

# JCPAA INQUIRY INTO COASTWATCH

## DEPARTMENT OF DEFENCE SUBMISSION

### Introduction

*Under our system of government the ADF is not normally involved in the enforcement of civil law. In addition, the use of defence capabilities is inevitably less cost-effective than civil alternatives, as the demands of modern warfare mean that these capabilities are highly sophisticated and very expensive. Moreover, their use diverts the ADF from its core business, distorts funding priorities and reduces defence capabilities for high level tasks. It has been the policy of successive Governments that the ADF provide its services to the civil community only where the community is facing exceptional demands, or where the ADF has assets that are essential for the community's well-being.*

*Within these policy parameters, successive Australian Governments have endorsed the routine allocation of ADF assets to provide surveillance and response forces for customs, immigration, fisheries and other civil authorities off Australia's coast. The size, crewing, armament, range and other characteristics of RAN patrol boats and RAAF surveillance aircraft are well-suited to performing these tasks throughout Australia's Exclusive Economic Zone (EEZ). Such operations also serve a strategic purpose in providing a continuous ADF presence in Australia's northern maritime approaches. This strategic requirement would still need to be met even if the ADF did not provide assistance to Coastwatch, and consequently ADF operations in support of Coastwatch serve both purposes efficiently and effectively.*

### **Term of Reference 1: The Role and Expectations (both public and Government) of Coastwatch**

Coastwatch coordinates civil surveillance and response for all Government Departments managing Australia's offshore maritime areas, and fulfills the broader objective of border protection. Government expects Coastwatch to function as an umbrella organisation for the coordination of all peacetime surveillance activity in support of the Civil Surveillance Program, focussing in particular on potentially illegal activities such as the drug trade, general smuggling, foreign fishing vessels, illegal immigration, and protection of the environment (including quarantine issues). Coastwatch's activities are separate from any surveillance undertaken for purely defence purposes, though relevant surveillance information acquired by Coastwatch is made available to the ADF.

The Civil Surveillance Program covers civil tasks, for which civilian law and civil agencies have primacy in peacetime. ADF support for this is not core Defence business, which is the use of military power in defence of Australia and its interests. The civil surveillance tasks are a whole-of-government responsibility, and the appropriate use of all available national resources allows the most effective national response. In 1988 Government directed the ADF to make ADF assets available to assist Coastwatch in its activities, and reaffirmed this in its June 1999 acceptance of the recommendations of the Prime Minister's Inter-Departmental Task Force on Coastal Surveillance.

Defence considers that the role of Coastwatch in coordinating both civil and military assets in support of the Civil Surveillance Program is not well understood in the wider community. Coastwatch's role is sometimes confused with the broader roles and responsibilities of both the Australian Customs Service and the ADF, the agencies which have actual responsibility for national border protection in time of peace and armed conflict respectively.

The role of the ADF as a strategic partner supporting Coastwatch dates from the latter's inception in 1988. Surveillance and response is a key contribution made by the ADF to the civil surveillance program and is a capability inherent in the ADF's mission to defend Australia, with particular expertise developed in the northern sea-air gap.

The ADF contributes to Coastwatch in four main areas: patrol boats, aircraft, surveillance, intelligence and operational planning expertise. The roles of the RAN's Patrol Boats in times of tension and conflict are to conduct patrol duties in low level conflicts, and contribute to the seaward and harbour defence of Australian ports. The role of the RAAF's surveillance aircraft in tension and conflict is to conduct surveillance and identify targets. The inherent combat capability of these units is well-suited to assisting Coastwatch in coordinating its civil surveillance tasks.

While the RAN patrol boats are expensive to operate in this civil support role (more so, for example, than the new Australian Customs Service *Bay Class* vessels [ACV]), they are a highly capable surveillance and response platform with a larger crew, better endurance and seakeeping capabilities than the smaller ACVs. The patrol boats are armed with deck-mounted guns (ACVs are not); they have a significant capability for response, boarding, law enforcement and apprehension (ACVs do not carry an armed boarding party of the same size or capability as those of the Navy); and they can readily transition to their wartime roles in time of conflict (ACVs do not have an assigned national support role in tension or conflict). The P3-C long-range maritime patrol aircraft is a highly capable surveillance asset with long range, high endurance and an ability to locate and report both surface vessels and submarines. These war-fighting capabilities readily enable the P3-C to carry out civil tasks like surveillance and search & rescue.

Government mandates Defence to provide to the Civil Surveillance Program 1,800 days of RAN surface patrol and response, and 250 hours of RAAF maritime aerial surveillance per fiscal year. In practice, assistance has exceeded these targets. (Actual achievement in FY 98/99 was 1,868 patrol boat days and 401 flying hours.)

Defence has also been a participant in developing whole-of-government options to stem the flow of illegal boat arrivals, and the ADF has contributed to a number of recent Australian Customs Service and Australian Federal Police-led operations to counter the illegal importation of narcotics and prohibited substances.

Coastwatch draws on Defence intelligence information and seeks assistance with the planning and conduct of surveillance through ADF operational staffs located at Sydney, Perth, Cairns and Darwin. Appropriate areas in Defence Headquarters (Operations and Intelligence) are electronically linked to the new National Surveillance Centre in Canberra. The creation of the Centre was recommended by the Prime Minister's Inter-Departmental Task Force on Coastal Surveillance (June 1999),

in which Defence was a participant and whose recommendations were accepted by the Government on 27 June 1999.

The two star officer position of Director-General Coastwatch, whose establishment was also recommended by the Task Force, has been filled by Defence (RADM R.E. Shalders, RAN), which since July 1999 has provided two other military specialists to Coastwatch.

**Term of Reference 2: The relationship of Coastwatch as “service provider”, and its client agencies, as “service purchasers”**

Coastwatch is better described as a ‘service coordinator’. Although supplemented increasingly by eight smaller and unarmed *Bay Class* ACVs (five are in-service, the remaining three will be introduced in 2000/2001), the ADF is the primary surface response ‘service provider’. The Coastwatch Resources Section provides coordination of contracted civil support, primarily small light aircraft, to Coastwatch.

When providing assistance to Coastwatch, RAN patrol boats and RAAF aircraft remain under ADF operational control at all times, and are commanded by ADF officers. When a patrol boat is assigned to the Civil Surveillance Program by Defence, the appropriate operational authority (normally Commander Headquarters Northern Command) will be requested by Coastwatch to investigate a suspected illegal entry vessel (SIEV) or a foreign fishing vessel (FFV). The operational control authority will determine whether there is an ADF patrol boat in the area available to respond in a timely manner, then will task the patrol boat to conduct the investigation. Coastwatch’s approach to deployment of the ACVs is similar.

Command and control arrangements for ADF assets are highly developed. The patrol boat and military aircraft with its secure military communications suite supported by a mature command, control and communications infrastructure is able to receive timely classified information. Customs have a commercial secure communications system which is suitable to pass basic classified information, usually positional data.

The staff working relationship and electronic interconnectivity between Coastwatch and Defence is excellent at the operational level. Similarly, the relationship between Headquarters Northern Command and Coastwatch Darwin, and Headquarters Australian Theatre and Coastwatch Canberra, is mature and effective. Electronic interconnectivity between Coastwatch and Headquarters Northern Command (with the ability for personnel to be on site if and when required) has improved rapport and general working relationships, and most day-to-day working level problems or difficulties are quickly resolved. The Coastwatch Darwin personnel work in an integrated manner with Headquarters Northern Command processes, attending daily briefs and having access to ADF command & control systems.

**Term of Reference 3: The effectiveness of Coastwatch’s allocation of resources to its task**

Defence makes a significant contribution to the effective allocation of Coastwatch resources. The development of historical records by Northern Command which enabled the establishment of ‘normalcy’ patterns and, to a lesser extent, the historical records of the Australian Fisheries Management Authority created a basis for national

surveillance mission planning. The sharing of military intelligence and planning information with Coastwatch is increasing, and provides a firm foundation for the planning and conduct of support to the civil surveillance effort. Another factor has been Defence involvement in the establishment of the National Surveillance Centre (NSC), which has permitted better access to classified intelligence.

Within the northern Australia area, the allocation of Coastwatch charter aircraft for area surveillance (“strategic”) flights appears to be very effective, as does its timely redirection of aircraft for “tactical” support to RAN patrol boats and ACVs. However, the forthcoming United Nations Implementing Agreement on “straddling stocks” (which will address migratory fish species that appear in different areas of ocean and EEZs) may require an increasing focus on the Southern, Indian and Pacific Oceans outside the Australian EEZ in the medium to longer term. Government may require more appropriate vessels, capable of sustained and dedicated patrol and response tasks, and able to operate in a more challenging environment.

#### **Term of Reference 4: New technologies which might improve the performance of Coastwatch**

Defence and Coastwatch have agreed to a joint approach to the investigation of evolving technologies and potential platforms for surveillance. Defence military requirements are broader in scope than those of Coastwatch, and open discussion of some current and proposed Defence data collection capabilities is constrained by security restrictions. Nevertheless, Defence skills and research in relevant technological areas are applicable to Coastwatch’s responsibilities. An officer of the Defence Science and Technology Organisation is seconded to Coastwatch.

Additional emerging technologies including space vehicles, unmanned aerial vehicles, hyper-spectral imaging, surface wave radar and unattended surface & sub-surface sensors will also be relevant. Planned military acquisitions such as Airborne Early Warning & Control aircraft will be of particular importance for surveillance tasks. High Altitude Endurance Unmanned Aerial Vehicles have a significant potential for enhancing surveillance capability, and Defence is currently engaged with the United States in a Project Arrangement under the Deutch-Ayers Agreement on US-Australia Defence research collaboration. As part of this, the Global Hawk vehicle will be flown to Australia for trials in mid 2001.

As noted, the new National Surveillance Centre has access to military intelligence information, and the developing information sharing arrangements will allow increased access to military intelligence and surveillance product. Where appropriate, liaison with industry and potential providers of data collection systems will be conducted jointly. Coastwatch requirements have been taken into account in planning Defence’s integrated surveillance system. Coastwatch is therefore well placed to absorb new technologies and obtain maximum advantage from any new military assets.

Secure computer links between the NSC and the ADF have produced good results in the short time that the connectivity has been available. Defence has an obligation to safeguard its information and a need-to-know principle must apply, but wider access within the surveillance community and by client agencies to a single system at a lower level of classification could further improve collaborative planning, information sharing and cooperation. Another way to enhance operational effectiveness would be

to establish commonality of communications and intelligence systems, such as linking military units, ACVs and charter aircraft by secure voice/data/imagery transfer.

**Term of Reference 5: The adequacy of existing or proposed legislation which underpins Coastwatch's functions**

Existing legislation is generally adequate for ensuring that the ADF can assist Coastwatch in achieving its objectives.

The main pieces of legislation relevant to the ADF's contribution to Coastwatch, and which underpin Coastwatch's function, are:

- a. the *Fisheries Management Act 1991 (FMA)*,
- b. the *Migration Act 1957*, and
- c. the *Customs Act 1901*.

The last two Acts grant powers to masters of Commonwealth vessels and aircraft and their crews in specified circumstances. All members of the ADF are fisheries officers under the FMA. The *Border Protection Legislation Amendment Act* (December 1999) amends all three pieces of legislation.

**Fisheries legislation.** Overall this legislation works well, because it has been tested in court and is consistent with Australia's obligations under the Law of the Sea Convention 1982 (LOSC). The 1999 amendments to the FMA were particularly useful. They introduced powers provided for in the LOSC for which Australia had not previously legislated. This included mothership apprehension and the right of hot pursuit. It also clarified some domestic legal issues that had previously been in doubt, including escort of a seized vessel over the high seas. These amendments improved the adequacy of the legislation that underpins Coastwatch's function in regard to fisheries legislation enforcement.

**Border protection legislation.** This legislation expands the powers of the ADF to pursue, board, search, seize, detain and arrest in Australia's maritime zones and on the high seas with respect to a range of incidents including customs or migration violations.

**Training.** More effective use by ADF personnel of these new powers requires the provision of good law enforcement training to ADF personnel engaged in Coastwatch support. In April 2000 the first new Boarding Operations Law Course was held at HMAS WATSON for ADF personnel. Presenters were from Defence Legal Office, Customs, the Australian Fisheries Management Authority, Coastwatch and other relevant areas. RAN training officers have also attended the AFP training course for the Customs Marine Group at the AFP College in Canberra, with a view to arranging new training by Customs and the AFP for the RAN. A necessary parallel activity will be the revision of naval doctrine relevant to boarding operations, planned as a collaborative exercise with Coastwatch and Customs. Briefings to ADF patrol boat

crews by the Australian Fisheries Management Authority in March 2000, and improved evidence collection procedures, have also been important.

**Term of Reference 6: Whether an Australian ‘Coastguard’ should be created to take over Coastwatch’s functions**

It is a core responsibility of Government that Australia should be able to effectively and efficiently enforce its sovereign right to protect its national interests. Recent experience has raised interest in the suitability of a Coastguard-type service for Australia. The US Coastguard, for example, conducts fisheries, counter-narcotic, illegal immigrant interdiction and environmental operations, sea transport certification and navigation aid/safety maintenance, and supports national defence operations in time of conflict. The Coastguard retains full control of each mission, and its purpose designed, built and managed organic assets are more than adequate to conduct many different types of maritime operations. The US Coastguard’s authority and jurisdiction is very extensive; it includes inland waterways and overseas trust territories. The Coastguard does not need to employ other agencies for any of these tasks. In Australia, the complexity of legal arrangements, and Coastwatch’s role as a ‘service provider’ rather than the ‘service coordinator’, has suggested that the surveillance function could be simplified and streamlined by the creation of a single agency of this type.

Defence does not consider that the establishment of a separate Coastguard organisation is warranted at this time. Essentially, the costs would outweigh the benefits conferred by the efficient and effective coordination arrangements managed by Coastwatch. It is noteworthy that in other critical areas of community concern, such as natural disaster management and counter-terrorism, Australia’s expertise in high quality, efficient and timely coordination of all relevant national assets has served the community well.

Most recently, the review of coastal surveillance conducted by the Prime Minister’s Task Force in 1999, whose recommendations were accepted by the Government, acknowledged that Coastwatch, working closely with the Australian Customs Service and the ADF, is an appropriate cooperative model for civil surveillance in Australia. Moreover, were a change to a US Coastguard-type service to be adopted, such a new structure would face practical difficulties.

- Cost would be a major consideration. A separate Coastguard organisation, particularly one based on the US model, would require the significant support infrastructure provided by various naval bases and maintenance facilities, the intelligence support provided by Defence agencies, and the planning support & operational guidance provided by military headquarters.<sup>1</sup> With our even greater length of coastline, and responsibility for ten percent of the earth’s surface, a similar structure would tax Australia’s resource capacity.
- Creation of a Coastguard would have a detrimental affect on Navy training and experience. The RAN’s core business requires the development of the same

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<sup>1</sup> The US Coastguard has about 35,000 active duty personnel and a large reserve force, 3 polar class ice breakers, 12 high endurance FFG size cutters, 31 medium endurance cutters, 85 patrol boats, over 1000 equipment boats (tasked with the maintenance of navigation marks, buoys lights and the like, and also used for general water police or specific operations), 30 C-130 aircraft, 23 Falcon jets, about 140 other aircraft -- at a cost of US\$4.3 billion per annum.

operational skills and experience that are needed to assist Coastwatch to fulfill its responsibilities. The business of running a patrol boat in an operational environment provides for junior officers and sailors the ideal preparation from which to launch into broader and more advanced operational areas. Creation of a separate Coastguard would ultimately remove these opportunities.

**Term of Reference 7: Any other issues raised by Audit report 38, 1999-2000, Coastwatch-Australian Customs Service.**

- **Unidentified Air Movements**

An issue that needs to be addressed is the nature and extent of Unidentified Air Movements (UAM), and the coordination of required surveillance responses. Available information, for example that held within the NORCOM database, gives little indication of the possible magnitude of the problem. Further examination and research is needed to determine the extent and possible threat that may be posed by such flights. Defence agencies, in particular Headquarters, Northern Command and Headquarters, Australian Theatre are collaborating with Coastwatch on the issue.

While UAMs fall partly within the Coastwatch/Customs area of responsibility, any effective response might need to include the ADF, and in particular the RAAF. Should the RAAF be required, detection would include use of the Jindalee OTHR facility, and response would normally be by military fighter aircraft. (The pilots of military aircraft have the power to request an aircraft to land pursuant to the *Customs Act* and the *Migration Act*.) These activities, and any subsequent apprehension and prosecution which could involve the AFP or State police forces, would be extremely resource-intensive. The costs would need to be balanced against the extent of any threat posed by UAMs.

- **Southern Ocean Issues**

Australia has responsibilities for the conservation, management and rights for exploitation of natural resources in Southern Ocean areas under various domestic and international laws, regulations and agreements. These include the Australian EEZ around the mainland and Tasmania; Macquarie Island, Heard and MacDonal Islands; the Tasman Sea; and the Southern Tasman Rise (an area south east of Tasmania and just outside the Australian EEZ/AFZ).

Illegal, unregulated and unreported fishing has been observed in recent years in the Heard & MacDonal Islands EEZ, and in 1999, in the Southern Tasman Rise area.

Two ADF operations (with Australian Fisheries Management Authority officers embarked) were undertaken in late 1997 and early 1998; these military operations were successful and resulted in the apprehension and detention of three vessels engaged in poaching stock of Patagonian toothfish. The operations lasted approximately 40 days and 30 days respectively, and required the deployment of a helicopter-capable warship and a support tanker from the RAN, and a separate long-range aerial surveillance capability from the RAAF. The direct cost of the operations in 1997-98 was in the vicinity of \$13 – 15M; additional costs were in the vicinity of \$4M each patrol.

Government subsequently reviewed these operations and agreed on a more cost-effective, long-term strategy for management of the Heard & MacDonald Islands (HIMI) area. This included a review of legal and fiscal penalties, pursuit of international cooperative action, institution of surveillance and enforcement measures using civilian charter vessels (in 1998 Government funded \$4.2M per annum for the next four years for two civil patrols per annum), and the establishment of a Heard & MacDonald Island Operational Working Group (HIMIOWG) to monitor illegal activity and review the effectiveness of surveillance and enforcement operations/options. Four civilian charter patrols have since been completed, with the ADF providing communications, intelligence and surveillance assistance, as well as embarked personnel to operate equipment. HIMIOWG last met in September 1999, and is currently considering options to put to Government for the longer term way ahead once the civil charter funding ceases in 2002.

Government has agreed that the ADF may be deployed to the Southern Ocean regions in appropriate circumstances to assist in apprehending illegal foreign fishing vessels when intelligence indicates illegal activity; civil operations have been unable to prevent such activity; and if the Australian Fisheries Management Authority has requested, and Government has directed, ADF assistance for law enforcement tasks.

In the Southern Ocean and elsewhere beyond the EEZ, the adequacy of both civil and military assets to meet existing and future tasking requirements – in particular with regard to fisheries issues – is of national concern. Although ADF operations in the 1997-98 violations were successful, it should be noted that the ADF does not have specific capabilities for sub-Antarctic enforcement operations. There is no strategic justification for such a capability, and its development would divert resources away from the ADF's primary role.

Since 1998 there has been no evidence of the resumption of illegal foreign fishing vessel activity inside the HIMI EEZ. The deterrent effect of the 1997/98 ADF operations was clearly an effective contribution to this, and Government continues to assess the costs and risks of operating in such a demanding environment in the context of Australia's overall national interest.

In mid 1999 large foreign fishing vessels operated illegally in the Southern Tasman Rise, taking stocks of orange roughy fish. RAAF and Coastwatch surveillance flights were flown to assist in identifying the scope of the problem, and diplomatic efforts were commenced to have the flag nations take action against the vessels' owners. Successful international cooperation resulted in the South African Government withdrawing the licences of three South African registered vessels identified as taking endangered fish stocks from the area. Since then there has been no evidence of a resumption of any illegal fishing activity in the area.

## **Conclusion**

Defence considers that the current Coastwatch arrangements – focussed as they are on the effective coordination of the full array of relevant national assets – serve the community well. Defence considers that the partnership that has been forged between key Commonwealth agencies (the Australian Customs Service, Defence, the Australian Federal Police, the Australian Fisheries Management Authority, the Australian Quarantine Inspection Service, the Department of Immigration and Multicultural Affairs, Environment Australia and the Great Barrier Reef Marine Park



Authority) and their State counterparts (especially State fishing authorities) provides an economical, effective and efficient means of meeting Australia's coastal and border protection needs.