving domestic animals, including pets, should similarly be classified, and issues such as cruelty to animals, although highly emotive, can definitely not be linked to conservation in any perceivable way. Crime involving these organisms should, therefore, best be classified under existing contemporary crime categories.
Similarly, antiquities from previous civilisations, paintings and etchings in caves or on rocks (essentially bushman graffiti), and the like, are all human products, and although they might have historical value, cannot be seen as natural resources in the true sense of the word. This fact is supported by section 24 of the Constitution, where no specific reference is made as to whether the concept of the environment, conservation and/or natural resources should include human-made objects, artefacts and/or cultural and historical heritage. Theft, defacement or other criminal activities directed at these artefacts, although to be deplored, will not have any effect on the conservation of natural resources and should, therefore, similarly be classified in existing crime categories. The incorporation of all the above-mentioned extraneous concepts and misnomers by Swanepoel (in Van der Merwe & Swanepoel 2002:58) into his attempt to categorise ecological [conservation] crime has resulted in the production of what can, at least, only be described as a misleading and teleologically incorrect categorisation schematic (See figure 2.2 below).

Figure 2.2: Swanepoel’s configuration of “ecological crime” (in Van der Merwe & Swanepoel 2002:58).
Further critique of Swanepoel’s schematic includes, but is not limited to, the following:

- The peculiar separation of marine (species) from fauna and flora (species) under the heading ‘Wildlife Crime’. Surely the juxtaposition of crime involving marine plants and animals with the previously mentioned generic headings would have been more prudent?
- Besides the faux pas committed by incorporating ‘Heritage Crime’ into the schematic, an ambiguous distinction is made between ‘Natural’ ‘Historical Findings’, such as Bushmen art, and ‘Human Creations’ such as paintings and sculptures under the sub-heading ‘Artifacts’. What are Bushmen etchings and drawings, if not a form of art?
- The very fact that Swanepoel differentiates between ‘Wildlife Crime’ and ‘Environmental Crime’, and does not incorporate the former under the latter, raises serious questions about his understanding of natural resource crime issues. In the context of his schematic, should wildlife crime not be an integral part of environmental crime?
- A further confusing distinction is made between ‘Natural’ and ‘Domestic’ Environmental Crime’. Under the sub-heading ‘Natural’ reference is made to, amongst others, air and soil pollution. Under the sub-section ‘Domestic’, further reference is made to pollution, in and around the home and business. Is pollution originating from these areas not an enormous source of air and soil pollution?

4. **SUMMARY AND CONCLUSION**

In the foregoing chapter the current and historical situation regarding the categorisation of natural resource crime has been examined and evaluated. Various semantical issues regarding natural resource criminality were discussed, and the traditional application of the terms used to describe natural resource crime subsequently found to be punctuated with inadequacies. Lack of paradigm direction and focus regarding natural resource crime was established to be present, calling for the formation of a feasible framework in
which to address this phenomenon in a consolidated and coherent manner. It has been unequivocally established that natural resource crime overlaps to a small degree with existing crime categories, but also that none of these categories are in themselves mutually exclusive, many in fact superficial and vague. In terms of the violation of crime category parameters, certain existing crime categories impinge on the newly formulated category for natural resource crime, namely conservation crime/criminology, with its bottom line being the conservation of natural resources, to a negligible degree, subsequently making this new category seem almost pristine.

The development of this comprehensive and viable category, which embodies the underlying dynamics of natural resource crime, will hopefully serve to eliminate confusion about what qualifies, and what does not qualify as, conservation crime/criminology and assist in streamlining, focussing and promoting the study of this particular phenomenon.

Having established a sound theoretical base the following logical step is to test its bona fides and explore how it operates. Chapter three examines the nature of the illegal reptile trade with specific reference to reptiles as crime targets.