



## Australian CUSTOMS AND BORDER PROTECTION

### **Australian Customs and Border Protection Service Submission to the Senate Committee – Australia's future activities and responsibilities in the Southern Ocean and Antarctic waters**

The Australian Customs and Border Protection Service (ACBPS) acknowledges the strategic importance of the Southern Ocean and Antarctic waters to Australia.

ACBPS maintains the border as a strategic national asset, in the interests of economic prosperity as well as national security, maritime security, law enforcement, community protection, industry support, revenue collection and trade facilitation. Our activities and responsibilities in the Southern Ocean and Antarctic waters are critical in protecting Australia's national interests.

ACBPS supports the development of national capabilities that facilitate the wide range of activities needed to be delivered in the Southern Ocean and Antarctic waters. ACBPS must balance competing priorities across its full range of responsibilities to maintain security and promote Australia's interests.

#### **ACBPS role in the Southern Ocean**

The ACBPS is Australia's primary border management agency. A function of the ACBPS is to protect Australia's national interests by generating awareness of activity in Australia's maritime jurisdiction and responding to mitigate, or eliminate the risks posed by civil maritime security threats. To achieve awareness in Australia's maritime jurisdiction and to exercise maritime security responsibilities in the Southern Ocean and Antarctic waters, the ACBPS contributes assets and personnel to Border Protection Command (BPC).

BPC is a multiagency taskforce, which utilises assets assigned from both the ACBPS and the Department of Defence to conduct civil maritime security operations. Assets assigned to BPC conduct law enforcement activities on behalf of other Australian Government agencies exercising powers to coordinate national awareness and response efforts to protect Australia's interests in Australia's maritime jurisdiction.

BPC is the primary government law enforcement organisation in Australia's maritime jurisdiction and remains responsive to a broad range of threats in the Southern Ocean including but not limited to: illegal activity in protected areas; illegal exploitation of natural resources; marine pollution; compromises to biosecurity; piracy, robbery and violence at sea; and maritime terrorism.

The fundamental purpose of operations in the Southern Ocean is to protect sovereign territories and undertake surveillance and response in support of activities against illegal unregulated and unreported (IUU) fishing in the Heard Island and McDonald Islands

Exclusive Economic Zones (HIMI EEZs), the Macquarie Island EEZ, and the adjacent waters covered by the Convention on the Conservation of Antarctic Marine Living Resources (CAMLR Convention). Through cooperative arrangements, ACPBS operations also support surveillance and response against IUU fishing in the French EEZ around Kerguelen Island.

Additionally, BPC is responsible for the International Maritime Organization (IMO) Security Forces Authority (SFA) arrangements within Australia's designated area. The Australian Security Forces Authority Area (SFAA), analogous to the Australian Search and Rescue Region, is a vast area extending into the Southern Ocean and Antarctic waters.<sup>1</sup> The SFAA does not expand Australia's jurisdiction or sovereign rights or provide BPC, as the SFA, the authority or any specific powers to intervene in an incident occurring within the SFAA. The SFAA is analogous to the high seas and therefore similar legal considerations exist. Any exercise of Australian enforcement jurisdiction is undertaken in accordance with applicable international and domestic laws. Additionally, Australia's jurisdiction over the Australian Antarctic Territory (AAT) is not universally recognised with the EEZ adjacent to the AAT considered part of the high seas.

## **The Southern Ocean operating environment**

The Southern Ocean and Antarctic Waters can be a treacherous, remote and unforgiving environment with conditions varying considerably. Sea temperatures often drop below zero degrees and strong winds and converging currents often combine to create large swells. Icebergs, often with large drafts, and sea ice can also pose a hazard to navigation. Additionally, the sheer remoteness of the region adds an additional element of danger and there is limited search and rescue capacity in this region. While not an exhaustive list of conditions experienced in this operating environment, the aforementioned factors must be considered to ensure operations in this region are effective and conducted safely to minimise the risks to personnel.

Although responsive to a range of threats within Australia's maritime domain, the ACBPS continues to support whole of government efforts to combat IUU fishing. Combatting IUU fishing is a multifaceted program led by the Australian Fisheries Management Authority (AFMA), which includes surveillance and enforcement through ACBPS operational support, as well as regional cooperation, capacity building and diplomatic representation through AFMA's engagement activities. IUU fishing is fishing activity that does not comply with national, regional or global fisheries conservation and management obligations and may more commonly be referred to as "poaching". It can occur within zones of national jurisdiction, within areas of control of regional fisheries bodies, or on the high seas.

IUU fishing vessels that fish in the Southern Ocean primarily use South East Asian ports to offload their IUU catch and to re-supply. These vessels employ a range of techniques including the changing of vessel name and flag country to mask their identity in an attempt to evade monitoring, interruption to their activities, and apprehension.

IUU fishing activity remains an ongoing threat. This is demonstrated by the reporting of IUU vessels operating in the Southern Ocean and sightings by ACBPS aerial surveillance assets as IUU vessels transit from the Southern Ocean to land their catch in South East Asia.

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<sup>1</sup> Attachment A – Australia's Maritime Jurisdiction

## International Collaboration and Cooperative Arrangements

The transnational nature of maritime security threats, including IUU fishing, requires a coordinated whole-of-government response with a broad range of domestic, regional and international stakeholders. The roles of government and non-government stakeholders within Australia's maritime security context are briefly outlined in the Guide to Australian Maritime Security Arrangements.

In conducting IUU enforcement activities in the Southern Ocean and Antarctic waters, the ACBPS actively collaborates with AFMA. Further, the ACBPS maintains relationships with other Australian Government agencies with interests in the Southern Ocean. These include, but are not limited to, the Department of Agriculture, the Department of the Environment including the Australian Antarctic Division (AAD), the Department of Foreign Affairs and Trade, the Department of Defence, law enforcement agencies, and other agencies working across the broader range of maritime security and border threats.

In addition to domestic stakeholders, engagement occurs with international partners including but not limited to the Republic of France, Malaysia, and New Zealand. Australia is also Party to the following Treaties and international instruments.

*The CAMLR Convention.* The Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) was established under the CAMLR Convention in 1982 with the objective of conserving Antarctic marine life and in response to increasing commercial interest in Antarctic krill resources. The CCAMLR consists of 24 member States and the European Union. A further eleven States have acceded to the Convention.

*The Treaty between the Government of Australia and the Government of the French Republic on Cooperation in the Maritime Areas Adjacent to the French Southern and Antarctic Territories (TAAF), Heard Island and the McDonald Islands (the Treaty).* The Treaty, signed in 2003 and entered into force on 1 February 2005, facilitates the mutual exchange of Australian and French officials on respective patrol vessels to patrol the Australian EEZ around HIMI and the French territories of Amsterdam Island, Crozet Islands around Kerguelen Island and Saint-Paul Island.

*The Agreement on the Cooperative Enforcement of Fisheries Laws between the Government of Australia and the Government of the French Republic in the Maritime Areas Adjacent to the French Southern and Antarctic Territories, Heard Island and the McDonald Islands (the Agreement).* The Agreement, signed in January 2007 and entered into force in January 2011, came into force and built upon the existing Treaty by formalising previous ad hoc enforcement activities Australia undertakes with France. This agreement allows either party to engage in cooperative enforcement activities such as boarding, hot pursuit and apprehensions in the French and Australian EEZs.

*The Regional Plan of Action to Promote Responsible Fishing Practices including Combating Illegal, Unreported and Unregulated Fishing in the Region (RPOA-IUU).* The ROPA-IUU resulted from a joint Australia-Indonesia initiative and was agreed by fisheries Ministers of eleven countries in May 2007. The objective of the RPOA-IUU is to enhance and strengthen

the overall level of fisheries management in the region and promote adoption of responsible fishing practices including combatting IUU fishing. The lead Australian agency for policy regarding ROPA-IUU matters is the Department of Agriculture.

The ACBPS and AFMA, along with other Australian Government agencies, have over time dedicated efforts and resources to address IUU fishing. Activities focused on the Southern Ocean and subsequent ACBPS monitoring and detections of IUU fishing vessels are fundamental enablers for bilateral and regional action to address this threat. Further, close collaboration and engagement with domestic and regional stakeholders is also vital, although requires further investment, in the continued effort to protect Australia's interests not just from IUU fishing but also from other civil maritime security threats as they present.

The development and fostering of bilateral and regional relationships allows the ACBPS and partner agencies (domestic and international) to collaborate through information sharing and capacity building initiatives. Close collaboration with domestic and regional stakeholders is vital for the efforts to disrupt the IUU fishing business model. Using a range of measures, including the RPOA-IUU network to deny access to regional ports, is facilitating significant disruption of IUU activity and is limiting the viability of IUU fishing.

### **ACBPS management and monitoring activities in the Southern Ocean**

The ACBPS adopts a multi-layered approach to surveillance and response, which incorporates intelligence assessments for early threat identification, aerial surveillance in high priority areas, satellite surveillance, and on-water response by available assets. These actions are undertaken throughout the entirety of Australia's maritime domain, including the Southern Ocean, and are tailored to ensure appropriate operational responses in specific areas of operation and in response to the targeted threat.

The ACBPS has historically undertaken surface patrols in the Southern Ocean using ACBPS assigned assets. Due to a confluence of maritime threats in Australia's northern waters, the ACBPS has not conducted a surface patrol in the Southern Ocean since February 2012. Since then the ACBPS has utilised aerial capabilities to monitor the Southern Ocean, and ACBPS officers have participated in, and are embarked on, patrols undertaken by French military vessels. These joint Australian and French patrols allow for the enforcement of each other's fishing laws in the respective EEZs and territorial seas in the Southern Ocean. The exchange of personnel is necessary to apply and enforce each country's laws and offers development of capability through the sharing of better practice. For Australian vessels to enforce French fisheries laws in French waters, a French officer must be on board, and vice versa when French vessels are operating in Australian waters.

During the last patrol conducted by an ACBPS asset, one IUU mother ship was sighted and a fishing vessel was boarded for inspection. Although no IUU fishing vessels have been detected in the HIMI and the Macquarie Island EEZs since 2005, the presence of an authorised Government (French or Australia) vessel in the region provides an overt deterrent to IUU fishing in the HIMI EEZ and IUU fishing in the CAMLR Convention Area. Deploying a vessel to the Southern Ocean is one of many methods of managing IUU fishing

and other maritime threats, however the utility of such vessels is an important but not exclusive component to any mitigation.

In January/February 2008, and at the direction of Government, an ACBPS surface patrol was conducted to observe and record the Japanese Whaling Fleet's (JWF) activities in the Southern Ocean. The Department of the Environment's contracted A319 aircraft was also involved and conducted three monitoring flights. A key objective of this operation was to gain evidence to allow Australia to bring proceedings against Japan in the International Court of Justice (ICJ). On two occasions, ACBPS surface assets assisted in the retrieval of activists who had boarded Japanese whaling vessels.

The first incident occurred in January/February 2008 and involved the Australian Customs Vessel (ACV) *Oceanic Viking*, and the second incident occurred in January 2012 and involved ACV *Ocean Protector*. In this instance, ACV *Ocean Protector* diverted from its fisheries enforcement patrol to retrieve three protestors who boarded the Japanese whaling vessel the *Shonan Maru No 2*. Nine days were lost from the fisheries enforcement patrol in the Southern Ocean and an additional direct cost of \$155,000 was incurred by the ACBPS. This included costs for fuel, berthage and support services, which were in addition to the normal operating costs of the ACV *Ocean Protector*. During the 2013-14 whaling season, the ACBPS also conducted two monitoring missions using the Department of the Environment's contracted A319 aircraft.

The ACBPS also maintains continuous awareness in the Southern Ocean through the use of a commercially contracted satellite service, which conducts surveillance over the Southern Ocean and provides regular reporting back to the ACBPS. This surveillance enables operationally relevant maritime domain awareness to be maintained in nominated areas of interest where aerial surveillance and surface patrols may not be conducted.

Additionally, ACBPS surveillance flights outside of the Southern Ocean track and identify the passage of IUU fishing vessels, which contributes to and has facilitated forewarning and alerted RPOA-IUU member countries of likely destination ports and expected arrival times, which assists with the disruption of IUU vessel activity.

The denial of port access of the IUU fishing vessel *Pion* (a known Patagonian toothfish poacher) in February 2012 by Malaysian authorities was the first occasion where the RPOA-IUU helped facilitate the disruption of an IUU vessel unloading in port. The brief detention of the vessel represented a significant milestone in the fight against IUU fishing and for partnership building with Malaysian authorities. Australia was requested to provide fisheries officers to undertake a joint inspection of the vessel. ACBPS officers based in Malaysia provided assistance to the AFMA fisheries officers who assisted with the inspection.

Again in April 2014, the ACBPS played a pivotal role in disrupting the activities of IUU fishers. This activity involved surveillance by ACBPS aircraft to detect the IUU fishing vessels *Thunder* and *Chang Bai* as they transitioned north towards South East Asia to offload their catches. These sightings enabled Australia to request RPOA-IUU countries to deny port access to both vessels. Subsequently, Malaysian authorities advised that both vessels had

been detained, along with the crew of both vessels who were held for questioning. These vessels remain the subject of ongoing investigations by Malaysian Authorities.

Prior to this, the tracking and disruption of the operations of IUU fishing vessel *Thunder* in 2013, further demonstrates the successful application of a regionally coordinated approach. In this instance, *Thunder* made significant efforts to deceive authorities and avoid detection of its activities, including changing its name and flag. However, the ACBPS was able to track the vessel to South East Asia, and regional authorities were alerted through diplomatic channels. Australia was able to request assistance from RPOA-IUU member countries and AFMA fisheries officers assisted with the inspection, which resulted in the vessel being denied access to offload its IUU catch in Benoa, Indonesia.

A further example of interagency and international cooperation was the pursuit of the *Viarsa 1*, a Uruguayan registered vessel that fled Australian waters in the Southern Ocean with a cargo of illegally caught toothfish. The pursuit was initiated on 7 August 2003 when the ACBPS and AFMA contracted patrol vessel *Southern Supporter* located the *Viarsa 1* suspected of fishing illegal inside the Australian Fishing Zone adjacent to the HIMI. The pursuit involved the cooperative efforts of the ACBPS, AFMA and the Royal Australian Navy with South Africa, the United Kingdom, France and the United States aiding the Australian Government through the provision of assistance to the pursuit.

On 28 August 2003 and after a 21 day, 3900 nautical mile chase through some of the most inhospitable sea and weather conditions, including an area dubbed 'Iceberg Alley', where 72 icebergs were sighted in a 24 hour period, the *Viarsa 1* was boarded by the ACBPS and AFMA officers. On 3 October 2003 the *Viarsa 1* and its catch were formally seized under the *Fisheries Management Act 1991*. This incident was a significant catalyst in focusing global attention on the need for stronger measures to combat IUU fishing.

Separately, the ACBPS's efforts to record the activities of the JWF contributed to the case Australia brought against Japan before the International Court of Justice (ICJ). On 31 March 2014, the ICJ ruled that Japan's whaling program in seas near Antarctica is not for scientific purposes. The ICJ further agreed that Japan should revoke permits to catch and kill whales for research purposes. The ACBPS continues to engage with relevant stakeholders regarding Japan's future whaling program intentions.

## Resourcing

As previously outlined, BPC draws its resources from the ACBPS and Defence through the provision of assets and personnel which are assigned to BPC. The specific assets and capabilities assigned to BPC impact on the type of operations able to be conducted. The limited number of vessels capable to undertake operations in the Southern Ocean is a factor that needs consideration when planning and conducting operations in this area.

Since December 2004 the ACBPS has used ACV *Oceanic Viking* and then ACV *Ocean Protector* to conduct operations in the Southern Ocean. The contract for ACV *Ocean Protector* is due to expire by the end of 2014 and is not being renewed.

To maintain a capability in the Southern Ocean the Government has previously committed to the ACBPS having shared use of the Australian Defence Vessel (ADV) *Ocean Shield* in 2014-15 and 2015-16 including the provision of two x 40 day Southern Ocean patrols per annum. Consideration is currently being given to additional options for the use of the ADV *Ocean Shield* for ACBPS purposes in this period. The selection of ADV *Ocean Shield* by the Department of Defence was based on a technical and performance profile that exceeds their Humanitarian Assistance and Disaster Relief requirements, including an ice hardened hull, which is essential for Southern Ocean operations.

In addition, the potential confluence of a number of maritime threats in Australia's northern waters, continued Operation Sovereign Borders activity, high operational tempo, and broad expectations to enhance Australia's Southern Ocean patrol activity continues to challenge ACBPS's ability to balance operational responses and prioritise limited resources. As noted above this has meant the ACBPS has relied on aerial capabilities to monitor and surveil the Southern Ocean since February 2012 and ACBPS officers on French patrols.

Further, the prioritisation of resources is intelligence-led and risk based; however the perennial challenge continues to be the deployment of limited assets. Notwithstanding these challenges, operational planning and responses are continually reviewed to ensure resource prioritisation is based on the most up-to-date, accurate and actionable intelligence to allow for appropriate and timely operational responses.

## **Conclusion**

Deploying an Australian vessel to the Southern Ocean provides an overt presence and deterrent to IUU fishers in the region but is not the exclusive option in response to this or other threats. A range of options are available and used to mitigate civil maritime security threats including IUU fishing. Continued surveillance and monitoring through a range of capabilities, and enhancing regional collaboration and capacity building, all contribute to the mitigation of the threats confronted by Australia.

ACBPS remains committed and continues to engage with key stakeholders and partners in undertaking activities consistent with protecting Australia's interests in the Southern Ocean and Antarctic waters. The provision of additional multi-faceted capabilities will further enhance ACBPS's ability to meet our responsibilities to mitigate not only IUU fishing, but all civil maritime security threats within Australia's maritime domain.

Attachment A – Australia's Maritime Jurisdiction

