

Current challenges for Coastwatch

Introduction

- 6.1 During the inquiry the Committee has received evidence on challenges currently facing Coastwatch. These challenges, which are covered in this chapter are:
- the arrival by boat of people seeking refugee status or to immigrate illegally to Australia;
 - the movement of people across the Torres Strait;
 - illegal fishing by foreign fishing vessels; and
 - unauthorised air movements (UAMs) into and out of Australian airspace.

The movement of people by boat to Australia

- 6.2 Currently there are three people movement corridors to Australia from foreign countries. Each corridor is used by different groups of people, for different reasons, and each therefore poses a separate and distinct problem for Coastwatch. The three corridors are:

- to Ashmore reef and the north and north west of Australia with people coming predominantly from the Middle East via Indonesia;
 - to the east coast of Australia with people coming predominantly from China; and
 - through the Torres Strait with people predominantly coming from Papua New Guinea.
- 6.3 The Torres Strait currently does not appear to be used by illegal immigrants, but is of interest as a corridor for the movements of illicit goods including drugs.
- 6.4 The Customs annual report indicates that during 1999–2000 there was a total of 76 suspect illegal entry vessels (SIEVs) reaching Australia—a significant increase over the 42 SIEVs in the previous year and the 18 SIEVs in 1997–98. The number of suspect unlawful non-citizens (SUNCs) carried by these vessels has risen from 190 in 1997–98, to 923 in 1998–99, to 4188 in 1999–2000.¹ The vast majority of these SIEVs arrive off the north and north west coast.
- 6.5 Coastwatch’s role is to detect these SIEVs and coordinate their interception. However, the way and extent to which Australian authorities can respond to these arrivals is constrained by United Nations conventions and international law.

United Nations Convention on the Law of the Sea

- 6.6 In July 1999 the Prime Minister’s Coastal Surveillance Task Force concluded that Australian law did not implement fully the powers available to it under international law, and that Australian law should be amended to:
- ... incorporate all of the powers available to Australia under international law including the 1982 United Nations Convention on the Law of the Sea (UNCLOS).²
- 6.7 Subsequently the Border Protection Legislation Amendment Act which received Royal Assent in December 1999 addressed the Task Force’s concerns and strengthened Australia’s laws in this area.
- 6.8 There are four maritime zones recognised under UNCLOS:

1 Customs, *Annual Report 1999–2000*, p. 51.

2 Department of Prime Minister and Cabinet, *Report of the Prime Minister’s Coastal Surveillance Task Force*, p. 7.

- Territorial seas—waters within 12 nm³ of the coast. Vessels within this area fall under Australian law, but foreign flag vessels have the right of passage.
 - Contiguous zone—from 12 to 24 nm offshore. Vessels may be detained if a person on board has committed an offence within the territory or territorial sea. A vessel may also be stopped searched and warned off (but not arrested).
 - High seas—waters beyond 24 nm. On the high seas Australia can engage in ‘hot pursuit’ where a vessel having broken Australian law may be pursued, arrested and brought back to Australia. Mother ships can also be arrested if they have used smaller craft for illegal activities within Australian jurisdiction.
 - Exclusive Economic Zone—12–200 nm offshore. Australia has power to manage, protect and preserve the natural resources of the waters and seabed. It covers fisheries, non-living resources and pollution.⁴
- 6.9 The responses coordinated by Coastwatch therefore have to conform to these international laws if they are to be legal.

United Nations Convention Relating to the Status of Refugees

- 6.10 Australia is also a signatory to the 1951 United Nations Convention Relating to the Status of Refugees and the 1967 Protocol. The two articles of the Convention which are of prime importance are:
- Article 31—The Contracting State shall not impose penalties, on account of their illegal entry or presence, on refugees ... provided they present themselves without delay to the authorities.
 - Article 33—No Contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where this life or freedom would be threatened on account of his race, nationality, political opinion or membership of a particular social group.
- 6.11 As a signatory to the Refugee Convention, Australia has an obligation to act within these constraints. However, while permanent resident status is often granted to refugees, it is not stipulated under the Convention.⁵

3 12 nautical miles is 22.2 kilometres.

4 Department of Prime Minister and Cabinet, *Report of the Prime Minister's Coastal Surveillance Task Force*, pp. 7–8; Customs, *Submission No. 25*, Volume 1, p. S250.

5 Department of the Parliamentary Library, Information and Research Services, Research Paper No. 5 2000–01, *The Problem with the 1951 Refugee Convention*, p. 4.

- 6.12 It has been argued that the Refugee Convention is out of date and should be reviewed.⁶ The Committee has not pursued this issue as it has received no evidence on the matter and the issue is beyond the scope of this inquiry.

Boat people arriving in the north and north west of Australia

Factors driving the people movement

- 6.13 At the beginning of the year 2000 the United Nations High Commissioner for Refugees (UNHCR) had identified some 22.3 million people 'of concern'. Of these there were 11.7 million refugees and 4 million internally displaced persons. Most of these people were in poor countries. A recent UNHCR-commissioned report commented that people smugglers were the last resort for genuine refugees.⁷
- 6.14 Mr Andrew Metcalfe, Deputy Secretary DIMA, told the Committee that Australia was facing large numbers of unauthorised arrivals coming from the Middle East and South Asia who were originally from Iraq, Iran, Palestine, Afghanistan and Pakistan. He added that Pakistan was host to some 3 million refugees while 3 million displaced Iraqis were living in countries such as Iran, Jordan and Turkey.⁸
- 6.15 There is often pressure placed on refugees in poor countries because of the financial burden they pose. For example the Iranian Government, citing economic reasons, has in recent years:
- ... set several deadlines for refugees to leave the country, has declined to register new arrivals from Afghanistan and Iraq as refugees, has attempted to round up and confine refugees to camps, and, at times, has deported them summarily.⁹
- 6.16 Mr Metcalfe commented that there had always been 'push factors' where people were seeking a better standard of living or to leave countries where they were experiencing human rights abuses. However, he added, a new factor had arisen which was the:

6 DPL, Information and Research Services, Research Paper No. 5 2000-01, *The Problem with the 1951 Refugee Convention*.

7 DPL, Information and Research Services, Research Paper No. 5 2000-01, *The Problem with the 1951 Refugee Convention*, pp. 2, 3.

8 DIMA, *Transcript*, 30 January 2001, pp. 258-9.

9 United States Committee for Refugees, *Country Report: Iran*, <http://www.refugees.org/world/countryrpt/mideast/iran.htm>

... organised criminal business involvement who are just as prepared to package people off in a container to the UK as they are to send them on a boat to America or in a fishing vessel to Australia.¹⁰

- 6.17 People from the Middle East were paying between \$US5 000 to \$US10 000 to people smugglers who were employing Indonesian fishermen to bring them to Australia.¹¹ The Committee was advised during its inspection tour of northern Australia that the trip to Ashmore Reef takes about a day and that the Indonesian crew were being paid about \$US400.

The problem faced by Australia

- 6.18 The Customs annual report for 1999–2000 shows that some 4 100 boat people arrived in 76 vessels, an average of about 1 every 5 days. It is important for Coastwatch to detect the vessels travelling towards the north-west and northern Australian coasts and coordinate their interception for two main reasons:
- the quarantine risk due to the food and mosquitoes which might be on board the vessel and the risk of rabies being carried by any dogs on board;¹² and
 - the duty of care owed by Australia to the people on board because of the treacherous nature of the coastline.¹³
- 6.19 The urgency of Coastwatch's task is compounded because it only takes a day for a boat to travel from Indonesia to Ashmore Reef and then a day or so to arrive at the mainland. However, in Coastwatch's favour is the fact that the people on the boats are happy to be detected because they wish to claim refugee status.¹⁴
- 6.20 The problem of the number of potential refugees arriving by this route needs to be placed in the context of the other people unlawfully in Australia. Mr Metcalfe told the Committee that there are about 53 000 illegal immigrants in Australia at any one time with some 13 000 arriving

10 DIMA, *Transcript*, 18 August 2000, p. 61.

11 DIMA, *Transcript*, 18 August 2000, p. 61.

12 AQIS, *Transcript*, 18 August 2000, p. 67.

13 A supplementary submission from DIMA provides details of the drownings of 5 people seeking to arrive illegally by boat in Australia between December 1998 and December 2000. DIMA, *Submission No. 59*, Volume 4, p. S677.

14 DIMA, *Transcript*, 18 August 2000, p. 54.

each year and the same number being apprehended by DIMA. These people come through airports, desert from ships or overstay their visas.¹⁵

- 6.21 The numbers of illegal immigrants coming to Australia via SIEVs has become significant in 1999–2000 and continues to be of concern. The Committee considers that it is therefore important that a concerted effort be maintained to reduce the number.

Solutions to the problem

- 6.22 One commonly held solution to the problem is for the Government to:

... intercept the vessels off Australia's north coast, provide them with water, food, fuel and medical supplies, and send them back.¹⁶

- 6.23 The Committee considers this option is impractical for the following reasons:

- unless boats are within 12nm of Australian territory they are only able to be bordered and 'warned off'—under UNCLOS they cannot be arrested unless they have broken Australia's national laws;
- there would be nothing to stop the boats returning to Australian waters after being 'warned off';
- many of the boats are in a dilapidated state and could easily sink or be scuttled—Australia has an international obligation to save shipwrecked people; and
- Australia has an obligation as a signatory to the UN Convention on Refugees to respond to a request for refugee status and not return asylum seekers to a place where they faced danger.

- 6.24 The Committee concludes that 'pushing boat people back to sea' is not a viable option. Australia cannot ignore its international responsibilities. Instead Australia must work within the conventions and contribute to solving the problem at its source.

- 6.25 Witnesses from DIMA told the Committee that its first policy objective was to stop people leaving countries to come to Australia. Some 20 compliance officers had been placed in Asia, the Middle East, Africa and the Pacific to work with AFP and Foreign Affairs officers.¹⁷

15 DIMA, *Transcript*, 18 August 2000, pp. 57, 59.

16 Reported in *The Courier-Mail*, 15 February 2001.

17 DIMA, *Transcript*, 18 August 2000, p. 63.

- 6.26 At ministerial level there had been discussions with the countries which were hosting refugee populations in an attempt to shut down people smuggling rings. Efforts were a high priority, but the issues were complex and there had been no breakthroughs.¹⁸ A supplementary submission from DIMA indicated there were negotiations with Indonesia to create a broad framework within which the problem of people smuggling would be addressed,¹⁹ but as Mr Metcalfe told the Committee:

The [boat] people concerned are not Indonesian nationals. Therefore, Indonesia's obligation to take people back will only come about if Indonesia can be satisfied that they will not be left holding the problem. ... Indonesia has a substantial memory of the issues it faced when there was an exodus of Vietnamese from Vietnam in the late 1970s and early 1980s. At one stage, Indonesia had about 20,000 Vietnamese nationals living on an island called Galang in northern Indonesia. That required a comprehensive international solution ...²⁰

- 6.27 DIMA's supplementary submission also advised of its worldwide media campaign to inform smugglers of increased penalties and of the risks involved in trying to enter Australia illegally by boat.²¹ Further information can be obtained from the DIMA publication, *Protecting the Border—Immigration Compliance*.²²

Performance so far

- 6.28 While boat people continue to arrive off the north west of Australia, Mr Metcalfe advised the Committee that a large number of vessels had probably been prevented from leaving Indonesia due to the cooperation between the AFP and its Indonesian counterparts.²³
- 6.29 Mr Bill Farmer, Secretary to DIMA, has also told the Senate Legal and Constitutional Legislation Committee that between November 2000 and February 2001 there had been a reduction in the number of people arriving unlawfully by boat—1 315 down from 3 104 in the previous year. (There had also been a substantial reduction in the number of unauthorised air arrivals in the first 7 months of the current financial year.)²⁴

18 DIMA, *Transcript*, 30 January 2001, p. 259.

19 DIMA, *Submission No. 48*, Volume 3, p. S628.

20 DIMA, *Transcript*, 30 January 2001, p. 259.

21 DIMA, *Submission No. 48*, Volume 3, p. S629.

22 DIMA, *Protecting the Border—Immigration Compliance*. 2000 Edition, pp. 25–9, 45–50.

23 DIMA, *Transcript*, 30 January 2001, p. 259.

24 Senate Legal and Constitutional Legislation Committee, *Transcript 20 February 2001*, p. 122.

- 6.30 A media release from the Minister for Customs on 2 August 2001, however, indicated that the number of SIEVs arriving in the 2000–01 financial year was 4295 compared to the total of 4434 for the previous financial year.²⁵
- 6.31 Mr Farmer also told the Senate committee that Indonesia continued to detain people who were en route to Australia by boat and that there were currently 546 illegal immigrants detained in Indonesia under regional cooperation agreements.²⁶ The Committee notes an article from the Australian Associated Press of 18 May 2001 which reported that Indonesian authorities had over the previous year intercepted over 1100 people from the Middle East who had been destined for Australia. During the previous week, the article noted, 227 people had been intercepted in the ports of Medan and Makassar. According to an Indonesian official the flow of potential illegal immigrants from the Middle East to Australia was increasing.²⁷
- 6.32 The Committee is satisfied that the Minister and DIMA are doing all they can to address this issue. The need for continued effort will always remain for as long as people are subjected to persecution and human rights abuse. The Committee agrees with Mr Metcalfe when he said:
- While the numbers have dropped, we do have continuing information about people seeking to travel to Malaysia and Indonesia to access Australia. While there have been strong efforts to reduce Australia's attractiveness as a destination, it ultimately becomes an economic question as to whether Australia is harder to get to or cheaper to get to than some other destination. It is that very complex set of issues that will determine the numbers we see. We have been effective in dealing with the issue, but the price of that is continued work and continued vigilance.²⁸
- 6.33 However, there will be occasions when SIEVs will evade detection by Coastwatch and be able to land their cargo. The incident when 24 suspected illegal immigrants were detained some 1 300 km north of Perth in April 2001,²⁹ and the warning from Indonesia of increased flows of boatpeople, serves as a reminder that Coastwatch must not let its guard drop.

25 Senator the Hon Christopher Ellison, Minister for Justice and Customs, *Interception by Customs near Ashmore*, Media Release, 2 August 2001.

26 Senate Legal and Constitutional Legislation Committee, *Transcript 20 February 2001*, p. 123.

27 Australian Associated Press, *Indonesia warns of increase in illegal immigrants*, 18 May 2001.

28 DIMA, *Transcript*, 18 August 2000, p. 62.

29 AAP Wire Service, *WA: Police detain 24 suspected illegal immigrants on west coast*, 19 April 2001.

Boat people arriving along the east coast of Australia

- 6.34 The east coast corridor for illegal immigrant entry poses a different challenge for Coastwatch because the entry methods are covert and the consequence if the vessel makes landfall on the populous eastern seaboard is likely to be front page headlines.
- 6.35 Mr Metcalfe told the Committee that the people attempting to enter via the east coast of Australia were ethnic Chinese Vietnamese—a group of about 280 000 which had been displaced from Vietnam during the 1978 Sino-Vietnamese border conflict. They had been granted refugee status by China in the late 1970s with about \$US1 billion of international aid funding assisting their resettlement. However, Mr Metcalfe commented that the group had ‘shown themselves to be particularly interested in foreign travel’ with large numbers illegally travelling to Hong Kong and Japan.
- 6.36 Following a spate of arrivals, an MOU had been negotiated in 1995 with the People’s Republic of China (PRC). The MOU allows any member of the Sino-Vietnamese group to be repatriated to the PRC. This did not contravene the 1951 Refugee Convention because they were being returned to a safe third country from whence they had come. Mr Metcalfe concluded that the MOU had been particularly effective with this group of boat people.³⁰
- 6.37 A consequence of this success is that the people smugglers have attempted covert delivery of their charges. This impacts on Coastwatch because such illegal efforts are harder to detect, and the consequences of failure is likely to result in considerable media attention. In fact, two such ‘unexpected’ boat arrivals—at Holloways Beach, Cairns; and at Nambucca Heads, NSW—in March and April 1999 led to the Heggen Inquiry and subsequently to the Prime Minister’s Task Force review.³¹
- 6.38 After the announcement of the Prime Minister’s review, but before the release of the report, Coastwatch successfully coordinated the interception of another SIEV near Broken Bay NSW. The 40 metre long vessel had been detected 600 nm offshore and monitored for some 11 days until it crossed into Australia’s territorial sea. The vessel was apprehended and escorted

30 DIMA, *Transcript*, 30 January 2001, p. 258.

31 Minister for Justice and Customs, Senator the Hon Amanda Vanstone, *Minister orders inquiry*, Media Release, 12 March 1999; Australian Customs Service, *Heggen inquiry extended to Nambucca Heads*, News Release, 10 April 1999; The Prime Minister, the Hon John Howard MP, *Coastal surveillance task force*, Media Release, 12 April 1999.

to Sydney.³² A supplementary submission from DIMA advised that the master of the vessel was successfully prosecuted for offences under the Migration Act and was sentenced to 18 months imprisonment to serve 12 months.³³

- 6.39 A further SIEV successfully offloaded its passengers at Holloways Beach, Cairns in July 2000. There followed a series of arrests in Cairns and Brisbane which culminated in the arrest 300 nm north of Cairns of the 40 metre fishing vessel which had brought them to Australia.³⁴
- 6.40 Mr Metcalfe told the Committee that in this instance the people had each paid around \$US30 000 to the people smugglers and were 'virtually being held hostage' at Holloways Beach until confirmation that their relatives had paid the amount to the organisers in the PRC.³⁵
- 6.41 The supplementary submission from DIMA advised that it was determined there was insufficient evidence to charge 7 of the 11 crew members of the vessel. The 4 other crew members received sentences ranging from 12 months to 4½ years imprisonment. As well, 2 onshore organisers were sentenced to 2 years to be released after 1 year. Upon release DIMA advised they would be removed from Australia.³⁶

Efforts to combat the smugglers

- 6.42 Mr Metcalfe told the Committee that the Department's overseas information campaign had proved most effective in the PRC. There had been extensive work in the southern provinces where the people originated from and the campaign would increasingly be extended elsewhere.³⁷
- 6.43 As well, recent amendments to the Immigration Act had increased penalties for people smuggling. Penalties now range from up to 10 years imprisonment for smuggling 5 or fewer people, to 20 years for smuggling more people.³⁸ A supplementary submission from DIMA provided as an attachment details of the results of prosecutions in the Northern Territory

32 Australian Customs Service, *Suspect illegal entrant vessel boarded near Sydney*, News Release, 5 June 1999.

33 DIMA, *Submission No. 61*, Volume 4, p. S709.

34 Minister for Justice and Customs, Senator the Hon Amanda Vanstone, *Suspect boat detained by Customs—alleged organisers arrested*, Media Release, 15 July 2000.

35 DIMA, *Transcript, 18 August 2000*, p. 61.

36 DIMA, *Submission No. 61*, Volume 4, pp. S709–10.

37 DIMA, *Transcript, 18 August 2000*, p. 63.

38 DIMA, *Submission No. 47*, Volume 3, p. S628.

and Western Australia of the crews of SIEVs.³⁹ The sentences were commonly between 2 and 4 years with the maximum being 7 years, 3¹/₂ years non parole—this was for a crew member of a boat carrying 281 illegal immigrants which arrived at Christmas Island in February 2000.⁴⁰

- 6.44 The Committee also notes that the recently introduced *Crimes Amendment (Age Determination) Bill 2001* will allow officials to x-ray the wrists of people unwilling to disclose their identity to determine age.⁴¹
- 6.45 A supplementary submission from DIMA has detailed Australia's efforts to enter into agreements with foreign governments aimed to combat people smuggling. The submission advised that the department has entered into discussions/negotiations or has agreements with the East Timor Transitional Administration, Indonesia, Iran, Jordan, Pakistan, Papua New Guinea, PRC, Syria, and Turkey.⁴²
- 6.46 The Committee notes that DIMA and the AFP have also established a strike force to prevent people smuggling. Articles in the media have indicated that, in March 2001, investigations carried out by the strike force have resulted in the break up of a people smuggling and money laundering syndicate with arrests in Australia, Hong Kong and the United Kingdom.⁴³

The Committee's conclusion

- 6.47 The Committee believes the risk of covert landings along Australia's east coast will remain for some time despite the efforts of DIMA to combat the problem at source and Coastwatch's efforts at detection. This is because people smugglers are involved with the illegal departure of between 50 000 and 100 000 people from the PRC each year.⁴⁴
- 6.48 However, the Committee is satisfied that covert smuggling on the east coast has achieved little success to date. The evidence for this view was provided by DIMA witnesses who told the Committee that interviews with illegal immigrants who have been caught in Australia have indicated they had not arrived covertly by boat.⁴⁵ The issue has been discussed in Chapter 3.

39 DIMA, *Submission No. 59*, Volume 4, pp. S678–706.

40 DIMA, *Submission No. 59*, Volume 4, p. S702.

41 Minister for Justice and Customs, Senator the Hon Christopher Ellison, *New technology to combat people smuggling*, Media Release, 7 March 2001.

42 DIMA, *Submission No. 59*, Volume 4, pp. S674–6.

43 AAP Wire Service, *Arrests a big breakthrough in people smuggling crackdown*, 14 March 2001.

44 DIMA, *Transcript, 18 August 2000*, p. 64.

45 DIMA, *Transcript, 18 August 2000*, p. 57.

- 6.49 There is, however, a warning for those combating people smuggling in the north west of Australia. If Australia's efforts to stem the flow of boat people from the Middle East succeed and enable Australia to repatriate such people to their source country, the people smugglers may well switch to covert smuggling. The risk will be compounded with the growth of a nucleus of people resident in Australia who may be prepared to be the Australian link in any smuggling chain.
- 6.50 It is unrealistic to expect any Coastwatch organisation to provide total coverage of the coastline all of the time, so good intelligence and risk management will be crucial to maintaining covert landings at an acceptable level. From time to time, boats carrying illegal immigrants are bound to evade detection and make landfall.⁴⁶ The test for Coastwatch will be its ability to respond to these incidents to 'plug the gap'.
- 6.51 The Committee is also confident that DIMA is doing what it can to combat people smuggling through its contacts with the governments of foreign countries that are the source countries or transit points for illegal immigrants.

The movement of people across the Torres Strait

- 6.52 During the Committee's inspection tour of the Torres Strait it was told that annually there were over 40 000 people movements between the southern coast of Papua New Guinea (PNG) and islands in the Strait. A DIMA publication indicates that the number of such movements has increased substantially, from 21 000 in 1994 to 46 000 in 1999–2000.⁴⁷
- 6.53 The movement of such large numbers of people across the Torres Strait provides a challenge to authorities to identify movements that are associated with illegal activities. The problem is compounded because the travel time by boat from PNG to the nearest island in the Strait can be as brief as 15 minutes and to the Cape York Peninsula about 8 hours.⁴⁸
- 6.54 The control and management of people movements is affected by the Torres Strait Treaty between Australia and PNG. The Treaty which was signed in 1978 describes the boundaries between the two countries and how various areas within the Strait may be used.

46 For example, in April 2001, 24 suspected illegal immigrants from Sri Lanka landed on the coast near Exmouth Western Australia. AAP Wire Service, *Police detain 24 suspected illegal immigrants on west coast*, 19 April 2001.

47 DIMA, *Protecting the Border—Immigration Compliance*. 2000 Edition, p. 50.

48 AFP, *Submission No. 43*, Volume 3, p. S585.

- 6.55 A large proportion of the Strait has been defined as the Torres Strait Protected Zone.⁴⁹ Within the zone and also in the nearby coastal areas of PNG, Torres Strait islanders and the coastal people of PNG are able to move freely and carry on traditional activities without the need for passports and visas. Traditional activities include:
- activities on land such as gardening and food collection;
 - activities on water such as fishing for food;
 - ceremonies and social gatherings; and
 - traditional trade.⁵⁰
- 6.56 However, no evidence was provided to the Committee to indicate that people smuggling was a major issue. This may in part be due to the remoteness of the Strait and Cape York Peninsula and also to a 1994 MOU between Australia and PNG. The MOU provides that 'people who cross the international border illegally in the Torres Strait will be returned.'⁵¹
- 6.57 A submission from the AFP stated that the major law enforcement issue for the area is the 'structured small-scale importations of cannabis from PNG to Northern Australia.' The drugs were being transported by fibreglass banana boat and aluminium dinghies from PNG to islands in the Strait and to Cape York Peninsula. Australian registered trawlers and light aircraft were also being used. In the mistaken belief that Coastwatch aircraft could not operate at night, illegal cross border activities tended to be carried out after dark.⁵²
- 6.58 The importation is funded by various goods leaving Australia. The AFP submission commented:
- Small amounts of cannabis is exchanged for cash, firearms, ammunition, fuel, outboard motors, dinghies, pornographic videos, methylated spirits, alcohol and food. Intelligence shows that relatively small quantities of munitions and methylated spirits are exchanged for cannabis. Generally single firearms are exported however caches ranging from five to seven firearms have been seized or reported. The types of firearms exported include handguns, rifles of various calibres, SKS and SKK semi-automatic
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49 About two thirds of this zone fall within Australia's seabed jurisdiction. Several islands are within the PNG jurisdiction but are Australian territory with their own 3 nm territorial seas. There is also a fisheries jurisdiction area which encompasses all of Australia's islands in the strait.

50 Department of Foreign Affairs and Trade, *Torres Strait Treaty and you*.

51 DIMA, *Submission No. 48*, Volume 3, p. S627.

52 AFP, *Submission No. 43*, Volume 3, pp. S585, S588.

carbines and shotguns. Methods of importation and exportation can be described as ad hoc, opportunistic and unsophisticated nevertheless they are effective.⁵³

- 6.59 The submission concluded that Coastwatch provided a vitally important role in ‘the detection of drug importations, people smuggling and firearms exportations’ and that ‘carefully planned and coordinated night operations’ involving Coastwatch aircraft and Customs vessels would provide useful intelligence and deter some criminal activities. The submission also noted that the installation of a ‘Suricate coastal surveillance radar (microwave) or high frequency ground wave radar on a strategically located island’ would be capable of ‘detecting and tracking small craft’ and augment Coastwatch surveillance.⁵⁴
- 6.60 The Committee has overflown islands in the Torres Strait during its inspection tour of northern Australia. The Committee has also been briefed by local officers of Commonwealth and Queensland Government agencies. The Committee was impressed by the proximity of the islands to each other and the Australian mainland and the consequent challenges this poses for law enforcement. The Committee believes that the installation of strategically placed surveillance radar facilities in the Torres Strait would enable continuous monitoring of the region and provide valuable intelligence for Coastwatch-coordinated operations. Enhancing radar coverage is of national significance as it would supplement Australia’s existing or future Defence radar coverage of the region.
- 6.61 The Committee notes Coastwatch’s advice in a supplementary submission that it has engaged a consultancy firm to undertake a study of Torres Strait surveillance requirements.⁵⁵

Recommendation 6

- 6.62 **Based on Coastwatch’s review of surveillance requirements in the Torres Strait, the Government should consider providing additional resources to increase surveillance coverage of the Torres Strait.**

53 AFP, *Submission No. 43*, Volume 3, p. S587.

54 AFP, *Submission No. 43*, Volume 3, pp. S588, S587.

55 Customs, *Submission No. 56*, Volume 4, p. S663.

Illegal fishing by foreign vessels

- 6.63 Dwindling fish stocks are a major concern to governments worldwide. Mr Frank Mere, Managing Director Australian Fisheries Management Authority (AFMA) told the Committee:

The United Nations Food and Agriculture Organisation estimates that one-half of the world's maritime fisheries are already fully exploited, with an additional one-sixth being overexploited. Coupled with this, we have an increasing growth in the number of world fleets and less homes, if you like, in which those fleets can legally fish.⁵⁶

- 6.64 A further factor is the likely ratification by Australia of the UNCLOS provisions relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks. This agreement will require additional monitoring of fishing activities beyond the 200 nm limit.⁵⁷ A supplementary submission from Customs acknowledges that the agreement will require Australia to undertake 'fisheries surveillance and law enforcement action in a range of regions beyond Coastwatch's current area of operations.'⁵⁸

Fishing off the north and north west coasts of Australia

The pressure to fish illegally in Australian waters

- 6.65 During its inspection tour of northern Australia the Committee participated in two Coastwatch patrols between Darwin and Broome. The first was a strategic surveillance patrol along the 200nm limit to Ashmore Reef. The second patrol was a tactical flight in response to a SIEV that had been detected.⁵⁹
- 6.66 During the patrols the Committee saw at first hand the large number of Indonesian fishing boats that are allowed to fish in Australian waters around and to the south of Ashmore Reef under an MOU with Indonesia. The MOU defines an area where traditional Indonesian fishing boats are

56 AFMA, *Transcript, 8 September 2000*, p. 86.

57 DIMA, *Transcript, 30 January 2001*, p. 283.

58 Customs, *Submission No. 56*, Volume , p. S667.

59 Further information about the incident can be found in the House of Representatives publication, *About the House, Issue 6 November/December 2000*, and on the website at: www.aboutthehouse.aph.gov.au

permitted. These boats are non-motorised sail powered vessels classified as Type 1 and Type 2 vessels. Motorised fishing vessels, classified as Type 3, are not permitted within the 200 nm zone.⁶⁰

- 6.67 A supplementary submission from AFMA cited a CSIRO reef top survey of the area within the MOU which indicated severe overfishing of the species targeted by the traditional fishermen—trochus, beche-de-mere (trepang) and shark.⁶¹ Consequently, there is increasing pressure for traditional fishermen to fish illegally in Australian waters. As Mr Peter Venslovas, Senior Manager Compliance, AFMA, put it:

I do not have specific figures in relation to the current prices or market prices for shark fins or trochus shells, but we understand that, if an Indonesian boat can make a foray into the Australian fishing zone and escape successfully, then the investment that is directed towards that voyage is more than recouped on that first voyage, and that would include the value of the boat.⁶²

Coastwatch's performance

- 6.68 Figures provided by AFMA at a public hearing indicated that the apprehension rate of illegal fishing boats in 1998 was not high.⁶³ The figures provided for 1999 in an AFMA supplementary submission showed a deterioration in apprehension rate. For example, the rates for the areas to the east of Ashmore Reef showed the apprehension rate for Type 2 vessels and Type 3 vessels dropping from 2% and 6% in 1998 to 0.8% and 1.9% in 1999.⁶⁴
- 6.69 At the hearing Mr Venslovas commented that the apprehension rate figures should be interpreted with some caution because of the likelihood of multiple sightings of the same vessel. This was likely because the Coastwatch surveillance aircraft were usually asked by AFMA to remain covert to assist apprehension and this prevented positive identification of individual vessels.⁶⁵
- 6.70 Commenting on 'the ones that got away' Rear Admiral Shalders told the Committee that Coastwatch sometimes made a sighting which could not be dealt with because of the lack of assets in the area. He gave an example

60 A description of the vessels can be found at: AFMA, *Submission No. 46*, Volume 3, pp. S609–10.

61 AFMA, *Submission No. 46*, Volume 3, p. S610.

62 AFMA, *Transcript, 8 September 2000*, p. 94.

63 The figures were the ratio of apprehended boats divided by the number of boats detected plus the number not detected but subsequently arrested during a surface interdiction patrol.

64 AFMA, *Transcript, 8 September 2000*, p. 96; *Submission No. 46*, Volume 3, p. S621.

65 AFMA, *Transcript, 8 September 2000*, pp. 93, 96.

of four fishing vessels inside the line north of Arnhem Land against which a response could not be mounted.⁶⁶

6.71 A second reason for illegal fishing vessels escaping the net is that Australian response vessels are diverted to higher priority tasks. Mr Venslovas acknowledged that when an issue involving possible illegal immigrants arose fisheries matters would take second place.⁶⁷ The Committee too noted a similar redirection of priorities when the surveillance patrol it was on detected three illegal fishing boats, but the RAN patrol boat sent in response was diverted to assist in apprehending a SIEV.

6.72 However, despite these factors, Mr Geoffrey Rohan, General Manager Operations AFMA, told the Committee:

I note that there are many fishing vessels in Indonesian and Papua New Guinea waters, but particularly Indonesian waters, most of them Indonesian nationals, but some of them are also foreign vessels flagged or licensed by Indonesia that are tempted to come across the line, and I believe that we have been able to contain that to a large extent.⁶⁸

Combating the problem

6.73 There are three aspects to combating the problem of illegal fishing:

- the ability to detect;
- the ability to respond; and
- the ability to deter.

6.74 The Committee believes that at present Coastwatch's ability to detect illegal fishing boats is adequate and will improve as new land based radars such as JORN and surface wave radars become fully operational or are introduced. Acting in Australia's favour is the fact that illegal fishing vessels are for the most part far slower than the RAN patrol boats or Customs Bay Class vessels sent to capture them and Australian and international law permits hot pursuit of vessels escaping into international waters.

6.75 On the other hand, evidence of the low apprehension rate indicates the ability to respond is a major factor limiting performance. While the data

66 Customs, *Transcript*, 30 January 2001, p. 281.

67 AFMA, *Transcript*, 8 September 2000, p. 87.

68 AFMA, *Transcript*, 8 September 2000, p. 91.

provided is for 1998 and 1999, comments regarding the diversion of surface assets from fisheries matters to higher priorities, as well as the Committee's first hand experience, indicates the situation has not changed.

- 6.76 With the apparent depletion of stocks in the MOU area, the temptation to fish in Australian waters is almost certain to increase. In fact Rear Admiral Shalders told the Committee that illegal fishing activity was increasing, from 50 vessels apprehended in 1998–99, through 79 in 1999–2000, to 65 in the first 7 months of 2000–01.⁶⁹
- 6.77 Also, if at some future time Australia and Indonesia decide to ban fishing in the MOU to allow stocks to recover, the pressure will further increase. The Committee recalls the substantial number of Type 2 vessels it observed legally fishing in the MOU. The Committee notes that the Draft Management Plan for the islands within the MOU, released in May 2001, proposes the closure of the Cartier Island Marine Reserve to traditional Indonesian fishermen.⁷⁰
- 6.78 The Committee believes therefore it is important to increase Australia's ability to respond to incursions of foreign boats that may be fishing illegally. One way may be to boost Australia's presence in northern waters through the lease of additional vessels to respond when illegal fishing boats are detected or to undertake medium term patrols of the region.

Recommendation 7

- 6.79 **Defence, Coastwatch, and Customs with advice from the Australian Fisheries Management Authority should review options for increasing Australia's ability to respond to illegal fishing in northern waters. If warranted, the Government should consider increasing Australia's response capability in northern waters.**
- 6.80 Regarding deterrence, the Committee was advised by Rear Admiral Shalders that since December 1999 AFMA was able to conduct 'administrative seizures' which entailed the confiscation of gear and catch but with the release of the boat.⁷¹ However, Mr Rohan told the Committee

69 Customs, *Transcript*, 30 January 2001, p. 282.

70 EA, *Ashmore Reef National Nature Reserve and Cartier Island Marine Reserve Draft Management Plans*, May 2001, p. 32.

71 Customs, *Transcript*, 30 January 2001, p. 282.

that 'the vessels seized in northern Australia by and large are forfeited to the Crown.'⁷²

- 6.81 As well as forfeiture of vessel and catch, penalties include fines up to \$550 000. However, Mr Venslovas told the Committee that under UNCLOS Article 73, penalties under national laws could not include imprisonment. On the other hand, recidivists who had breached the conditions of previous bond arrangements could be imprisoned.⁷³ A supplementary submission from AFMA advised that the gaol terms for recidivists have ranged from 30 days to 525 days.⁷⁴
- 6.82 Mr Venslovas also told the Committee the sentences handed down by the courts was not helpful in creating a deterrent effect. He said:
- In terms of recidivists, we do have experiences when the occurrence of repeat offenders is quite high. However, it gets down to the deterrent effect our actions are having ... It is possibly true to say that, with the amount of recidivism, certainly in some areas we are not having the desired level of deterrence that we would like to have there, but we are at the mercy of the courts in terms of the penalties that are handed down.⁷⁵
- 6.83 A supplementary submission from AFMA stated that 'in Broome it [was] not uncommon for offenders to be apprehended on three separate occasions and sometimes more.'⁷⁶
- 6.84 The Committee believes it would be inappropriate for it to comment on the leniency or otherwise of the courts. The Committee recalls comments made to it during its inspection tour that would indicate that lengthy gaol terms might be having limited deterrence. This was because, it was alleged, prisoners received medical and dental treatment and were able to return to Indonesia with money and they had earned during their sentence. While such amounts might be modest, it could represent a reasonable sum in their home country.
- 6.85 A supplementary submission from DIMA advised that 'Indonesian nationals serving sentences for fisheries and people smuggling offences are paid gratuities to provide for daily necessities'. They were able to accumulate these to purchase items such as television sets and video cassette recorders. However, the Migration Act enabled the

72 AFMA, *Transcript*, 8 September 2000, p. 90.

73 AFMA, *Transcript*, 30 January 2001, p. 311.

74 AFMA, *Submission No. 57*, Volume , p. S669.

75 AFMA, *Transcript*, 30 January 2001, p. 311.

76 AFMA, *Submission No. 57*, Volume , p. S669.

Commonwealth to seize valuables and cash to cover the costs of detention and removal.⁷⁷ The money and valuables of unlawful non-citizens were seized when they were about to be repatriated, but they were allowed to keep some cash to enable them to travel to their home villages when they arrived in their country of origin.⁷⁸

6.86 The Committee expects this aspect of the Migration Act to be applied when people convicted for people smuggling and fisheries offences are removed from the country.

6.87 It occurred to the Committee that, as with countering the boat people arriving in the north and north west, in the long term it is better to solve the problem at source. For example, providing aid to Indonesian fishing communities which was designed to promote fish farming could help to alleviate the pressure on wild fish stocks.

6.88 The evidence from AFMA that Australia's legal response did not seem to be having the desired deterrent effect appeared to contradict other evidence from AFMA. Mr Rohan argued that a coercive capacity was needed because illegal fishermen were becoming increasingly aggressive because of fear of losing their vessels. He said:

To a large extent, we are dealing with people who are traditional fishers and not well armed. ... We sense that the response that the boarding parties are getting is of increasing resistance and less respect for the Australian authorities boarding the vessels, and that is fed by desperation from the prospect of losing their vessels if they come to port. As the vessel increases in value, that desperation increases.⁷⁹

6.89 Mr Venslovas cited an incident in 1998 where the crew of an Indonesian vessel attempting to abscond hit the shadowing Coastwatch helicopter with sinkers and other objects. He also cited occasions where fisheries officers were threatened by knives and machetes.⁸⁰

6.90 The implication of these remarks—that the Customs Bay Class vessels should be armed—was made explicit by Mr Rohan when he said:

... if the Customs Bay Class vessels were going to apprehend foreign fishing vessels—and the sorts of vessels they are likely to

77 Division 10 of the *Migration Act 1958* contains provisions relating to the costs of detention, removal and deportation.

78 DIMA, *Submission No. 59*, Volume 4, p. S676.

79 AFMA, *Transcript, 8 September 2000*, pp. 88, 90.

80 AFMA, *Transcript, 8 September 2000*, p. 89.

come across will be bigger than the Bay Class vessels—it helps to have some coercive stopping power.⁸¹

- 6.91 Air Vice Marshall Allan Houston, Head Strategic Command, acknowledged that there had been instances where non-lethal use of weapons had been used against illegal fishermen in northern waters.⁸²
- 6.92 However, Rear Admiral Shalders responded by saying that of the 79 fishing vessels dealt with in 1999–2000 he could not recall where force had been used against uncooperative illegal fishing vessels. It was a very rare occurrence, he added, and he unequivocally stated that no force had been needed to deal with the 65 foreign fishing vessels dealt with in the current financial year to the time of the hearing.⁸³
- 6.93 On the basis of the evidence before it, the Committee considers the argument that there is **increasing** violence by alleged illegal fishermen against the authorities has not been sustained. Consequently, the Committee does not believe there is a case for fixing weapons to the Customs vessels. The Committee notes that recent amendments to the legislation allow Customs officers to carry ‘approved firearms and other personal defence equipment’.⁸⁴ The Committee considers that at present this should be sufficient.
- 6.94 Whether RAN or unarmed Customs vessels are used in apprehending illegal fishing vessels is a management issue. The Committee is confident that Coastwatch in deciding which asset to deploy would be mindful of the possible response of the target vessel. It is not as if vessels resisting apprehension are able to quickly escape. The surveillance capability of Coastwatch and Australia’s right of hot pursuit up to the territorial waters of another country will mean that there will be adequate time to bring the necessary coercive power to bear.
- 6.95 An additional point made in a Defence supplementary submission is relevant. The comment provides a strong argument for caution in any decision to arm Customs vessels.

... enemy merchant vessels, which may be taken to include GNCS vessels [vessels on government non-commercial service], may be attacked as military objectives if they are, “armed to an extent that they could inflict damage to a warship. This excludes light individual weapons for the defence of personnel ...”. Such a

81 AFMA, *Transcript*, 30 January 2001, p. 280.

82 Defence, *Transcript*, 30 January 2001, p. 281.

83 Customs, *Transcript*, 30 January 2001, p. 281.

84 Customs, *Submission No. 25*, Volume 1, p. S253.

definition would most likely render armed GNCS vessels liable to attack in time of armed conflict.⁸⁵

- 6.96 The Committee considers that it is inappropriate to arm civilian vessels.

Fishing in the Southern Ocean

- 6.97 Australia lays claim to extensive areas of Antarctica and as a consequence has a large economic exclusive zone (EEZ) in the Southern Ocean adjacent to the Australian Antarctic Territory. There is also an EEZ around the Southern Ocean Heard and McDonald Islands (HIMI) some 4 000 km south west of Australia, and Macquarie Island between Tasmania and Antarctica.
- 6.98 Currently the main fishery around HIMI is for the Patagonian toothfish. The Patagonian toothfish are long lived, slow growing species and are only able to slowly replenish their numbers. Consequently, the potential impact of overfishing is more devastating.
- 6.99 The Committee understands that the value of this fishery to licensed Australian fishing boats is \$30m per annum on a sustainable yield basis. The value of the fishery is therefore substantial and is likely to increase as fish stocks worldwide become depleted through overfishing.
- 6.100 In 1997, Australia demonstrated a commitment to protecting its rights in its Southern Ocean EEZ when it became apparent illegal fishing for Patagonian toothfish was occurring around the HIMI. Subsequent RAN patrols in the area in October 1997 and February 1998 apprehended three foreign fishing vessels.⁸⁶
- 6.101 The submission from Customs acknowledges that operations in the HIMI area are outside Coastwatch's mainstream operations, but notes that the Director General Coastwatch chairs the HIMI Operational Group. As a consequence 'Coastwatch has maintained full visibility of operations, as well as a degree of responsibility for their conduct.'⁸⁷
- 6.102 The issues relating to combating illegal fishing in Australia's remote EEZ are different to those of northern waters. The main differences are the remoteness of the area, the harshness of the conditions, and the illegal fishing vessels confronting Coastwatch which are larger and carry more sophisticated equipment.

85 Defence, *Submission No. 50*, Volume 3, p. S639.

86 Customs, *Submission No. 25*, Volume 1, p. S255.

87 Customs, *Submission No. 25*, Volume 1, pp. S255-6.

- 6.103 The principles in the discussion that follow also apply to other areas of the Southern Ocean such as the South Tasman Rise where in 1999 factory trawlers over 90 metres in length were fishing for orange roughy for between two and three weeks. The area is just outside Australia's fishing zone but is cooperatively managed with New Zealand.^{88,89}

The ability to detect illegal fishing activities

- 6.104 The submission from Customs indicated that the distances involved created a challenge for Coastwatch regarding aerial surveillance of the HIMI area. Surveillance could only be provided using highly modified aircraft which could only employ visual, non-electronic, surveillance. In 1998, Coastwatch had trialed civilian-based radar satellite surveillance, but the results had been inconclusive. This was because of limitations in the software's ability to interpret the radar contacts that had been detected. However, the submission noted that Coastwatch did have 'constant access to classified surveillance sources from Defence which are used in support of Southern Ocean monitoring.'⁹⁰
- 6.105 A way to provide additional surveillance capability was suggested in a supplementary submission from Surveillance Australia. The submission drew the Committee's attention to a scoping study by Environment Australia's Australian Antarctic Division for an air link between Australia and the Australian Antarctic Territory. The study referred to the possibility of enhancing Australia's ability to conduct air surveillance of the Territory and the Southern Ocean.
- 6.106 Surveillance Australia's submission and subsequent evidence to the Committee at a public hearing provided detailed information about the aircraft requirements for such surveillance. The submission noted that during the winter months the aircraft could be used for surveillance duties in northern Australia.⁹¹
- 6.107 A further way to increase surveillance capability was suggested by Mr Gary Clarke, Managing Director Sonacom Pty Ltd. He told the Committee of a proposal to trial the deployment of sonobuoys in the Southern Ocean to monitor fishing vessel activity. The sounds of vessels

88 AFMA, *Transcript, 8 September 2000*, p. 91; *Transcript, 30 January 2001*, p. 283.

89 As a result of successful diplomatic efforts the South African Government withdrew the licences of three South African registered fishing vessels for taking endangered fish stocks. Defence, *Submission No. 28*, Volume 2, p. S280.

90 Customs, *Submission No. 25*, Volume 1, p. S256.

91 Surveillance Australia, *Submission No. 40*, Volume 3, pp. S564–5.; *Transcript, 17 October 2000*, p. 185.

would be detected and the information relayed via satellite to Australia. He said it was probably possible to identify up to six individual vessels in an area of about 20 nm by their acoustic signatures. The buoys which cost between \$2 000 and \$5 000 had a life of about 6 months and could provide continuous monitoring.⁹²

- 6.108 The Committee is not in a position to assess the merits of the proposals to increase surveillance capability in the remote Southern Ocean. However, there appears merit in the suggestion that aircraft supplying Australia's Antarctic bases undertake some surveillance activity, even though flights would have to divert from the Australia–Antarctic route to cover the HIMI.
- 6.109 The deployment of sonobuoys would also seem to provide a suitable low cost (when considering the 24 hours surveillance capability and costs of aircraft flights) solution to surveillance needs in the medium term.
- 6.110 The Committee notes advice provided by Customs in a supplementary submission that the HIMI Operational Group is preparing an options paper for Ministers on how to address potential threats to Australia's interests in the Southern Ocean.⁹³ The Committee endorses this review.

The ability to respond to illegal fishing activities

- 6.111 Australia's primary response to illegal fishing in the Southern Ocean has been to mount surface vessel patrols of the area. The Auditor-General noted that an interdepartmental committee examination of patrol requirements of Southern Ocean in 1997 concluded that 'Coastwatch or the RAN did not possess any marine vessels capable of undertaking interception and/or surveillance activities' of the region 'on a protracted basis.' It was recommended Coastwatch and client agencies 'assess the risks, develop options and assess costs of patrols of the Southern Ocean and Australian Antarctic Territory.'⁹⁴
- 6.112 Customs agreed with the recommendation with qualification, noting in part that government funding had been provided 'to charter a civilian vessel to carry out fisheries enforcement activities'.⁹⁵ The civilian vessel currently used is the 74 metre P&O vessel the *Southern Supporter* (previously known as the *Cape Grafton*). The most recent patrol by the

92 Sonacom, *Transcript*, 8 September 2000, pp. 143–4.

93 Customs, *Submission No. 56*, Volume , p. S666.

94 Auditor-General, *Audit Report No. 38, 1999–2000*, p. 59.

95 Auditor-General, *Audit Report No. 38, 1999–2000*, p. 59.

resulted in the apprehension of an illegal fishing vessel in April 2001.⁹⁶ In addition there have been RAN patrols of the area in 1997 and 1998 undertaken by two frigates and a fleet tanker.⁹⁷

- 6.113 The submission from AFMA noted that the funding commitment for this patrol activity ceases in 2003.⁹⁸ Consequently, the Committee has raised with witnesses the requirements for vessels suitable to patrol the region. The issue as to whether these vessels should be armed to facilitate apprehension was also raised.
- 6.114 The Committee has received a submission from Mr John Simmons, Marine Consultant on the matter. He advised that several civilian vessels were capable of operating in the Southern Oceans.⁹⁹ While unable to provide the acquisition costs of suitable weapons, Mr Simmons indicated that the cost of installing the weapons specified for the replacement patrol boats would be about \$180 000.¹⁰⁰
- 6.115 The Committee has discussed the need for arming civilian fisheries patrol vessels when discussing the illegal fishing problems in northern Australian waters. In this case it is likely that the value of the illegal fishing vessel will increase the likelihood that it will attempt to resist apprehension.
- 6.116 Indeed, during the April 2001 incident the illegal fishing boat, the *South Tomi*, attempted to abscond but was finally boarded in a combined Australian and South African defence forces operation 390 km south of Cape Town after a 4 100 km hot pursuit by the *Southern Supporter*.¹⁰¹
- 6.117 This strengthens the argument for an appropriately armed patrol vessel, because had the *Southern Supporter* had the necessary coercive capacity it would not have had to engage in a costly hot pursuit and abandon its patrol area, leaving the fishing zone open to any other illegal fishing boats which might be in the area.

96 Hon Wilson Tuckey MP, Minister for Forestry and Conservation, *Australia captures million dollar foreign fish poacher*, Media Release, 12 April 2001.

97 Customs, *Submission No. 25*, Volume 1, p. S255.

98 AFMA, *Submission No. 18*, Volume 1, p. S127.

99 The vessels would need to be ice capable and have sufficient range. They would also need to be sea capable in force 8 weather conditions.

100 Mr John Simmons, *Submission No. 45*, Volume 3, p. S598–600.

101 Hon Wilson Tuckey MP, Minister for Forestry and Conservation, *Australia captures million dollar foreign fish poacher*, Media Release, 12 April 2001; Hon Peter Reith MP, Minister for Defence, *Minister congratulates ADF and AFMA on successful mission*, Media Release, 12 April 2001.

- 6.118 This needs to be balanced by the value of the HIMI fishery which is worth some \$30m annually. However, the Committee notes that the *South Tomi* was found with some 90 tonnes of Patagonian toothfish valued at \$1.6m.¹⁰² It is evident therefore that the HIMI fishery remains lucrative to potential fish poachers.
- 6.119 The comment from Defence that an armed vessel becomes a legitimate target in times of war also mitigates against arming a Southern Ocean civilian patrol vessel. If a civilian vessel was contracted to undertake armed patrols it would either have to be on long term contract/lease or the weaponry would need to be removed each time the vessel undertook other activities.
- 6.120 It occurred to the Committee that if armed patrols of the Southern Ocean were to be undertaken, an ice capable civilian vessel should be purchased or a new vessel built and added to the RAN fleet. It would be ironic if the recently captured *South Tomi*, valued at \$1.2m,¹⁰³ was forfeited to the Commonwealth and converted to a Southern Ocean patrol vessel.
- 6.121 The Committee notes there are other remote areas that need to be patrolled such as the orange roughy grounds south of Tasmania and around the Christmas Islands and the Cocos (Keeling) Islands.¹⁰⁴
- 6.122 It is likely the need for remote patrols will increase when, as has been predicted, Australia ratifies the UN fish stocks agreement. Under the agreement Australia will need to monitor the harvesting of migratory fish species which may move beyond Australia's fishing zones to the zones of other countries.
- 6.123 It would seem sensible in such cases to mount joint patrols with other countries, especially with countries with an interest in the Southern Oceans, for example New Zealand and France.¹⁰⁵ It would be appropriate for those countries to contribute to the costs of those joint patrols.

102 Australian Associated Press, *Toothfish captain pleads guilty over haul charges*, 6 August 2001.

103 Australian Associated Press, *Captain remanded over toothfish haul*, 11 May 2001.

104 AFMA, *Transcript*, 8 September 2000, p. 83.

105 The French Kerguelen Islands share a common border with the Heard and McDonald Islands.

Recommendation 8

- 6.124 **Defence should investigate, with subsequent advice to the Government, the cost of acquiring and outfitting a vessel to patrol the Southern Ocean and other remote areas, and the feasibility of mounting joint patrols of the Southern Ocean with other countries with an interest in the region.**

The ability to deter illegal fishing activities

- 6.125 Operators of illegal fishing vessels have to balance the value of their potential catch against the possibility of being detected and apprehended, and the penalties which are incurred. As is apparent from the discussion above the poachers are advantaged by the remoteness of the HIMI which decreases the chance of detection and apprehension on the high seas. However, the potential penalties can include fines of up to \$550 000 and forfeiture of the vessel. In the case of the vessels fishing in the Southern Ocean, which can be some 80 metres long, forfeiture can represent a substantial penalty. This provides a significant deterrent.
- 6.126 In the cases where three illegal fishing boats had been apprehended in 1997 and 1998, two of the masters were each fined \$100 000 and forfeited a bond of over \$2m for the release of their vessels. The owners of the third vessel lost the vessel because of action taken by their mortgagee to have it sold.¹⁰⁶
- 6.127 Mr Frank Mere, Managing Director AFMA, when providing evidence to the Committee recalled an incident in September 2000 where a Falklands registered fishing vessel was observed fishing illegally in the waters around the HIMI.¹⁰⁷ He told the Committee that the owners and skipper of the Falklands registered vessel were fined considerable amounts and their authority to work in sub-Antarctic waters had been cancelled.¹⁰⁸
- 6.128 In the case of the *South Tomi*, the Captain pleaded guilty to two charges of illegal fishing with a maximum penalty of \$1.1m. He awaits trial on a

106 AFMA, *Foreign Fishing Vessel Aliza Glacial Sets Sail*, Media Release, 23 December 1998.

107 Hon Warren Truss MP, Minister for Agriculture, Fisheries and Forestry, *Patagonian toothfish poacher sighted in AFZ*, Media Release, 26 September 2000.

108 AFMA, *Transcript, 30 January 2001*, p. 300.

further charge of disobeying an order of a fisheries officer and faces a maximum sentence of a year in jail if found guilty.¹⁰⁹

- 6.129 The Committee considers that, provided illegal fishing vessels are detected and identified, there are significant deterrents to illegal fishing in the Southern Oceans. The Committee notes the advice from Customs in a supplementary submission that 'there has been a significant downturn in the level of and impact of illegal, unlicensed and unregulated fishing activities in the HIMI area.'¹¹⁰
- 6.130 However, the April 2001 incident indicates that Customs' optimism may be premature. At the very least it indicates the need for constant vigilance.

Suspect illegal flights into Australian airspace

- 6.131 Suspect illegal flights entering and leaving Australian airspace were raised in the audit report as an issue yet to be satisfactorily addressed. The Auditor-General recommended that Coastwatch determine whether these 'flights are within its scope of operations and, if not, advise Government of options to deal with such intrusions.'¹¹¹
- 6.132 These so called 'black flights' have attracted a deal of public interest. However, the Committee agrees with Customs that the term is a misnomer,¹¹² and should more correctly be unauthorised air movements (UAMs). Customs defined UAMs as being:
- ... unidentified civilian aircraft that do not report to Customs or other authorities for clearance on arrival in Australia and which are likely to be involved in illegal activities.¹¹³
- 6.133 However, the Committee believes the definition should be extended to also cover flights **leaving** Australia that are involved in illegal activity. The Committee acknowledges that this extended definition complicates the problem of how to address UAMs and which agency should be charged with the responsibility.
- 6.134 The issue has arisen because of the limited radar coverage across much of Australia,¹¹⁴ and that for most light aircraft flights, there is no requirement

109 Australian Associated Press, *Toothfish captain pleads guilty over haul charges*, 6 August 2001.

110 Customs, *Submission No. 56*, Volume , p. S666.

111 Auditor-General, *Audit Report No. 38, 1999-2000*, Recommendation 6, p. 61.

112 Black flights usually describe hostile covert military flights on intelligence gathering missions.

113 Customs, *Submission No. 25*, Volume 1, p. S257.

to lodge flight plans. The problem facing authorities is how to distinguish a legitimate aircraft movement from one with illegal intent. A corollary is: if a flight is identified as a UAM, how are authorities to respond?

Is there an unauthorised air movements problem?

- 6.135 Evidence put to the Committee by Customs, the AFP and Defence suggests that currently UAMs do not pose a problem.
- 6.136 Mr Rodney Stone, Director Coastwatch Operations, told the Committee that he could only recall one incident 'where a light aircraft was intercepted after having made an illegal crossing of the border.' It was intercepted in central Australia and was carrying cannabis.¹¹⁵
- 6.137 Mr Michael Palmer, Commissioner AFP, told the Committee that, as part of the normal operational arrangements the AFP had with other enforcement agencies both state and Commonwealth, it would be told about suspicious sightings. He advised that AFP intelligence did 'not indicate there is any orchestrated movement of organised crime directed black flights'.¹¹⁶
- 6.138 Brigadier Mike Silverstone, Commander Northern Command, told the Committee that in order to quantify the potential problem, Defence had analysed all their air track records obtained over the past ten years. The study had only identified 'four possible flights [that] could be identified as potential cross-border flights.' However, Brigadier Silverstone acknowledged that 'the data is neither complete nor necessarily accurate' because of the limited radar coverage over northern Australia.¹¹⁷
- 6.139 Rear Admiral Shalders also told the Committee that Defence Northern Command had conducted a two-week exercise in the Kimberley region where Defence had applied all its available sensors to the area, including ground based observers and the Jindalee radar. Rear Admiral Shalders advised that :

... over a two-week period, all but one aircraft track was able to be tied down to a legitimate movement, either by flight plan or by knowledge that we had from the launching site or whatever.

114 A map of the radar coverage in Australia can be found at the Air Services Australia web site at <http://www.airservices.gov.au/classroom/airspace/06rca.htm>

115 Customs, *Transcript*, 18 August 2000, p. 15.

116 AFP, *Transcript*, 18 August 2000, p. 72.

117 Defence, *Transcript*, 30 January 2001, p. 256.

Ultimately, that one track was also checked out and it turned out to be a pastoralist who was investigating his property.¹¹⁸

- 6.140 The Committee notes that Northern Command is taking advantage of fleet concentrations during Defence exercises to use air defence ships in conjunction with the Jindalee radar to monitor particular areas such as Darwin.¹¹⁹
- 6.141 However, the Committee considers that the Torres Strait area poses a significant risk because of:
- the lack of radar coverage;
 - its proximity to Papua New Guinea—currently a source of small scale importations of cannabis to Australia; and
 - the potential for gun running to Papua New Guinea and Irian Jaya.¹²⁰
- 6.142 The Committee also believes there is potential for covert people smuggling operators to use light aircraft, especially for people who could expect to be returned to their country of departure under existing memoranda of understanding with Papua New Guinea and the Peoples Republic of China. Such operations could be expected to use the Torres Strait and Cape York as the entry corridor.

How should the authorities respond?

- 6.143 As mentioned previously a major obstacle in detecting and responding to UAMs is the lack of an integrated microwave radar system providing unbroken coverage of the Australian coastline.¹²¹ As well, the audit report identified other difficulties:
- aircraft flying at low altitude may be difficult to detect by radar;
 - aircraft speed creates problems for tracking and interception;
 - the proximity of Australian airspace to that of Papua New Guinea reduces flight times and could cause jurisdictional issues for the pursuit of aircraft leaving Australia;
 - the numerous airfields in northern Australia;

118 Customs, *Transcript*, 18 August 2000, p. 12.

119 Customs, *Transcript*, 18 August 2000, p. 12.

120 For an assessment of law enforcement issues in the Torres Strait see, AFP, *Submission No. 43*, Volume 3, pp. S583–8.

121 Customs, *Submission No. 25*, Volume 1, p. S258, see the Air Services Australia radar coverage map at <http://www.airservices.gov.au/classroom/airspace/06rca.htm>.

- the radars in Coastwatch contracted surveillance aircraft are not configured for aircraft detection;
 - Civil Aviation Safety Authority regulations require aircraft separation so could compromise interception; and
 - RAAF aircraft are constrained in their pursuit of Australian owned aircraft.¹²²
- 6.144 The Committee believes that a major advantage in countering the problem is the remoteness of northern Australia. To minimise detection a UAM flight would be as short as possible after the border had been crossed. However, the landing fields chosen are likely to be at some distance from highway infrastructure and population areas. Travelling overland from the landing area to major population centres would be time consuming and could potentially arouse suspicion from the local population however sparsely spread.
- 6.145 Customs operates a free telephone number under its Customs Watch campaign whereby members of the public can report suspicious activity. This number is linked to the Coastwatch National Surveillance Centre and the Committee was briefed privately by Coastwatch on its usefulness.
- 6.146 The Customs submission advised that the line received between 60 to 100 calls a month. It also provided an example of a call in October 1999 which resulted in the detention of 25 Afghan nationals and 2 Indonesians within four hours of their landing on the north west coast of Australia.¹²³
- 6.147 Defence also has three regional force surveillance units operating in the Pilbara, the Kimberley and Cape York which 'rely on people who live in the local areas exploiting their local knowledge in terms of observing and reporting information.'¹²⁴
- 6.148 There are two basic types of response to UAM incursions—interception or forensic examination.
- 6.149 Brigadier Silverstone advised the Committee that given the relative infrequent reporting of UAM activity, Defence's response would be to support investigation to determine, amongst other things, who had flown and the location of the landing site.¹²⁵

122 Auditor-General, *Audit Report No. 38, 1999–2000*, p. 60.

123 Customs, *Submission No. 25*, Volume 1, p. S206.

124 Defence, *Transcript, 30 January 2001*, p. 292.

125 Defence, *Transcript, 30 January 2001*, p. 257.

- 6.150 However, this is not to say Defence is ignoring the interception option. Dr Bruce Ward, Chief of Defence's Surveillance Systems Division advised the Committee that work was being done to improve JORN's ability to detect light aircraft so that it could be the primary light aircraft detection system. It would be backed up by mobile ground based radars and the future AEW&C airborne radars.¹²⁶
- 6.151 Rear Admiral Shalders also told the Committee that during the 2000 Northern Shield exercise a major theme was UAMs:

... on one occasion, we injected a synthetic track into the intelligence area of Northern Command headquarters. Our measure was how quickly that synthetic track was recognised as being something that was unidentified and therefore suspicious. On another occasion we actually flew a Coastwatch aircraft on a suspicious profile and again measured the time. ... In the first instance, the time was longer than it should have been; it was a matter of minutes. On the second occasion it was far less, but you are talking about a matter of minutes to verify that it is not on a flight plan, that it perhaps has deviated from a normal flight route or that there is some indicator that makes it suspicious ...¹²⁷

- 6.152 The outcome of the exercise was the beginning of a process to refine the operational procedures that were required for coordinating a response to a UAM.¹²⁸

- 6.153 Rear Admiral Shalders also told the Committee that it was in fact possible to successfully combat UAMs but at considerable expense. He cited the example of the US Customs Service Air Interdiction Coordination Centre:

They track every movement in the continental United States and south—20,000 movements at any one time. If an aircraft deviates from a flight plan, that centre is alerted and they then have authority to put a response asset onto that aircraft track. ... US Customs actually have their own AEW&C. They have a fleet of old P3Bs with the appropriate radar fit, and they have other P3s which they call 'slicks', which are long endurance P3 Orion aircraft able to track unidentified aircraft. They also have a fleet of Cessna Citation business jets. They have a fleet of 24 Black Hawk helicopters to take response teams to where they might need to

126 Defence, *Transcript*, 30 January 2001, pp. 304–5.

127 Customs, *Transcript*, 18 August 2000, pp. 18–19.

128 Defence, *Transcript*, 30 January 2001, p. 257.

be—this is the US Customs Service, nobody else—and they do have access to US military aircraft to intercept ...¹²⁹

- 6.154 The Committee considers that the UAM threat currently posed to Australia does not warrant such a response force.

Recommendation 9

- 6.155 **Defence and Coastwatch should continue to analyse the potential threats posed by unauthorised aircraft movements and develop response strategies. Once JORN is fully operational there should be an assessment of the frequency of unauthorised aircraft movements in the Torres Strait and Cape York.**

- 6.156 The Committee has received evidence that acoustic sensors may be able to ‘fingerprint’ aircraft through the noise produced by the engine.¹³⁰ In addition, during an inspection of CEA Technologies Pty Ltd facilities the Committee was shown how CEA’s phased array radar could identify particular types of aircraft.

Recommendation 10

- 6.157 **Defence and Coastwatch should develop contingency plans for the siting of sensors in the Torres Strait and Cape York to meet any identified unauthorised aircraft movement threat.**

Recommendation 11

- 6.158 **Customs should promote the use of the Customs Watch free telephone line in remote areas for reporting suspicious aircraft movements and other activities.**

129 Customs, *Transcript*, 30 January 2001, p. 305.

130 CEA Technologies Pty Ltd, *Transcript*, 8 September 2000, pp. 156, 158.

- 6.159 The Committee believes it is important for authorities to investigate ways to respond to UAMs which leave Australia. In mounting the necessary rapid response to a departing UAM, there would need to be pre-existing links and agreed protocols with the agencies of foreign governments to avoid the potential for an international incident.

Recommendation 12

- 6.160 **Customs, in consultation with other agencies, should create links and agreed protocols with law enforcement agencies of Australia's northern neighbours to enable the timely investigation of suspicious aircraft leaving Australian airspace.**

- 6.161 The monitoring of aircraft movements in Australia's remote north would be assisted by mandating the installation of transponders on non-commercial aircraft. Dr Ward told the Committee that mandating transponders had occurred in the Caribbean to combat drug running. He added that despite the use of squawk codes by drug runners it was still possible to filter out legitimate aircraft movements and identify suspect flights.¹³¹

Recommendation 13

- 6.162 **Customs, with advice from other agencies, should prepare a contingency plan for recommending to Government that the use of transponders on non-commercial aircraft be mandatory in areas where there is a demonstrated problem due to unauthorised air movements.**

Which agency should have primary responsibility?

- 6.163 It is clear from the recommendations of the Hudson Report that monitoring and responding to UAMs would have fallen within the area of operations of the agency envisaged by Mr Hudson. Recommendation 3 of the Hudson Report makes reference to developing joint intelligence with

¹³¹ Defence, *Transcript*, 30 January 2001, p. 310-311.

respect to breaches of law through aerial incursions, and developing a data-bank relevant to the coastal hinterland of northern Australia.¹³²

6.164 As noted above, the Auditor-General was unclear as to whether UAMs fell within Coastwatch's scope of operations.¹³³ This was reiterated by Mr Woodward when he told the Committee that Coastwatch did 'not have a responsibility for surveilling inland Australia.'¹³⁴

6.165 However, if Coastwatch was to be the agency primarily responsible for detecting, monitoring and responding to UAM incursions, or departures, it would result in Coastwatch self-tasking.

6.166 The Committee accepts the self-tasking moratorium as being a mechanism to prevent Coastwatch pursuing activities on its own volition and for which there may be no need. As well, with no legislation to underpin its activities, resulting prosecutions may be jeopardised.

6.167 The following comment in the Customs submission indicates that Customs is the agency 'closest' to the issue in jurisdictional terms:

Apprehension operations relating to UAMs identified crossing the Border and landing are, in the first instance, the responsibility of the Customs Border Division, in conjunction with the AFP and the relevant State/Territory Police Service. It should be noted, however, that Customs jurisdiction does not extend to criminal activity beyond the Border where no clear continuum with a Border incursion can be established.¹³⁵

6.168 Potential improvements in radar coverage and ability to track aircraft should be able to provide the continuum needed for UAM incursions to fall within the Customs jurisdiction. Nevertheless, it will ultimately lie with the Courts as to whether the continuum provided by radar tracking will be admissible as evidence.

6.169 On the other hand, there remains the difficulty of defining jurisdiction over aircraft taking off within Australia with the intent to leave the country, but which are apprehended **before** crossing the border.

6.170 Although Customs is the closest to this issue in jurisdictional terms, it is Defence which is closest to the issue in practical terms. This is because of its radar equipment, coordination centre, and future ability to mount a rapid response. However, if Defence were to assume prime responsibility

132 DoTC, *Northern Approaches*, p. 59.

133 Auditor-General, *Audit Report No. 38, 1999–2000*, p. 61.

134 Customs, *Transcript, 18 August 2000*, p. 15.

135 Customs, *Submission No. 25*, Volume 1, p. S258.

for UAMs it would mean it would be entering into a civilian law enforcement role. Notwithstanding its role in the 2000 Sydney Olympics, this would be a fundamental departure from its present role.¹³⁶ As the Defence supplementary submission commented:

Defence is primarily responsible for the defence of Australia, and available resources must be directed first and foremost to that purpose. In the final analysis this involves the concerted use of high levels of violence, under the authority of the Government, to destroy an enemy. Coastwatch involves, by contrast, the use of policing powers with minimal use of force.¹³⁷

- 6.171 The Committee concludes that Customs should be the agency having prime responsibility for UAMs. Customs should, if circumstances dictate, task Coastwatch to assume the surveillance and response coordination role using Defence resources as appropriate.
- 6.172 The Committee believes the ability to respond to UAM incursions is an issue of national importance as it has serious defence implications in times of conflict. The Committee therefore expects Defence to continue to take a leading role in developing strategies and procedures for responding to this potential threat.

Recommendation 14

- 6.173 Customs should review existing border legislation to determine whether it adequately allows Customs jurisdiction over UAMs entering and leaving Australia and the ability for Defence personnel, acting on Customs' behalf, to respond to UAM flights. The legislation should be amended if required.**

¹³⁶ A discussion of the use of the military in law enforcement can be found a paper by Mr Hugh Smith in *Policing Australia's Offshore Zones: Problems and Prospects*, *Wollongong Papers on Maritime Policy No. 9*, Centre for Maritime Policy, University of Wollongong, Ed. Doug MacKinnon & Dick Sherwood, *Exhibit No. 1*, pp. 74–97.

¹³⁷ Defence, *Submission No. 50*, Volume , p. S640.