CHAPTER 5

MOTIVATIONAL AND CONTRIBUTORY DYNAMICS PERTAINING TO HERPETOLOGICAL CRIME
5.1 **INTRODUCTION**

Besides the insight and understanding that *modus operandi* and crime scenes exemplify in relation to the illegal reptile trade phenomenon, it is only once this knowledge is integrated with the motivations and contributory dynamics of the crime that a unified representation can be produced, allowing holistic conceptualisation and visualization. The criminological relationship embedded in the illegal reptile trade dynamic is thus further developed in this chapter by introducing the multi-faceted motivational/contributory constituent into the broader conservation crime discourse.

In addressing this theme there is a manifest move away from the human ~ natural resource interface as such, with emphasis rather being placed on the somewhat more ominous, surreptitious and vexing, human ~ crime perigyny. The existentialistic nature of the conservation criminal, in a herpetological context, is additionally explored and elaborated upon by broadening conservation crime precincts and revealing strategic underlying issues.

Cohen and Felson’s Routine Activities Theory (1979), which essentially assumes a ready supply of motivated offenders and focuses on the opportunities for violating the law (Empey, Stafford & Hay 1999:246), is felt to be particularly relevant as a means to introduce the subject material in question and elucidate the seminal risk factors contributing towards herpetological crime. This three-tier theory is, therefore, utilised as a conduit to present the contents of this chapter in a lucid and structured manner, as well as lay the foundation for the development of a theoretical explanation for the illegal reptile trade quandary.

5.2 **RATIONALE OF THE ROUTINE ACTIVITIES THEORY**

The Routine Activities Theory, also known as Lifestyle Approach, advanced by Larry Cohen and Marcus Felson, is closely related to the Rational Choice Perspective and explains situations/incidents of crime rather than being an
explanatory theory of criminal behaviour per se (Williams & McShane 1999:236). According to Empey et al. (1999:246); Fattah (1993:245-6); Siegel 2001:98); and Williams and McShane (1999:236-237) the basic premise of Routine Activities Theory is that for a predatory crime to occur, there must be a confluence in time and space of three [minimal] elements, namely:

- A motivated offender. People are regarded as inherently self-centred and hedonistic, implying that many people are prepared to steal. Such motivated offenders commit crime when a situation or opportunity presents itself.
- A suitable target. There must be something worth stealing or taking, or at least there must be the appearance of worth.
- The absence of capable guardians. There must be no one [no mechanisms] present that could prevent or interfere with the commission of the crime.

Consistent with this theory, crime will be more probable when all these mentioned components are present (Siegel 2001:98; Williams & McShane 1999:236).

5.3 **EXPOSITION OF MOTIVATIONAL AND CONTRIBUTORY DYNAMICS WITHIN THE FRAMEWORK OF THE ROUTINE ACTIVITIES THEORY**

Although conservation crime occurs in a variety of forms, and will in all probability, therefore, differ considerably in relation to contributory and motivational dynamics and complexity in each of its various facets, it has as a central shared quality, the direction of an injury at a [taciturn] non-human biotic and/or abiotic entity/recipient [victim]. Rationalisation, justification as well as the perpetuation and even intensification of the wrong, it is submitted, is resultantly easier to do as the crime is regarded as less reprehensible, the consequences are not readily discernable, and no apparent victim trauma will be obvious.
It is within this depersonalised/guilt-neutralised context, therefore, that the incentives for the involvement in herpetological crime are distinguished in, what is considered to be an appropriate framework, below. Although presented in a structured fashion, it should be borne in mind that the factors discussed are by no means mutually exclusive, but more accurately, interdependent and indivisible in nature. The themes covered are not necessarily exhaustive of all the contributory and/or motivational aspects applicable to conservation crime, but are rather intended to focus the analysis.

In applying this framework to the contributory and motivational factors for involvement in herpetological crime, the following relevant issues can be identified. Due to their integral nexus, however, above-mentioned factors are not discussed in any particular hierarchical sequence.

5.3.1 TIER ONE - PRESENCE OF MOTIVATED OFFENDERS

Felson (in Siegel 2001:100) maintains that there are always impulsive, motivated offenders who are willing to take the chance, if conditions are right, of committing crime for profit. With regard to the illegal trade in reptiles there would seem to be an overabundance of enthused offenders for, amongst others, the following reasons.

5.3.1.1 FINANCIAL ATTRACTION

According to Franke and Telecky (2001:77) and Marsh (1999:114-116), the illegal sale of animals and plants are tied for second place with illegal armaments as the most profitable form of contraband trafficking activity in the United States of America (USA/US), drugs being number one. These authors go on to state that although it is not known what exact percentage of the illegal wildlife trade consists of reptiles, evidence suggests that reptile smuggling for the live-animal trade constitutes a significant portion. Bruwer (1997:5-6) maintains that there are a number of independent, but interlinked international syndicates, with contacts in amongst others the United Kingdom
(UK), and USA, presently operating in South Africa, and that the illegal trade in reptiles is flourishing.

Given this scenario, as well as the large numbers of rare and valuable South African species being offered for sale [amongst others on the world wide web] in the USA (Hignett 2002), it is not considered audacious to presuppose that the South African illegal reptile trade, and specifically that portion emanating from the Western Cape province, due to its high degree of endemism and concomitant desirability, contributes significantly towards bolstering US, and even global, illegal reptile trade statistics. Gildenhuys (2002) is of the opinion that the huge prices paid for certain Western Cape species, such as the rare and endangered geometric tortoise (*Psammobates geometricus*) and the more common padloper (*Homopus*) species, can be as high as US$ 5000 and US$ 1500 respectively for a single individual, and therefore, play a decisive motivational and contributory role with regard to the illegal reptile trade phenomenon.

Gildenhuys *supra* states further that even the common and relatively abundant angulate tortoise (*Chersina angulata*) can realise between R50.00 and R150.00 on the local market, and between US$ 600 and US$ 800 on the international market, indicating in no uncertain terms that, pound for pound, many reptile species are worth far more than other more conventional contraband, such as illegal drugs. Illegal trade in endangered species, which CITIES was set up to combat, brings traffickers profits of up to 800 percent (Environment: Govt’s seek to ease controls on endangered species 2002:page number unknown). Western Cape provincial conservation legislation, in contrast to the legislation of many other provinces, and even countries, prohibits the export for commercial purposes of all its reptiles (Hignett 2002; Gildenhuys 2002). This fact, according to Gildenhuys (2002), serves to make the Western Cape an illegal trade focal point, and its endemic reptile resources even more sought after - their scarcity increasing their value exponentially. Gildenhuys (2002) Malherbe (2002) and Vorster (2002) contend that many overseas buyers are fanatical collectors who will pay gargantuan amounts in order to make their collections more representative
and improve their status amongst the herpetological fraternity. Montagne (2000: page number unknown) concurs by stating that there are a number of people who will buy illegal things [reptiles] in order to have the rarest or most expensive, or the only one of its kind in the area. Notwithstanding the fact that national/international trade realises enormous financial rewards for CDTC&D’s and middlemen alike, local inhabitants of impoverished communities find the comparatively low prices paid to them for wild collected organisms just as appealing and, therefore, opportunistically pursue these financial prospects at the expense of the resource.

Naudé (2002:31) maintains in this regard that rural people who have no income and who go hungry every day will be hard pressed not to become involved in the illegal trading of plant and wildlife products. Hoover (1998:37) asserts further that as demand drives prices upward, the temptation to smuggle reptiles becomes overwhelming, with the chance for large monetary gain, the relatively low risk of being caught, and the comparatively inconsequential penalties being among the main factors driving the illegal trade in reptiles. There is no denying, however, that the legal reptile, [as well as other wildlife] trade has the potential to generate significant income for local people and the State alike, and the development of this capability should, according to Bürgener, Snyman and Hauck (2001:1) and Du Bois (1997:38), be urgently addressed not only to promote a sustainable legal trade, but also as a mechanism to address the illegal trade.

5.3.1.2 Popularity of Reptiles as Pets

Although difficult to quantify, it is patently evident that the international reptile trade has grown radically during the last decade, a trend that can primarily be ascribed to the demand stemming from the pet trade, as well as for food, educational, breeding, exhibition and research purposes (Hoover 1998:3). According to Hignett (2002), the keeping of reptiles as pets is currently in vogue, largely due to changing lifestyles and culture, which make the keeping of reptiles as pets more suitable (and acceptable) than other types of fauna.
Some years ago Ballenger (1998:4) and Feris (1997:1) already indicated that reptiles seem to have become one of the latest crazes throughout the world, with more and more people keeping them as [domestic] pets, pushing up their monetary value and endangering their survival. Improved technology and advanced reptile husbandry techniques additionally allows animals to be kept healthier, longer and cheaper, and has undoubtedly also made reptiles more practical and appealing as pets, resulting in demand increasing commensurate to this trend. Reptiles, furthermore, do not require nearly as much attention or maintenance as traditional pets such as dogs and cats, and have subsequently, like fish, been elevated to greater status as the type of pet that fits in with the modern day hectic lifestyle. Public perceptions that reptiles merely require their heating pad to be turned on, and to be tossed a morsel every now and again, has also boosted their popularity as pets in domiciles such as flats and condominiums, abodes traditionally devoid of pets other than the odd budgerigar/parakeet and/or goldfish. Reptiles, due to their low charismatic value in relation to mammals and birds remain, however, attractive to only a relatively small proportion of the population, and its contribution as a motivational and contributory factor, although by no means to be discounted, should, therefore, be measured against this backcloth.

5.3.1.3 POVERTY/ECONOMIC CONSIDERATIONS

As alluded to elsewhere in this thesis, poverty and the deficient socialisation generally associated therewith, play a significant role in the illegal reptile trade. Whether reptile exploitation occurs for victual or financial reasons within this sector is largely irrelevant, as penury would seem to be the stimulus behind much of this natural resource deviance. It is also, irrespective of the motivations, in the final analysis, natural herpetological resources that suffer the consequences of these hardship driven pursuits. Not only are rural areas, traditionally settings punctuated with deprived communities, affected by these activities, but urban, peri-urban and urban fringe locales are suffering similar and increasing pressures as unemployed individuals stream to these nodes in seek of employment and developmental opportunities.
According to Paton (2002:22), thousands of people flock to the city of Cape Town every month – amounting to about 50 000 new residents a year, almost all of whom set up home in the sprawling informal settlements on the edges of the city. The pressures on, amongst others, natural resources that this sundry influx instigates can, therefore, be regarded as seminal with regard to reptile biodiversity decline. Naudè (1998:99) is of the opinion that as long as there is poverty and dire economic need, poaching and illegal trading will remain a problem. Although blatant disregard for the rule of law, can, it is submitted, not be tolerated, it is, however, recognised that the total exclusion of local communities from the benefits to be derived from, and the judicious participation in, the controlled and sustainable utilisation of the natural resources in their surroundings, is perhaps not always the most prudent approach to the preservation of naturally occurring reptile resources. The, albeit strategically limited, involvement of local communities in the management of natural resources both within and beyond the borders of protected natural areas could to a greater or lesser degree serve to promote the conservation of, amongst others, reptile resources, and simultaneously serve to mitigate instances of abject poverty – an essentially win-win situation.

In this regard Naudè (1998:99), states that local communities should be allowed to use some of the proceeds of the protected fauna and flora products in a controlled manner while educating and teaching them about the importance of sustaining these natural resources for survival and enjoyment. Baland & Platteau (in Bürgener et al. 2001:29) maintain further in this regard that natural resources cannot be managed effectively without the co-operation and participation of resource users to make laws and regulations work. Whilst such initiatives are considered to be an integral part of the total management dynamic and are supported by sect. 35 of the National Environmental Management Act, 1998 (NEMA), the pursuance thereof should not be allowed to compromise the viability of the resource base and its potential to remain resilient.

Community partnerships are considered, given current mindsets and apartheid moulded local community psyche, to be somewhat of a medium to
long-term initiative. To focus on these programmes exclusively, at the expense of ensuring or regaining control over resource destiny would, at least, be foolhardy and counterproductive, and a staggered integrated approach focused on ensuring resource stability should, therefore, be afforded priority attention in the short-term. Gildenhuys (2002), Stadler (2002) and Van der Westhuizen (2002) all support community involvement, but stress that successful public/private/community partnerships will only be realised if continuous and dedicated regulation and policing are the order of the day, and that such programmes would be still-born initiatives if this commitment/investment cannot be made.

5.3.1.4 CULTURAL FACTORS

Although currently impossible to quantify, but quite probably less significant in terms of conservation impact if compared to the illegal import/export trade of live reptiles per se, cultural motivations for the illegal trade in reptiles and/or reptile products for the muti\(^1\) trade and/or other traditional/superstitious/ceremonial/medicinal reasons, both for local and international markets, cannot be ignored in a study of this nature (see figure 5.1).

Figure 5.1: Examples of “medicinal” products made from reptiles (Asian Turtle Trade: Proceedings of a ... 1999:25, 40).

\(^1\) Muti: South African term for the medicines, herbs, or charms dispensed by traditional healers (The South African Pocket Dictionary ... 2001, s.v. ‘muti’).
If one considers that the local trade (legal and illegal) in medicinal plants alone is rumoured to be in excess of R1, 6 billion a year, one can only begin to imagine what the value of the herpetological trade for similar reasons could be. Just as there exists a big demand for rhino products among Asian communities for which they are willing to pay large amounts of money (Van der Merwe & Swanepoel 2002:75), so there also exists a substantial demand for especially chelonian medicinal and health products in the very same Asian countries (Asian Turtle Trade: Proceedings of a... 1999:45, 59-60). As long as these cultural traditions and beliefs exist it can be presumed that the demand will continue to place strain on South African wild plant and animal reserves, and will, due to its very nature, be an illegal market that is extremely difficult to regulate and control.

Naudé (2002:30) and Van der Merwe and Swanepoel (2002:75) are also of the opinion that many parts of endangered flora and fauna are used as medicine by sangomas² or traditional healers for curative purposes or to ward off evil spirits. According to Joseph (1999:9), even tortoise faeces and urine are used by sangomas in rituals and as muti due to their supposedly health-giving and therapeutic properties.

Bruwer (1997:10) maintains that although there is a paucity of information available regarding the medicinal power attached to the various reptile species, all indications are that the African rock python (Python sebae natalensis), and certain Cordylus lizard species, (CITIES Appendix II species), are particularly favoured by traditional healers. Malherbe (2002) additionally claims that sangomas, specifically in the Western Cape province, make use of snakeskin to ease the pain associated with burn wounds.

With regard to customs and tradition an interesting paradox arises in that traditional usage, in terms of conservation legislation, is essentially rendered illegal manipulation. No provision is made in current legislation for bona fide

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² Sangoma: South African terminology for African diviner, healer and remover of evil spirits, often a woman (The South African Pocket Dictionary ... 2001, s.v. 'sangoma').
usage of reptiles for traditional or other related practices, and essentially therefore, impinges on the Constitutional rights of indigenous people to practice their customs and beliefs. It is in this context that the dimensions of sustainable utilisation come to the fore, necessitating the unpacking and strategic interpretation of the concept.

Sustainability, it is submitted, consists of the following interconnected dimensions: social, economic, ecological and institutional, making up what can be regarded as a virtuous loop. Not taking the interrelatedness and nexus of these dimensions into account with regard to traditional/customary natural resource utilization would be to address herpetological deviance in the cultural sphere in somewhat of a piecemeal, inadequate and un-African fashion. One would need to gain an understanding of local limitations and build on them in order to address any form of illegal exploitation identified as potentially unsustainable.

An appreciative enquiry could determine what kind of exploitation works and what does not, providing an indication as to what can be strengthened so as not to undermine the natural resource asset base. Notwithstanding these sentiments, it would be short-sighted not to recognise the opportunities for hedonistic criminal exploitation that traditional usage generates. Such opportunities could well be the catalyst for more intense and/or diversified involvement in conservation crime pursuits.

**5.3.2 Tier Two - Presence of Suitable Targets**

The attractiveness and suitability of reptiles as targets for criminal activities, due to, amongst others, their secular value, significance, characteristics, distribution and availability has already been comprehensively deliberated in chapter 3 and will, therefore, not be further pursued here. Its relevance as a motivational and contributory stimulus promoting herpetological deviance is, however, not to be underestimated, and is, undoubtedly, crucial to the modest exposition envisaged in this chapter.
5.3.3 TIER THREE - ABSENCE OF CAPABLE GUARDIANS

In the context of this focal area, the absence of capable guardians is interpreted and applied as meaning the absence of *guardian mechanisms* (italics mine) and not merely the absence of human guardianship capacity per se.

5.3.3.1 CONSERVATION LEGISLATION

According to Hignett (2002); Gildenhuys (2002); Stadler (2002) and Van der Westhuizen (2002), the current plethora of conservation legislation in South Africa is highly fragmented, conflicting, confusing, inconsistent and to say the least, disparate. According to the afore-mentioned functionaries, this gives rise to a state of affairs that not only creates loopholes, but impinges upon and jeopardises natural resource integrity, promoting as it were, the illegal reptile trade locally, nationally and globally, and also importantly acting as an obstacle to effective biodiversity management.

The White Paper on Conservation, 1997, largely substantiates the aforesaid opinion and stresses the following in this regard (Kumleben, in Bürgener *et al.* 2001.iv):

‘The fragmented, polarised, and inefficient administrative and legislative structures created by apartheid resulted in no fewer than seventeen government departments having primary responsibility for nature conservation prior to the April 1994 election. This situation did not improve with the establishment of new provinces and government structures (see figure 5.2). Divided responsibilities, together with a duplication of effort, a profusion of laws, and most importantly, a lack of co-ordination, have been major factors hampering the effective conservation of biodiversity.’

Corroborating the above sentiments, Naudé (2002:29) states that the 1994 President’s Council Report on National Environmental Management Systems identified the fragmented nature of environmental legislation and the diffusion of responsibility for the administration and enforcement of South Africa’s
environmental policies as the most serious problem contributing to environmental crimes. Hignett (2002) is also deeply concerned about the animosity and scepticism that exists between provinces, specifically with regard to permitting staff, a situation that is largely exacerbated by the hotchpotch of incongruent legislation, and one that is definitely not conducive to effective and holistic natural resource management, both in the Western Cape province and in general.

Figure 5.2: Maps representing the former and current provincial geography of South Africa (Bodasing & Mulliken, in Bürgener et al. 2001:3).

Bürgener et al. (2001:1), stress that there are in excess of twenty different pieces of nature conservation legislation in force throughout the Republic, some provinces having to deal with up to five different pieces of conservation legislation (see figure 5.3). This leads to a largely unmanageable situation appositely summed up by Du Plessis (in Bürgener et al. 2001:2) as ‘legal
pluralism or legal chaos'. Notwithstanding this fact, and perhaps somewhat ironically, the Department of Environment of Affairs and Tourism has only recently (during early 2003) developed a national policy framework within which provinces can formulate their own dedicated reptile conservation policy (Baard 2003). Baard (2003) goes on to mention that, although a national policy framework now finally exists, no official directive have as yet been issued compelling the various provinces to initiate their own provincial reptile conservation strategies/policies and, furthermore, that many provinces do not even possess the necessary expertise and/or competency to formulate such policy anyway. Policies, if and when developed (on such an idiosyncratic basis), will, it is submitted, because of the potential for provincial inconsistency, serve little purpose but to add to the already confusing, fragmented and polarized nature of herpetological and other natural resource legislation.

Figure 5.3: Current and draft provincial conservation legislation (Bürgener et al. 2001:28).
As an example of the disparate state of affairs with regard to South Africa’s conservation legislative environment, the following examples can be cited (You decide what’s more venomous – snakes or police unit! 1997:5):

- You may not buy, sell or possess any indigenous snakes without a permit from conservation officials in Gauteng. You need a permit to own an exotic, or imported snake;
- In the Western Cape, you need permits for all snakes and reptiles – including exotic ones;
- In KwaZulu Natal, you don’t need a permit to possess or sell indigenous snakes – with the exception of African rock pythons and Gaboon adders.

Besides this unnecessarily complex legislative environment, within which under-resourced conservation authorities are required to function, there is also a lack of institutional equivalence with regard to the placement of conservation authorities within provincial departments, further complicating matters. Asian Turtle Trade: Proceedings of a… (1999:151) and Bürgener et al. (2001:24), emphasize that the manner in which conservation authorities are structured is frequently problematic, in the sense that the overarching objectives of the department in which conservation is placed, for example agriculture, are diametrically opposed, but yet the two may be situated in the same department. In the Western Cape province, for example, the Western Cape Nature Conservation Board is grouped together with the provincial Environmental Affairs and Development Planning cluster.

Bearing in mind that effective law enforcement is paramount in ensuring successful regulation of the wildlife trade (Bürgener et al. 2001:32), the existing legislative environment within which enforcement officials are required to promote resource guardianship is extremely challenging, and is definitely not one conducive to deterrence and biodiversity conservation. Crime flourishes on division and strife within government and between the various law enforcement agencies (Institute for Municipal Law Enforcement of
Southern Africa 2001:12), and all too often diverse, confusing and inadequate legislation contributes to the illegal exploiter’s success (Du Bois 1997:39). It is furthermore, one thing to create policy and legislation but quite another to implement it effectively.

**5.3.3.2 CONSERVATION SANCTIONS**

Apart from the conservation legislation dilemma expounded upon above, a further repercussion emanating from this legislative potpourri is that of the inconsistent penalties imposed by the various provinces for conservation related transgressions. It is common knowledge that inadequate penalties lack deterrent value, specifically in a milieu where the price of getting “caught” is considered as simply part of the cost of doing business (Franke & Telecky 2001:78). Without effective deterrents the illegal trade with its high profits will remain an attractive proposition and continue to attract and encourage participation therein. Criminals operating in the illegal reptile, or wildlife trade milieu in general for that matter, are highly sensitised to these inequities and thoroughly exploit them, it is submitted, where and whenever the opportunity arises.

The problematical nature of this scenario is best explicated by means of a succinct example cited by Gildenhuys (2002). Two Czechoslovakian nationals were apprehended on 26 January 2001 at a foot and mouth precautionary roadblock near to the town of Underberg in the KwaZulu-Natal (KZN) midlands.

They had in their possession several endangered geometric tortoises (*Psammobates geometricus*), protected padlopers (*Homopus spp.*) and angulate tortoises (*Chersina angulata*). The geometric tortoises, although highly endangered and listed as such in terms of the conservation Ordinance applicable to the Western Cape province, are merely listed as protected in terms of the relevant KZN conservation legislation.
The driver of the vehicle was subsequently only found guilty of illegally importing protected tortoises into KZN and fined approximately R2000.00. The information was, however, relayed to the Environmental Crime Investigation Service (ECIS) of the Western Cape Nature Conservation Board and both Czechs were immediately rearrested the moment they stepped out of court. After a protracted court case in the Western Cape province both men were found guilty (the passenger in terms of the doctrine of common purpose) of a number of contraventions including, hunting without a license, illegal possession, illegal transport, etcetera. Each of the men was sentenced to an effective R88 000.00 or 30 months imprisonment. Gildenhuys supra reluctantly admits, however, that cases of this nature are seldom happened upon, are few and far between, and basically boil down to pure luck, showcasing as it were the largely heuristic operational approach of Gildenhuys and his institution.

The vexing question is, therefore, how many people are escaping justice as a result of such perfidious activities, and how frequently. Cases such as the one detailed above, it is submitted, would merely seem to indicate the tip of an iceberg, the true size of which remains ominously concealed. As is evident from the foregoing example, the wide array of gaps and inconsistencies present in South African legislation results in the regulation of the wildlife trade only being as strong as the weakest provincial provisions – a highly volatile and exploitable situation.

It is, regrettably, not only South African legislation that falls short in this arena but also international legislation. CITIES is regarded as one of the most important pieces of legislation, or perhaps more accurately, agreements, currently in existence focusing on the global protection of plant and animal species from unregulated international trade (Alarcón 2001:107; Marsh 1999:115). Notwithstanding this fact, Alarcón, op cit. maintains that major loopholes involving the enforcement of CITIES directives exists, and that because no penalties are specified or endorsed within this agreement, inconsistent sentences and inadequate financial penalties are applied by the different nations, if (italics mine) prosecutions are considered at all! CITIES
is, furthermore, a voluntary convention as it lacks provisions for remedies against non-complying member states, and has no bearing on countries that do not wish to assume the obligations of its provisions (Alarcón 2001:115; Hignett 2002).

A further shortcoming in relation to the imposition of sanctions and injunctions, allowing criminals to get off lightly so to speak, according to Bürgener et al. (2001:41), relates to the lack of knowledge within the conservation authorities of the provisions within section 34 of NEMA. This section permits a judicial officer to impose additional fines for certain wildlife trade related offences committed in terms of certain provisions within the provincial nature conservation Ordinances.

A judicial officer may, in terms of section 34 [in addition to any fines imposed in terms of the relevant provincial legislation], impose fines that reflect both the costs to the state and society of the environmental degradation, including the costs of rehabilitation, as well as the costs of the state to prosecute the matter. Ignorance in this sphere results in weaker sentences being imposed which consequently detracts from the deterrent value of the sentence, serving to strengthen the perception that conservation crime can be committed with impunity.

Because effective deterrence depends not only on the severity of the punishment, but also on a perceived high risk of detection, potential offenders will not be deterred by the threat of high penalties if they realise they are unlikely to be apprehended – it is common knowledge that empty threats rapidly lose their credibility (Herbig & Joubert 2002:72).

5.3.3.3 CONSERVATION POLICING/GUARDIANSHIP

According to Mathee et al. (in Liebenberg & De Vos 2002:27) the environmental rights entrenched in s 24 of the Constitution must be read in conjunction with the overarching obligation on the State to ‘respect, protect,
promote and fulfil the rights in the Bill of Rights’ in s 7(2). This section thus unequivocally places a duty on the State (italics mine) to take reasonable legislative and other measures to improve the environmental situation, implying, amongst others, the development of programmes that avoid and minimise the disturbance of ecosystems, loss of biodiversity and degradation of the environment as well as the enforcement of laws/directives. Nature conservation policing is undertaken to a larger or lesser extent by a number of organisations on both the provincial and national level. Apart from the provincial conservation authority present in each province, the SAPS, South African National Parks (SANParks), Customs and Excise division of the South African Revenue Service (SARS), the Department of Environmental Affairs and Development Planning (DEA&DP), the Department of Environmental Affairs and Tourism (DEAT), Marine and Coastal Management (M&CM), and in certain instances Local Authorities and quasi-conservation entities (non governmental organisations or NGO’s) also contribute towards the conservation of natural resources. Bürgener et al. (2001:31) aver that while it appears that inter-provincial co-operation on wildlife trade issues are not entirely lacking, there is insufficient co-operation between authorities, and that the situation has deteriorated since the provincial restructuring in 1994.

Schedule 4 Part A of the Constitution states that nature conservation is a functional area of concurrent national and provincial legislative competence. No mention is, however, specifically made of which state departments are involved, and because numerous departments have either a direct or indirect connection to the environment and/or the conservation of natural resources, diverse role-players are necessarily implicated.

Regrettably little provincial inter-agency co-ordination takes place (Naudé 2002:34; Van der Merwe & Swanepoel 2002:77) and these agencies cannot therefore, be said to be complying with the Constitutional provisions regarding co-operative governance. Furthermore, these different role players do not always hold conservation as their primary focal area and subsequently only approach the matter superficially, seldom allocating large budgets or other financial/personnel reserves to this functional area.
Local authorities, as an important sphere of government, unfortunately do not, as in the previous political dispensation, possess a specific conservation regulatory/policing mandate, although they are typically *au fait* with local conditions, and thus often in a better position to address conservation crime than other official bodies. These entities usually have intimate local knowledge, regularly liase closely with resident communities, and are hence better suited to transcend financial and spatial impediments in order to effectively address district/regional environmental issues. Although the funded delegation of this function to capacitated local authorities is rumoured to be in process, there has since the December 2000 elections, which invoked the Constitutional Schedule mentioned above, not been any observable progress in this matter. Conservation guardianship is as a result further weakened and any localised deterrence possibilities, substantially negated.

Notwithstanding the fore-mentioned, SANParks and the Western Cape Nature Conservation Board (CNC) can be viewed as the primary, lead and accountable agencies charged with operational (chiefly terrestrial) natural resource conservation in the Western Cape province. Although the conservation policing capacity of these and other organisations will be discussed in more detail in a later chapter, the provision of a succinct capacity exposition is considered prudent within the present colloquium in order to elucidate policing deficiencies within the contributory and motivational framework.

### 5.3.3.3.1 **SOUTH AFRICAN NATIONAL PARKS (SANPARKS)**

SANParks are, according to Sieben (2002), solely responsible for conservation within specifically demarcated South African National Parks/Transfrontier Parks. This organisation does not regulate the trade of wildlife in the public domain unless a contravention originates from within the boundaries of a National Park. For these purposes SANParks possesses an investigation team, known as corporate investigation services (CIS), comprising approximately 10 individuals (2 in the Western Cape) that function
countrywide, should the need arise, from offices located in Cape Town and Skukuza (Erntzen 2002; Sieben 2002).

However, given the vast bucolic tracts of land under the jurisdiction of SANParks, and the volume of visitors frequenting these venues, policing, not considered a key focus area/discipline by this organisation per se (Sieben 2002), is severely hampered and guardianship is subsequently restricted. Crime within these areas, where habitat preservation serves to concentrate certain desirable organisms and promote their proliferation, can thus attract and elevate herpetologically orientated crime, essentially augmenting this phenomenon in the purlieu of such parks.

**5.3.3.3.2 THE WESTERN CAPE NATURE CONSERVATION BOARD (CNC)**

The Western Cape Nature Conservation Board (CNC) is, in contrast to SANParks, responsible for the conservation of natural resources both within its demarcated reserve areas (mountain catchments etc.) as well as outside of these areas, i.e. in the public/pastoral domain. According to Erasmus (1996:1), CNC has a responsibility ‘to protect and control the utilisation of all wild (sic) that are found within the province of the Western Cape.’ Baard (2002); Gildenhuys (2002); Hignett (2002); Malherbe (2002); Stadler (2002); Van der Westhuizen (2002) and Vorster (2002) unanimously agreed that CNC does not currently have the resources to effectively police/regulate conservation crime within the Western Cape province and, therefore, cannot effectively discharge their responsibilities in this regard. This deficiently managed conservation mandate, which basically amounts to untargeted strategic intervention, places, it is submitted, natural resources increasingly at risk, resulting in mounting hazards and escalating vulnerability.

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3 Hazard: a term used to describe a situation, which can produce an event that could adversely affect human life, property, activity and/or the environment [natural resources].

4 Vulnerability: relates to the degree of loss (for example, from 0 to 100 percent) resulting from a potentially damaging phenomenon.
Since effective policing is a basic tenet for guaranteeing the successful management of the wildlife trade, it can be inferred that CNC is not adequately bringing to fruition the conservation mandate they have been entrusted with. This capacity predicament does not go unnoticed in an arena where highly sensitised and professional deviant protagonists function. Coupled with all the other impediments/hurdles discussed thus far, this state of affairs can only promote, it is submitted, miscreant behaviour and serve to entice participation in the illegal reptile trade and other natural faunal and floral resources.

The message sent out by CNC compounds the already volatile situation by advertising the fact that they are impuissant to regulate their brief, something that can, it is submitted, be regarded as tantamount to corporate negligence. Conservation mandates and effective policing/regulation would certainly, in the CNC context, and contrary to what can be considered the norm, seem to be somewhat unnatural bedmates. A largely under-resourced and trained (capacitated) permit administration section of CNC, furthermore, compounds an already seriously constrained operational component. Hignett (2002) maintains that the permit administration section can be regarded as the backbone of the organisation, but that it, and its diminishing staff, somewhat ironically, seem to be considered expendable - a liability rather than an asset. Hignett supra goes on to state that neither he nor his staff receive adequate support from top management, and that thanks is seldom given where thanks is due.

Of extreme concern is the fact that none of the staff employed in Hignett’s section have any formal conservation training, or are allowed to enter the operational environment, for sensitising and/or orientation purposes, but yet are expected to evaluate and process conservation requests and issues at the highest levels. Such an inflexible and impenitent approach, which might have been deemed sufficient in times gone by, results in staff not being able keep pace with changes in the external environment and can have a decidedly negative effect on goal attainment (conservation).
Hignett (2002) admits that the failure of any permit section is a dearth of checks and balances, and that in his section reports from operational staff, if requested, are merely taken on face value unless a problem/irregularity is known about beforehand. In this manner biased reports can easily find their way through the system, showcasing as it were, CNC’s wanting to “run with the hare and hunt with the dogs” crypto-conservation type approach to the preservation of the public’s natural resource assets essentially held in trust by them.

Although CNC has an environmental crime investigation unit (ECIS), it is currently only staffed by a sole dedicated functionary (programme manager) who co-opts nature conservation personnel from the various centres within the organisation whenever necessary. The unit was only formed during 1999, prior to which no such capacity existed and reliance was made on the already overburdened and under resourced district services (now nature management services) component to generate and investigate cases and successfully prosecute offenders. Prosecutions are currently not generated by the unit itself. The majority of information received by the unit is forwarded to it by the SAPS or other conservation staff members (Gildenhuys 2002; Hignett 2002).

Since effective conservation policing can be regarded as the cornerstone to ensuring successful reptile trade regulation and management, the paucity of operational and supporting capacity and logistics mentioned in the prevenient section can be seen as promoting the generation and exploitation of opportunities, exacerbating as it were the prevalence of natural resource deviance in the Western Cape province.

5.3.3.3 Endangered Species Protection Unit (ESPU)

The ESPU, founded in June 1989, would, as a national role player not restricted by provincial boundaries, seem to be a decisive participant in the regulation and reduction of, amongst others, herpetological crime. According to Bürgener et al. (2001:33) the ESPU works primarily on syndicate crime
related to endangered species, but its precise mandate is not known and is currently being revised.

Such lack of clarity has not aided collaboration between the ESPU and certain provincial conservation authorities with some indicating that they receive adequate support from the ESPU and others reacting more critical to the approach taken by the ESPU with regard to the sharing of information, coordination of activities and provision of support (ibid. 2001:33). Gildenhuys (2002) was of the opinion that the ESPU works far too secretively within the Western Cape province, seldom sharing information with him, and furthermore, felt that they come across ‘geheimsinnig en windgat’.

On an operational level ESPU members tend to experience difficulties on account of the different policies that are applied in the various provinces, specifically with regard to pursuing a cohesive law enforcement approach throughout South Africa to effectively combat illegal activity related to trade in endangered species (Lategan, in Bürgener et al. 2001:39).

The centralised nature of the unit also serves to complicate matters and impedes the co-ordination of law enforcement activities in the country as a whole. De-centralisation, although not without logistical obstacles, would be beneficial in the sense that provincial conservation authorities could have ready access to its members.

Should such decentralisation, however, result in the disbanding of the unit as a whole, and the individual integration of its members into the mainstream police society, as is presently being envisaged (Kikillus, 2002), conservation policing initiatives and efficiency at national level are bound to deteriorate. In such circumstances it can be anticipated that integrated ESPU agents will, at most, only be able to realise sporadic conservation specific intervention actions, as they will be expected to carry and dispose of diverse case dossiers akin to their peers. Motivational levels can, furthermore, be expected to drop with a concomitant decrease in deterrence, in particular with regard to syndicate related deviance habitually targeted by the specialised unit.
According to Kikillus (2002), police senior management do not expect conservation policing service delivery to be negatively affected by the disbanding and integration of the ESPU, and maintain that this restructuring is necessary in order to comply with renewed police strategy and policy. There is already, however, at this early stage speculation that the ESPU officers could be seconded to the Department of Environmental Affairs & Tourism (DEAT) in order to continue policing, specifically CITIES related conservation crime, or even that they could resign from the Police Service and join DEAT on a permanent basis (Kikillus 2002).

The mere fact that such alternatives are being considered should be a clear indication to police decision makers that conservation crime policing capacity should not be reduced in such a short-sighted and irresponsible manner. The total disbanding and integration of such a dedicated conservation crime suppression unit, even if as part of a rationalisation exercise by the police, will, it is submitted, ultimately end up being much more expensive, not only in terms of policing economics, but also in terms of the preservation of South Africa’s natural heritage and natural resources in general.

5.3.3.4 SOUTH AFRICAN REVENUE SERVICE (CUSTOMS & EXCISE)

The Customs and Excise Act, 1964 (Act 91 of 1964) in its preamble states that the Act is to ‘provide for the levying of customs and excise duties and a surcharge; for a fuel levy, the prohibition and control of the importation, export or manufacture of certain goods; and for matters incidental thereto.’ While the Act provides for the control of the importation and export of certain goods, Customs officials are primarily concerned with ensuring that correct duties and taxes are paid on goods being imported (italics mine) into South Africa, and in addition to enforcing their own Act are burdened with the task of regulating legislation pertaining to more than 40 external bodies, both governmental and non-governmental (Bürgener et al. 2001:19). According to Duguid (in Bürgener et al. 2001:19) Customs officials at the Cape Town
harbour do not check for CITIES permits for any species, as they are unaware of this requirement and, furthermore, lack the necessary expertise to monitor wildlife trade effectively.

Gildenhuys (2002) and Lourens (in Bürgener et al. 2001:19) moot that Customs officials in general do not consider the enforcement of wildlife trade provisions a priority, a fact that is aggravated by them being severely under-capacitated in terms of species identification and knowledge of applicable national and international wildlife trade related legislation. Du Bois (1997:35) corroborates the aforementioned sentiment by stating that inadequate customs control is a major problem in South Africa and that customs control is more focussed on collecting taxes than on preventing illegal trading in endangered species.

She goes on to state, in essence summing up the contribution of customs and excise towards natural resource guardianship, that customs control is also derisory at all ports of entry and exit and ill equipped to mount effective and continuous operations to prevent and control illegal smuggling, making it easy for smugglers to operate largely unchecked and without fear of apprehension. Gildenhuys (2002) and Hignett (2002) confirmed that there is no CNC presence at ports of entry or exit in the Western Cape province, and that they will only consider such assignment of staff if specifically requested or informed of some or other impending irregularity.

5.3.3.3.5 DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM (DEAT)

DEAT does not currently play any legislative implementation role and certainly seems to lack the capacity to do so. The Department is best placed to monitor biodiversity utilisation throughout the country, facilitate inter-provincial co-operation and co-ordination, and drive policy development (Bürgener et al. 2001:vii). Implementation, for realistic and practical reasons, should continue to take place almost entirely at provincial and local level. Because DEAT
lacks the necessary practical experience for sound policy development all the provincial authorities should be consulted in any policy development process. Adequate provincial consultation is essential as implementation of policies is currently carried out entirely by provincial [and local] conservation authorities (Bürgener et al. 2001:39). Since DEAT has not played a significant role in national policy development regarding wildlife trade, provincial conservation authorities have accordingly each developed their own suite of policies where national policy does not exist and they frequently, therefore, lack uniformity.

5.3.3.3.6 MARINE AND COASTAL MANAGEMENT (M&CM)

The Marine and Coastal Management Branch of DEAT is primarily concerned with the administration of the Marine Living Resources Act, 1998 (Act 18 of 1998). These activities include:

- Protecting the marine environment;
- Sustainable utilisation of South Africa’s marine living resources; and
- Restructuring of the fishing industry through assisting historically disadvantaged communities to have effective and equal access to marine resources (Department of Environmental Affairs and Tourism 2002:4).

M&CM, although a conservation entity in own right, does not, apart from a duty to protect marine chelonians (turtles), therefore, have any major links to reptile conservation and/or guardianship, and can subsequently be regarded as a marginal role-player for the purposes of this thesis.

5.3.3.3.7 DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING (DEA&DP)

According to DEA&DP’s mission, it must protect the environment in the Western Cape province for the benefit and well-being of present and future generations, through measures that:
• Promote the conservation and sustainable use of natural resources;
• Minimises pollution and waste; and
• Secure development that is sustainable, prevents ecological degradation and takes due consideration of adverse environmental impacts.

DEA&DP does not, however, possess adequate capacity to effectively police and/or regulate/monitor its entire mandate effectively (De Jager 2002), and subsequently lacks the “teeth” to personally address contraventions of its legislation, undermining to a large extent the guardianship role it envisages interpreting in the conservation of natural resources and biodiversity milieu. CNC, as a conservation entity grouped within this bureaucratic cluster, is expected to discharge the majority of this department’s environmental policing responsibilities.

CNC has, however, received statutory board status and is fast becoming an independent organisation in its own right. This will eventually result in funding ties being cut with the state and DEA&DP being responsible for policing its entire mandate, something for which capacity, in all respects, is still sadly lacking.

5.3.3.3.8 LOCAL AUTHORITIES AND NGO’S

Local authorities, as already mentioned elsewhere in this thesis, play a supporting role with regard to natural resource guardianship, but are at present regrettably severely limited in terms of being able to pursue these ideals. Even though sections 41 (1)(h)(ii), (iii) and (iv) of the Constitution state respectively that ‘all spheres of government and all organs of state within each sphere must co-operate with each other in mutual trust and good faith by:

– assisting and supporting each other;
– informing each other and consulting on matters of common interest; and
formal conservation policing and guardianship remains, in the Western Cape province at least, a function that is not presently performed on anything but an *ad hoc* basis by certain local authorities, and will remain so until the establishment delegates the conservation mandate to capacitated local authorities on a *funded* (italics mine) basis.

Conservation policing expenditure by local authorities on behalf of official conservation organisations will soon amount to illegal disbursement and realise Auditor-General queries and budgetary disqualification/censure (Markus 2002). Since it is, however, beyond the scope of this study to address their present and future contribution in detail, their unquestionably positive role will austerely be recorded here.

NGO's, in contrast to government/semi-government entities, possess no statutory obligation to conserve or otherwise protect natural resources against injurious actions/activities, and can basically therefore, be seen as fulfilling a watchdog role/function. They can, however, place immense pressure on the State Departments to fulfil their mandate, and can furthermore, through public lobbying, espousal and funding, even assist certain State entities to bring conservation initiatives to fruition.

**5.3.4 SUMMARY AND CONCLUSION**

Amongst others, fragmented and derisory herpetological legislation and/or conservation policy, lack of inter/intra authority co-operation and capacity, inadequate and atypical sanctions, sentencing discrepancies, ambiguity and polarization of authority, contumacious bureaucratic attitudes, custom/tradition, poverty and greed, as well as the interrelatedness of these issues, have been identified as some of the more prominent motivational and contributory stimuli having unambiguous links to herpetological crime and deviance.
These limitations, provided above within the framework of the Routine Activities Theory, in essence, sabotage and erode deterrence initiatives, serve to generate opportunities for crime, and furthermore, cause the resource to appear especially attractive as a conservation crime target, enticing/stimulating and/or promoting, it is submitted, participation therein. Through a largely epistemological approach to the analysis of this fundamental constituent of herpetological crime, it has been possible within this synopsis, to communicate and elucidate the gamut and convolution of the challenges faced within this sphere.

Although individual motivations differ considerably from one another, it should at this stage be abundantly clear that they seldom exist in singular/puritanical form, but more commonly as a collective generally involving greed/economic considerations in some or other form. Of the motivations outlined in the preceding colloquium it is ironic that all but one can be regarded as exogenic causational factors i.e., circumstances created and manipulated by humankind. It is only the intrinsic human trait of greed that can be regarded as an endogenic causational factor over which humans, essentially, have no command. This is because, it is posited, self-control mechanisms, which will largely determine an individual’s potential to partake or abstain from criminal temptation, are inculcated [socialised?], to a lesser or greater extent, unknowingly during youth.

It would, therefore, appear from the foregoing exposition that the prime stimuli for participation in herpetological crime, in what purports to be very much of a virtual conservation realm, gravitate decidedly towards rational hedonistic behaviour, encouraged and sustained, as it were, by a host of human and institutional inadequacies, an assumption that will be thoroughly assessed and reflected in the explanatory theory which will be developed and expounded upon in the subsequent chapter.