

2014

Protecting Australia's offshore estate: an evolving commitment for the Royal Australian Navy

Jack McCaffrie
University of Wollongong

Recommended Citation

McCaffrie, Jack, Protecting Australia's offshore estate: an evolving commitment for the Royal Australian Navy, Doctor of Philosophy thesis, Australian National Centre for Ocean Resources and Security (ANCORS), University of Wollongong, 2014.
<http://ro.uow.edu.au/theses/4339>

UNIVERSITY OF WOLLONGONG

COPYRIGHT WARNING

You may print or download ONE copy of this document for the purpose of your own research or study. The University does not authorise you to copy, communicate or otherwise make available electronically to any other person any copyright material contained on this site. You are reminded of the following:

Copyright owners are entitled to take legal action against persons who infringe their copyright. A reproduction of material that is protected by copyright may be a copyright infringement. A court may impose penalties and award damages in relation to offences and infringements relating to copyright material. Higher penalties may apply, and higher damages may be awarded, for offences and infringements involving the conversion of material into digital or electronic form.

**PROTECTING AUSTRALIA'S OFFSHORE ESTATE: AN EVOLVING
COMMITMENT FOR THE ROYAL AUSTRALIAN NAVY**

A thesis submitted in fulfilment of the requirements for the award of the degree
of

DOCTOR OF PHILOSOPHY

from

UNIVERSITY OF WOLLONGONG

by

JACK McCAFFRIE

BA (Queensland)

MA (Strategic Studies) (ANU)

**AUSTRALIAN NATIONAL CENTRE FOR OCEAN RESOURCES AND
SECURITY (ANCORS)**

FACULTY OF LAW, HUMANITIES AND THE ARTS

2014

CERTIFICATION

I, Jack McCaffrie, declare that this thesis, submitted in fulfilment of the requirements for the award of Doctor of Philosophy in the Australian National Centre for Ocean Resources and Security, Faculty of Law, Humanities and the Arts, University of Wollongong, is wholly my own work unless otherwise referenced or acknowledged. The document has not been submitted for qualifications at any other academic institution.

Jack McCaffrie

23 April 2014

ABSTRACT

For thousands of years, navies have been used primarily for military purposes; battling against opposing naval forces, protecting trade and supporting land forces. They have other roles, which have evolved over time, and are now commonly categorized as the diplomatic and constabulary functions of navies. The diplomatic function relies on the ability of navies to operate freely at sea and to exert influence through their presence. The constabulary function of navies involves law enforcement at sea and relates to the protection of borders, natural resources and the marine environment.

Not all navies have become equally involved in the constabulary function. For some smaller navies it marks the limit of their capability, while for others it is only a very small part of their total responsibility. For example, the United States Navy undertakes relatively few constabulary functions; leaving most to the United States Coast Guard which has been established specifically for law enforcement duties. On the other hand, the Royal Navy has played a larger role in the constabulary function, alongside several civilian law enforcement agencies.

This thesis examines Australia's approach to law enforcement at sea, from the time of Federation until the end of 2012, and what it has meant for the Royal Australian Navy. The examination covers the nature and evolution of the law enforcement challenges, noting that illegal immigration and resources protection have been recurring issues from the beginning. In considering government responses to illegal activities at sea the thesis identifies the slow, tentative and relatively informal approach that characterized action until the extension of resource zones, and the arrival of large numbers of asylum seekers by boat, demanded a more effective approach. The thesis also tracks the evolution of supporting legislation, from an early trickle to a growing flood, reflecting the increasing internationalization and complexity of law enforcement at sea.

Despite the longstanding involvement of navies in the constabulary function the Royal Australian Navy was slow to engage in it, with wars, funding restrictions and government ambivalence contributing factors. This thesis demonstrates, however, that since the Navy took on the constabulary function, formally from 1967, it has become integral to the Navy's operations. Furthermore, the constabulary function has had

profound impacts on the Navy's force structure, basing, people and public image, not all of which have been to the Navy's advantage.

TABLE OF CONTENTS

Abstract	v
Acronyms	viii
Acknowledgements	x
List Of Figures And Tables	xii
Chapter One - Law Enforcement At Sea: Implications For The Royal Australian Navy	1
Chapter Two - The Functions Of Navies	30
Chapter Three - The Evolution Of The Constabulary Function Of Navies	72
Chapter Four - The Evolution Of The Constabulary Function Of Navies: The Australian Experience 1901 - 1975	123
Chapter Five - The Evolution Of The Constabulary Function Of Navies: The Australian Experience 1976 - 1988	178
Chapter Six - The Evolution Of The Constabulary Function Of Navies: The Australian Experience 1989 - 2001	228
Chapter Seven - The Evolution Of The Constabulary Function Of Navies: The Australian Experience 2002 - 2012	286
Chapter Eight - Protecting Australia's Offshore Estate: The Story So Far	356
Chapter Nine - Conclusions	374
Bibliography	384

ACRONYMS

ADF	Australian Defence Force
AFMA	Australian Fisheries Management Authority
AFZ	Australian Fishing Zone
APEC	Asia Pacific Economic Cooperation
AQIS	Australian Quarantine and Inspection Service
CCAMLR	Convention for the Conservation of Antarctic Marine Living Resources
DAFF	Department of Agriculture, Fisheries and Forests
EEZ	Exclusive Economic Zone
GBRMP	Great Barrier Reef Marine Park
HMAS	Her Majesty's Australian Ship
IMO	International Maritime Organization
IUU	Illegal, Unregulated and Unreported (fishing)
ISPS	International Ship and Port Security
LOSC	Law of the Sea Convention
MV	Motor Vessel
MOU	Memorandum of Understanding
nm	Nautical Mile
NATO	North Atlantic Treaty Organization
PSI	Proliferation Security Initiative
RAAF	Royal Australian Air Force
RAN	Royal Australian Navy
RN	Royal Navy

SAR	Search and Rescue
SIEV	Suspected Illegal Entry Vessel
SOLAS	Safety of Life at Sea (Convention)
SPREP	South Pacific Regional Environment Plan
sq km	Square Kilometre
UK	United Kingdom
UN	United Nations
UNESCO	United Nations Educational Scientific and Cultural Organization
USA	United States of America
USN	United States Navy

ACKNOWLEDGMENTS

Like many PhDs this one has taken longer to complete than I expected when setting out on the journey. As a part-time student my time was divided between paid employment and the opportunities to progress the thesis - and paid employment always came first. As well as studying part-time, living in Canberra meant only infrequent visits to the University campus. Consequently I was unable to share the camaraderie in the group of ANCORS students engaged in post-graduate study. Nevertheless, I owe thanks to several people who have guided me through the entire process and who have exhibited great patience with my often very slow progress to eventual completion.

Foremost among those I wish to acknowledge are my supervisors, Professor Martin Tsamenyi and Dr Chris Rahman. It was Professor Martin who said to me in late 2004 that it was time to start my PhD. He also said to me in late 2013 that it was time to finish my PhD. In between he caused me to think uncomfortably deeply about my topic and my arguments and always provided encouragement, when it was needed. I am especially grateful to Chris for his unerring ability to find weaknesses in my arguments and especially for his assistance in the final stages of thesis preparation.

Even though I was unable to spend much time on campus, I have really valued the opportunity to study at Wollongong. Being on the main campus especially and then the Innovation Campus, when visiting ANCORS, always provided the spark that comes from mixing with others who are engaged in study. Within the Centre I would like to thank especially Myree Mitchell for her unfailing helpfulness over many years, Dr Quentin Hanich for his interest and encouragement as he was working towards his own PhD, and Professor Greg Rose for some very useful early advice that I did not forget.

I must also mention the staff at the National Library in Canberra, especially those in the Newspapers and Periodicals Room, who were always helpful during my many hours closeted in the controlled access collection. The National Library is a real treasure and those who work there provide an excellent service.

Finally I must acknowledge my family, noting that my wife Chris and our three adult children Caroline, Jennifer and Brendan were all engaged in tertiary study at some point during my odyssey. Having Brendan awarded his PhD in 2013 provided an additional spur to my own efforts, but in any event I believe we all took inspiration from each other. Nevertheless, my special thanks to wife Chris for her constant support and encouragement and especially for her proof-reading and editing of the final draft, for which the thesis reads very much better.

	LIST OF FIGURES AND TABLES	PAGE NO.
Figures		
2-1	RAN Development of Booth's Trinity of Naval Functions	33
2-2	The Components of Naval Diplomacy	51
Tables		
2-1	Grove's Typology of Navies	34
2-2	RAN Maritime Operations 1990 - March 2005	43
2-3	Navies and Coast Guards by Capability	69
3-1	A Comparison of East Asian Surface Combatants	96
3-2	East Asian Coast Guard and Marine Police Forces	97
4-1	Customs Assets and Funding, 1902	132
4-2	Naval Personnel Strength 30 June 1908	133
4-3	Persons Admitted or Refused Admission to the Commonwealth under the provisions of the Immigration Restriction Act, 1909-1917	141
4-4	The RAN in 1920	158
6-1	Irregular Maritime Arrivals 1989 - 2001	232
6-2	Coastwatch Expenditure 1990-91 to 1996-97	249
6-3	Fremantle Class Patrol Boat Tasking For Other Than the Constabulary Function, 1989-2002	272
6-4	Comparison of Fremantle and Attack Class Performance	275
7-1	Foreign Fishing Vessel (FFV) Sightings between WA and Indonesian Coasts	287
7-2	Coastwatch FFV Statistics 2002-05	288
7-3	Irregular Maritime Arrivals 2002 - 2010	291
7-4	Irregular Maritime Arrival numbers since 2007 election	293
7-5	Coastal shipping voyage permits	299
7-6	Container Inspection Figures for Major Australian Ports FY 2003-04	318

7-7	Fremantle and Armidale Class Patrol Boat Tasking For Other Than the Constabulary Function, 2002 - 2013	336
7-8	Fremantle Class Patrol Boat Rates of Effort for 2002 and 2003	337
7-9	Fleet Unit Involvement in Constabulary Tasking	338
7-10	RAN Contribution to ADF Operations 2002 - 2005	339
7-11	Comparison of Attack, Fremantle and Armidale Classes Characteristics	343
7-12	Fremantle Class Crew Turnover for 2002-2003	346
8 - 1	Legislative Activity, 1901 - 2012	366

CHAPTER ONE

LAW ENFORCEMENT AT SEA: IMPLICATIONS FOR THE ROYAL AUSTRALIAN NAVY

This thesis will examine Australia's approach to law enforcement at sea, the policy-making and practical solutions it has considered and implemented and the legislative arrangements that have supported them. It will also examine the implications for the Royal Australian Navy (RAN) of its growing involvement in the law enforcement function, especially in recent years. In its examination the thesis will focus on the period from Australian Federation in 1901 to the end of 2012. The thesis will conclude that the changing nature and growing importance of law enforcement at sea have demanded an ever-increasing, more formalized and permanent commitment from governments. It will also conclude that the implications for the RAN have been profound and far-reaching.

Australia is an island trading nation with a vast coastline and equally extensive offshore territory and resource zones. Its coincident exclusive economic zone (EEZ) and fishing zone extend for around 10 million square kilometres (sq km).¹ The Australian continental shelf, in places extends up to 350 nautical miles (nm) includes an area of 2.56 million sq km beyond the 200 nm EEZ and continental shelf limit.² Within these zones Australia enjoys certain rights and responsibilities which have significant impacts on the national economy. These rights and responsibilities are laid out in the United Nations Convention on the Law of the Sea (LOSC).³ Briefly, they are to explore, exploit, conserve and manage the natural resources of the waters and seabed.⁴

Because of these rights and responsibilities, Australia has developed significant maritime industries. They include fishing and aquaculture, the fifth most valuable

¹ Geosciences Australia, *Oceans and Seas*, <<http://www.ga.gov.au/education/geoscience-basics/dimensions/oceans-and-seas.html>> (24 October 2013)

² Attorney General, Explanatory Statement, *Seas and Submerged Lands (Continental Shelf) Proclamation 2012*, 24 May 2012, <www.comlaw.gov.au/Details/...76...> (24 October 2013).

³ United Nations, *The Law of the Sea: United Nations Convention on the Law of the Sea*, United Nations, New York, 1983, p. 18. See in particular Article 56.

⁴ See Article 56 of *The Law of the Sea*, p. 18 for full details.

rural industry, worth some \$A2.23 billion per annum.⁵ They also include the offshore oil and gas industries. Nationally, both industries are significant although the oil industry cannot satisfy domestic demand. The expanding natural gas industry has significant export contracts with both Japan and China.⁶

Recent experience has demonstrated that the oceans' living resources are in many cases now severely depleted.⁷ This has led to attempts to regulate the harvesting of these resources and to counter attempts to take them illegally. History has shown that the sea can be used to the disadvantage of coastal states, through explicitly or implicitly illegal activities. These include illegal people movement, drug running, environmentally damaging activities and quarantine infractions. Each of these issues has provided recent regulatory challenges for Australia.⁸

These challenges have generated an appreciation of the need for regulatory frameworks and the associated policing mechanisms, to manage the 'health' of the sea, to ensure continuity of the living resources, to prevent illegal activity and to provide a balance among the needs of all the users of the sea and the needs of the States which border it; where those needs differ. For this thesis, the combination of regulatory framework and policing mechanisms will be said to comprise Australia's approach to law enforcement at sea. The Navy's involvement in this policing comprises its constabulary function which will be examined in greater detail below and in Chapter Two.

Approaches to law enforcement at sea can range from an all-encompassing coast guard with full law enforcement powers and operational capability, to combinations of several organizations, including navies, each playing different parts in the overall task.

⁵ The figure is for the financial year 2010-11. Australian Government Department of Agriculture, Fisheries and Forests, *Australian Fisheries Statistics 2011*, December 2012, p. 1, <<http://data.daff.gov.au/bus/data/warehouse/9aam.../>> (24 October 2013).

⁶ Australian Government, Department of Industry, *Australian liquefied natural gas*, <http://www.ret.gov.au/resources/upstream_petroleum/lng/Pages/index.aspx> (24 October 2013).

⁷ Kjellrun Hiis, Belinda Cleelend and Douglas Clyde Wilson, *Fisheries Depletion and Collapse*, International Risk Governance Council, Geneva, 2009, p. 1, <<http://irgc.org/wp-content/uploads/2012/04/Fisheries>> (24 October 2013).

⁸ Australian Government, Australian Customs and Border Protection Service, *Protecting our borders*. <http://www.customs.gov.au/site/page5799.asp> (24 October 2013).

As Australia's offshore law enforcement task has grown in recent years, with some elements becoming politically sensitive, there has been debate as to how best the task can be tackled.

One aspect of the debate concerns the increasing part played in law enforcement at sea by the RAN and the implications of this for the Navy. The nature and extent of the law enforcement task remain unpredictable and have impacted on RAN operations, training, patrol boat basing, personnel and reputation.

REGULATION OF THE SEA

Prior to the relatively recent series of United Nations (UN)-sponsored Law of the Sea Conferences, regulation of maritime issues gradually evolved, in the Western tradition, from the British Admiralty Courts. Through their decisions, the uses and practices of laws of the sea were substantially developed by the mid-17th century.⁹ The approach of these Courts is neatly summarized in this 1689 quote from Sir Charles Hedges, one of the courts' eminent judges:

The Court of Admiralty is a Court of Justice, and the judge who is sworn to administer it is as much obliged to observe the laws of nations as the Judges of the Courts of Westminster are bound to proceed according to the statutes of common law.¹⁰

The first serious attempt to codify the principles of the international law of the sea came in the Declaration of Paris in 1856. It laid down the rules for the abolition of privateering, the immunity of neutral goods and the effectiveness of blockade.¹¹ Subsequently, the Hague Conference of 1907 and the London Declaration of 1909 codified the rules of naval warfare. Further work was done on international maritime law between the two World Wars, including by the Hague Conference of 1930 which drafted a convention on the status of the territorial sea, but without being able to agree on its limits.¹²

⁹ John, C. Colombos, *The International Law of the Sea*, 6th ed., (1967) rpt., Longmans Green and Co., London, 1968, p. 10.

¹⁰ Colombos, *The International Law of the Sea*, p. 11.

¹¹ Colombos, *The International Law of the Sea*, p. 20.

¹² R.R. Churchill and A. V. Lowe, *The Law of the Sea*, 3rd ed., Manchester University Press, Manchester, 1999, pp. 14-15.

Following the Second World War and the establishment of the UN, an International Law Commission sought topics for codification and settled on, *inter alia*, legal regimes of the high seas and territorial waters.¹³ A report on these issues was approved for submission to the UN Conference on the Law of the Sea at the UN's Geneva session in July 1956. Conferences in 1958 and 1960 failed to reach agreement on some important issues, such as the limits of the territorial sea and fisheries limits.¹⁴ Eventually, however, the third UN Conference of the Law of the Sea, which began in 1973, adopted a convention in 1982.¹⁵ The LOSC was opened for signature on 10 December 1982 and it came into force on 16 November 1994.¹⁶

The LOSC established several regimes including a 12 nm territorial sea, methods for distinguishing between territorial waters and internal waters, and recognized the traditional right of innocent passage. It also introduced the concept of transit passage (more liberal than innocent passage) and importantly, that of archipelagic waters and the associated archipelagic sea lanes passage.¹⁷

Beyond territorial waters, the Convention allowed for EEZs extending to 200nm from the baselines, to allow coastal States to gain economic benefit from resources further offshore.¹⁸ It also mandated that neighbouring land-locked and geographically disadvantaged States must be allowed access to resources not exploited by the coastal State.¹⁹ As stipulated in Article 58 of the LOSC, within EEZs all States, subject to the provisions of the Convention, enjoy freedoms of navigation and overflight, and of the laying of submarine cables and pipelines and other related lawful uses of the sea.²⁰

¹³ Colombos, *The International Law of the Sea*, p. 22.

¹⁴ Churchill and Lowe, *The Law of the Sea*, p. 15.

¹⁵ Churchill and Lowe, *The Law of the Sea*, p. 16.

¹⁶ Churchill and Lowe, *The Law of the Sea*, p. 22.

¹⁷ United Nations, *The Law of the Sea: United Nations Convention on the Law of the Sea*, p. xxv.

¹⁸ United Nations, *The Law of the Sea: United Nations Convention on the Law of the Sea*, Articles 55-57, pp. 18-19.

¹⁹ United Nations, *The Law of the Sea: United Nations Convention on the Law of the Sea*, Article 58, p. 19.

²⁰ United Nations, *The Law of the Sea: United Nations Convention on the Law of the Sea*, Article 58, p. 19.

The LOSC also considered globally important issues such as ecology and environment. It established general principles governing the prevention, reduction and control of pollution throughout the marine environment.²¹ The Convention further established the specific rights and duties of States for the realization of their environmental and ecological goals.²² Additionally, the Convention included provisions to foster the development and transfer of marine technology and to encourage the conduct of marine research.²³

Outside the EEZ, activities on the surface and in the water column are generally governed by the provisions for the freedom of the high seas.²⁴ Activities on the sea-bed and in the subsoil of the continental shelf may come under coastal state jurisdiction in specific cases. However, the LOSC also set out the principles and regulations for the sea-bed and ocean floor beyond these limits.²⁵ It also gave regulatory power for this area to the International Sea-Bed Authority.²⁶

The LOSC obliges parties to resolve disputes peacefully and provides a variety of methods for achieving this. There is a compulsory element to the dispute resolution process, but States may take their dispute to either the International Court of Justice, arbitration, or the International Tribunal for the Law of the Sea.²⁷

Alongside the international legal framework for regulation of the oceans is the supporting legislation enacted by States to protect and promote their own interests. In Australia most of the relevant legislation exists at the Commonwealth level and reflects the number of government departments or other authorities involved – 10 according to the Customs Service annual report.²⁸ It includes legislation which empowers the Defence Force for law enforcement at sea; including the *Fisheries Management Act 1991*,

²¹ United Nations, *The Law of the Sea: United Nations Convention on the Law of the Sea*, Articles 192-4, pp. 70-1.

²² United Nations, *The Law of the Sea: United Nations Convention on the Law of the Sea*, Articles 194-6, pp. 70-1.

²³ United Nations, *The Law of the Sea: United Nations Convention on the Law of the Sea*, p. xxvii.

²⁴ United Nations, *The Law of the Sea: United Nations Convention on the Law of the Sea*, p. xxv.

²⁵ United Nations, *The Law of the Sea: United Nations Convention on the Law of the Sea*, p. xxvi.

²⁶ United Nations, *The Law of the Sea: United Nations Convention on the Law of the Sea*, p. xxvi.

²⁷ United Nations, *The Law of the Sea: United Nations Convention on the Law of the Sea*, p. xxvii.

²⁸ Australian Government, Australian Customs and Border Protection Service, *Annual Report 2011-2012*, Commonwealth of Australia, 2012, p. 4. The reference lists nine authorities; the tenth being Customs itself.

the *Customs Act 1901* and the *Crimes Act 1914*. It also includes border security legislation such as the *Migration Act 1958* and the *Border Protection Legislation Amendment and Fisheries Legislation Amendment Acts of 1999*, together with subsequent amendments to them. The development of the legal framework from the time of Federation will be discussed in chapters four to seven below.

POLICING THE REGULATIONS

Nations have taken varied approaches to maintaining good order at sea. For centuries Britain has used the Royal Navy (RN) for constabulary work, not least to ensure the advancement of Britain's interests. Today, Britain still uses the Navy to carry out its offshore policing tasks, now under the legal framework of the LOSC. The latest edition of *British Maritime Doctrine* lists three major forms of application of maritime power; one of which is 'constabulary' or 'policing'.²⁹ Many other countries have taken the same approach; using their navies for both war-fighting and constabulary tasks. Others have given the constabulary tasks to dedicated coast guards.

Ken Booth in his 1977 book, *Navies and Foreign Policy*, provided a convincing rationale for the involvement of navies in the constabulary function. He identified three functions of navies; military, diplomatic and policing.³⁰ He also nominated the three functions as elements of a trinity, in which the unifying principle is the use of the sea.³¹ Depending on the size of the navy, these functions can be expanded. The military function can involve balance of power and force projection roles, while the diplomatic function can include negotiation, manipulation and prestige roles. The policing or constabulary³² function can involve nation-building and coast guard roles. Booth also illustrated this proposition with the three functions as sides of a triangle - the military function forming the base. This accorded with his contention that the military function

²⁹ Joint Doctrine Publication 0-10, *British Maritime Doctrine*, Ministry of Defence, August 2011, p. 2-7.

³⁰ Ken Booth, *Navies and Foreign Policy*, Croom Helm, London, 1977, p. 15.

³¹ Booth, *Navies and Foreign Policy*, p. 15.

³² The term 'constabulary' is used in the RAN's adaptation of Booth's trinity of naval functions. It will be used throughout this thesis. See Sea Power Centre-Australia, *Australian Maritime Doctrine*, Defence Publishing Services, Canberra, 2000. p. 57.

was ultimately the essential one, because ‘... the essence of navies is their military character’.³³

Although the military function is acknowledged as the essential function of navies, the constabulary function has long been a major responsibility for many navies. It can be both internally and externally focussed and is mainly concerned with extending sovereignty over the coastal State’s maritime frontiers and sovereign rights in resource zones. Booth further expands the description by establishing two categories of activity, each with a number of sub-tasks. These are; coast guard responsibilities involving sovereignty, resource enjoyment and maintenance of good order; and nation-building, involving contributions to internal stability and to internal development.³⁴

Since the end of the Second World War the constabulary or protective task in territorial waters has gained importance, especially because of new and expanding avenues of economic exploitation of the sea.³⁵ In the 1980s, as the negotiations over the law of the sea continued, national jurisdiction was expected to creep outwards, enclosing more of the high seas.³⁶ Where such pressures still exist, they have the potential to extend the constabulary role of navies.

Nevertheless, policing of the immediate coastal zone has always been an important if usually undramatic role for naval forces. For many navies it remains the overriding task.³⁷ Similarly, the future of many navies will depend on their carrying out constabulary functions in those waters over which they claim national jurisdiction.³⁸ Sovereignty, good order at sea and resource enjoyment are the primary concerns of constabulary operations.

Notwithstanding the historical record, policing offshore zones also has a very contemporary aspect. These zones have grown in importance in recent years. As

³³ Booth, *Navies and Foreign Policy*, p. 16.

³⁴ Booth, *Navies and Foreign Policy*, p. 17.

³⁵ Lawrence Martin, *The Sea in Modern Strategy*, Praeger for the Institute for Strategic Studies, New York, 1967, p. 123.

³⁶ Geoffrey Till, with Craig Symonds, Bryan Ranft et. al., *Maritime Strategy in the Nuclear Age*, 2nd. ed., St. Martin’s Press, New York, 1984, p. 207.

³⁷ Booth, *Navies and Foreign Policy*, p. 265.

³⁸ Booth, *Navies and Foreign Policy*, p. 266.

Geoffrey Till noted some 30 years ago, they have come to be seen as a new source of food, energy and raw materials.³⁹ More recently, the constabulary role has seen navies involved in defending national positions on oil and gas extraction and on access to fish stocks. Clashes have occurred in the South China Sea, notably since 1974.⁴⁰ These have been caused primarily by tensions over the establishment or maintenance of a physical presence on islands and reefs, to take advantage of territorial and consequent resource claims. From 2010 there have been eruptions of tension between Japan and China in the East China Sea and between China and the Philippines in the South China Sea.⁴¹ These have involved contested rights to oil, gas and fishing resources.

Australia has been subjected to illegal, unreported and unregulated (IUU) foreign fishing activities, both in northern waters and in the Southern Ocean. Those in northern waters have involved mainly Indonesian fishing craft, often engaged in traditional fishing. More recently, these activities have become both more commercial in nature and likely to involve international criminal organizations.⁴² IUU fishing in the Southern Ocean has involved commercial operators from several countries and poses particular difficulties because of the distance of the fishing grounds from the Australian mainland.⁴³

In several regions seaborne asylum seekers have become a significant if episodic problem. They continue to be a problem between North Africa and the southern European coast.⁴⁴ They have been a problem for Australia since the late 1970s, when

³⁹ Till, *Maritime Strategy in the Nuclear Age*, p. 203.

⁴⁰ James Goldrick and Jack McCaffrie, *Navies of South-East Asia: A comparative study*, Routledge, Abingdon, Oxon, 2013, p. 192.

⁴¹ Patrick M. Cronin, *Flashpoints: The Way Forward in the East and South China Seas*, Centre for New American Security, Washington, D.C., 28 March 2013, p. 2.

⁴² Greg McLean, 'Chinese mafia funding illegal fishermen', *Northern Territory News*, 14 June 2005, p. 1. The article claimed that the Australian Federal Police was gathering intelligence on Chinese organized crime syndicates which were believed to be funding illegal fishermen.

⁴³ Two countries that have been involved are Uruguay and Honduras and their efforts have prompted a strong Australian response. See, for example, Australian Customs Service and Australian Fisheries Management Authority, *Enforcement Operations in the Southern Ocean*, August 2005.

⁴⁴ Konye Obaji Ori, 'Immigration: Italy seeks asylum overhaul', *The Africa Report*, <<http://www.theafricareport.com/International/immigration-italy-seeks-asylum-overhaul.html>> (24 October 2013).

Vietnamese asylum seekers or 'boat people'⁴⁵ began appearing off the northern Australian coast.⁴⁶ They were followed by Cambodian and Chinese refugees in the 1980s and 1990s.⁴⁷ Beginning in 1999, however, there was a shift in the pattern, with much larger numbers of asylum seekers arriving by boat. These tended to be from Central Asia and the Middle East rather than from Southeast and East Asia.⁴⁸ At the time of writing, asylum seekers, primarily from Southwest and South Asia,⁴⁹ continue trying to reach Australia by boat, despite Government efforts to stop the traffic.

Wherever such asylum seekers have appeared navies and coast guards have been engaged in trying to apprehend them, save them from unseaworthy and sometimes foundering craft and in some cases dissuade them from continuing to their intended destinations. In Australia, the RAN commitment has at times involved two or three frigates, one amphibious ship, one survey ship and up to six patrol boats; together with Sea King helicopters and Air Force P3 aircraft.⁵⁰ The effort has also involved Coastwatch aircraft, Customs patrol boats and some vessels under civilian contract.⁵¹

Another emerging issue with potential ramifications for maritime constabulary functions is the tendency for coastal States to restrict the activities of foreign flag naval vessels in their EEZs. Certain Asia-Pacific coastal States appear to be particularly active

⁴⁵ 'Boat people' was a term used informally for the first arrivals from Southeast Asia in the late 1970s. This thesis will use the terms 'asylum seeker' and 'irregular maritime arrival' which have had official status at least until the time of writing at the end of 2012.

⁴⁶ Janet Phillips and Harriet Spinks, *Boat Arrivals in Australia since 1976*, Department of Parliamentary Services, Canberra, 5 January 2011, p. 1.

⁴⁷ Lieutenant Commander D.J. Chessum, RNZN, 'The Impact of International Conventions on Efforts to Address People Smuggling into Australia', *Journal of the Australian Naval Institute*, Vol. 28, No. 1, Autumn 2002, p. 9.

⁴⁸ Chessum, 'People Smuggling into Australia', p. 9.

⁴⁹ Janet Phillips, *Background Note: Asylum Seekers and refugees: What are the facts?* Parliament of Australia, Parliamentary Library, 11 February 2013, p. 11.

<<http://parlinfo.aph.gov.au/parlInfo/download/library/prspub/HGNW6/pdf>> (24 October 2013)

⁵⁰ David Stevens, 'To disrupt, deter and deny: sealing Australia's maritime borders', in Bruce A. Elleman and S.C.M. Paine, eds., *Naval Blockades and Seapower: Strategies and counter-strategies, 1805-2005*, Routledge, Abingdon, Oxon, 2006, p. 229.

⁵¹ Australian Government, Australian Customs and Border Protection Service, *Customs and Border Protection Marine Unit Maritime Operations Support Branch*,

<<http://www.customs.gov.au/site/page5503.asp>> (25 October 2013) and *Minister Media Release: New Coastwatch fleet takes to the skies*, Thursday 28 March 2008,

<<http://www.customs.gov.au/site/content10172.asp>> (25 October 2013).

in this matter.⁵² The implication for Australia and for the RAN, is that if other States succeed in having limits placed on such activities in EEZs (limits beyond those now specified in the LOSC) then Australia may feel obliged to impose its own set of restrictions. This would inevitably increase the law enforcement burden on maritime forces, potentially resulting in a greater involvement by the RAN's surface combatant force.

The sheer variety of issues, together with their inherent complexity and political impact will cause coastal States to consider how best to manage the 'offshore estate'. In many coastal States the task is complicated by the number of government authorities involved in it. For example, Till, writing in the 1980s, noted that there were 40 agencies with overlapping maritime responsibilities in the United States of America (USA) while the United Kingdom (UK) has over 20 such organizations.⁵³

The situation in Australia is also complex, with federal, state and local government authorities sharing responsibilities. At the federal level, there are no fewer than 10 government departments and authorities involved. These include several discrete authorities with specific responsibilities; such as the Department of Agriculture, Fisheries and Forests (DAFF) Biosecurity and the Australian Fisheries Management Authority (AFMA). They also include the Departments of Defence and Foreign Affairs and Trade.⁵⁴ The Australian Offshore Constitutional Settlement and the associated legislation, which give the various states jurisdiction over waters from the baselines out to three nautical miles, exacerbates the problems.⁵⁵

⁵² Moritaka Hayashi, 'Military and intelligence gathering activities in the EEZ: definition of key terms', in *Marine Policy*, Vol. 29, No. 2, 2005, pp. 126 and 131.

⁵³ Till, *Maritime Strategy in the Nuclear Age*, p. 203.

⁵⁴ As at 2012, the complete list of Commonwealth authorities is: Australian Customs and Border Protection Service, Australian Crime Commission, Australian Federal Police, Attorney-General's Department, Department of Agriculture, Fisheries and Forests (including Biosecurity), Department of Defence, Department of Foreign Affairs and Trade, Department of Immigration and Citizenship, Department of Industry, Innovation, Science, Research and Tertiary Education, and the Office of Transport Security in the Department of Infrastructure and Transport. See, Australian Customs and Border Protection Service, *Annual Report 2011-2012*, p. 4.

⁵⁵ Stuart Kaye, 'Federal-State Relations Offshore', in Doug MacKinnon and Dick Sherwood, eds., *Policing Australia's Offshore Zones: Problems and Prospects*, Wollongong Papers on Maritime Policy No. 9, Centre for Maritime Policy, University of Wollongong, NSW, 1997. p. 230.

THE PRACTICALITIES OF LAW ENFORCEMENT AT SEA

There have been expressions of concern that law enforcement at sea may absorb resources which would be better dedicated to navies' military functions and that the constabulary functions should be left to coast guards.⁵⁶ Some maritime nations have chosen to give the responsibility to dedicated coast guards. The USA is perhaps the best example in some respects, in that its coast guard has cooperated with the Navy for many years, in wartime and peacetime operations.⁵⁷

The US Coast Guard evolved from the Revenue Cutter Service established in 1790, the Lighthouse Service, the Steamboat Inspection Service, the Bureau of Navigation and the Lifesaving Service.⁵⁸ Law enforcement, safety of life at sea and environmental protection remain central responsibilities, while the organization also remains an armed force of the USA.⁵⁹ The Coast Guard is the lead US federal government agency for maritime homeland security, for responses requiring civil authorities.

Thus, while the US Coast Guard has primary responsibility for law enforcement at sea, other law enforcement agencies, such as Customs and Border Protection, cooperate to achieve this. Similarly, the United States Navy (USN) assists the Coast Guard in its homeland security task.⁶⁰ The US Coast Guard comprises 43 000 men and women, 42 cutters, a large number of patrol craft and a fleet of 211 fixed-wing aircraft and helicopters.⁶¹ That an organization of this magnitude operates with several other agencies to meet its responsibilities, testifies to the complexity and scale of the maritime security task confronting the USA.

Much smaller countries have also opted for a coast guard in addition to a navy. Malaysia passed legislation to establish the Malaysian Maritime Enforcement Agency

⁵⁶ Till, *Maritime Strategy in the Nuclear Age*, p. 207.

⁵⁷ A Center for Naval Analyses powerpoint presentation covering the Coast Guard's relationship with the U.S. Navy, 1970-2009, <http://www.uscg.mil/history/h_militaryindex.asp> (26 October 2013).

⁵⁸ U.S. Coast Guard: A Historical Overview, <www.uscg.mil/hq/g-cp/history> (28 October 2013).

⁵⁹ U.S. Coast Guard, *Maritime Strategy for Homeland Security*, U.S. Coast Guard Headquarters, Washington, D.C., 2002. p. 9.

⁶⁰ U.S. Coast Guard, *Maritime Strategy for Homeland Security*, p. 12.

⁶¹ United States Coast Guard, U.S. Department of Homeland Security, *Aircraft, Boats and Cutters*, <<http://www.uscg.mil/datasheet/#cutters>> (26 October 2013).

in June 2004.⁶² The Agency became operational in March 2005, taking over law enforcement in Malaysia's territorial sea and EEZ. It also manages search and rescue, pollution control and anti-piracy and drug trafficking operations on the high seas.⁶³

According to Sam Bateman, the impetus for establishing the agency came from within the Royal Malaysian Navy, which considered the constabulary tasks a waste of resources and time for complex warships and their heavily committed crews.⁶⁴ Currently, the Agency operates a fleet of 84 small and medium sized vessels, two fixed-wing aircraft and three helicopters.⁶⁵

The extent to which the Royal Malaysian Navy will retain any residual responsibilities for offshore law enforcement or related tasks is unclear. The reasons given for establishing the Maritime Enforcement Agency suggest, however, that the Navy will not be keen to remain involved.⁶⁶ Conversely, any navy would find difficulty in ignoring maritime activities inimical to its national interests, simply because the law enforcement responsibility belonged to another organization.

For several countries, including Ireland, a single organization acts as both navy and coast guard. The Irish Naval Service, which comprises eight ocean going patrol vessels, has homeland security as its primary role.⁶⁷ This involves deterrence of and resistance to aggression, EEZ surveillance and the upholding of neutrality. Its coast guard functions include fishery protection, drugs interdiction, maritime safety and pollution control.⁶⁸ This approach is consistent with that articulated by Ken Booth.⁶⁹

⁶² Sam Bateman, 'Regional Coast Guards—A Growing Contribution to Maritime Order and Security', a paper delivered at the International Conference on Maritime Security Challenges in the Asia-Pacific Region in the post 9/11 Era, held in Victoria, British Columbia, 5-7 May 2005, p. 12.

⁶³ Bateman, 'Regional Coast Guards—A Growing Contribution to Maritime Order and Security', p. 12.

⁶⁴ Bateman, 'Regional Coast Guards—A Growing Contribution to Maritime Order and Security', p. 12.

⁶⁵ James Hackett, ed., *The Military Balance 2013*, Routledge, Abingdon, Oxon., 2013, pp. 318-9.

⁶⁶ Sam Bateman, 'regional navies and coastguards: striking a balance between "lawships" and warships', in Geoffrey Till and Jane Chan, eds., *Naval Modernisation in South-east Asia: Nature, causes and consequences*, Routledge, Abingdon, Oxon., 2013, pp. 253-4.

⁶⁷ Hackett, ed., *The Military Balance 2013*, p. 146.

⁶⁸ 'The Irish Defence Forces—Naval Service', < <http://www.military.ie/naval-service/organisation/roles-of-the-naval-service/> > (2 December 2013).

⁶⁹ Ken Booth, *Navies and Foreign Policy*, Croom Helm, London, 1977, pp. 15-17.

THE AUSTRALIAN APPROACH TO LAW ENFORCEMENT AT SEA

A variation of the Irish approach and a similar adherence to Booth's proposition has proven to be attractive to other navies, including Australia's. The RAN includes a derivative of the trinity of naval functions in its keystone statement on doctrine, *Australian Maritime Doctrine*.⁷⁰ It describes the constabulary role as comprising; environmental and resource management, peace operations, maritime barrier operations, sanctions and embargoes, defence force aid to civil authorities, counter-piracy operations, and search and rescue operations.⁷¹

Australia's Navy retains primary responsibility for the offshore constabulary function, with the RAN's patrol boat dedicating 3 000 patrol boat days per year to it.⁷² The Navy is supported by the patrol craft of the Australian Customs and Border Protection Marine Unit⁷³ and by surveillance aircraft of the Coastwatch organization⁷⁴ and of the Royal Australian Air Force (RAAF), to a lesser extent.⁷⁵ Navy patrol boats also carry officers of other law enforcement bodies depending on the nature of their operations. These can include Federal Police officers and officers from Customs, Fisheries and Biosecurity authorities.

Other elements of the RAN also become involved in the constabulary function. Destroyers and frigates controversially have been called on to undertake patrol or response operations against suspected asylum seekers in the northwest approaches to Australia.⁷⁶ A major operation against asylum seekers, Operation *Relex*, began in

⁷⁰Sea Power Centre-Australia, *Australian Maritime Doctrine-RAN Doctrine 1*, Defence Publishing Services, Canberra, 2000, pp. 113-20.

⁷¹ *Australian Maritime Doctrine-RAN Doctrine 1*, pp. 113-20.

⁷² Semaphore, *Welcome to the Armidale Class*, February 2006, <http://www.navy.gov.au/media-room/publications/semaphore-february-2006-0> (28 October 2013).

⁷³ *Customs and Border Protection Marine Unit: Maritime Operations Support Branch*, <<http://www.customs.gov.au/site/page5503.asp>> (28 October 2013).

⁷⁴Australian Government, Australian Customs and Border Protection Service, 'Minister media release: New Coastwatch fleet takes to the skies', 27 March 2008, <<http://www.customs.gov.au/site/content10172.asp>> (28 October 2013).

⁷⁵ Department of Defence, *Annual Report 2011-2012, Part 1*, <http://www.defence.gov.au/budget/11-12/dar/dar_1112_1.pdf> (28 October 2013).

⁷⁶ There are several references to these activities in *Australia's Navy Annual 2001*. See, for example, Lieutenant Geoffrey McGinley, 'Life Down South', in Lieutenant Laura Bulloch, et. al., eds., *Australia's Navy Annual 2001*, Fine-Line Publishing Pty. Ltd., Jerrabomberra, NSW, pp. 40-

September 2001 and was superseded by Operation *Resolute* on 17 July 2006.⁷⁷ At its peak, it involved patrol boats, surface combatants, amphibious ships and hydrographic survey vessels. Their use reflects the extent of the task and the inability of the patrol boat force to cope with it, both numerically and in individual capability. For all vessels but the patrol boats, the activity was a diversion from their primary tasks.

That the military function is still considered essential for navies inevitably creates the potential for dispute about the priority to be given to the other functions. These disputes are essentially peacetime matters; when diplomatic and constabulary activities are more likely to confront navies. They also remain alive no matter how important or extensive the constabulary tasking may be. Such disputes concern the allocation of financial resources, training opportunities and of ships to lower priority tasks.

Navies naturally should concentrate on their essential or primary function and should see any diversion from that as liable to impact on their capacity to carry out that function. This view applies more to the constabulary function than it does to the diplomatic, because the former is more likely to impact directly on the availability of warships for the primary function, and because the latter often involves training and exercises with other navies.⁷⁸ Conversely, the constabulary function, on the other hand, is more likely to interfere with the continuous training programs that prepare ships and their crews for their primary function.

The dispute is sometimes extended by arguing that the constabulary function is not a true navy function, but one that belongs to coast guards. This argument has been

44. See also, Maritime Headquarters, 'Operations 2001-2002', in Bulloch, et. al., eds., *Australia's Navy Annual 2001*, p. 13. See also Stevens, 'To disrupt, deter and deny: sealing Australia's maritime borders', in Elleman and Paine, eds., *Naval Blockades and Seapower: Strategies and counter-strategies, 1805-2005*, p. 231.

⁷⁷ Operation *Resolute* incorporated several other operations devoted to countering illegal fishing and smuggling, as well as Operation *Relex*. Navy, *Resolute*, <<http://www.navy.gov.au/operations-and-exercises/resolute>> (28 October 2013).

⁷⁸ Lieutenant Lauren Rago, 'Triton Centenary draws to a close', *Navy Daily*, 18 October 2013, <<http://news.navy.gov.au/en/Oct2013/Fleet/537/Triton-Centenary-draws-to-a-close.htm#.Um24LZq4bmQ>> (28 October 2013).

pressed by the Labor Party in Australia since 2001⁷⁹ and has some support within other elements of the community.⁸⁰ An examination of history, however, suggests that constabulary tasks have been an integral part of naval operations for centuries. They occupied the RN for centuries and were a significant feature of its 19th century operations, including countering the slave trade off the west and east coasts of Africa.⁸¹ Sporadically for many years, they have also been a feature of RAN operations almost since its inception; involving fisheries and anti-illegal immigration patrols as early as 1911.⁸²

Tensions between constabulary and other roles currently remain quite high, with the almost unprecedentedly high demand for RAN ships to meet government tasking over the last decade or more. This has seen Australian warships engaged in high-end war-fighting in two Persian Gulf wars, enforcement of UN sanctions (blockade operations) against Iraq, undertaking power projection operations in East Timor, extended patrols to prevent incursions by illegal immigrants, disaster relief operations in Indonesia, and peace operations in Tonga and the Solomon Islands.⁸³ The extensive and long-standing patrols of the Australian Fisheries Zone (AFZ) have also continued uninterrupted throughout this time.

The RAN is now acquiring new and highly capable sea control destroyers and amphibious landing ships significantly larger than those previously operated by the Navy. Coincidentally, there is a debate about the nature of the future security environment and its likely effect on naval operations and force structure. The extent to which global terrorism might develop a maritime dimension in Southeast Asian and Southwest Pacific waters is a significant element of this debate. The existence of terrorist groups within Southeast Asian nations demands vigilance – given the wealth

⁷⁹ Australian Broadcasting Corporation, *Insiders*, 11 November 2001, <<http://www.abc.net.au/insiders/content/2001/s413703.htm>> (28 October 2013).

⁸⁰ Sam Bateman and Anthony Bergin, 'Dedicated body will anchor command', *The Australian*, 20 December 2012, <<http://www.theaustralian.com.au/opinion/dedicated-body-will-anchor-command/story-e6frg6zo-111115155920>> (28 October 2013).

⁸¹ Roger Morris, 'Endeavour, Discovery and Idealism, 1760-1895', in J. R. Hill, ed., *The Oxford Illustrated History of the Royal Navy*, Oxford University Press, Oxford, 1995, pp. 244 and 249.

⁸² Bob Nicholls, *Statesmen and Sailors: Australian Maritime Defence 1870-1920*, Standard Publishing House, Rozelle, NSW, 1995, p. 188.

⁸³ See *Database of Royal Australian Navy Operations 1990-2005*, Sea Power Centre-Australia, Canberra, 2005, pp. 7, 43, 50, 53, and 61, and Navy, *HMAS Kanimbla II*, <<http://www.navy.gov.au/hmas-kanimbla-ii>> (28 October 2013).

of opportunities for terrorist activities in regional seas and the potential for significant human and economic loss as a result.

Constabulary tasks may impact on other naval operations, especially on those of the RAN. Several aspects of national maritime responsibility have received more attention in recent years. They include the marine environment, marine resource protection and management and maritime border protection in respect of customs, immigration and quarantine regulations. They also include implementation of the International Ship and Port Facility Security (ISPS) Code and Australia's involvement in the US-sponsored Proliferation Security Initiative (PSI).

Furthermore, the Prime Minister's announcement on 15 December 2004 of the establishment of new law enforcement at sea arrangements emphasized the continuing and growing importance of maritime security to Australia.⁸⁴ The announcement followed a review of offshore maritime security which focussed on the oil and gas platforms on the northwest shelf of Western Australia. The review reflected growing industry concern as to the adequacy of existing security and resulted in the creation of new arrangements to monitor shipping approaching Australian waters.⁸⁵

The new arrangements included the establishment of a Joint Offshore Protection Command, led by the Navy Rear Admiral who was the Director General of Coastwatch. The new arrangement cemented the role of the Australian Defence Force (ADF) and of the RAN especially, in law enforcement at sea. In October 2006, the organization was renamed the Border Protection Command, while retaining the same command arrangements.⁸⁶ Subsequently in December 2008, and following the election of a Labor Government, the Australian Customs Service was renamed the Australian Customs and Border Protection Service, with overall responsibility for responding to maritime people smuggling.⁸⁷ The command arrangements remained unaltered and

⁸⁴ Australian Government, Department of the Prime Minister and Cabinet, *PM Transcripts: Strengthening Offshore Maritime Security*, PM Howard, John, 15 December 2004, <<http://pmtranscripts.dpmc.gov.au/browse.php?did=21554>> (28 October 2013).

⁸⁵ *PM Transcripts: Strengthening Offshore Maritime Security*, PM Howard, John, 15 December 2004,

⁸⁶ *Border Protection Command—History Overview*, <<http://bpc.gov.au/site/page5792.asp>> (11 January 2013).

⁸⁷ *Border Protection Command—History Overview*, <<http://bpc.gov.au/site/page5792.asp>> (11 January 2013).

the organization involved several other government authorities with law enforcement at sea responsibilities.⁸⁸

For the future, although the exact nature of the maritime security environment cannot be clear, the existing and emerging issues identified above suggest growing importance for regulatory activities associated with constabulary functions at sea. If so, Australia will inevitably confront some choices in dealing with them. These include the extent to which the Navy remains committed to them and the implications of that commitment, the possibility of establishing a dedicated law enforcement organization (possibly incorporating or led by a coast guard) and the extent to which military activities at sea become part of an integrated national security apparatus. These issues were highlighted in the November 2007 Australian election, with Labor promising the formation of a Department of Homeland Security and a coast guard.⁸⁹ Although neither organization emerged from Labor's election win, the potential for further organizational change remains.

THE CONTRIBUTION OF THE LITERATURE

This subject has only quite recently gained widespread political and public attention, so very little was written about Australia's approach to law enforcement at sea until about 30 years ago. Furthermore, much of the literature is specialized and is aimed at an audience already familiar with the subject. There are two major strands to this literature; official government studies, reports and policy statements, and Australian academic studies and proposals.

Official Literature

The official literature comprises parliamentary debates, government examinations of the coastal surveillance needs, parliamentary studies of the existing programs and departmental and other policy statements. These official documents include a

⁸⁸ Australian Government, Australian Customs and Border Protection Service, *About Customs and Border Protection*, <<http://www.customs.gov.au/site/page4222.asp>> (29 October 2013).

⁸⁹ Australian Labor Party, *National Platform and Constitution 2007*, pp. 248, 255 and 256, <<http://parlinfo.aph.gov.au/parlInfo/download/library/partypol/1024541/>> (29 October 2013).

succession of audit reports on the efficiency and effectiveness of the various approaches to law enforcement at sea.

Law enforcement at sea has been the subject of parliamentary debate since Federation, yet until now there has been no systematic examination of these debates and their influence on law enforcement.⁹⁰ Formal government reporting was almost non-existent for many years after Federation and in the early years documents such as the *Official Commonwealth Year Books*, and the annual *Government Resident's Reports on the Northern Territory* were amongst the only sources of the very limited information about law enforcement at sea issues.⁹¹ Admiral Jellicoe's 1919 *Naval Defence Report on the Naval Mission to the Commonwealth of Australia* made some reference to the potential constabulary or policing role for the RAN in peacetime, although the report concentrated on the Navy's military defence roles and needs.⁹²

By the 1930s official reports began to appear sporadically. For example, the Auditor General's annual report on receipts and expenditure in 1934 detailed Customs' seizures of illicit goods and successful prosecutions.⁹³ But, it was only from the 1970s that official inquiries and regular reporting became commonplace. The most prominent theme in this literature is the number of reviews of various kinds which examined the coastal surveillance aspect of law enforcement at sea.

The Commonwealth Government's first review of coastal surveillance, by the Standing Interdepartmental Committee on Civil Coastal Surveillance, was delayed from 1979 until a much revised completion date of 31 December 1981,⁹⁴ because of difficulties in

⁹⁰ See, *Commonwealth Parliamentary Debates*, the House of Representatives, Vol. IV, 6 September 1901, p. 4631, *Commonwealth Parliamentary Debates*, the Senate, Vol. IV, 4 September 1901, p. 4415; *Quarantine Act 1908*, *The Acts of the Parliament of the Commonwealth of Australia passed in the Session of 1907-08*, Government Printer, Victoria, 1908, p. 24. .

⁹¹ *Government Resident's Report on the Northern Territory, 1908*, Palmerston, NT, 1908, p. 10.

⁹² Admiral of the Fleet, Viscount Jellicoe of Scapa, *Naval Defence Report on the Naval Mission to the Commonwealth of Australia: Appendix 1*, Government Printer, Melbourne, 1919, p. 37.

⁹³ 'Annual Report of the Auditor General upon the Treasurer's Receipts and Expenditure during the year ended 30th June 1934', pp. 64-5, *The Parliament of the Commonwealth of Australia, Papers Presented to Parliament 1934-5-6-7, Vol. II*, Government Printer, Canberra, pp. 2434-5. No publication date listed but presumed to be 1937.

⁹⁴ Derek Woolner, *Australian Coastal Surveillance: A History and Commentary, Basic Paper No. 3* 1984, Department of the Parliamentary Library, the Parliament of the Commonwealth of Australia, Canberra, 1984. pp. 3-9.

establishing aerial surveillance contracts with several general aviation companies or small airlines.⁹⁵

The newly elected Labor Government announced a review of coastal surveillance on 9 May 1983, to be conducted by the Minister Assisting the Minister for Defence, Kim Beazley and reporting in April 1984.⁹⁶ The Beazley Report provided a distinctive and comprehensive treatment of threats and risks; specifically quarantine, fisheries, customs, immigration, environment and conservation and offshore oil and gas installations.⁹⁷

The approach to law enforcement at sea was also questioned around this time by two reports into drug smuggling in Australia; the *Australian Royal Commission of Inquiry into Drugs* (The Williams Report) of 1980 and the *Royal Commission of Inquiry into Drug Trafficking* (The Stewart Report) of 1983.⁹⁸ Nevertheless, the recommendations of these inquiries were not readily accepted by the dedicated coastal surveillance reviews.⁹⁹

Parliament's appetite for reviews of coastal surveillance remained strong through the 1980s. The House of Representatives Standing Committee on Expenditure enquired into the implementation of the Beazley Report recommendations in 1986 and in 1988 the Labor Government commissioned Mr Hugh Hudson to conduct a further review of coastal surveillance. The Hudson Review took account of the recommendations of the Beazley Report and of the 1986 Parliamentary review known as *Footprints in the Sand*.¹⁰⁰ Similarly the 1988 Hudson Review Report, *Northern Approaches: A Report on the Administration and Management of Civil Coastal Surveillance in Northern Australia*,

⁹⁵ Woolner, *Australian Coastal Surveillance: A History and Commentary*, Basic Paper No. 3 1984, pp. 3-9.

⁹⁶ Woolner, *Australian Coastal Surveillance: A History and Commentary*, Basic Paper No. 3 1984, p. 12.

⁹⁷ The Parliament of the Commonwealth of Australia, *Australia's Peacetime Coastal Surveillance and Protection Arrangements—A Review*, The Commonwealth Government Printer, Canberra, 1984. pp. 3-2 to 3-19.

⁹⁸ Parliament of Australia, *Royal Commissions and Commissions of Inquiry*, <http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Browse_by_Topic/law/royalcommissions#1977> (30 October 2013).

⁹⁹ Woolner, *Australian Coastal Surveillance: A History and Commentary*, Basic Paper No. 3 1984, p. 14.

¹⁰⁰ Hugh Hudson, *Northern Approaches: A Report on the Administration and Management of Civil Coastal Surveillance in Northern Australia*, Australian Government Publishing Service, for the Department of Transport and Communications, Canberra, 1988. p. 8.

identified the full range of risks and threats and noted also that the probability of their arising varied greatly.¹⁰¹

The 1990s saw increases in the level of some offshore activity and a consequent slew of additional reviews. Some of these were notable for responding to specific maritime security incidents.¹⁰² These were followed by the *Report of the Prime Minister's Coastal Surveillance Task Force* in July 1999, which resulted in additional funding for coastal surveillance with a special focus on intelligence.¹⁰³

More recently, the Australian National Audit Office has reported several times on aspects of Customs performance, beginning with a performance audit of the Australian Customs Service Coastwatch organization in 2000.¹⁰⁴ The Audit Office report focused on coordination, surveillance and response, and corporate governance of Coastwatch.¹⁰⁵ This was a broad scope, but it was conducted very much in response to growing Government concern at the arrival of increasing numbers of asylum seeker vessels.¹⁰⁶

The Parliamentary Joint Committee of Public Accounts and Audit reported on a review of Coastwatch in 2001.¹⁰⁷ This was a comprehensive statutory response to the Audit Office report in 2000. Apart from reviewing Coastwatch and the challenges confronting the organization, the Report also canvassed alternatives to the current approach to maritime border security.¹⁰⁸ Like many previous reports, it focused primarily on the

¹⁰¹ Hudson, *Northern Approaches: A Report on the Administration and Management of Civil Coastal Surveillance in Northern Australia*, p. 18.

¹⁰² Australian Customs Service, *Report on investigation into arrival of suspect irregular entry vessel (SIEV) into Montague Sound*, Australian Customs Service, Canberra, 1992. See also, Alan Heggen, AVM, RAAF (Ret.), *Independent Inquiry into Circumstances Surrounding the Arrival of suspected Illegal Entry Vessels Near Cairns, North Queensland and Nambucca Heads, New South Wales March/April 1999*, Canberra, 30 April 1999. The report is referred to in, Derek Woolner, *The Developing Policy Pressures in Australian Coastal Surveillance*, Department of the Parliamentary Library, Research paper No. 20, 2000-01, 6 February 2001.

¹⁰³ M.W. Moore-Wilton, *Report of the Prime Minister's Coastal Surveillance Task Force*, July 1999, p. ii.

¹⁰⁴ Australian National Audit Office, *Auditor-General Report No. 38 1999-2000: Performance Audit, Coastwatch, Australian Customs Service*, Canberra, 6 April 2000.

¹⁰⁵ *Coastwatch: Australian Customs Service, Audit Report No. 38 of 1999-2000*, p. 14.

¹⁰⁶ *Coastwatch: Australian Customs Service, Audit Report No. 38 of 1999-2000*, p. 14.

¹⁰⁷ The Parliament of the Commonwealth of Australia, Joint Committee of Public Accounts and Audit, *Report 384: Review of Coastwatch*, Canberra, August 2001.

¹⁰⁸ Joint Committee of Public Accounts and Audit, *Review of Coastwatch: Report 384*, p. ix.

challenges then confronting Coastwatch; illegal people movement, illegal fishing and suspect illegal flights in Australian airspace.¹⁰⁹

In 2004 the Audit Office reported on the performance of the Customs National Maritime Unit, with recommendations for improvement in matters such as intelligence gathering and training.¹¹⁰ Later in 2011, the focus shifted to the Customs and Border Protection Service risk management approach to processing sea and air cargo consignments.¹¹¹ Once again these efficiency reviews, and their reports, were aimed at specific elements of the law enforcement regime.

A more far-reaching review of law enforcement at sea was Prime Minister Howard's Task Force on Offshore Maritime Security in 2004, which examined the security needs of the offshore oil and gas industry on the north-west shelf. As the Task Force Report was classified, publicly available information on it is limited to media releases and reports and examination of them. Nevertheless, the report led to the formation of the Joint Offshore Protection Command, forerunner of the current arrangements.¹¹²

Other examples of specific purpose reviews included the 2008 Beale Review, *One Biosecurity-A Working Partnership*, which identified significant shortcomings in quarantine procedures, following an outbreak of equine flu.¹¹³ Similarly, in 2012 a review led by Air Chief Marshal Angus Houston, produced the *Expert Panel on Asylum Seekers: Summary of Recommendations*.¹¹⁴ The Panel's report, which was accepted entirely by the Government, sought to overcome the divisive politics associated with the continuing influx of asylum seekers.

¹⁰⁹ Joint Committee of Public Accounts and Audit, *Review of Coastwatch: Report 384*, pp. v-vi.

¹¹⁰ The Auditor General, *Audit Report No. 8 2008-09, Performance Audit, National Maritime Unit Australian Customs Service*, Australian National Audit Office, Canberra, 2008, p. 15.

¹¹¹ The Auditor General, *Audit Report No. 15 2011-12, Performance Audit, Risk Management in the Processing of Sea and Air Cargo Imports*, Australian National Audit Office, Canberra, 2011, p. 14.

¹¹² Department of the Prime Minister and Cabinet, *PM Transcripts: Strengthening Offshore Maritime Security*, 15 December 2004,

<<http://pmtranscripts.dpmc.gov.au/browse.php?did=21554>> (28 October 2013).

¹¹³ Roger Beale, et. al., *One Biosecurity-A Working Partnership*, Attorney General's Department, Canberra, September 2008.

¹¹⁴ *Expert Panel on Asylum Seekers: Summary of Recommendations*, <expertpanelon.asylumseekers.dpmc.gov.au> (25 March 2013).

The Parliamentary Library continues to produce papers on aspects of law enforcement at sea, primarily for the benefit of members and senators but also available to the public. These have included, *The Developing Policy Pressure in Australian Coastal Surveillance*, in the lead-up to the election of 2001 and *Asylum seekers and refugees: what are the facts?* which was updated early in 2013.¹¹⁵

In addition to the Parliamentary literature, Defence and the Navy, in particular, generate documentation relating directly or otherwise to law enforcement at sea. The *Defence Annual Reports*, especially more recently, provide only very general information on RAN operational activity. Although they are produced in ‘coffee table book’ style the *Navy Annuals* produced from the mid-1990s and the two editions of *Patrolling the Line*, in 2002 and 2003, give real insight into the operational aspects of law enforcement as practised by the RAN. Additionally, the fortnightly internal newspaper, *Navy News*, frequently carries stories about law enforcement operations and the people involved in them. None of these sources provide detailed analyses of the operational tasks or how well they are being carried out.

Academic and Professional Literature

There is a limited body of academic and other professional literature dealing with law enforcement at sea. Virtually all of it is quite recent; reflecting the growth in public interest as a result of well publicized incursions by asylum seekers and the ongoing and sometimes almost bizarre responses to illegal fishing activities.

Most of the recent literature comes from a very few sources, including the RAN Sea Power Centre,¹¹⁶ the University of Wollongong’s Australian National Centre for Ocean Resources and Security¹¹⁷ and the now defunct Australian Defence Studies Centre at the Australian Defence Force Academy. The literature is notable for the breadth of its coverage of contemporary issues. Whereas the government reports have responded to specific shortcomings in existing programs the academic literature has endured no such restriction.

¹¹⁵ Phillips, *Asylum seekers and refugees: what are the facts?*

¹¹⁶ This centre was formerly known as the RAN Maritime Studies Program.

¹¹⁷ This Centre was formerly known as the Centre for Maritime Policy.

Charles Haultain's 1971 memoir of his time commanding a patrol boat operating from Darwin in the 1930s, *Watch off Arnhem Land*, is a unique, if personal, view of the embryonic nature of law enforcement at sea operations then.¹¹⁸ Myra Willards's *History of the White Australia Policy to 1920*¹¹⁹ and Geoffrey Sawer's *Australian Federal Politics and Law 1901-1929*¹²⁰ are two of the few other books that relate to the early period, even though they do not deal with operational aspects of law enforcement. David Day's two volume history of the Customs Service, from the time of white settlement, provides useful information on the development of some of the laws and on aspects of their enforcement.¹²¹

The more recent publications include sets of conference papers, such as *Policing Australia's Offshore Zones: Problems and Prospects* in 1997.¹²² Topics covered include threats, political and operational issues, legal considerations and future directions. This volume also compares how several other countries conduct law enforcement at sea. Many of the issues raised in this volume are repeated in the later volume, *Protecting Australia's Maritime Borders: The MV Tampa and Beyond*¹²³ suggesting that at least some problems had not been attended to in the intervening five years.

Protecting Australia's Maritime Borders: The MV Tampa and Beyond comprises papers from a conference held in Canberra in 2002. Some papers examine issues such as the then fragmented approach to law enforcement,¹²⁴ the legislative implications of ADF

¹¹⁸ C.T.G. Haultain, *Watch off Arnhem Land*, Roebuck Society Publication No. 4, Canberra, 1971.

¹¹⁹ Myra Willard, *History of the White Australia Policy to 1920*, Melbourne University Press, Melbourne, 1923.

¹²⁰ Geoffrey Sawer, *Australian Federal Politics and Law 1901-1929*, Melbourne University Press, Melbourne, 1956.

¹²¹ David Day, *Smugglers and Sailors: The Customs History of Australia 1788-1901*, Australian Government Publishing Service, 1988, and *Contraband and Controversy: The Customs History of Australia From 1901*, Australian Government Publishing Service, Canberra, 1996.

¹²² Doug MacKinnon and Dick Sherwood, eds., *Policing Australia's Offshore Zones: Problems and Prospects*, Wollongong Papers on Maritime Policy No. 9, Centre for Maritime Policy, University of Wollongong, Wollongong, NSW, 1997.

¹²³ Martin Tsamenyi and Chris Rahman, eds., *Protecting Australia's Maritime Borders: The MV Tampa and Beyond*, Wollongong Papers on Maritime Policy No. 13, Centre for Maritime Policy, University of Wollongong, Wollongong, NSW., 2003.

¹²⁴ Derek Woolner, 'Australia's Maritime Border Protection Regime', in Tsamenyi and Rahman, eds., *Protecting Australia's Maritime Borders*, p. 26.

involvement in law enforcement at sea and a separate coast guard.¹²⁵ Others deal with the costs of law enforcement, the difficulty of identifying those costs and the possible costs of an independent coast guard. The proposals for a dedicated coast guard in both volumes are from the same author, who admits that his proposals are not intended to be definitive.

Other recent writings on law enforcement at sea include David Marr's and Marian Wilkinson's *Dark Victory*,¹²⁶ and Frank Brennan's *Tampering with Asylum: A Universal Humanitarian Problem*,¹²⁷ both of which examined aspects of the controversial handling of asylum seekers around the time of the 2001 Federal election.

The two professional journals which pay most attention to maritime border security are *Australian Journal of Maritime & Ocean Affairs*,¹²⁸ the journal of the Australian Centre for Maritime Studies and the *Journal of the Australian Naval Institute*. Both journals range broadly over maritime affairs; the Naval Institute journal understandably focussing primarily on naval topics. In recent years it has, however, covered law enforcement at sea issues including the ISPS Code,¹²⁹ and the proposition of an Australian Coast Guard.¹³⁰ *Maritime Studies* has also dealt with the ISPS Code,¹³¹ environmental issues like ballast water¹³² and border protection.¹³³

¹²⁵ Commodore Warwick Gately, RAN, and Lieutenant Commander Cameron Moore, RAN, 'Protecting Australia's Maritime Borders: Operational Aspects', and Commander Bruce McLennan, RNZN, 'Maritime Border Protection and the Royal Australian Navy: Threat or Opportunity?' in Tsmenyi and Rahman, eds., *Protecting Australia's Maritime Borders*, pp. 26 and 117.

¹²⁶ David Marr and Marian Wilkinson, *Dark Victory*, Allen and Unwin, Sydney, 2003.

¹²⁷ Frank Brennan, *Tampering with Asylum: A Universal Humanitarian Problem*, University of Queensland Press, St. Lucia, Qld., 2003.

¹²⁸ This journal was formerly entitled *Maritime Studies*.

¹²⁹ Lieutenant Graeme Hale, RAN, "Does the ISPS Code address post-9/11 security threats?" *Journal of the Australian Naval Institute*, No. 116, Autumn 2005, pp. 13-18.

¹³⁰ See Professor Stephen Martin, 'The evolution of Labor's policy on an Australian Coast Guard', *Journal of the Australian Naval Institute*, No. 114, Spring 2004, pp. 7-9, and Lieutenant Commander Cameron Moore, 'Legal Issues Surrounding an Australian Coastguard', *Journal of the Australian Naval Institute*, Vol. 28, No. 2, Winter 2002, pp. 6-11.

¹³¹ Captain Peter Heathcote, 'An Explanation of the New Measures for Maritime Security Aboard ships and in Port Facilities', in *Maritime Studies*, No. 137, July/August 2004, pp. 13-21.

¹³² Geoff Rigby, 'Ballast Water Treatment Technology: Choosing the Best Options', *Maritime Studies*, No. 135, March/April 2004, pp. 22-29.

¹³³ Hugh Smith, 'Border Protection and the Limits of Obedience', *Maritime Studies*, No. 134, January/February 2004, pp. 21-24.

Several Australian law journals have also published papers on aspects of law enforcement at sea. These include the *University of New South Wales Law Journal*, the *Australian and New Zealand Maritime Law Journal* and the *Melbourne International Law Journal*. Topics covered have included legal regimes, resources protection and asylum seekers.

This examination of the literature associated with Australia's approach to law enforcement at sea is representative; encompassing several of the most important government studies of the subject and including work by those academics with acknowledged expertise. Two striking issues emerge. First, despite the wealth of government reviews conducted and academic writing produced over recent years, there is as yet no common approach to the provision of law enforcement at sea for Australia. In fact, Labor went to the 2013 election promoting a coast guard to be operated by the Australian Federal Police.¹³⁴

Second, none of the reviews or the academic writing have been definitive. The reviews for the most part have examined only the coastal surveillance aspect of border security or have responded to individual failings in it. The academic writing is more comprehensive in its coverage, but has not produced the thorough and detailed analysis of the entire subject, with credible costings, that would enable clear judgments to be made on how best to enforce the law at sea.

No previous examination of law enforcement at sea in Australia has provided an in depth historical appreciation of how the task has evolved, how the legislative framework has evolved in parallel and the often glacial progress towards the current federated organizational approach to the task. Nor has any previous study illustrated the gradual engagement of the Navy in the task to the point where it is now a permanent, substantial and occasionally all-consuming part of daily operations.

¹³⁴SBS News, 'ALP Coastguard policy relaunched', <<http://www.sbs.com.au/news/article/2004/06/30/alp-coastguard-policy-relaunched>> (1 November 2013).

METHODS AND SOURCES

This thesis is an empirical and primarily qualitative study of an important Australian national security issue and will examine the political, legal and operational, aspects of it. It is a study of the means by which law enforcement at sea is provided in Australia, with the ultimate objective of identifying the growth of the Navy's involvement in the task and its implications. Such a study is long overdue because of the growing importance of the various elements of law enforcement at sea, because of continuing disagreement as to how best to provide it and because of its now considerable impact on many elements of the Navy.

The thesis is therefore an examination of public policy which will consider the influences that ultimately generate the solutions to political problems. It is a complex study in that several Commonwealth Government Departments play significant and intersecting roles and because the nature and extent of these roles have evolved over time.¹³⁵

Sources used include Parliamentary debates, official government reports, studies and reviews, Coalition and Labor Party policy statements, academic studies, professional journals and discussions with current and past academics and officials. There are limits to the utility of each of these sources. Official government sources may be constrained in some instances by security classification demands and by the need to meet political and operational ends.

Party policy statements are sometimes subject to substantial change before implementation and they too can be prepared for political as much as for operational reasons. While the academic studies cover some aspects of this subject, there is no academic study of the entire subject. Similarly, while there is a lot of professional writing on individual aspects of law enforcement at sea, not all of it is definitive. This applies especially to those writings which canvass the possibility of a dedicated Australian coast guard – and thus the withdrawal of the Navy from the task.

¹³⁵ An example of the changing roles is the Beazley Review of 1984 recommendation that the coastal surveillance task should be the responsibility of the Australian Federal Police. This arrangement was subsequently overturned by the 1988 Hudson Review. Nevertheless, the Australian Federal Police retain an important role in maritime border security.

CHAPTER STRUCTURE

Chapter two examines the history of law enforcement at sea - or the constabulary function - and identifies the role of navies and coast guards. It refers to the work of several eminent maritime strategists in determining the historically accepted roles of navies. It then defines the maritime constabulary function and in doing so, clarifies the connections between oceans governance, law enforcement at sea and coastal surveillance; all terms which tend to be used without sufficient discrimination. The chapter concludes with an exposition of the historical growth of the constabulary function and establishes that it has been an important role for navies for centuries.

Chapter three provides a contemporary framework for the subsequent examination of the Navy's role in the constabulary function. It identifies the elements of the function, which include anti-piracy operations, border, resource and environmental protection. It also evaluates developments likely to impact on the task and argues that the nature of the task is changing and that the task is growing in importance and complexity. As examples, the chapter refers to counter-terrorism related activities and those related to countering weapons of mass destruction.

Chapters four to seven analyse chronologically the Australian approach to law enforcement at sea from Federation in 1901. Each of the chapters follows a common four-step method, which involves identifying the nature of the law enforcement challenges, identifying the solutions selected by governments, explaining the legislative outcomes associated with the solutions and determining the implications for the Navy of its involvement in the constabulary function. The chapter break points have been selected to coincide with significant events in the development of Australia's approach to law enforcement at sea. Thus Chapter Four ends with the 1975 High Court decision on offshore jurisdiction; Chapter Five ends in 1988, coinciding with the end of the first set of government reviews of coastal surveillance, and Chapter Six ends in 2001 with the events which led to the politicization of the response to irregular maritime arrivals. Finally, Chapter Seven concludes the examination at the end of 2012, the time of writing.

Chapter Four begins with a historical review of Colonial Navies' engagement in the constabulary function before Federation. The chapter then examines the issues in three discrete periods; 1901 to 1918, 1919 to 1945 and 1946 to 1975. The chapter covers the period immediately after Federation, in which illegal immigration and foreign fishing and the Government's lack of capacity to manage them were the main issues. Analysis of the period between the wars highlights ongoing illegal fishing and pearling activities, together with the emergence of interest in the marine environment. It also demonstrates the initial halting and ineffective attempts to counter these activities. The final section covers the period in which the declaration of resource zones demanded a more formal response from government, together with the beginning of a permanent RAN commitment to the constabulary function.

Chapter Five, covering 1979-1988, maintains the focus on resources protection, but also includes the appearance of boats carrying asylum seekers and the government response to the influx. This period also saw the simultaneous emergence of environmental, quarantine and drug smuggling challenges, thus complicating law enforcement. This chapter also examines the succession of reviews of coastal surveillance operations and the organizational and other changes proposed by them, as governments initiated a comprehensive approach to law enforcement at sea. One element of this approach was the beginning of a permanent and often very significant commitment to the task by the Navy.

The period from 1989-2001 is explored in Chapter Six and encompasses continuing law enforcement at sea challenges created by the need to protect marine resources with a new focus on the Southern Ocean, together with a continuation of the flow of asylum seekers. Chapter six identifies the growth of resources assigned to law enforcement at sea, the development of ever more complex legislation to deal with problems and the realization that better surveillance and patrol forces were needed to manage the extensive range of law enforcement issues. This chapter also illustrates the implications for the Navy of a task that at times demanded the commitment of a significant part of the surface fleet.

Chapter seven covers the final period, from 2002 to the end of 2012, during which asylum seekers, resources protection, the marine environment and quarantine made

the greatest law enforcement demands on governments. It was also a period in which asylum seekers became a partisan political issue and in which the associated policies, practice and legislation were often controversial. The chapter discusses the further significant organizational change experienced by the authorities responsible for law enforcement at sea. Most significantly, chapter seven identifies the very substantial stresses placed on the Navy in meeting the demands of law enforcement while also committed to several other operations.

The final chapter draws conclusions from the arguments presented in the earlier chapters. These relate to the nature of law enforcement at sea in Australia and the manner in which it has been approached since Federation. In particular, this chapter identifies the growing involvement of the Navy in the task and the implications for the Navy of its now substantial commitment.

CHAPTER TWO

THE FUNCTIONS OF NAVIES

INTRODUCTION

This chapter will examine the generally accepted roles for navies, to establish that the constabulary function, providing good order at sea,¹ is a legitimate function of navies. Establishing the legitimacy of the task will provide a solid foundation for examining the Royal Australian Navy's (RAN) current and future role in law enforcement at sea.

Proponents of navies have argued that seapower has generated three great 'gifts'. They were acquiring colonies, dominating trade and becoming prosperous; helping to keep the acquired colonial possessions and maritime trade, and a decisive way in which to prevail in conflict.² Martin claims this has been possible because '... seapower is a means for bringing power to bear on distant places and freedom of movement by sea is a principle by which the powerful may have access to the weak. No such rights to movement through the airspace over territorial waters have ever been conceded.'³

This general view of the benefits of seapower was supported by Admiral A.T. Mahan, the late 19th and early 20th century American naval historian and strategist. His writing reflected the importance of previous colonial powers, and the still active European search for new colonial possessions. Mahan argued that the key to much of history is to be found in production of goods and the consequent maritime trade, the shipping which enabled the trade and the colonies which facilitated both the trade and its protection.⁴ Mahan further stated that it was the peaceful commerce and shipping '...

¹ Geoffrey Till, *Seapower: A Guide for the Twenty-First Century*, Frank Cass Publishers, London, 2004, p. 310. The term 'good order at sea' is one used by Till, and others, which encompasses the constabulary function.

² Geoffrey Till with Craig Symonds, Bryan Ranft et. al., *Maritime Strategy in the Nuclear Age*, 2nd ed., St. Martin's Press, New York, 1984, pp. 2-3.

³ L. W. Martin, *The Sea in Modern Strategy*, Praeger for the Institute for Strategic Studies, New York, 1967, p. 22.

⁴ A.T. Mahan, *The Influence of Seapower on History 1600-1783*, Hill and Wang, New York, 1985. p. 25.

from which alone a military fleet naturally and healthfully springs and on which it securely rests.⁵

By their activities, the navies of the great trading states enabled this commerce to be carried on in peacetime and in war. In the case of the British Empire, the Royal Navy (RN) contested, gained and for long periods maintained 'command of the sea.' This concept, today more often referred to as 'sea control,' meant little more than being able to use the sea for one's own purposes and preventing an adversary from using it.⁶ For much of modern history, the work of navies has comprised the gaining and maintaining of sea control, enabling the sea to be used for various purposes. Recently, there has been a growing acceptance that sea control is a relative concept, limited in place and time.⁷

Much has changed since Mahan wrote and influenced political and military leaders a century ago. Colonies, for example, are mostly relegated to history. Furthermore, since the end of the Second World War there have been few conflicts involving the acquisition of territory. Nevertheless, the demand for seaborne trade has continued to rise and this is expected to continue.⁸ Protection of maritime trade continues to be a *raison d'être* for many navies, even if the nature of the threat to it continues to change. Thus, the recent rise of large scale violent piracy off west and east Africa and to a lesser extent in Southeast Asian waters, has drawn several of the world's navies into counter-piracy operations.⁹ Maritime terrorism has also become a threat, both to trade and to warships themselves, because of their iconic flag status.¹⁰

Contemporary writers including Geoffrey Till, point to a range of additional tasks for navies. These include protecting maritime resources, exercising jurisdiction and

⁵ Mahan, *The Influence of Seapower on History 1600-1783*, p. 25.

⁶ Till, *Seapower: A Guide for the Twenty-First Century*, p. 149.

⁷ Till, *Seapower: A Guide for the Twenty-First Century*, pp. 150-52. Till notes that sea control may also be limited by extent of use, strategic consequence and necessity.

⁸ Till, *Seapower: A Guide for the Twenty-First Century*, p. 100. He quotes the UK Chamber of Shipping assessment that global shipping will double in ton-miles over the next one or two decades.

⁹ Martin N. Murphy, *Small Boats, Weak States, Dirty Money: Piracy & Maritime Terrorism in the Modern World*, Hurst and Company, London, 2009, pp. 118, 102, and 85-6.

¹⁰ Murphy, *Small Boats, Weak States, Dirty Money: Piracy & Maritime Terrorism in the Modern World*, p. 200.

maintaining order in times of peace.¹¹ Many of these tasks have demanded activities other than those associated traditionally with war-fighting.¹² In 2004, Till noted that navies now operate in a vastly different strategic environment and face entirely different problems, as well as all of the old familiar ones.¹³ This has implications for what navies do and how they do it.

BOOTH'S TRINITY OF NAVAL FUNCTIONS

In 1977, Ken Booth provided one of the most quoted and most useful descriptions of the functions of navies. It is founded on an assessment of the need for States to use the sea. Booth argued that there are three major reasons for this need; the passage of goods or people, the passage of military force for diplomatic purposes or for use against targets on land or at sea, and the exploitation of resources in or under the sea.¹⁴ These are contemporary equivalents of Mahan's approach to seapower, with the introduction of resource exploitation reflecting technological developments relating to fishing and to oil and gas extraction.

For Booth the functions of navies can be seen as a 'trinity'; that is, a three in one. The trinity is defined by the three characteristic modes of action by which navies achieve their purposes; military, diplomatic, and policing - or constabulary.¹⁵ The unifying idea of this trinity is 'the use of the sea' the concept which encompasses each of the functions. There are several subordinate functions within each of the three primary functions: these are shown in a development of Booth's work at Figure 2-1.¹⁶ Booth emphasized that the 'trinity' was not to be considered a practical model, because most navies will neither need nor want to be capable of all of the subordinate functions listed. Indeed, some so-called token navies will be incapable of all three major functions.

¹¹ Till, *Maritime Strategy in the Nuclear Age*, p. 17.

¹² Till, *Maritime Strategy in the Nuclear Age*, p. 17.

¹³ Till, *Seapower: A Guide for the Twenty-First Century*, p. 26.

¹⁴ K. Booth, *Navies and Foreign Policy*, Croom Helm, London, 1977, p. 15.

¹⁵ Booth, *Navies and Foreign Policy*, p. 15.

¹⁶ This figure is a more detailed representation of that in *Navies and Foreign Policy*, p. 16 and can be found in Sea Power Centre-Australia, *Australian Maritime Doctrine: RAN Doctrine 1*, Sea Power Centre-Australia, Canberra 2010, p. 100.



Figure 2-1: RAN Development of Booth's Trinity of Naval Functions

That point is well articulated by Eric Grove in his 1990 book *The Future of Seapower*¹⁷ which provides a typology of navies graded according to their level of capability. Reproduced in brief form here, it illustrates how the nature of force employment changes with capability level, how some navies are optimized for the constabulary function and how some are capable of nothing more than the constabulary function.

¹⁷ Eric Grove, *The Future of Seapower*, Naval Institute Press, Annapolis MD., 1990, pp. 236-241.

Grove's Typology of Navies

Major Global Force Projection Navy - Complete. This is a navy capable of carrying out all the military roles of a naval force on a global scale. Currently, only the USN qualifies for this description.

Major Global Force Projection Navy - Partial. This is a navy with all the characteristics of the USN but without that navy's capacity to exercise sea control and power projection far from its shores. The Soviet Navy, prior to the end of the Cold War was the only navy in this category.

Medium Global Force Projection Navy. This is a navy capable of mounting one major out of area operation, together with high-level naval operations closer to home. The RN and French Navies are the only two such navies at present.

Medium Regional Force Projection Navy. A navy in this category can project force into the adjoining ocean basin. There are several such navies. They include the navies of India, Australia, Japan and now China.

Adjacent Force Projection Navy. Any navy in this category has the ability to project force well offshore. North Atlantic Treaty Organization navies, such as those of Portugal and Greece fit the description, along with the navies of Chile and Peru.

Offshore Territorial Defence Navy. This is a navy quite capable of defensive and constabulary operations up to about 200nm from its shores. It is essentially a coastal navy, such as those of Norway, Denmark and Sweden, as well as those of Indonesia and Malaysia.

Inshore Territorial Defence Navy. This describes a navy capable of inshore combat operations as well as undertaking constabulary duties. Several of the Persian Gulf navies fit the category.

Constabulary Navy. This category includes navies that are not intended to fight, but to act purely in the constabulary role. Countries such as the USA, Canada and Japan have such forces in addition to their navies and in many cases they are termed coast guards. Countries such as Burma, Sri Lanka and Ireland have navies which are capable of little beyond constabulary tasks-even if they are called navies.

Token Navy. Some of the world's smaller and weaker states have navies which amount to little more than some formal organizational structure and a few coastal craft. These are the token navies and at best they carry out limited constabulary functions.

Table 2-1: Grove's Typology of Navies

For individual countries each of the 'elements of the trinity' can have varying degrees of importance. This will depend on the nature of their maritime interests and of their capacity (financial, technical and human) to support these interests. Nevertheless, the defining function of navies is the military one. The threat or use of force gives meaning to the other modes of action.¹⁸ It provides them with credibility in the eyes of all those at whom the actions or activities of navies are aimed.

THE MILITARY FUNCTION OF NAVIES

The military function of navies is based on the concept of 'command of the sea', that is the freedom to use the sea for a nation's own purposes as and when desired. The concept has sometimes appeared to have an absolute quality,¹⁹ but both Mahan and Corbett clearly acknowledged that it could only be a relative attribute – in Corbett's words, a 'working command'.²⁰ Till notes that the relativities include time, place, extent of use, strategic consequence and necessity.²¹

Sea Control and Sea Denial

Thus, the concept of command of the sea has given way to the more limited one of 'sea control'. This term acknowledges the impact of aircraft, submarines and mines on the ability of naval forces to operate freely. Furthermore, currently sea control is sought for limited periods, primarily to project power at sea or over the shore and to sustain forces employed overseas.²² This point was emphasized by Corbett, who noted in 1907 that one of the three functions of the fleet was to further or hinder military operations ashore.²³

¹⁸ Booth, *Navies and Foreign Policy*, p. 16.

¹⁹ Till, *Seapower: A Guide for the Twenty-First Century*, p. 150.

²⁰ Till, *Seapower: A Guide for the Twenty-First Century*, p. 150.

²¹ Till, *Seapower: A Guide for the Twenty-First Century*, pp. 150-1.

²² Booth, *Navies and Foreign Policy*, p. 118.

²³ Julian S. Corbett, *England in the Seven Years War: A Study in Combined Strategy*, Longman, Green and Co., London, 1907, p. 6.

Sea control is associated with another concept, sea denial, which involves preventing an opponent from using an area of the sea for his purposes.²⁴ It can be an alternative to sea control in that some countries, on some occasions, may not need to use the sea themselves. Another interesting feature of sea denial, not common with sea control, is that it can in some circumstances be attained without the use of naval forces. That is, air forces, or even suitably equipped and located land forces, can achieve sea denial.

Vice Admiral Stansfield Turner, United States Navy (USN) in a seminal article in 1974, argued that there were four objectives for which the United States of America (USA) should seek sea control or sea denial. They were to ensure industrial supplies, to reinforce or resupply military forces engaged overseas, to provide wartime economic and military supplies to allies, and to provide safety for naval forces in the projection of power ashore.²⁵

Historically, there have been three ways of achieving command of the sea or sea control; decisive battle, blockade and use of the fleet-in-being concept.²⁶ Decisive battle has been the preferred option because it can be the fastest and surest means of achieving the object. Blockade, much favoured in the 18th and 19th centuries, has become less popular because of the emergence of threats such as submarines, aircraft and mines and because it takes time to produce results. Blockade is however, still a favoured option for certain peacetime sanctions operations. The fleet-in-being concept involves an inferior force contesting a superior force and by attrition or diversion of the superior force, creating the opportunity for itself of gaining sea control.²⁷

The military function of navies can be examined from both wartime and peacetime perspectives; noting that often at sea, the boundary between the two states can be graduated rather than clearly defined. As the aim of gaining sea control is to exercise it in some way, during conflict navies will generally aim to project power or force, either

²⁴ Till, *Seapower: A Guide for the Twenty-First Century*, p. 158.

²⁵ Vice Admiral Stansfield Turner, 'Missions of the U.S. Navy', *Naval War College Review*, Volume XXVI, Number 5, March/April 1974, p. 8.

²⁶ Till, *Maritime Strategy in the Nuclear Age*, p. 132.

²⁷ www.dtic.mil/doctrine/jel/doddict/data (26 June 2004). The US Department of Defense defines the term fleet-in-being as a fleet (or force) that avoids decisive action, which because of its strength and location, causes or necessitates counter-concentrations and reduces the number of opposing units available for operations elsewhere.

at sea or against objectives on land. As shown by Booth, this can be done in conflicts of varying complexity and intensity; from general war, through conventional war, limited war and what he termed guerrilla war.²⁸ In referring to guerrilla war, Booth also noted the potential for terrorism at sea. He acknowledged fear of it, with respect to the North Sea oil fields for example, but noted that there had been no instances of it at the time of writing.²⁹

Peacetime Tasks

Booth also identified a range of peacetime tasks associated with the military function of navies, which are broadly enough stated to have remained valid. These are strategic nuclear deterrence, conventional deterrence and defence, extended deterrence and defence and international order.³⁰ Ballistic missile-fitted submarines remain the primary naval means of providing strategic nuclear deterrence and for some analysts strategic deterrence is more accurately seen as a national military task than a specifically naval one. Till for example, in 2004, paid the strategic nuclear deterrence function very little attention, compared with that given to conventional deterrence.³¹

The extent to which conventional deterrence is a naval function will depend on a nation's maritime interests and its capacity and determination to protect them. This will involve potential adversaries having to consider carefully the ramifications of engaging in a 'shooting war'.³² The concept of extended deterrence applies to navies of nations with security responsibilities to others, or to navies needing access in distant waters. A decline in the utility of warships for this purpose, noted by Booth,³³ appears to have been arrested in more recent times. Till's reference to the USN Seventh Fleet's deployment in Taiwanese waters during 1996 provides one effective example of this.³⁴

Maintenance of international order at sea by navies takes various forms. It can involve navies dealing with illegal activities such as piracy, and it can involve them in asserting

²⁸ Booth, *Navies and Foreign Policy*, p. 224.

²⁹ Booth, *Navies and Foreign Policy*, p. 235.

³⁰ Booth, *Navies and Foreign Policy*, p. 224.

³¹ Till, *Seapower: A Guide for the Twenty-First Century*, pp. 292-98.

³² Booth, *Navies and Foreign Policy*, p. 244.

³³ Booth, *Navies and Foreign Policy*, p. 244.

³⁴ Till, *Seapower: A Guide for the Twenty-First Century*, p. 294.

rights at sea, such as the USN's Freedom of Navigation program which began in 1979.³⁵ In reality, there is a quite high degree of order at sea, which allows for significant asymmetries between national merchant and fishing fleets and their navies.³⁶ Thus, nations with large merchant or fishing fleets do not necessarily need proportionally large navies. The existence of relative order at sea also allows many merchant flags to fly without the direct support of navies. Nevertheless, maintenance of 'good order' at sea cannot be taken for granted, as threats such as piracy and transnational crime emerge from time to time and need to be countered.³⁷ Many aspects of maintaining good order at sea can also reside within the constabulary function of navies, thus reinforcing the earlier point that the boundary between peacetime and conflict at sea can be graduated.

THE CHARACTERISTICS OF SEAPOWER

The capabilities or characteristics needed by navies to carry out their functions depend on the interest which their supporting nations have in using the sea. As illustrated above, the world's navies encompass a vast range of capabilities, reflecting national maritime interests and capacity to pursue and protect them. In assessing the impact of the law of the sea on these characteristics, Booth asserted that for countries '... satisfied with using their navies for constabulary functions and non-acquisitive purposes in regional seas... their warships have no need to fear for future employment'.³⁸ Booth has summarized the main assets of warships in terms of their versatility, controllability, mobility, projection ability, access potential, symbolism and endurance, as explained in the following paragraphs.

Warships, singly or together, can perform a range of social, humanitarian or political tasks as well as military ones. There can also be a subtlety in how warships change from one role to another: the change may even be imperceptible to outside observers. Furthermore, warships are capable of conducting several roles simultaneously. These characteristics give warships **versatility**.

³⁵ US Annual Defense Report 1995, Appendix 1: Freedom of Navigation. <www.defenselink.mil/execsec/adr95/toc.html> (17 March 2006).

³⁶ Booth, *Navies and Foreign Policy*, p. 248.

³⁷ Till, *Seapower: A Guide for the Twenty-First Century*, pp. 333-34.

³⁸ Ken Booth, *Law, Force and Diplomacy at Sea*, George, Allen and Unwin, London, 1985, p. 190.

One of a warship's greatest assets is the capacity to escalate in or withdraw from any situation, that is **controllability**. A warship's potential for escalation or withdrawal can be applied gradually and stopped at any point. Much if not all of this activity can take place in an international environment, the high seas or exclusive economic zones (EEZ) removing at least some of the associated risk.

Through their inherent **mobility**, warships can move easily, relatively quickly and usually independently in response to events, at a distance or close by. Often they will be the only forces that offer governments military options, with armies or air forces unable to be deployed or inappropriate to the mission.

Warships' size makes them '... efficient bulk carriers of their own firepower, troops, tanks, aircraft, landing craft...' ³⁹ The combination of firepower, mobility and carrying capacity can make warships the only means of applying military power at a distance and gives them **projection ability**.

Although the Law of the Sea Convention (LOSC) of 1982 reduced some of the traditional freedoms of the seas,⁴⁰ the movement of military forces across the sea remains simpler than it is by land or air. Consequently, as Booth argues '... a country with a navy is potentially a neighbour to all countries with coasts.'⁴¹ Thus, navies have **access potential**.

That warships are recognized as '... small mobile pieces of national sovereignty...' ⁴² is perhaps the most important of their characteristics. There is no ambiguity as to nationality and they provide, when necessary, visible **symbolism** of their nation's military and technological capability.

³⁹ Booth, *Navies and Foreign Policy*, p. 34.

⁴⁰ The six traditional high seas freedoms listed in Article 87 of the Law of the Sea Convention are; navigation, overflight, laying of submarine cables and pipelines, construction of artificial islands and other installations, fishing and scientific research. See United Nations, *The Law of the Sea: United Nations Convention on the Law of the Sea*, Article 87, United Nations, New York, 1983, p. 31. Some limitations on those freedoms are described in R. R., Churchill, and A. V. Lowe, *The Law of the Sea*, 3rd. ed., Manchester University Press: Manchester, 1999, pp. 205-208.

⁴¹ Booth, *Navies and Foreign Policy*, p. 34

⁴² Martin, *The Sea in Modern Strategy*, p. 138.

Warships can operate at great distances from bases and can remain in an area of interest for considerable periods, thus displaying great **endurance**. Depending on the circumstances, their presence in an area can be very visible or out of sight—over the horizon. Booth has noted that in the diplomatic function ‘political visibility’ is usually more important than actual visibility.⁴³

THE MILITARY UTILITY OF NAVIES

Grove argues that, ‘Navies would have a part to play in all forms of future war, total and limited, nuclear and conventional.’⁴⁴ He also states that navies are at their most relevant in conventional hostilities. Since the end of the Cold War, however, the expected character of conventional conflict at sea has changed. There is now much more focus on littoral operations involving the projection of power ashore than on fleet-on-fleet encounters. This began in the early 1990s with the publication of the USN’s doctrinal publications, *From the Sea*⁴⁵ and *Forward...From the Sea*.⁴⁶

This major change in operational focus, which assumes the possession of sea control, has been adopted by other navies, including the RAN, within the Australian Defence Force’s (ADF) emerging joint expeditionary operations concept.⁴⁷ The ADF cannot always assume it will enjoy sea control, but, when operating in coalitions, especially with the USN, sea control is less likely to be challenged.

Changing Utility

In the 1970s Booth argued that the utility of navies’ ‘interventions from the sea’ had been decreasing because of the growing self-defence capabilities of third-world navies. Much has changed since then, with enough quite striking examples of the use of seapower to warrant refuting Booth’s argument. Even before the end of the Cold War,

⁴³ Booth, *Law, Force and Diplomacy at Sea*, p. 147.

⁴⁴ Grove, *The Future of Seapower*, p. 199.

⁴⁵ The Hon. Sean O’ Keefe, Admiral Frank Kelso II, USN, and General C.E Mundy, USMC, *...From the Sea: Preparing the Naval Service for the 21st Century*, Department of the Navy, Washington, DC., 1992.

⁴⁶ The Hon John H. Dalton, Admiral J.M. Boorda, USN, and General Carl E. Mundy, USMC, *Forward...From the Sea*, The Department of the Navy, Washington, DC., 1994.

⁴⁷ Department of Defence, *Australia’s National Security: A Defence Update 2005*, Canberra 2005, p. 26.

the United Kingdom (UK) discovered that only seapower, including embarked air power, could enable the retaking of the Falkland Islands.⁴⁸ Seapower also played a major military role in the 1991 War against Iraq⁴⁹ and even greater parts in the 2001 War against the Taliban regime in Afghanistan⁵⁰ and the 2003 War against Iraq.⁵¹ Also, in a reversion to an age old function the United Nations (UN)-sponsored naval coalition forces conducted an extended blockade of the Iraqi coast from 1991 until the end of the 2003 Iraq War.⁵²

Even so, to be effective seapower must appear to be credible. Therefore, subtlety in its use can be as important as brute force. This was apparent in North Korea's dismissive response to the USN's major deployment subsequent to the taking of the USS *Pueblo*.⁵³ Timeliness was also a significant element of the credibility issue in this case and the delayed deployment of even an overwhelming force appeared to reflect impotence.⁵⁴ On a much smaller scale, and locally, the presence of a task group of nine naval vessels off Dili, before troops began landing in East Timor on 20 September 1999, provided a clear indication to Indonesian military authorities that the Australian-led coalition was serious in its purpose. That naval force was indeed credible.⁵⁵

The blockade of Iraq and the peace enforcement operation in East Timor, highlight another characteristic of seapower and the military utility of navies; the use of navies in circumstances short of war and in circumstances in which graduated force needs to be applied. They also reflect a significantly changed strategic environment, in which all of

⁴⁸ Till, *Seapower: A Guide for the Twenty-First Century*, pp. 195-6.

⁴⁹ Till, *Seapower: A Guide for the Twenty-First Century*, p. 180.

⁵⁰ Norman Friedman, *Terrorism, Afghanistan and America's New Way of War*, Naval Institute Press, Annapolis, MD., 2003, p. 159.

⁵¹ Williamson Murray and Major General Robert H. Scales, Jr., *The Iraq War: A Military History*, Belknap Press of Harvard University Press, Cambridge, MA., 2003, p. 71.

⁵² James Goldrick, 'Maritime Sanctions Enforcement against Iraq, 1990-2003', in Bruce Elleman and S.C.M. Paine, eds., *Naval Blockades and Seapower—Strategies and counter-strategies, 1805-2005*, Routledge, Abingdon, UK, 2006, p. 201.

⁵³ The USS *Pueblo* was an intelligence gathering ship which in 1968 was captured by North Korean forces just outside North Korean territorial waters. The ship was apparently ill-prepared for its mission and unprotected by other USN forces. Till, *Seapower: A Guide for the Twenty-First Century*, p. 285.

⁵⁴ James Cable, *Diplomacy at Sea*, Macmillan, London, 1985, p. 41.

⁵⁵ David Stevens, 'The Combined Naval Role in East Timor', in Gary E. Weir and Sandra J. Doyle, eds., *You Cannot Surge Trust: Combined Naval Operations of the Royal Australian Navy, Canadian Navy, and United States Navy, 1991-2003*, Department of the Navy, Washington, D.C., 2013, p. 123.

the old familiar problems are joined by a set of entirely new ones.⁵⁶ It is also an environment in which the tempo of operational activities for many navies has risen dramatically.⁵⁷

RAN Operational Environment

A RAN study of its operations from 1990 to March 2005⁵⁸ reflects this new environment. Firstly it identifies a total of 376 separate operations within the period, with the years 2003 and 2004 the busiest completed years since 1990. Secondly, it shows that the vast majority of operations have been diplomatic or constabulary in nature. Even so, the small number of purely military operations must be balanced by the recognition that ‘... they have involved numerous, highly capable units for prolonged periods at lengthy distances from Australia.’⁵⁹ These include some 30 separate deployments of single or multi-ship task units to the Persian Gulf. Table 2-2 below illustrates the numbers and pattern of recent operations.

Figures like these have caused some analysts to question whether naval operations in major wars can remain the guiding principle for future naval preparation and development, if such wars are becoming less frequent.⁶⁰ Grove, for example, writing in 1990, asked whether high-end conflict capabilities may become less important.⁶¹ Till, in 1982 noted that States need at least some ships optimized for operations in support of the law, or for maintenance of claims under the law, rather than for war-fighting. He also noted that there appeared to be too much attention paid to the latter role, especially by medium power navies.⁶² Yet, according to Booth, that is the primary role

⁵⁶ Till, *Seapower: A Guide for the Twenty-First Century*, p. 26. While Till does not specify the new problems, they would include the complexity and ambiguity of the LOSC, maritime terrorism and, mass irregular people movement.

⁵⁷ Sea Power Centre-Australia, *Semaphore: A First Analysis of RAN Operations, 1990-2005*, Canberra, Department of Defence, January 2006, p. 1.

⁵⁸ Vanessa Bendle, David Griffin and Peter Laurence, eds., Sea Power Centre-Australia, *Database of Royal Australian Navy Operations, 1990-2005*, Working Paper No. 18, Canberra, Department of Defence, 2005.

⁵⁹ Sea Power Centre-Australia, *Semaphore: A First Analysis of RAN Operations, 1990-2005*, p. 1.

⁶⁰ Till, *Seapower: A Guide for the Twenty-First Century*, p. 26.

⁶¹ Grove, *The Future of Seapower*, p. 235.

⁶² Till, *Maritime Strategy in the Nuclear Age*, p. 174.

of navies and thus there should be no surprise that, especially in the face of resource constraints, medium power navies should concentrate in that way.⁶³

Year	Military Ops	Constabulary Ops	Diplomatic Ops
1990	0	30	17
1991	1	15	10
1992	0	12	9
1993	0	8	8
1994	0	12	8
1995	0	13	9
1996	0	10	3
1997	0	22	12
1998	0	13	10
1999	1	14	6
2000	0	9	6
2001	1	15	7
2002	1	5	6
2003	2	25	12
2004	0	27	10
Jan-Mar 2005	0	2	5
Totals (376)	6	232	139

Table 2-2: RAN Maritime Operations 1990-March 2005⁶⁴

The Impact of the LOSC

A primary cause of the changed strategic environment has been the growing importance of international law at sea, both as a source of and a regulator of conflict.⁶⁵ For example, although the LOSC of 1982 imposed no interference on military activities, there was a sense that in the longer term, growing territoriality among the coastal states could be expressed in demands for greater control over foreign shipping, including naval vessels, in their own 'backyards'.⁶⁶ This has certainly come to pass as two recent examples can attest. In March 2001 a US Naval Service hydrographic ship, the *Bowditch*, was forced to cease surveying activities in China's EEZ while the same

⁶³ Booth, *Navies and Foreign Policy*, p. 16.

⁶⁴ Sea Power Centre-Australia, *Semaphore: A First Analysis of RAN Operations, 1990-2005*, p. 1.

⁶⁵ Till, *Maritime Strategy in the Nuclear Age*, p. 174.

⁶⁶ Booth, *Law, Force and Diplomacy at Sea*, p. 139.

ship and Her Majesty's Ship (HMS) *Scott* were separately subject to protest by India for similar activities not long before that.⁶⁷ There have been further more recent incidents of the same kind in the South China Sea.⁶⁸

The consequences of such attempts to limit foreign naval activity are not yet entirely clear. Booth suggested that there might be a growing reluctance to deploy warships on 'marginal issues' but conversely, navies could decide to continue to exercise their rights under the LOSC, with the associated potential for confrontation or conflict. Indeed, Cable argues that low level conflict at sea must be regarded as probable.⁶⁹

More importantly, Cable suggested in 1985 that all maritime conflicts for the previous 37 years had remained limited.⁷⁰ Whether or not that remains the case in future, his point is that conflict at sea is inherently more controllable than it is on the land or in the air. Civilians, except for the crews of merchant ships, are unlikely to be involved in it. Warships can pose a threat without engaging in a single warlike act and they can operate, if necessary, without infringing on territorial rights.⁷¹ Furthermore, maritime power is so flexible that it is inevitably the tool of choice when circumstances permit, for a government intending the threat or use of limited force.⁷²

This changed strategic environment, bringing with it a concentration on operations other than war, and the flexibility and adaptability of navies in contributing to these operations, led one commentator to suggest that although navies are built for war, their greatest utility may be in peace.⁷³ They have the capacity to deter, exert influence and pressure through diplomatic activities and to uphold the body of international law and regulations.⁷⁴ This judgment leads to a consideration of the diplomatic function of navies.

⁶⁷ Kwa Chong Guan, 'Strategy: A View from Southeast Asia', in Jack McCaffrie, ed., *Positioning Navies for the Future: Challenge and Response*, Sydney, Halstead Press, 2006, p. 66.

⁶⁸ Captain Raoul Pedrozo, USN, 'Close Encounters at Sea: The USNS *Impeccable* Incident', *Naval War College Review*, Summer 2009, Vol. 62, No. 3, p. 101.

⁶⁹ Cable, *Diplomacy at Sea*, p. 44.

⁷⁰ Cable, *Diplomacy at Sea*, p. 48.

⁷¹ Cable, *Diplomacy at Sea*, p. 48.

⁷² Cable, *Diplomacy at Sea*, p. 49.

⁷³ Grove, *The Future of Seapower*, p. 187.

⁷⁴ Grove, *The Future of Seapower*, p. 187.

THE DIPLOMATIC FUNCTION OF NAVIES

What the Diplomatic Function Is

The diplomatic function has been examined by many writers on naval strategy, Corbett being one of the earliest. In acknowledging that war is a political act, he noted that the first function of the fleet was to support or to obstruct diplomatic effort.⁷⁵ Because he was writing at the beginning of the 20th century, Corbett had as his model the still pre-eminent RN. Booth devoted a significant section of *Navies and Foreign Policy* to the topic and argued that diplomacy was one of the three main functions of navies.⁷⁶ Likewise, James Cable devoted an entire book to naval diplomacy with *Gunboat Diplomacy 1919-1979* which includes a detailed chronology of 20th century examples of the function.⁷⁷ Most recently, Till devoted a section of his book *Seapower: A Guide for the Twenty-First Century* to naval diplomacy, including its application to naval coalition-building.⁷⁸

Edward Luttwak in the 1970s argued that in the 19th century, the RN's supremacy was such that a single frigate could represent the power of the RN and the will of the UK Government.⁷⁹ Yet, as Booth shows, power and influence can be measured only crudely and the capacity to mobilize naval capability is not the same as having power or influence. Ambiguity, one of the most important attributes of naval forces may also contribute to the lack of a clear distinction between power and influence.⁸⁰

What enables navies to succeed in the diplomatic function is their continuing freedom to operate in vast ocean areas including the high seas of the world, the EEZs of coastal states and while undertaking innocent or straits transit passage within national waters.⁸¹ This enables governments to dispatch their naval forces for a variety of purposes in support of the diplomatic function, all of which can be categorized under

⁷⁵ Till, *Seapower: A Guide for the Twenty-First Century*, p. 47.

⁷⁶ Booth, *Navies and Foreign Policy*, pp. 26-49.

⁷⁷ James Cable, *Gunboat Diplomacy 1919-1979*, 2nd. ed., St Martin's Press, New York, 1981. The chronology can be found at pages 193-258.

⁷⁸ Till, *Seapower: A Guide for the Twenty-First Century*, pp. 271-309.

⁷⁹ Edward N., Luttwak, *The Political Uses of Seapower*, Johns Hopkins University Press, Baltimore MD., 1974, p. 30.

⁸⁰ Booth, *Navies and Foreign Policy*, p. 27.

⁸¹ United Nations, *The Law of the Sea: United Nations Convention on the Law of the Sea*, Article 58, p. 19, Article 19, pp. 6-7; and Article 38, p. 12.

the description of 'presence'. Admiral Stansfield Turner, USN, has argued that the presence mission is the use of naval forces short of war, to achieve political objectives.⁸² He also noted that presence has two broad objectives; to deter actions inimical to the state and to encourage actions that are in the interest of the state. Consequently the diplomatic function of navies involves two kinds of naval deployment, preventative and reactive. The first initiates a show of presence in peacetime, while the second responds to a crisis.⁸³

While the presence mission is the most visible and most usual form of the diplomatic function, the function can also be realized in other ways. These include the sale on generous terms or the gifting of ships, the attachment of naval advisors to another country's navy, or humanitarian operations such as mine clearing or disaster relief.⁸⁴ Similarly, while the presence mission itself can involve warships operating off another State's coast, it can also have a more benign appearance. Ship visits to foreign ports are an example, with the potential for such issues as crew behaviour, ship appearance and the entertaining of local dignitaries to influence political leadership.⁸⁵

Although Booth's trinity of naval functions appears to provide neat divisions among the three categories, in reality the division is less than precise. As Grove notes, the line between diplomatic and military operations can be particularly difficult to discern.⁸⁶ Booth provides a partial explanation for this, in pointing to the relative subtlety with which a warship changes from being a '... dance-band platform to a haven for refugees, to a gun-platform for shore bombardment'.⁸⁷ Till also acknowledges the 'fuzzy boundaries' and the ability of warships to be engaged simultaneously in different activities.⁸⁸

⁸² Turner, 'Missions of the U.S. Navy', p. 14.

⁸³ Turner, 'Missions of the U.S. Navy', p. 14.

⁸⁴ Booth, *Navies and Foreign Policy*, p. 44.

⁸⁵ Booth, *Navies and Foreign Policy*, p. 44.

⁸⁶ Grove, *The Future of Seapower*, p. 233.

⁸⁷ Booth, *Navies and Foreign Policy*, p. 27.

⁸⁸ Till, *Seapower: A Guide for the Twenty-First Century*, p. 276.

Why the Diplomatic Function is Important

The importance of the diplomatic function to navies is exemplified in the time they spend in non-warlike operations or activities. Grove very succinctly suggested that navies are built for war, but have their main utility in peacetime, through deterrence and diplomatic activities.⁸⁹ He argued further that navies may now be configured primarily for peace and that presence at a distance, with a finely calculated capacity to apply force, may become the essence of naval power. Hence surface ships could become more important than ever.⁹⁰

Soviet Navy Admiral Sergei Gorshkov strongly reinforced this position. He argued that the unique claim for navies was that in peacetime only they could further the State's policies, by showing strength and achievement far beyond the State's borders.⁹¹ While his claim may have been self-serving, it was probably no more so than those made many years before by the USN's Admiral Mahan. Both officers were intent on their respective navies growing more powerful. As Till notes, Gorshkov had an ally in Admiral Elmo Zumwalt, his USN counterpart, who claimed there was a 95 per cent chance that the most likely future use of naval forces would be in the presence role.⁹²

The specific characteristics of navies that lead to this flexibility and utility are longstanding. James Cable quotes the British Foreign Office in 1907. 'The opportune presence of a British ship of war may avert a disaster which can only be remedied later at much inconvenience and considerable sacrifice'.⁹³ The failure of Britain to maintain a credible naval presence in the vicinity of the Falkland Islands in 1982 and the subsequent war with Argentina indicates that the Foreign Office judgment remains valid, if not always heeded.

All navies can take advantage of the diplomatic function.⁹⁴ Smaller navies will be limited in the extent to which they can apply it and in the options available to pursue

⁸⁹ Grove, *The Future of Seapower*, p. 187.

⁹⁰ Grove, *The Future of Seapower*, p. 236.

⁹¹ Till, *Maritime Strategy in the Nuclear Age*, p. 71.

⁹² Till, *Maritime Strategy in the Nuclear Age*, p. 214.

⁹³ Cable, *Diplomacy at Sea*, p. 117.

⁹⁴ Till, *Seapower: A Guide for the Twenty-First Century*, p. 275.

it, but in their local domains, they may still be effective. Hence, naval diplomacy has become a preoccupation of maritime strategists, an important declared function of navies and a justification for having them.⁹⁵

What the Diplomatic Function Enables

Given the inherent flexibility of naval forces, there can be many outcomes from the application of naval diplomacy. Booth has provided a lengthy and illuminating list. He argues that there are three main policy objectives, each with its own subsidiary objectives, associated with the diplomatic function.⁹⁶

The first of these objectives is negotiation from strength. Its subsidiary objectives include reassuring and strengthening allies and friendly governments threatened by internal challenges or external attack; signalling business as usual in a crisis; improving bargaining strength; and threatening force from the sea to support policy.

The second main objective is manipulation and its subsidiary objectives; manipulation of bargaining positions within alliances, demonstration of support for or gaining access to countries, build up of foreign navies and creation of proxy threats, and provision of standing demonstrations of naval power in distant waters.

Prestige is the third main policy objective. Its subsidiary objectives include providing psychological reassurance for the home country, providing a favourable image of one's country, and projecting an image of impressive naval force.⁹⁷

In Booth's view the best example of negotiation from strength is what used to be called 'gunboat diplomacy', which was practised frequently during the 19th and early 20th centuries. One notable mid-20th century example is the primarily naval British response to Iraqi threats against Kuwait in June 1961. The deployment of a strong naval force, including embarked Royal Marines, defused the situation very quickly.⁹⁸

⁹⁵ Till, *Seapower: A Guide for the Twenty-First Century*, p. 275

⁹⁶ Booth, *Navies and Foreign Policy*, pp 18-19.

⁹⁷ Booth, *Navies and Foreign Policy*, pp. 18-19.

⁹⁸ Cable, *Gunboat Diplomacy*, p. 65.

Booth identifies Soviet Navy activities in the 1960s and 1970s as an example of manipulation. The Navy was used to gain political advantage in a range of countries, especially in the Middle East and Africa – but not always to lasting effect.⁹⁹

Prestige remains an important element of naval diplomacy but is now less frequently associated with displays of naval power. Today, multi-ship task groups or even individual warships are usually the most frequent practitioners. For an example of the ongoing importance of naval diplomacy and prestige, it is hard to surpass then Indonesian President Megawati Sukarnoputri's statement:

A strong naval force reflects a nation's dignity, thus (by having one) we can gain the respect of other countries in the world.¹⁰⁰

Because influence is neither easily measured nor easily acquired and retained, the impact of actions can be misjudged. For example, in the Soviet Union's relations with Egypt in the late 1960s and early 1970s, and the associated request for naval basing rights, 'Soviet naval needs resulted in greater Soviet vulnerability to Egypt than Soviet naval strength produced Soviet influence over Egypt'.¹⁰¹

How Naval Diplomacy Works

The essence of naval diplomacy is presence, defined in *Australian Maritime Doctrine* as '... the operation of naval forces in areas of strategic significance that are intended to convey an interest'.¹⁰² Presence is not in itself a threat of force, but a demonstration of capability used to reassure, to impress and to warn. Consequently, presence is seen as being valuable for what it makes possible. It can be a first step to a wide range of methods by which maritime force can achieve foreign policy objectives. ¹⁰³ Presence can also be routine and continuous or periodic and it can be provided by anything from a single ship to a major task force. Presence is also associated primarily with

⁹⁹ Booth, *Navies and Foreign Policy*, p. 257.

¹⁰⁰ President Megawati Sukarnoputri quoted in Till, *Seapower: A Guide for the Twenty-First Century*, p. 277.

¹⁰¹ Booth, *Navies and Foreign Policy*, p. 38.

¹⁰² Sea Power Centre-Australia, *Australian Maritime Doctrine*, p. 65.

¹⁰³ Till, *Seapower: A Guide for the Twenty-First Century*, p. 279.

peacetime activities, but cannot have any significant effect without the possibility of a transition to conflict.¹⁰⁴

Despite being one of the most widely accepted elements of navies' operations, the concept of presence is difficult to analyse, in the sense of determining the associated benefits. Conversely, the costs are easier to determine, making the operations sometimes hard to justify to political leaders.¹⁰⁵

Peacetime presence activities are varied, including 'flag-showing' operations and providing assistance to friendly navies. Yet presence also has a less benign aspect, which maritime strategists describe with various euphemisms. Luttwak, for example, writes about various forms of suasion,¹⁰⁶ while Till mentions coercion, which in his terms can involve deterrence and compellence.¹⁰⁷ But, just as the benign forms of presence aim to influence others so too the less benign aspect aims to impact on or manipulate the political calculations of others. Consequently, force size, shape and tactics are very important for success.¹⁰⁸ Figure 2-2 below illustrates the components of naval diplomacy and their connections.¹⁰⁹

¹⁰⁴ Luttwak, *The Political Uses of Seapower*, p. 12.

¹⁰⁵ Booth, *Law, Force and Diplomacy at Sea*, pp. 143-44.

¹⁰⁶ Luttwak, *The Political Uses of Seapower*, pp. 1-6.

¹⁰⁷ Till, *Seapower: A Guide for the Twenty-First Century*, p. 276.

¹⁰⁸ Booth, *Navies and Foreign Policy*, p. 20.

¹⁰⁹ Till, *Seapower: A Guide for the Twenty-First Century*, p. 276

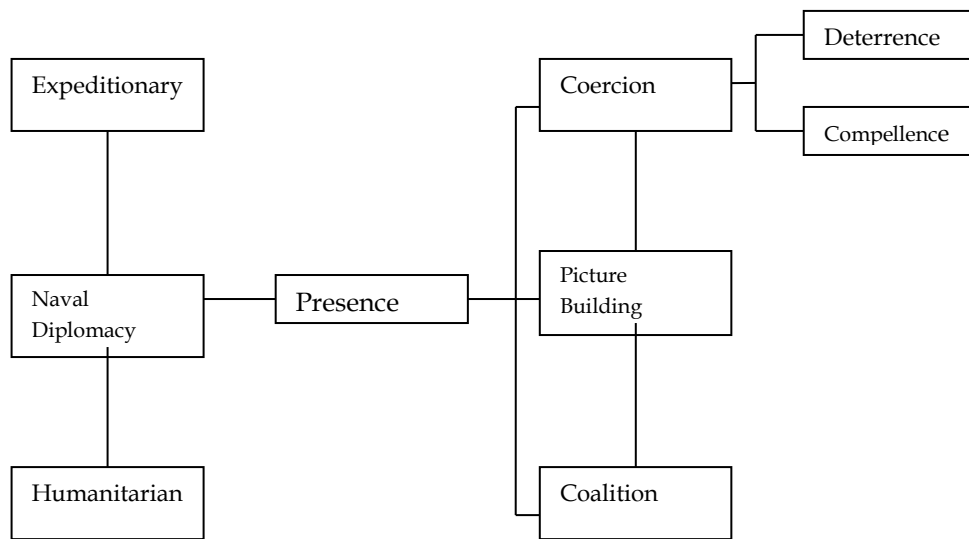


Figure 2-2: *The Components of Naval Diplomacy*

The use of naval deployments to compel or deter is widespread. Luttwak in 1974 noted that the USN had done so some 70 times since the end of the Second World War, at all levels of intensity and all over the world.¹¹⁰ Argentina's naval invasion of the Falkland Islands in 1982 and the RN-led response are other examples of the use of naval force to compel, although Argentina was unsuccessful. Highlighting the difficulty in assessing the success of presence missions to compel or deter, Luttwak also differentiated between active and latent suasion. He claimed that naval forces use active suasion in a deliberate attempt to evoke a specific response from another state; whereas in the case of latent suasion, the response to a deployment may be undirected and thus possibly unintended.¹¹¹

One specific form of compellence or deterrence is blockade or interception operations, both of which aim to stop or limit movement of shipping. Naval blockade has a long history, especially when used as a wartime expedient. Its use in peacetime has also been widespread if not especially successful. The RN's Beira patrol off the east coast of Africa from 1966 until 1975 was limited by the readiness of international shipping to

¹¹⁰ Luttwak, *The Political Uses of Seapower*, p. 38.

¹¹¹ Luttwak, *The Political Uses of Seapower*, p. 11.

ignore it.¹¹² The more recent UN sponsored interception operations aimed at illegal Iraqi oil traffic were circumvented by Iraq's ability to use land routes. Nevertheless, an advantage of blockade operations in peacetime is that while they may be seen as potentially provocative, they may also be non-belligerent and difficult to counter without escalating to violence.¹¹³

Why Naval Diplomacy Does Not Always Work

Warships are particularly suited to the diplomatic function because of their defining characteristics, which also determine their effectiveness in carrying out their other functions. But the diplomatic function of navies is the most problematic. The effects of its application tend to be indirect and depend on the reactions and understanding of leaders or rulers who may not have any appreciation of naval or maritime strategy.¹¹⁴ So, an attempt at influence-building with one nation can also have a coercive impact on another.¹¹⁵

There will be occasions when the display of naval might has an unexpected impact. An example of this was the German Navy fleet review in Kiel during 1904, which left British observers feeling uneasy as much as impressed.¹¹⁶ A more recent example is the USN deployment of the United States Ship (USS) *Enterprise* and Task Force 74 to the Bay of Bengal during the 1971 Indo-Pakistani War. As a show of strength by the pro-Pakistan United States it failed, not least because events in East Pakistan had already passed the stage at which any American intervention would have mattered.¹¹⁷ Furthermore all foreign nationals had already been evacuated from East Pakistan, thereby removing another potential purpose for the task force deployment.¹¹⁸

¹¹² Eric Grove, *From Vanguard to Trident: British Naval Policy Since World War Two*, Naval Institute Press, Annapolis, MD., 1987, p. 301.

¹¹³ Martin, *The Sea in Modern Strategy*, pp. 152-3.

¹¹⁴ Booth, *Navies and Foreign Policy*, p. 28.

¹¹⁵ Booth, *Navies and Foreign Policy*, p. 28.

¹¹⁶ Booth, *Navies and Foreign Policy*, p. 58.

¹¹⁷ James Goldrick, *No Easy Answers: The Development of the Navies of India, Pakistan, Bangladesh and Sri Lanka 1945-1996*, Lancer Publishers and Distributors, New Delhi, 1997, p. 98.

¹¹⁸ Goldrick, *No Easy Answers: The Development of the Navies of India, Pakistan, Bangladesh and Sri Lanka 1945-1996*, p. 98.

There is no guarantee that the signal sent is the signal received and the potential for misjudgment is increased with the growing tendency for ships' capabilities to be less visible than was the case when 'main armament' was clearly the big guns. Today, sensors can be just as important and be in action without any visible sign from the ship.

The potential for uncertainty and unpredictability is heightened by the ambiguity inherent in coercive instruments being used in apparently non-coercive roles.¹¹⁹ Ultimately there is the prospect of miscalculation in both the application of and response to naval diplomacy, which could at worst lead to unwanted conflict.

Furthermore, the application of naval diplomacy tends to be indirect and slow. While warships are mobile and relatively independent they are also relatively slow, especially when compared with aircraft. Consequently, unless they are already in position or an immediate response is not needed, warships may not be able to exercise the presence that generates influence. Neither can there be any guarantee that effects created will have long term impact. The failure of Soviet naval assistance to the Indonesian Navy in the 1960s to develop lasting ties with that country is an example of such difficulty.¹²⁰ Furthermore, influence is not easily measured and even if the outcome desired by the presence of warships is achieved, there is no sure way of determining that it was achieved by that demonstration of presence.¹²¹ Finally, the influence generated by the presence of warships may not always achieve the objective unaided. As Booth noted, warships rarely have the quality of looming menace across a border associated with armies.¹²² This is a double-edged sword. The need on occasion to depend on other actions beyond the presence of warships also adds to the difficulty of assessing the impact of the measures being taken.

¹¹⁹ Booth, *Navies and Foreign Policy*, p. 27.

¹²⁰ Booth, *Navies and Foreign Policy*, p. 254.

¹²¹ Booth, *Navies and Foreign Policy*, p. 36.

¹²² Booth, *Navies and Foreign Policy*, p. 35.

THE CONSTABULARY FUNCTION OF NAVIES AND ITS IMPORTANCE

The Legal Basis

The basis of the constabulary function is that States enjoy sovereignty over their territorial waters which may extend up to 12nm and sovereign rights over the resources, living and non-living in their EEZs which can extend to 200nm from the baselines. In some cases, sovereign rights extend to 350 nm; the outer limit of the continental shelf.¹²³ These EEZ and continental shelf sovereign rights are currently enjoyed by at least 166 States, while there are 51 with claims over the continental shelf extensions to 350nm.¹²⁴

Within their territorial seas, while States enjoy full sovereignty, under the terms of the LOSC they also permit the right of innocent passage to international shipping. Such passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State and so long as it is continuous and expeditious.¹²⁵ Immediately beyond the territorial sea, to a maximum of 24 nm from the baselines, in what is termed the contiguous zone, coastal States may exercise the controls necessary to prevent infringement of their customs, fiscal, immigration or sanitary laws and regulations within their territory or territorial seas. They may also punish infringements of these laws and regulations committed within their territory or territorial seas.¹²⁶ Coastal States' efforts to ensure their sovereign rights are maintained is a vital element of the constabulary function of navies.

In their EEZs, coastal States have sovereign rights for the exploration, exploitation, conservation and management of living and non-living natural resources in the waters,

¹²³ United Nations, *The Law of the Sea: United Nations Convention on the Law of the Sea*, Articles 76 and 77, pp. 27-8.

¹²⁴ See, *States Parties*, International Tribunal for the Law of the Sea, <<http://www.itlos.org/index.php?id=137>> (7 November 2013), and Bernard H. Oxman, *The Rights of States to Establish Maritime Zones Under the United Nations Convention on the Law of the Sea*, 8 June 2010, <http://www.un.org/Depts/los/reference_files/oceansday10_oxman.pdf> (7 November 2013).

¹²⁵ United Nations, *The Law of the Sea: United Nations Convention on the Law of the Sea*, Articles 17-19. p. 6.

¹²⁶ United Nations, *The Law of the Sea: United Nations Convention on the Law of the Sea*, Article 33. p. 11.

seabed and sub-soil. They also have jurisdiction over artificial islands, installations, structures, marine scientific research and the protection and preservation of the marine environment.¹²⁷ Where coastal States claim extended continental shelves, up to 350nm from their nominated baselines, they also have sovereign rights for exploring and exploiting the living and non-living natural resources of the seabed and sub-soil in the areas claimed.¹²⁸ These resources include sedentary living organisms which are either immobile on or under the seabed, or can move only when in contact with the seabed or sub-soil.¹²⁹ Protection of these rights is another major element of the constabulary function.

Marine Resources and the Constabulary Function

The importance of the constabulary function lies primarily in the growing importance of the sea to humanity, the increasing ability to harvest its resources and the recent extensions to maritime boundaries which have placed a large proportion of the resources under the control of coastal States. Three billion people gain some 20 per cent of their animal protein from the sea, in the form of fish and other seafood.¹³⁰ Furthermore, the global fish catch has quintupled since 1950 although catches are declining, with wild catch expected to have been 90 million tonnes in 2012, down four per cent from the 94 million tonne record in 1996.¹³¹ Current harvesting capacity far exceeds biological sustainability of fish stocks. The growing gap between demand and supply of fish and seafood has already led to many clashes at sea.

The three so called 'Cod Wars' between Iceland and the UK (1958-61, 1972-73 and 1975-76) exemplified problems in the Atlantic Ocean fisheries.¹³² Disputes involving Japan,

¹²⁷ United Nations, *The Law of the Sea: United Nations Convention on the Law of the Sea*, Article 56, p. 18.

¹²⁸ United Nations, *The Law of the Sea: United Nations Convention on the Law of the Sea*, Article 77, p. 28.

¹²⁹ United Nations, *The Law of the Sea: United Nations Convention on the Law of the Sea*, Article 77, p. 28.

¹³⁰ J. Matthew Roney, *Eco-Economy Indicators: Fish Catch*, Earth Policy Institute, 19 November 2012, < http://www.earth-policy.org/indicators/C55/fish_catch_2012> (7 November 2013).

¹³¹ Roney, *Eco-Economy Indicators: Fish Catch*, < http://www.earth-policy.org/indicators/C55/fish_catch_2012> (7 November 2013).

¹³² Till, *Seapower: A Guide for the Twenty-First Century*, p. 312. See also, Ministry of Defence (Navy). *The Cod War: Naval Operations off Iceland in Support of the British Fishing Industry*, London, 1990, p. ix.

the Koreans and Russia have typified the tensions in East Asian waters and in Southeast Asian waters there have been recent clashes involving Thai fishers and their neighbours.¹³³ Australia has also been involved in fisheries disputes. For example, the Uruguyan registered *Viarsa I* was detected allegedly fishing illegally in Australian waters in the Southern Ocean. With assistance from South Africa, the vessel was boarded after a 3 900 nm chase into the South Atlantic Ocean.¹³⁴ In recent years there has been an ongoing battle to repel the efforts of hundreds of mainly Indonesian fishing vessels in northern waters.¹³⁵ The largest haul of Indonesian illegal fishers was 367 boats in the financial year 2005-06. By 2012 the number of apprehended boats had reduced to seven.¹³⁶

Early in the 21st century access to oil and gas reserves is becoming increasingly important as global demand for these energy sources threatens to outstrip supply. With about one third of world reserves of oil and gas located under the sea, there is growing commercial interest in exploiting it, even in water depths of up to 3,000m.¹³⁷ The vast majority of these offshore sources will be in coastal State territorial waters or EEZs, will be subject to a range of threats and will require protection by naval forces.

The South China Sea has seen disputes relating to contested rights to oil, gas and fish dating back at least to the 1970s. The disputes are founded on unresolved territorial disputes and have led to naval clashes.¹³⁸ These clashes were examples of the constabulary function of the navies involved, as the related operations were conducted in support of sovereign rights claimed in waters where maritime boundaries were not agreed.

¹³³ Till, *Seapower: A Guide for the Twenty-First Century*, pp. 312-13.

¹³⁴ Australian Government, Australian Customs Service and Australian Fisheries Management Authority, *Enforcement Operations in the Southern Ocean*, Canberra, May 2006. Of interest, the crew were subsequently acquitted in a Federal Court case in Perth. See, '\$30m suit as fishers acquitted', *The Australian*, 7 November 2005, <www.theaustralian.news.com.au> (7 November 2005).

¹³⁵ See for example, 'Dangerous territory', *Adelaide Advertiser*, 12 April 2006, p. 23, 'Customs operation targets illegal fishing', *Sunday Canberra Times*, 9 April 2006, p. 33, and 'Operation Breakwater', *Western Cape Bulletin*, 13 April 2006, p. 5.

¹³⁶ 'Australian Fisheries Management Burns Illegal Fishing Boats', *NT News*, 23 October 2013, in LCDR Graham Norman, RANR, ed., *RAN MTO Newsletter*, 28 October 2013, p. 3.

¹³⁷ Till, *Seapower: A Guide for the Twenty-First Century*, p. 311.

¹³⁸ Leszek Buszynski and Christopher Roberts, eds., *The South China Sea and Australia's Regional Security Environment*, National Security College Occasional Paper No. 5, Australian National University, Canberra, 5 September 2013, pp. 4 and 6.

Locally, Australia's Joint Offshore Protection Command was established on 30 March 2005, following a Prime Ministerial review of the security of the northwest shelf oil and gas platforms in the latter part of 2004.¹³⁹ In this case, terrorism was the presumed threat, although navigation safety may also have been a consideration. This was the case with the Bass Strait Oil Rig Patrols in the early 1980s.¹⁴⁰

Australian naval forces were involved in protection of Iraqi oil and gas platforms from insurgent attacks in the aftermath of the 2003 Gulf War. On the face of it, this appears to have been a constabulary operation. In this thesis however, for simplicity, such international operations will not be examined as part of the constabulary function.

Defining the Constabulary Function

In this thesis constabulary operations are defined as those conducted by a coastal State for law enforcement at sea. Thus, the RAN's capstone doctrine, *Australian Maritime Doctrine*, defines constabulary operations as those which, '... function within the framework of domestic law and Australia's international law obligations and hence the amount of force that can be applied must be strictly within the mandate given'.¹⁴¹

The position taken in this thesis differs from that of the RAN in one significant respect. The RAN includes within the scope of constabulary operations, activities that in this thesis are defined as diplomatic or military operations. These include peace operations, namely; peacekeeping, peace enforcement, embargoes and sanctions and peace building. These are operations which would take place in support of another

¹³⁹ 'Boost for maritime counter-terrorism protection', joint news release by Senator the Hon Robert Hill, Minister for Defence and Senator the Hon Chris Ellison, Minister for Justice and Customs, 30 March 2005. <www.ag.gov.au/agd/www/justiceministerHome.nsf> on 22 May 2006. As from 23 October 2006, the Joint Offshore Protection Command was renamed Border Protection Command. There was no change in the pre-existing command and control arrangements. Department of Defence, *Defgram No. 597/2006 Designation Of Border Protection Command*, signed by Air Chief Marshal A.G. Houston, Chief of the Defence Force, 30 October 2006.

¹⁴⁰ The writer participated in the aerial patrols of the oil rigs for several months in 1981 and 1982.

¹⁴¹ Sea Power Centre-Australia, *Australian Maritime Doctrine: RAN Doctrine 1*, 2nd ed., Commonwealth of Australia, Canberra, 2010, p. 113.

State or States, rather than in support of domestic or international laws governing Australia's law enforcement at sea responsibilities.

The RN uses a similar if more extensive definition to that of the RAN, for what it terms the 'constabulary application'.

Constabulary Application. The use of military forces to uphold a national or international law, mandate or regime in a manner in which minimum violence is only used in enforcement as a last resort and after evidence of a breach or intent to defy has been established beyond reasonable doubt. The level and type of violence that is permitted will frequently be specified in the law, mandate or regime that is being enforced. Also called policing.¹⁴²

This approach to the constabulary function is consistent with Booth's, if perhaps a little narrower. Booth divided the function into coast guard and nation-building responsibilities, with the latter involving contributions to maintaining internal stability.¹⁴³ Booth admitted that navies do not contribute extensively to such operations. This thesis takes the view that naval contributions to maintaining internal stability are policing operations and while they are mainly land-based, the naval contributions are part of the constabulary function. The RN takes the same view, considering that, for example, patrols of the Northern Ireland coast to counter terrorist activity constituted constabulary operations.¹⁴⁴

There is sometimes no clear distinction between the constabulary function and the military and diplomatic ones. This may be most pronounced when an operation moves from being one function to another. Booth and Till both acknowledge this point, with Booth noting that there is some artificiality in the classification of the functions, especially in peacetime as one operation can serve more than one objective.¹⁴⁵ Till's point is that the maintenance of good order at sea demands operations varying from law enforcement to the defence of security.¹⁴⁶

¹⁴² BR 1806, *British Maritime Doctrine*, 3rd ed., The Stationery Office, London, 2004, pp. 248-9.

¹⁴³ Booth, *Navies and Foreign Policy*, p. 16.

¹⁴⁴ BR 1806, *British Maritime Doctrine*, 3rd ed., p. 63.

¹⁴⁵ Booth, *Navies and Foreign Policy*, p. 17.

¹⁴⁶ Till, *Seapower: A Guide for the Twenty-First Century*, p. 342.

An example of an operation which reflected Till's spectrum of force was the element of Australia's Operation *Relex* mounted to combat illegal immigration off the northwest coast in August 2001. On 26 August 2001 the motor vessel (MV) *Tampa* rescued 438 intended asylum seekers from an unseaworthy craft and after some disputes with the asylum seekers, determined to land them at Christmas Island, which is Australian territory.¹⁴⁷ The Australian Government refused to allow the *Tampa* to enter Australian territorial waters and when it began to do so, used naval craft to enable special forces troops to board the ship, too late however to prevent its entry.¹⁴⁸

While the *Tampa* remained outside Australian territorial waters and showed no signs of entering, then it merited nothing more than surveillance by Defence and Coastwatch forces. When the *Tampa* appeared set to enter territorial waters the use of special forces was one option open to the Australian Government, which could also, for example, have fired shots across the ship's bows. The method selected may have represented the most effective one available; the least use of military force and the least threat of harm to the ship's crew and the asylum seekers.

Highlighting the difficulty of establishing a consistent approach to this issue, however, the Australian Government has recently authorized the Navy to open fire in certain circumstances when confronted by illegal fishing activities in the EEZ.¹⁴⁹ The decision was made in response to increasingly aggressive actions on the part of illegal fishers. The changed rules of engagement permit the Navy to disable fishing vessels by firing at the rudder or engines. The previous rules of engagement allowed only for warning shots to be fired across the bows of vessels attempting to avoid apprehension.

Although his definition of the constabulary function is not comprehensive, Rear Admiral J.R. Hill provides support for the position taken in this thesis. He noted that the rights and responsibilities of a state in the waters off its coast '... can usefully be

¹⁴⁷ Stuart Kaye, 'Tampering with Border Protection: The Legal and Policy Implications of the Voyage of the MV *Tampa*', in Martin Tsamenyi and Chris Rahman, eds., *Protecting Australia's Borders: MV Tampa and Beyond*, Centre for Maritime Policy, University of Wollongong, Wollongong, 2002, p. 60.

¹⁴⁸ Kaye, 'Tampering with Border Protection: The Legal and Policy Implications of the Voyage of the MV *Tampa*', p. 61.

¹⁴⁹ Sarah Miles, 'Navy granted power to shoot at illegal fishers', *The Age*, 7 December 2006. p. 5.

divided into sovereignty, good order and resource enjoyment'.¹⁵⁰ He also noted that sovereignty applies only to the territorial sea and that preservation of good order there is both a right and a responsibility.¹⁵¹ His argument supports the position taken by the Australian Government over the MV *Tampa*.

The Niue Treaty entered into force on 20 May 1993 and has been ratified by several South Pacific states, including Australia. This treaty, *inter alia* allows that a Party to it '... may permit another party to extend its fisheries surveillance and law enforcement activities to the territorial sea and archipelagic waters of that party'.¹⁵² This represents an important extension of the constabulary function, by which one state may provide one element of the constabulary function for another. In this case, the primary reason for the Treaty is to enable the small island States to cooperate for the protection of their very extensive EEZs.¹⁵³

The Niue Treaty has encouraged the development of subsidiary arrangements for closer cooperation among the parties. Multilateral Niue Treaty Subsidiary Agreements are being developed to enable States parties to cooperate more fully. Thus seven Forum Fisheries Agency member States have signed a Niue Treaty Subsidiary Agreement aimed at improving collaboration in monitoring control and surveillance of the region's shared fisheries resources.¹⁵⁴

Experience has shown that navies engaged in the constabulary function are not always involved in all aspects of the function. This is especially true of the RAN, for two reasons. Firstly, one of the traditional tasks associated with the constabulary function, counter-piracy operations, has never materialized to any extent in the waters around

¹⁵⁰ Rear Admiral J.R. Hill, *Maritime Strategy for Medium Powers*, Naval Institute Press, Annapolis, MD., 1986, p. 99.

¹⁵¹ Hill, *Maritime Strategy for Medium Powers*, p. 99.

¹⁵² Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region, Article VI. <<http://sedac.ciesin.org/entri/texts/acre/Niue.txt.html>> (18 May 2007).

¹⁵³ New Zealand House of Representatives, *International treaty examination of the Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region: Report of the Primary Production Committee*, undated, <<http://www.parliament.nz/resource/0000002575>> (26 March 2014).

¹⁵⁴ 'Samoa signs the Niue Treaty Subsidiary Agreement (NTSA)', *Savali*, 12 July 2013, <<http://www.savalinews.com/2013/07/12/samoa-signs-the-niue-treaty-subsidiary-agreement-ntsa/>> (8 November 2013).

Australia.¹⁵⁵ Secondly, the RAN is better placed to deal with issues such as marine resources protection and inflows of asylum seekers arriving by sea, than with others such as environmental and quarantine protection. Quarantine problems in particular are mostly dealt with at air and sea ports of entry. Experience has also shown that marine resources protection and interception of asylum seekers have been the aspects of the constabulary function that have demanded most attention from governments. Consequently, the RAN's constabulary function focus has been overwhelmingly on these two issues, especially since 1967 when the Attack class patrol boats entered service.

Yet, the RAN is involved in other aspects of the constabulary function, most notably assisting Customs authorities with counter-drug smuggling operations and assisting biosecurity authorities with the quarantine implications of unauthorized landings on remote parts of the Australian coast. Similarly, the RAN undertakes occasional work for environmental management authorities such as the Great Barrier Reef Marine Park Authority. These constabulary activities are, however, relatively infrequent.

Despite the fact that in protecting Australia's offshore estate the RAN does not fully engage in all aspects of the constabulary function, all aspects of the function relating to Australia's offshore estate will be examined in this thesis. This will provide a complete picture of the development of the threats to good order at sea as they have affected Australia. It will also provide an appreciation of the magnitude of the entire law enforcement function and the extent to which it is actually prosecuted at sea. Additionally, it will provide a clear exposition of the mostly gradual expansion of the Navy's involvement in the constabulary function and the extent of the Navy's contribution to the overall task.

Other Challenges for the Constabulary Function

Protection of the marine environment is another important element of the constabulary function. According to Davis we have '... treated the seas as a gigantic planetary waste

¹⁵⁵ As noted above examination of the constabulary function in this thesis is limited to law enforcement operations in and around Australia's EEZ. The RAN has conducted counter-piracy operations off the Horn of Africa.

bin...'.¹⁵⁶ The problems associated with pollution of the seas are not confined to coastal waters, but importantly apply also to oceanic waters. Still limited research has pointed to levels of some dangerous pollutants, including heavy metals, being present in both coastal and oceanic waters, although usually in higher levels in the coastal waters.¹⁵⁷

Jacques Cousteau determined that in the 20 years up to the 1980s marine pollution reduced the intensity of sea life by 30 to 50 percent. Cousteau has attributed this loss primarily to coastal discharge, ocean dumping or spillage, accidents and seabed mining.¹⁵⁸ Writing more recently, Till, referring to the 1995 UN Independent Commission on the World's Oceans, noted the increasing pressures on the oceans produced by growing populations, jurisdictional problems, over exploitation and widespread ignorance. He also noted the potential for disorder which could follow collapse of the marine environment.¹⁵⁹

The extension of national maritime responsibilities associated with the LOSC has enabled some remedial effort to be mounted against marine pollution in coastal waters. The growing realization of the fundamental importance of the state of the oceans to humanity will in time see these efforts extended beyond present territorial sea and contiguous zone boundaries. Clearly the main source of marine pollution remains discharges from land-based sources and in that sense, especially, protection of the marine environment is one element of the constabulary function of navies which will remain limited.

Australian Maritime Doctrine: RAN Doctrine 1 gives the matter very little coverage, apart from noting its growing importance.¹⁶⁰ Responsibility for marine environmental management and the National Plan to Combat Pollution of the Sea by Oil and other Hazardous and Noxious Substances, lies with the Australian Maritime Safety

¹⁵⁶ W. Jackson Davis, 'The Need for a New Ocean Governance System', in Jon M. Van Dyke, Durwood Zaelke and Grant Hewison, eds., *Freedom for the Seas in the 21st Century: Oceans Governance and Environmental Harmony*, Island Press, Washington, D.C., 1993, p. 148.

¹⁵⁷ Davis, 'The need for a New Ocean Governance System', p. 156.

¹⁵⁸ Till, *Seapower: A Guide for the Twenty-First Century*, p. 204

¹⁵⁹ Till, *Seapower: A Guide for the Twenty-First Century*, p. 330.

¹⁶⁰ *Australian Maritime Doctrine: RAN Doctrine 1*, 2nd ed., p. 114.

Authority.¹⁶¹ Thus, the Navy, apart from ensuring its own compliance with environmental legislation, has little more than an incidental involvement in the marine environmental aspects of the constabulary function.

There are other maritime activities, legal and illegal, which engage navies in their constabulary function. These include piracy and sea robbery, the carriage of dangerous or noxious substances and the smuggling of drugs or other illegal material. For example, Australia's Navy, and Army brought the North Korean owned freighter *Pong Su* into Sydney in April 2003 after the ship attempted to reach international waters having unloaded heroin off the Victorian coast.¹⁶²

Deterring and managing inflows of seaborne asylum seekers is yet another activity which continues to be countered by navies and coast guards around the world, and which continues to be a sensitive issue for Australia. For the first decade of the 21st century and beyond, the RAN has been involved in operations to manage the flow of asylum seekers, primarily from Indonesian ports, to the Australian coast and offshore islands.¹⁶³

Finally, two quite recent manifestations of illegal activities at sea have the potential to engage navies to an increasing extent. The first is the threat of proliferation of weapons of mass destruction by sea, which has led to the institution of the Proliferation Security Initiative, mentioned above. The second is maritime terrorism, with some occurrences in the Gulf of Aden and in the Philippines in 2000, 2002 and 2004 leading authorities to fear the potential for more such attacks in the future.¹⁶⁴

¹⁶¹ Australian Government, Australian Maritime Safety Authority, *Environment*, <<http://www.amsa.gov.au/environment/>> (9 November 2013).

¹⁶² See, ABC Foreign Correspondent, 'North Korea - Pong Su', broadcast on 27 July 2004. Accessed at www.abc.net.au/foreign/content/2004/s1162110.htm on 30 November 2006.

¹⁶³ Bendle, Griffin and Laurence, eds., *Database of Royal Australian Navy Operations, 1990-2005: Working Paper No. 18*, pp. 44, 46 and 50. See also, Janet Phillips and Harriet Spinks, 'Boat Arrivals in Australia Since 1976', *Parliament of Australia, Department of Parliamentary Services*, Canberra, 11 February 2011, Appendix A, p. 18.

¹⁶⁴ On 12 October 2000 the USS *Cole* was damaged in a terrorist attack in the port of Aden, while on 6 October 2002 the tanker *Limburg* was also damaged in a similar attack off the coast of Yemen. Later, on 27 February 2004, the *Superferry 14* sank with the loss of over 100 lives after the detonation of a bomb on board as it was leaving Manila.

Some of these threats, like piracy, are contemporary manifestations of age-old risks of doing business at sea. Others, like the illegal transport of weapons of mass destruction and maritime terrorism, are products of this age and because they are not present only within waters under coastal state jurisdiction, offer new and distinct challenges for navies in their resolution. The potential for these threats to create significant challenges for states against which they may be directed is illustrated by the claim that the global international trade in illegal drugs is valued at \$US 30-50 billion per year.¹⁶⁵

Recent Australian experience with both illegal, unreported and unregulated (IUU) fishing and asylum seekers has shown that naval and all other available resources can be inadequate at times. Numbers of vessels engaged in the illegal pursuits, geographic spread of the activities, the time span over which they occur and conflicting operational demands all contribute to this demand for law enforcement resources.

There is another maritime activity which some navies, including the RAN, categorize as part of the constabulary function; search and rescue at sea. It is not included within the constabulary function for the purposes of this thesis, because it is not primarily a law enforcement activity, but a humanitarian one. Many countries have formal organizations other than navies established specifically to deal with this task. The USA has the Coast Guard, while Australia has Australian Search and Rescue, within the Australian Maritime Safety Authority. Australian Search and Rescue manages and coordinates search and rescue operations, bringing in naval and other defence assets, together with other suitable civilian resources. Additionally, as detailed in the *Safety of Life at Sea (SOLAS) Convention*, Chapter Five and July 2006 Amendment, there is a general obligation for ships' masters to assist those in distress at sea.¹⁶⁶ The *SAR Convention*, to which Australia is also a party, ensures cooperation among neighbouring countries, so that wherever an accident occurs at sea a rescue operation can be mounted.¹⁶⁷

¹⁶⁵ Edward Gresser, 'World Drug Trade: \$50bn?' *Progressive Economy*, 14 August 2013, <<http://progressive-economy.org/2013/08/14/world-drug-trade-50-billion/>> (9 November 2013).

¹⁶⁶ International Convention for the Safety of Life at Sea (SOLAS) 1974, <www.imo.org/Conventions/contents> (16 December 2006).

¹⁶⁷ International Maritime Organization, *International Convention on Maritime Search and Rescue (SAR)*, <[http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-on-Maritime-Search-and-Rescue-\(SAR\).aspx](http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-on-Maritime-Search-and-Rescue-(SAR).aspx)> (27 March 2014).

How and why the Constabulary Function Works

Since the entry into force of the LOSC in 1994 and especially the extended maritime jurisdiction regimes it enabled, all coastal States seek to maintain good order at sea, at least within their territorial seas. At a minimum, they need some patrol craft to do this.¹⁶⁸ At the other end of the spectrum, the USA has established a Coast Guard larger than the navies of all but very few other states, to manage its constabulary duties and to ensure good order at sea. Often it does this in cooperation with the USN, which like many other navies, performs military, diplomatic and constabulary functions. Generally navies, or coast guards, have accepted the constabulary function as a legitimate part of their activities - for coast guards usually their primary activities.

In considering the environmental aspect of good order at sea, the 1998 Advisory Committee on the Protection of the Seas, in Stockholm, sought to '... encourage States to use the capacity of their military and intelligence organizations towards environmental security in partnership with their civilian counterparts.'¹⁶⁹ The committee recognized that navies have intrinsic skills and experience to apply to that particular function, including the capacity to contribute to pollution prevention and clean-up. This can include preventing the disposal of obsolete equipment from becoming a pollution problem itself.¹⁷⁰ Increasingly, navies are coming under pressure to ensure that their training activities involving the use of sonars do not cause distress to marine mammals and other creatures.

Navies also have skills and experience that apply equally to other elements of the constabulary function. In many instances, navies will be the only national organizations with these skills and experience. Others, such as Customs and Fisheries will lack some of the qualities of navies; seagoing vessels, comprehensive intelligence systems, a variety of sensors and weapons systems, boarding parties capable of

¹⁶⁸ Booth, *Law, Force and Diplomacy at Sea*, p. 196.

¹⁶⁹ Till, *Seapower: A Guide for the Twenty-First Century*, p. 331.

¹⁷⁰ Till, *Seapower: A Guide for the Twenty-First Century*, p. 332.

opposed boardings, for example. But they will have powers of arrest under a variety of laws. In many cases, these organizations will combine to achieve the desired results.¹⁷¹

To be effective in the constabulary function, navies firstly need to know what is occurring in their sovereign waters and in those waters over which they enjoy sovereign rights. This can be taken to include knowledge of movements on, above and under the water as well as knowledge of the maritime environment itself. Navies also need to be able to apply force and while sometimes only minimum force will be needed, there should be an inherent capacity to increase the level of force if circumstances demand it. For example, there was an instance in 1995 in which the Philippine Navy was unable to respond adequately to Chinese provocation over the disputed Mischief Reef.¹⁷² For navies, being able to apply force can also involve knowing when not to use it. Navies must be able to stop a ship without destroying it and must be able to communicate with others on the seas and not just resort to force.¹⁷³ Consequently, navies may also need to act as mediators between, for instance, non-government organizations such as Greenpeace and whaling fleets.

To carry out the constabulary function effectively, navies also need to be 'network enabled'. Essentially this means that they should have access to and share relevant intelligence and other information, in real time whenever possible. This will enable navies to respond quickly to threats of any kind, or preferably to prevent them from emerging. Usually, this capability will relate more to complex or extensive threats, such as international maritime terrorism and major illegal fishing activities. It must also be combined with a good working knowledge of international law on the part of those operating naval vessels in the constabulary function.

Navies also need sound strategic planning capabilities and plans, requirements of which the US Coast Guard was found wanting on the 11th of September 2001.¹⁷⁴ These plans must then also translate into effectiveness at the operational and tactical levels.

¹⁷¹ Warwick Gately and Cameron Moore, 'Protecting Australia's Maritime Borders: The Operational Aspects', in Tsamenyi and Rahman, *Protecting Australia's Maritime Borders*, p. 41.

¹⁷² Till, *Seapower: A Guide for the Twenty-First Century*, p. 329. The Philippines found itself in a similar position in trying to respond to Chinese incursions on Scarborough Reef in 2012.

¹⁷³ Booth, *Law, Force and Diplomacy at Sea*, p. 204.

¹⁷⁴ Till, *Seapower: A Guide for the Twenty-First Century*, p. 347.

One essential element of this planning is improved integration between military and civilian agencies with responsibilities for aspects of the constabulary function. This applies both nationally and internationally. For example, the British approach, involves the RN, Royal Air Force and Royal National Lifeboat Institution and with civilian agencies having most enforcement functions, is 'federated' rather than integrated'.¹⁷⁵ Till states that it '... looks untidy and should not work, but oddly seems to most of the time.'¹⁷⁶ He described Australia's approach as a tidier version of the British; with Coastwatch the coordinating organization, having access to service providers like the RAN and clients such as Fisheries, Customs and Immigration.¹⁷⁷ Australia's approach today is even tidier, with the Border Protection Command a multi-agency organization using assets assigned by the Australian Customs and Border Protection Service and the Department of Defence.¹⁷⁸

The operational effectiveness of navies in the constabulary function will therefore also reside in suitably equipped ships which have very good sea-keeping ability and endurance and on suitably trained and experienced personnel. Detection and apprehension are the keys to effective regulation on the oceans.¹⁷⁹

The Constabulary Function - for Navies or Coast Guards

Yet, despite the fact that the constabulary function is an acknowledged element of Booth's trinity of naval roles and is accepted as such by navies around the world, there is some dispute as to whether it is a legitimate role for navies. This has flourished because of the growing importance of the constabulary function and associated increasing popularity of coast guards. It also stems from the fear among certain navies that constabulary work will limit their ability to remain operationally ready to meet their traditional threats at sea.

¹⁷⁵ Till, *Seapower: A Guide for the Twenty-First Century*, p. 345.

¹⁷⁶ Till, *Seapower: A Guide for the Twenty-First Century*, p. 345.

¹⁷⁷ Till, *Seapower: A Guide for the Twenty-First Century*, p. 345.

¹⁷⁸ Australian Government, Border Protection Command, *Border Protection Command*, <<http://www.bpc.gov.au/>> (9 November 2013).

¹⁷⁹ Booth, *Law, Force and Diplomacy at Sea*, p. 199.

Even as long ago as the early 1970s, the increasing economic importance of coastal zones and their expansion, led many to believe that offshore maritime policing would become a more important task for navies. Both Canada and Britain reoriented their navies to an extent in response to this development.¹⁸⁰ There is also an argument that the future of many navies depend on carrying out coast guard functions in the waters over which they claim national jurisdiction.

Some countries prefer using navies rather than coast guards for constabulary work. This has been brought about through the capacity of warships and their helicopters to operate over long ranges, their comprehensively trained crews, capacity for conducting boardings and experience in using minimum levels of force to achieve objectives. There is also the appreciation that warships '... create an impression'.¹⁸¹ As well, while their surface combatants may be more complex and costly than ships purpose-built for the constabulary function, they are as a result more flexible and more adaptable to a variety of roles.

Another important reality is that many navies are in fact coast guards in all but name. This applies especially to smaller navies; the Irish Navy being a useful example. It has eight offshore and coastal patrol craft, with guns their only armament. Apart from navigation and search radars, the ships carry none of the sensors or other weapons systems associated with warships. Similarly, the Irish Navy has eight helicopters and fixed-wing aircraft for maritime patrol and search and rescue. None is armed.¹⁸² Along with other forces like it, this navy is optimized for the constabulary function and could not participate in contemporary maritime warfare.

Forty three per cent of navies listed in Table 2-3 (52 of the total of 124) are capable of nothing more than constabulary functions, while there are in addition some 82 coast guards also limited to constabulary functions or token status. Another 32 per cent of navies (40 in total) are capable of some defensive combat capability and only 25 per

¹⁸⁰ Booth, *Navies and Foreign Policy*, p. 265.

¹⁸¹ Robin Warner, 'Jurisdictional issues for navies involved in multilateral regimes beyond national jurisdiction', in David Wilson and Dick Sherwood, eds. *Oceans Governance and Maritime Strategy*, Allen and Unwin, Sydney 2000, p. 186.

¹⁸² Information taken from the online version of *Janes Fighting Ships*, accessed via the Defence Intranet on 25 May 2006.

cent of navies (32 in total) are capable of projecting naval power significantly beyond national maritime boundaries. Noteworthy too, only 64 countries have both navies and coast guards. This represents just 31 per cent of the total number of countries with either navies or coast guards. It suggests that no matter what function they are optimized for, most navies of the world must become involved in the constabulary function – if it is to be carried out at all.

Organization Type¹⁸³	Number¹⁸⁴	Percentage of total navies or coast guards
Force Projection Navies	32	25%
Territorial Defence Navies	40	32%
Constabulary Navies	24	20%
Token Navies	28	23%
Total Number of Navies	124	
Constabulary Coast Guards	65	79%
Token Coast Guards	17	21%
Total Number of Coast Guards	82	
Countries with both Navies and Coast Guards	64	31% of total countries with navies or coast guards

Table 2-3: Navies and Coast Guards by Capability

By contrast, a significant number of navies consider the constabulary function to be ancillary to the military function - the ‘real’ job - and the associated training for war-fighting, maintaining embargoes and supporting land forces.¹⁸⁵ Additionally, navies in this position sometimes argue that their warships are wasted on constabulary tasks; being far more complex and costly than the tasks demand. This latter point is valid and must be considered in parallel with military commitments that may limit the availability of warships for the constabulary tasks. Additionally, there can be

¹⁸³ The grouping is an amalgamation of the typology developed by Eric Grove and detailed earlier in the chapter.

¹⁸⁴ The Eric Grove typologies were applied to all of the navies and coast guards listed in James Hackett, ed., *The Military Balance 2013*, Routledge for the International Institute for Strategic Studies, London, 2013.

¹⁸⁵ Warner, ‘Jurisdictional issues for navies involved in multilateral regimes beyond national jurisdiction’, p. 186.

constitutional problems associated with enforcing national legislation against own flag vessels.¹⁸⁶

Yet even for these navies, the reality is that they spend a far greater proportion of their time at peace than at war. Consequently, they are likely to spend a greater proportion of their time engaged in or available for constabulary tasks than in military tasks. This is very well reflected in a quote from Admiral Humphrey Smith RN in the 19th century, when the Royal Navy dominated maritime affairs worldwide. He noted:

‘... I don’t think we ever thought very much about War with a big W. We looked on the Navy more as a world Police force than a warlike institution. We considered that our job was to safeguard law and order throughout the world – safeguard civilization, put out fires on shore, and act as a guide philosopher and friend to the merchant ships of all nations.’¹⁸⁷

Much the same point was made by Vice Admiral Chris Ritchie, the RAN Chief of the Navy, in his keynote address to the RAN’s *Seapower 2004* Conference. He said, *inter alia*:

‘... If I were willing to risk another prediction, it would be that the Navy will in future become even more closely involved in maintaining and enforcing good order at sea. From time to time an ill-informed commentator will remark that the Navy finds constabulary operations ‘distasteful’, and that they are incompatible with our war-fighting functions. I totally reject these allegations.’¹⁸⁸

Undoubtedly, there will remain a strong imperative for navies to maintain their traditional functions; those associated with manifestations of state power.¹⁸⁹ But, even those navies that consider the constabulary function to be a secondary one will be increasingly unable to ignore it. As Vice Admiral Ritchie acknowledged, the RAN recognizes this and welcomes it. The USN, the biggest and most capable navy in the world also devotes considerable effort to the constabulary task, despite the presence of the US Coast Guard, itself larger than the navies of most nations. This effort has been

¹⁸⁶ Warner, ‘Jurisdictional issues for navies involved in multilateral regimes beyond national jurisdiction’, p. 186.

¹⁸⁷ Till, *Seapower: A Guide for the Twenty-First Century*, p. 359.

¹⁸⁸ Chris Ritchie, Vice Admiral RAN, ‘Positioning Our Navy for the Future’, in McCaffrie, ed. *Positioning Navies for the Future*, p. 22.

¹⁸⁹ Till, *Seapower: A Guide for the Twenty-First Century*, p. 367.

formalized within the National Fleet Policy, which aims to allow ‘... an effective two-way flow of capability to meet both expeditionary and domestic security imperatives...’.¹⁹⁰

Ultimately the constabulary task is one for both navies and coast guards. It is a *raison d’être* for all coast guards and for many smaller navies. For bigger navies it is a task of varying importance, which will always compete for attention with the traditional military and diplomatic functions. Inevitably, as the importance of the constabulary task continues to grow and as it attracts significant political attention even the biggest of navies are being compelled to take it seriously.

¹⁹⁰ *Deepwater News January 2004*, <www.uscg.mil/deepwater> (13 June 2006).

CHAPTER THREE

THE EVOLUTION OF THE CONSTABULARY FUNCTION OF NAVIES

Introduction

Today the constabulary function of navies is well established and accepted, if not always popular.¹ The doctrine publications of both the Royal Navy (RN)² and the Royal Australian Navy (RAN)³ deal with it comprehensively, and it has its modern foundation in both domestic and international law. The constabulary function today is not the responsibility only of navies. Notably, since the 17th century other organizations have become involved. They include coast guards, customs and quarantine services and fisheries management authorities.

There were three significant focal points for early maritime activity; the Indian Ocean, Southeast Asia and Mediterranean Europe. Maritime activity began in the Indian Ocean as early as 3000 BCE, with trade involving India, the Red Sea and the Arabian coast.⁴ Within Southeast Asia in the third millennium BCE, rice, salt and fish were the main trading cargoes.⁵ In Mediterranean Europe the Cretans began maritime activity at about 2500 BCE.⁶ It included fishing, piracy and barter trade,⁷ primarily for luxury goods rather than commodities.⁸

¹ Tom Hyland, 'Morale overboard', *Sunday Age*, 22 July 2007, p. 13. The story related substantial morale problems among the RAN ships' crews involved in the long-running operations against illegal immigrants attempting to land in Australia.

² *BR 1806, British Maritime Doctrine*, 3rd ed., The Stationery Office, London, 2004, pp. 21-2, 48, 63, 68, 132 and 187.

³ Sea Power Centre-Australia, *RAN Doctrine 1, Australian Maritime Doctrine*, , Defence Publishing Service, Canberra, 2000, pp. 55, 56, and 65-9.

⁴ R.P. Anand, *Origin and Development of the Law of the Sea*, Martinus Nijhoff Publishers, The Hague, 1982, p. 10.

⁵ Kenneth McPherson, *The Indian Ocean: A History of the People and the Sea*, Oxford University Press, Oxford, 1993, p. 22.

⁶ Chester G. Starr, *The Influence of Seapower on Ancient History*, Oxford University Press, New York, NY. 1989, p. 5.

⁷ Fik Meijer, *A History of Seafaring in the Classical World*, St. Martin's Press, New York, NY, 1986, p. 1.

⁸ Starr, *The Influence of Seapower on Ancient History*, p. 5.

Naval activity came later. In the Mediterranean, for example, Pharaoh Thutmose III, who ruled Egypt from 1479 BC to 1425 BCE mounted frequent invasions of Palestine and Syria, often sending his troops by sea to avoid long marches.⁹ There is also evidence of minor raids on the Asia Minor coast by Minoans from the second millennium BCE.^{10 11} Indian Ocean naval activity emerged later still, in the time of Emperor Chandragupta Maurya (321 to 291 BCE). He created a Board of Admiralty¹² with an associated Naval Department. This was headed by a Superintendent of Ships, who controlled ships in harbour and in maritime zones,¹³ including waters in which the ruler had certain rights, as well as the high seas.¹⁴

The constabulary function of navies emerged in response to a need for good order at sea. Countering piracy was the first recorded constabulary task, with evidence of piracy existing from around 2000 BCE, as a mostly minor influence on trade.¹⁵ To the present day, there have been three other major constabulary tasks; resource protection, border protection including fiscal regulation and environmental protection. The extent to which navies have been and are involved in each of the four tasks varies greatly.

Navies have been responsible for the maintenance of good order at sea for millenia. Despite the appearance of specialist organizations such as customs and coast guards, navies around the world remain either wholly or partly responsible for the constabulary function. British and United States (US) experience will be the main focus of this chapter, because of their global importance at different times, and because of the different ways in which they have responded to the constabulary task. Further, the RN provided significant support for the development of the RAN, especially in the first half of the 20th century, while in recent times the RAN has looked to the United States Navy (USN) for its doctrinal lead.

⁹ Starr, *The Influence of Seapower on Ancient History*, p. 9.

¹⁰ Starr, *The Influence of Seapower on Ancient History*, p. 11.

¹¹ Starr, *The Influence of Seapower on Ancient History*, p. 12.

¹² Anand, *Origin and Development of the Law of the Sea*, p. 12.

¹³ Anand, *Origin and Development of the Law of the Sea*, p. 12.

¹⁴ Anand, *Origin and Development of the Law of the Sea*, p. 13.

¹⁵ Starr, *The Influence of Seapower on Ancient History*, pp. 11-12.

PIRACY

Introduction

International law, as reflected in the Law of the Sea Convention (LOSC) defines piracy as any illegal act of violence, detention or depredation committed for private ends by the crew or passengers of a private ship or aircraft, on the high seas or in a place outside the jurisdiction of any State, and directed against another ship or aircraft or against persons or property on board such a ship or aircraft.¹⁶ The LOSC also requires all States to cooperate fully in repressing piracy.¹⁷ These positions were codified first in the 1958 Convention on the High Seas.¹⁸ Historically, piracy has been more loosely defined as unlawful activity at sea involving the use or threat of violence.¹⁹ At times up to the Middle Ages, piracy was legitimate, before becoming a reviled criminal activity by the 15th century.²⁰

Today, many of the illegal acts committed against ships occur within territorial waters; for example those in parts of the Strait of Malacca. Because these illegal acts are not committed on the high seas, they are not legally defined as piracy, even though they resemble piracy in every other respect. These acts are considered to be armed robbery at sea.

Early Times

Piracy appeared soon after the seas were first used for commercial purposes and has waxed and waned, responding to variations in trading activity and to the capacity of navies to counter it. Some of the earliest recorded instances of piracy, from 2500 BCE, occurred in the Mediterranean Sea, but did not significantly interfere with Cretan

¹⁶ United Nations, *The Law of the Sea: United Nations Convention on the Law of the Sea*, Article 101, United Nations, New York, 1983, p. 34.

¹⁷ United Nations, *The Law of the Sea: United Nations Convention on the Law of the Sea*, Article 100, p. 33.

¹⁸ *Geneva Convention on the High Seas 1958*, Articles 14 and 15.

¹⁹ <http://www.intfish.net/treaties/genevaha.htm> (22 June 2008).

¹⁹ Martin N. Murphy, *Small Boats, Weak States, Dirty Money: Piracy & Maritime Terrorism in the Modern World*, Hurst & Company, London, 2009, p. 7.

²⁰ Janice E. Thomson, *Mercenaries, Pirates and Sovereigns*, Princeton University Press, Princeton, NJ., 1994, p. 23 and pp. 107-8.

trading activities.²¹ The Phoenicians, the next major group to employ seapower in the Mediterranean, *circa* 2000 BCE to 300 BCE, founded the colony of Rhodes, which policed Mediterranean maritime trade.²² Rhodes repeatedly fought pirates on its own account and supported Rome in countering piracy.²³ By the end of the fourth century BCE, several navies in the Mediterranean were protecting commerce.²⁴ In the second century BCE, Rhodes was still using its navy to suppress piracy, even when the Roman navy failed to do so; piracy then being a useful source of slaves for Rome.²⁵

That Rome's attitude changed is clear from a Roman piracy law, remnants of which were excavated at Delphi and dated about 100 BCE. The law stated *inter alia* that '... the citizens of Rome...may be able to sail the seas in safety and obtain justice...'.²⁶ It also noted that:

the ranking consul...shall make clear also that it is just that they (the Kings in Cyprus, Egypt and Cyrene) see to it that no pirates set out from their kingdom, land or territories, and that no officials or commanders appointed by them harbours (sic) the pirates under their protection.²⁷

Late in the second century BCE, Rome allowed its navy to atrophy, leading to one of the worst outbreaks of piracy in classical times.²⁸ ²⁹ Rome subsequently rebuilt its naval forces to protect its food supplies.³⁰ Over three months in 67 BCE, Rome's navy, led by Gnaeus Pompey, cleared the Mediterranean of pirates.³¹ Rome's standing navy

²¹ Starr, *The Influence of Seapower on Ancient History*, p. 12.

²² Anand, *Origin and Development of the Law of the Sea*, p. 11.

²³ Ellen Churchill Semple, 'Pirate Coasts of the Mediterranean Sea' in *Geographical Review*, Vol. 2, No. 2, August 1916, pp. 142-43.

²⁴ W.L. Rodgers, *Greek and Roman Naval Warfare: A Study of Strategy, Tactics and Ship Design from Salamis (480 B.C.) to Actium (31 B.C.)* Naval Institute Press, Annapolis, MD., 1964, p. 263.

²⁵ Naphthali Lewis and Meyer Reinhold, eds., *Roman Civilization: Selected Readings-The Republic and Augustan Age*, Vol. 1, 3rd ed., Columbia University Press, New York, NY, 1990, p. 348.

²⁶ Lewis and Reinhold, eds., *Roman Civilization: Selected Readings-The Republic and the Augustan Age*, p. 348.

²⁷ Lewis and Reinhold, eds., *Roman Civilization: Selected Readings-The Republic and the Augustan Age*, Vol. 1, 3rd ed., p. 349.

²⁸ Starr, *The Influence of Seapower on Ancient History*, p. 61.

²⁹ Semple, 'Pirate Coasts of the Mediterranean Sea', *Geographical Review*, Vol. 2, No. 2, p. 135. A notable feature of Mediterranean piracy, even to the 19th century, was its capacity to regenerate in the absence of the political control exercised by naval forces.

³⁰ Chester G. Starr Jr, *The Roman Imperial Navy 31 B.C.-A.D. 324*, Greenwood Press, Westport CT., 1941, rpt. 1979, p. 62.

³¹ Starr, *The Influence of Seapower on Ancient History*, p. 63.

achieved long-term suppression of piracy until the third century CE.³² As Rodgers noted, '... For over 350 years after Actium³³...the fleets served only for the maintenance of good order at sea and the protection of commerce'.³⁴ This Roman experience demonstrates an early direct link between the work of navies and good order at sea. To provide safe passage against early piracy in the Mediterranean, shipping was encouraged to follow specific narrow sea routes.³⁵ Similar restriction remains a feature of contemporary counter-piracy efforts, with the establishment of the Internationally Recommended Transit Corridor off the Horn of Africa a current example.³⁶

With Rome's defeat by Constantine in CE 324 Roman naval power almost disappeared. Coincidentally, piracy became widespread in the North Sea. First it involved the Chauci people, then in the third century CE the Franks and Saxons.³⁷ Later, Saxon pirate activity expanded to include raids against the English coast. This activity was countered in the sixth century by Frankish naval power which sometimes was strong enough to act against the piracy on the English side of the Channel.³⁸

The Middle Ages

Navies responded to subsequent outbreaks of piracy. Viking piracy appeared suddenly in the North Sea in the 790s³⁹ and Muslim pirates from Spain and North Africa were overcome by a Frankish naval force in the Balearic Islands in 799.⁴⁰ At about the same time, Venetian ships helped the Frankish fleet to counter Slav piracy in the Adriatic.⁴¹ Venice developed seapower largely to combat piracy.⁴² Separately, Charlemagne

³² Starr, *The Influence of Seapower on Ancient History*, p. 74.

³³ This refers to the battle of Actium in 31 BCE, in which Rome defeated Egypt. E.B. Potter, ed., *Seapower—A Naval History*, Naval Institute Press, Annapolis MD., 1981, p. 6.

³⁴ VADM William Ledyard Rodgers, USN (Rtd), *Naval Warfare Under Oars 4th to 16th Centuries—A Study of Strategy, Tactics and Ship Design*, Naval Institute Press, Annapolis MD., 1947, p. 3.

³⁵ Semple, 'Pirate Coasts of the Mediterranean Sea' *Geographical Review*, p. 135.

³⁶ *Combined Maritime Forces—CTF 151: Counter-piracy*, <www.combinedmaritimeforces.com/ctf-151-counter-piracy> (2 March 2013).

³⁷ The Chauci were the most prominent of the early Germanic seafarers and inhabited the North Sea coast. See John Haywood, *Dark Age Naval Power: A Reassessment of Frankish and Anglo-Saxon Activity*, Routledge, London, 1991. p. 7.

³⁸ Haywood, *Dark Age Naval Power: A Reassessment of Frankish and Anglo-Saxon Activity*, p. 86.

³⁹ Haywood, *Dark Age Naval Power: A Reassessment of Frankish and Anglo-Saxon Activity*, p. 109.

⁴⁰ Haywood, *Dark Age Naval Power: A Reassessment of Frankish and Anglo-Saxon Activity*, p. 110.

⁴¹ Haywood, *Dark Age Naval Power: A Reassessment of Frankish and Anglo-Saxon Activity*, p. 112.

⁴² Semple, 'Pirate Coasts of the Mediterranean Sea' *Geographical Review*, p. 145.

ordered the building of a fleet to protect the mouth of the River Rhone from pirates. Professional coast guards were also evident at that time.⁴³ Clearly, piracy was a problem which demanded an official response, mostly in the form of naval forces.

Maritime trade was possible between India and Babylon as early as 3000 BCE,⁴⁴ while the monsoons allowed trade between India and Southeast Asia as early as 600 BCE.⁴⁵ This trade was accompanied by a system of regulation, exerting control over fisheries and suppressing piracy.⁴⁶ From the fifth to the 13th centuries CE, naval stations were established along the Southeast Asian coastline to China for several Indian states, providing safe haven for China-bound ships.⁴⁷ Then, as now, when piracy was a problem merchant ships normally sailed in convoy and carried soldiers for their defence.⁴⁸

In both the Mediterranean and in Asian seas, from a very early time, serious attempts were made to impose regulations relating to the conduct of trade. These regulations and the attempts to enforce them were very early examples of constabulary tasks at sea and of using navies for law enforcement.

From the time of Henry I (1100-1135) after the Norman conquest, the kings of England rarely felt the need to maintain expensive warfleets.⁴⁹ There were, nevertheless, some constabulary-like activities, such as the fleet assembled in 1136 by King Stephen (1135-1154) to tackle piracy around the Isle of Wight.⁵⁰ By 1339, England had a 'Sea Guard' which was a coastal militia raised from all districts within 18 miles of the coast and entrusted to the Keepers or Wardens of each county.⁵¹ This was an early indication that not only navies would be responsible for good order at sea. There was also ambiguity

⁴³ Haywood, *Dark Age Naval Power: A Reassessment of Frankish and Anglo-Saxon Activity*, pp. 118-9. The reference does not make clear whether these coast guards were land forces or seagoing forces. In either case, however, they would have had a policing function.

⁴⁴ Anand, *Origin and Development of the Law of the Sea*, p. 10.

⁴⁵ Anand, *Origin and Development of the Law of the Sea*, p. 12.

⁴⁶ Anand, *Origin and Development of the Law of the Sea*, pp. 12-13.

⁴⁷ Anand, *Origin and Development of the Law of the Sea*, pp. 17.

⁴⁸ Anand, *Origin and Development of the Law of the Sea*, p. 18.

⁴⁹ David Loades, *England's Maritime Empire Seapower, Commerce and Policy 1490-1690*, Longman, Harlow, England, 2000, p. 2.

⁵⁰ N.A.M. Rodger, *The Safeguard of the Sea: A Naval History of Britain, Volume One 660-1649*, Harper Collins, London, 1997, p. 40.

⁵¹ Rodger, *The Safeguard of the Sea: A Naval History of Britain, Volume One 660-1649*, p. 136.

in the role of navies. Rose pointed out that in the early part of the 15th century English naval activity '... seems to have been confined to a form of semi-official piracy'.⁵² As an example, a notorious pirate barge, the *Mackerel* of Fowey, was owned by Henry VI's (1422-1461) Admiral of England, the Duke of Exeter.⁵³ Rose added that at the time, piracy was in fact a part of low-level naval warfare.⁵⁴

Despite the ambiguity, the need for a navy was recognized. Sir John Fortescue wrote in '*The Governance of England*' in 1476 that:

...yet it shall be that the king have always some fleet upon the sea, for repressing of rovers, saving of our own merchants, our fishers, and the dwellers on our coast.⁵⁵

The Age of Exploration

In 1552, the RN⁵⁶ provided a squadron for the 'Narrow Seas'⁵⁷ *inter alia* to protect merchant ships subject to pirate attacks and the fishing fleet sailing to the Newfoundland banks.⁵⁸ Concurrently, royal ships conducted regular operations against pirates in the Channel and the North and Irish Seas. In one particular incident in July 1556, ships of Queen Mary I (1553-1558) captured or destroyed the greater part of a substantial pirate fleet manned by French corsairs and English exiles.⁵⁹ Those actions which took place in waters claimed by England were constabulary operations.

The 16th century Mediterranean pirates extended their activities into the Atlantic and eventually reached England in 1631. The English response involved the notion of a British Empire to control the coasts and waters north to the Orkneys and to the north-

⁵² Susan Rose, *Medieval Naval Warfare 1000-1500*, Routledge, London, 2002, p. 82.

⁵³ Rodger, *The Safeguard of the Sea: A Naval History of Britain, Volume One 660-1649*, p. 149.

⁵⁴ Rose, *Medieval Naval Warfare 1000-1500*, p. 83.

⁵⁵ Loades, *England's Maritime Empire Seapower, Commerce and Policy 1490-1690*, p. 15.

⁵⁶ The Admiralty was established formally in the years 1545-6. Loades, *England's Maritime Empire Seapower, Commerce and Policy 1490-1690*, p. 43.

⁵⁷ The 'narrow seas' were those over which the English Kings claimed sovereignty and were the English Channel and the southern North Sea. Peter Kemp, *The Oxford Companion to Ships and the Sea*, Oxford University Press, Oxford, 1976, p. 573.

⁵⁸ Loades, *England's Maritime Empire Seapower, Commerce and Policy 1490-1690*, p. 63.

⁵⁹ David Loades, 'From the King's Ships to the Royal Navy', in J. R. Hill, ed. *The Oxford Illustrated History of the Royal Navy*, Oxford University Press, Oxford, 1995, pp 30 and 38.

east seaboard of North America. It also included maintaining a 'Petty Navy Royal' to protect the realm against invasion, protect merchant ships against piracy and to dissuade foreign embargoes. The Navy was financed by a tax on all foreign fishing in English waters.⁶⁰

During the first half of the 17th century, Dunkirkers, Dutch and Moor pirates were active in the English Channel. In 1627 Dunkirkers carried off five Ipswich-based ships and their crews and the townspeople of King's Lynn complained of their inability to maintain the Icelandic fishery because of pirates.⁶¹ Because Charles I (1625-1649) failed to maintain a fleet that could ensure sovereignty of the sea and defend the coast, in 1632 Yarmouth fishermen, among others, refused to go to sea because of the pirate threat.⁶²

With finance a constant problem, Charles eventually introduced the so-called 'ship-money' fleets in May 1635,⁶³ principally to secure the narrow seas from '... men-of-war, pirates and sea rovers and picaroons that interrupt the trade...'.⁶⁴ Nevertheless, until late in the 17th century the Barbary pirates continued to operate in British waters, taking thousands from the West Country into slavery.⁶⁵ These pirates had operated on the North African coast since the seventh century and continued to do so until they were finally curbed following the French conquest of Algiers in 1830.⁶⁶

In the 1690s, English piracy flourished in North American waters, under the cover of privateering against the French. New York gained a reputation as a centre of piracy.⁶⁷ The RN responded and by the late 1720s had completely eradicated piracy in those waters.⁶⁸ The RN constabulary-related presence was also needed to support a very

⁶⁰ Loades, *England's Maritime Empire Seapower, Commerce and Policy 1490-1690*, pp. 111-12.

⁶¹ T. W. Fulton, *The Sovereignty of the Sea*, William Blackwood and Son, Edinburgh, 1911, p. 247.

⁶² Fulton, *The Sovereignty of the Sea*, p. 248.

⁶³ 'Ship money' was a levy on the English counties to finance the building and maintenance of the Navy. It was treated as a payment for service rather than as a tax and went directly to the Treasurer of the Navy, not to the Exchequer. Rodger, *The Safeguard of the Sea: A Naval History of Britain, Volume One 660-1649*, p. 382.

⁶⁴ Fulton, *The Sovereignty of the Sea*, p. 260.

⁶⁵ Rodger, *The Safeguard of the Sea: A Naval History of Britain, Volume One 660-1649*, p. 384.

⁶⁶ Semple, 'Pirate Coasts of the Mediterranean Sea' *Geographical Review*, pp. 149-50.

⁶⁷ N.A.M. Rodger, *The Command of the Ocean: A Naval History of Britain, 1649-1815*, Penguin, Allen Lane, London, 2004, p. 162.

⁶⁸ Rodger, *The Command of the Ocean: A Naval History of Britain, 1649-1815*, p. 232.

poor performance by British Customs officers in North America.⁶⁹ The Caribbean Sea was also a centre of piracy against the Spanish trade in the 17th century.⁷⁰

The constabulary tasks of the RN diminished during the intensely warlike 18th century.⁷¹ A navy's capacity for constabulary work during wartime diminished markedly, because of the demands of more important military tasking. Conversely, depending on the nature and scale of the conflict, the constabulary task can reduce as illegal activities become more difficult to carry out. Nevertheless, the inability of a navy to respond to constabulary tasking during a conflict adds to the argument for coast guards dedicated to the constabulary task in war or peace.

Towards the end of the 18th century, constabulary operations were needed in the newly independent United States of America (USA). The US Revenue Cutter Service, within the Department of the Treasury,⁷² was to collect tariffs and tonnage duties associated with maritime trade; the only taxes collected in the first five years under the US Constitution.⁷³ From the outset, the Revenue Cutter Service dealt with more than revenue collection⁷⁴ and has always had a dual character; acting when needed as an adjunct to the USN.

After the French declaration of war against Britain on 1 February 1793 the USA declared its neutrality. France ignored this and sent privateers from Charleston and Philadelphia to seize British and Spanish prizes - often within three miles of the American coast. At the time, the Revenue Cutter Service operated the only armed ships in US Government Service but was unable to prevent the French activities.⁷⁵ Thus, the

⁶⁹ Irving H. King, *George Washington's Coast Guard, Origins of the U.S. Revenue Service 1789-1801*, Naval Institute Press, Annapolis, Maryland, 1978, pp. 107-8.

⁷⁰ Rodger, *The Command of the Ocean: A Naval History of Britain, 1649-1815*, p. 62.

⁷¹ Fulton, *The Sovereignty of the Sea*, p. 21. Confirmation of Fulton's point can be gained by reference to chapters 11, 15-18, 21-23, 28 and 30 of Rodger, *The Command of the Ocean: A Naval History of Britain, 1649-1815*.

⁷² Irving H. King, *The Coast Guard Under Sail: The U.S. Revenue Service 1789 - 1865*, Naval Institute Press, Annapolis, Maryland, 1989, pp. 2 and 5.

⁷³ King, *The Coast Guard Under Sail: The U.S. Revenue Service 1789 - 1865*, p. 29.

⁷⁴ On 12 April 1792 the Treasury Department was given authority to fix and maintain floating aids to navigation, a responsibility which was handled in part by the Collector of Customs and thus by the Revenue Cutter Service—which also undertook charting of coastal waters. Irving H. King, *George Washington's Coast Guard, Origins of the U.S. Revenue Service 1789-1801*, Naval Institute Press, Annapolis, MD., 1978, pp. 112-4.

⁷⁵ King, *The Coast Guard Under Sail: The U.S. Revenue Service 1789 - 1865*, pp. 20-1.

USA began with an organization other than the navy conducting law enforcement operations at sea.⁷⁶ The USN also had a dual character, especially in its early years. Yet, the Navy was not comfortable with constabulary tasking; a diversion from its primary peacetime task of preparing for war. Similarly the Revenue Cutter Service entered the 19th century with its primary role of collecting revenue, but with other challenges.

Piracy in the Gulf of Mexico, centred on New Orleans continued, despite the efforts of the Revenue Cutter Service, into the War of 1812.⁷⁷ In 1818, the Baltimore Collector of Customs asked for a bigger cutter, or a USN vessel, to deal with the smuggling in Chesapeake Bay. He indicated a preference for a cutter ' ... as the service is not relished by the officers of the Navy...'.⁷⁸ This theme emerges at times, both with navies that do constabulary work infrequently and with those for whom it is a permanent task. Whatever the nature of the constabulary work, it is seen as a distraction from the need to train for the primary military function. Yet the USN was again drawn in to assist the Revenue Cutter Service, with President Monroe's direction in 1819 that it protect US commerce and punish piracy, and with the establishment in 1822 of a West Indies Squadron to counter piracy and smuggling.⁷⁹

The RN re-engaged in anti-piracy work during the 19th century, specifically in Asian waters. Operations began in the Strait of Malacca in 1834⁸⁰ and continued to the 1870s.⁸¹ Operations were conducted in waters around the British Straits Settlements to establish good order at sea. In 1843 Borneo was included in an attempt to eradicate piracy at its source.⁸² From the 1840s to the 1860s the RN also conducted anti-piracy operations in Chinese waters, notably around Hong Kong.⁸³ As Hong Kong was a

⁷⁶ The United States Navy did not formally come into existence until 1793, when it was authorized in response to the capture of 11 merchantmen by Barbary pirates in the Autumn of that year—the latest of several such incidents. Robert Greenhalgh Albion, ed. Rowena Reed, *Makers of Naval Policy 1789-1947*, Naval Institute Press, Annapolis, Maryland, 1980, p. 181.

⁷⁷ King, *The Coast Guard Under Sail: The U.S. Revenue Service 1789- 1865*, p. 46.

⁷⁸ King, *The Coast Guard Under Sail: The U.S. Revenue Service 1789 - 1865*, p. 66.

⁷⁹ King, *The Coast Guard Under Sail: The U.S. Revenue Service 1789 - 1865*, p. 65.

⁸⁰ William Laird Clowes, et.al., *The Royal Navy: A History from the Earliest Times to the Present*, Vol. VI, Sampson, Low, Marston and Co., London, 1901, p. 275.

⁸¹ William Laird Clowes, et.al., *The Royal Navy: A History from the Earliest Times to the death of Queen Victoria*, Vol. VII, Sampson, Low, Marston and Co., London, 1903, p. 269.

⁸² Clowes, et.al., *The Royal Navy: A History from the Earliest Times to the Present*, pp. 323-5.

⁸³ Clowes, et.al., *The Royal Navy: A History from the Earliest Times to the death of Queen Victoria*, pp. 100-1.

Crown Colony⁸⁴ Britain took responsibility for security and those anti-piracy operations in Hong Kong waters became constabulary tasks.⁸⁵ With respect to the so-called 'treaty ports' British warships were '... employed at those ports as a maritime police...and (were) practically unavailable for any other service on the station'.⁸⁶

Modern Times

Little was written about piracy from the late 19th century until after the Second World War, suggesting that the incidence of piracy was not high. The Harvard Law School confirmed that in a report on piracy for the League of Nations in 1932, which noted that:

... large scale piracy disappeared long ago and any piracy of any sort on or over the high sea(s) is sporadic except in limited areas bordered by states without the naval forces to combat it.⁸⁷

Piracy reappeared after the Second World War, with for example, the RN conducting small-scale anti-piracy operations near Aden late in 1953.⁸⁸ In a speech on 'The Role of the Royal Navy' in January 1954, Admiral the Earl Mountbatten, Commander-in-Chief Mediterranean, also referred to the RN's policing role. It was secondary to the RN's main effort at that time; remaining relevant in the emerging world order, in which Britain's role was declining.⁸⁹ The 1958 Defence White Paper failed to mention the constabulary function as an RN role, beyond a very general statement on 'the maintenance of peace and security'.⁹⁰

⁸⁴ Anthony Preston, *Send a Gunboat: A study of the Gunboat and its role in British policy 1854-1904*, Longmans, Green and Co., London, 1967, p. 45.

⁸⁵ Ken Booth notes that policing the immediate coastal zone (which he does not define) has always been important for navies. Ken Booth, *Navies and Foreign Policy*, Croom Helm, London, 1977, p. 265.

⁸⁶ Letter from Vice-Admiral Robert Hall, Secretary of the Admiralty to Edmund Hammond, Permanent Under-Secretary, Foreign Office, 21 July 1879, in John B. Hattendorf, R.J.B. Knight, A.W.H. Pearsall, N.A.M. Rodger and Geoffrey Till, eds., *British Naval Documents 1204-1960*, Scholar Press for the Naval Records Society, Aldershot, Hants., 1993, p. 642.

⁸⁷ Martin Murphy, 'Piracy and UNCLOS: Does International Law Help Regional States Combat Piracy?' in Peter Lehr, ed., *Violence at Sea: Piracy in the Age of Global Terrorism*, Routledge, Taylor and Francis Group, New York, NY, 2007, p. 157.

⁸⁸ Grove, *Vanguard to Trident: British Naval Policy Since World War Two*, p. 153.

⁸⁹ Grove, *Vanguard to Trident: British Naval Policy Since World War Two*, pp. 199, 203 and 210.

⁹⁰ Grove, *Vanguard to Trident: British Naval Policy Since World War Two*, p. 213.

Piracy also re-emerged in the 1960s, in the waters off the British Protectorate of Brunei and elsewhere in Asian waters.⁹¹ This piracy was associated with de-colonization and unevenly growing economies, and the opportunities for piracy they presented.⁹² Initially small scale and non-violent, by the 1980s violence had increased⁹³ and the Strait of Malacca became a major piracy focal point. Between 1981 and 1987, one third of all piracy attacks in the world occurred in the Strait.⁹⁴ In July 2005, Lloyd's Joint War Committee declared the Strait of Malacca, along with 20 other places, a war risk because of piracy.⁹⁵

Piracy has also spread to West Africa, beginning in the 1980s, with large gangs operating against container traffic.⁹⁶ Since then the focus of activity has spread from the Niger Delta to encompass a much broader area, with oil trade most at risk.⁹⁷ Most recently, piracy has emerged in East African waters, mainly off Somalia. Between March and November 2005, for example, 32 vessels were attacked off the Somali coast.⁹⁸ Somali piracy differs from the Southeast Asian variety in that much occurs far offshore, as in the case of the cruise ship *Seabourn Spirit*, attacked 100nm off the coast in November 2005.⁹⁹ Piracy off the Horn of Africa, including holding ships and their crews for ransom, generated a strong multi-national naval response, which has largely succeeded and remained in place at the end of 2012.¹⁰⁰ In other regions, piracy remains mainly a coastal phenomenon.¹⁰¹

⁹¹ Grove, *Vanguard to Trident: British Naval Policy Since World War Two*, p. 262.

⁹² Graham Gerard Ong-Webb, 'Piracy in Maritime Asia: Current Trends', in Lehr, ed., *Violence at Sea: Piracy in the Age of Global Terrorism*, Routledge, p. 47.

⁹³ Ong-Webb, 'Piracy in Maritime Asia: Current Trends', Lehr, ed., *Violence at Sea: Piracy in the Age of Global Terrorism*, p. 48.

⁹⁴ Ong-Webb, 'Piracy in Maritime Asia: Current Trends', Lehr, ed., *Violence at Sea: Piracy in the Age of Global Terrorism*, p. 48.

⁹⁵ Ong-Webb, 'Piracy in Maritime Asia: Current Trends', Lehr, ed., *Violence at Sea: Piracy in the Age of Global Terrorism*, p. 48.

⁹⁶ Ong-Webb, 'Piracy in Maritime Asia: Current Trends', Lehr, ed., *Violence at Sea: Piracy in the Age of Global Terrorism*, p. 48.

⁹⁷ David Arnold, 'Shippers Raise Alarm Over Oil Piracy in Gulf of Guinea', Voice of America News, 14 October 2013, <<http://m.voanews.com/a/1769278.html>> (16 October 2013).

⁹⁸ Peter Lehr and Hendrick Lehman, 'Somalia-Pirates' New Paradise', in Lehr, ed., *Violence at Sea: Piracy in the Age of Global Terrorism*, p. 1.

⁹⁹ Lehr and Lehman, 'Somalia-Pirates' New Paradise,' in Lehr, ed., *Violence at Sea: Piracy in the Age of Global Terrorism*, p. 1.

¹⁰⁰ Murphy, *Small Boats, Weak States, Dirty Money: Piracy & Maritime Terrorism in the Modern World*, pp. 102-11.

¹⁰¹ Murphy, 'Piracy and UNCLOS: Does International Law Help Regional States Combat Piracy?' in Lehr, ed., *Violence at Sea: Piracy in the Age of Global Terrorism*, p. 157.

The naval response to piracy over the last half century has varied. In Southeast Asia most navies remain limited in operational and seagoing capability. Some lack the desire to engage pirates, who are often better armed.¹⁰² Nevertheless, the scale of Southeast Asian piracy and international pressure to act, have generated cooperation among the navies of Indonesia, Malaysia and Singapore. Beginning in July 2004, Operation *Malsindo* introduced coordinated patrols of the Strait of Malacca, though with little early impact.¹⁰³ The operation has since evolved into the Malacca Straits Security Initiative, involving surface and air patrolling.¹⁰⁴ While there had been a reduction in piracy in the Strait of Malacca from 2005,¹⁰⁵ it emerged again in Southeast Asian waters more recently.¹⁰⁶

The East African story is less happy. Somalia is currently a barely functioning state, with minimal capacity for offshore security. Its navy was founded in 1965 with Soviet help, as a coastal and inshore patrol force.¹⁰⁷ Reflecting the wretched state of the country, the Navy has not been operational since 1991.¹⁰⁸ In November 2006, however, the Somali Transitional Federal Government awarded a \$US50m two-year contract to a US company, Topcat Marine Security.¹⁰⁹ In return, the company was to create a small Somali coast guard to help fight piracy, but in an environment in which the company's

¹⁰² Robert Snoddon, 'Piracy and Maritime Terrorism: Naval Responses to Existing and Emerging Threats to the Global Seaborne Economy,' in Lehr, ed., *Violence at Sea: Piracy in the Age of Global Terrorism*, p. 233.

¹⁰³ Ong-Webb, 'Piracy in Maritime Asia: Current Trends', in Lehr, ed., *Violence at Sea: Piracy in the Age of Global Terrorism*, p. 779.

¹⁰⁴ Murphy, *Small Boats, Weak States, Dirty Money: Piracy & Maritime Terrorism in the Modern World*, p. 86.

¹⁰⁵ ICC International Maritime Bureau, *Piracy and Armed Robbery Against Ships: Annual Report 1 January -31 December 2006*, International Maritime Bureau, Barking Essex, 2007, p. 16. Note: pages are not numbered and this information appears on the first page of text in the report.

¹⁰⁶ Sam Bateman, 'Piracy and Maritime Security in East Asia', *East Asia Forum*, 10 February 2011, <<http://www.eastasiaforum.org/2011/02/10/piracy>> (16 October 2013).

¹⁰⁷ Lehr and Lehman, 'Somalia-Pirates' New Paradise', in Lehr, ed., *Violence at Sea: Piracy in the Age of Global Terrorism*, pp. 11-12.

¹⁰⁸ Lehr and Lehman, 'Somalia-Pirates' New Paradise,' in Lehr, ed., *Violence at Sea: Piracy in the Age of Global Terrorism*, p. 12.

¹⁰⁹ Lehr and Lehman, 'Somalia-Pirates' New Paradise,' in Lehr, ed., *Violence at Sea: Piracy in the Age of Global Terrorism*, p. 20.

own security could not be guaranteed.¹¹⁰ The USN and other navies have also become involved in anti-piracy operations off the Somali coast.¹¹¹

OCEAN RESOURCE PROTECTION

Introduction

The sea has long been a source of food¹¹² and from about 300 BC, the resources protection task for navies appeared in the form of fisheries protection in Indian waters.¹¹³ Since then, fisheries protection has been a constabulary task throughout the world's oceans. In the 20th century, the resource protection task has grown to include protection of oil and gas platforms and associated facilities.¹¹⁴ The value of these resources and increasingly their scarcity, caused coastal states to claim ownership of offshore resources and to husband them. Before maritime zones, such as territorial seas, became generally accepted¹¹⁵ these claims depended entirely on the ability of States to defend them. In this respect, Selden noted that coastal fish stocks were not inexhaustible and that the coastal State had first call on them.¹¹⁶

Even when fish were plentiful, they were considered valuable. This meant that naval forces were involved in protecting local fishing grounds from foreign fishing.¹¹⁷ More recently, other organizations, such as coast-guards, have become involved. The need for resource protection has not been as well documented historically as the need to

¹¹⁰ Lehr and Lehman, 'Somalia-Pirates' New Paradise,' in Lehr, ed., *Violence at Sea: Piracy in the Age of Global Terrorism*, p. 20.

¹¹¹ 'US Navy captures Somali 'pirates', *BBC News: One-Minute World News*, 26 January 2006. <<http://news.bbc.co.uk/2/hi/africa/4636588.stm>> (12 December 2007).

¹¹² Barry Cunliffe, *Facing the Ocean: The Atlantic and its Peoples 8000BC to AD 1500*, Oxford University Press, Oxford, 2001. p. 121. Cunliffe points to fish and shellfish having been a significant food source for communities living in the Jutland peninsula in the fifth millennium BCE.

¹¹³ Anand, *Origin and Development of the Law of the Sea*, p. 12.

¹¹⁴ See for example, 'Strengthening Offshore Maritime Security', Prime Minister of Australia Media Release, 15 December 2004, <http://www.pm.gov.au/news/media_releases/media_Release1173.html> (22 May 2006).

¹¹⁵ Anand points to the English Parliament fixing an eight to ten mile limit against foreign fishing in 1660 and the Dutch judge Bynkershoek's nomination of the cannon shot rule to establish offshore jurisdiction in 1703. Anand, *Origin and Development of the Law of the Sea*, pp. 138 and 146.

¹¹⁶ Fulton, *The Sovereignty of the Sea*, p. 547.

¹¹⁷ Anand, *Origin and Development of the Law of the Sea*, p. 12. See also Loades, *England's Maritime Empire Seapower, Commerce and Policy 1490-1690*, p. 63.

counter piracy. This is partly because fish stocks were plentiful in early times, when world population was much lower and the demand for fish accordingly lower.¹¹⁸

Today the need for offshore resource protection is broader and of greater economic significance. Fish stocks are under threat in many of the world's oceans, both from increasing demand and the growing capacity to harvest fish stocks.¹¹⁹ The nature of the resource protection task has also changed, with the development of offshore oil and gas fields. In this case the predominant threats are believed to be terrorism or other armed attack against installations, and poor navigation by shipping with the potential for collision with installations.¹²⁰

Fisheries Protection – Early Experience

Unsurprisingly, much of the relevant history is quite recent. For example, in 15th century northern Europe, despite the plentiful fish stocks, protection of local fisheries became a problem. Rodger suggests that in 1481, an English fisheries protection squadron was formed to guard East Anglian fishermen against Scottish raids.¹²¹ He also notes that for centuries Scots kings had imposed fees on foreign fishers for fishing licenses.¹²²

A survey of the RN's capabilities in 1559 led to a plan for 24 warships and two pinnaces, based on the provision of coastal defence and the protection of commerce and fisheries.¹²³ The local waters element of fisheries protection would have been constabulary work. The Navy was financed by taxing all foreign fishing in English waters. The imposition of this tax illustrates the extent of foreign fishing in English waters, and the corresponding need to have in the Navy a means of enforcing the tax.

¹¹⁸ Cunliffe, for example, notes at least two periods in which fish were both plentiful and much sought after; around 600BCE near the Canary Islands and in the 15th century CE in Icelandic waters. Cunliffe, *Facing the Ocean: The Atlantic and its Peoples 8000BC to AD 1500*, pp. 19 and 300.

¹¹⁹ Boris Worm, Ray Hilborn, Julia K. Baum, et. al, 'Rebuilding Global Fisheries', *Science*, Vol. 325, 31 July 2009, pp. 578-84.

¹²⁰ The RAN conducted air and surface patrols of the Bass Strait oil and gas platforms in the early 1980s primarily to prevent shipping from colliding with the rigs. The writer flew many of the air patrols.

¹²¹ Rodger, *The Safeguard of the Sea: A Naval History of Britain, Volume One 660-1649*, p. 157.

¹²² Rodger, *The Safeguard of the Sea: A Naval History of Britain, Volume One 660-1649*, p. 351.

¹²³ Loades, *England's Maritime Empire Seapower, Commerce and Policy 1490-1690*, p. 83.

In 1609 James proclaimed fisheries along the British and Irish coasts in which unlicensed foreign fishing was prohibited.¹²⁴ This was aimed at the Dutch herring fishery and presaged a long-running and often acrimonious dispute which eventually led to war. It can also be seen as the real beginning of British pretensions to command of the sea.¹²⁵ At this time, the Dutch fishing industry was much bigger than the English one and operated close inshore on the English and Scottish coasts. The Dutch industry earned about £1 million per year and employed some half a million people.¹²⁶

Early in the 17th century, pirates operating in English waters made life difficult for local fishermen, such that in the early 1630s Yarmouth fishermen, among others, refused to go to sea.¹²⁷ For some time there was little effective naval response. Eventually Charles I introduced the so-called 'ship money' fleets in 1635. The logic was that all ships attacked in the narrow seas could seek the King's protection; enabling him to extend the concept of the sovereignty of the sea. The fleets also conducted anti-tobacco smuggling patrols for the customs organization.¹²⁸ Characteristically for the period, when the first 'ship money' fleet Admiral, the Earl of Lindsey, asked for a determination of the King's seas, he was told that they were 'all round'.¹²⁹ Such vagueness contributed to the first 'ship money' fleet achieving little.

At the end of 1635 the second 'ship money' fleet was established with 24 ships to guard the narrow seas, and 10 ships in reserve. Reputed to be the most powerful English fleet yet, one of its duties was to suppress unlicensed fishing on British coasts.¹³⁰ The appearance of this fleet coincided with the publication of John Selden's *Mare Clausum* in December 1635. The fleet, under the Earl of Northumberland, succeeded in imposing licenses on Dutch herring fishermen, although with Dutch reservations. Dutch men-of-war were sent to protect their fishermen but did not perform very well.¹³¹ By the time the third 'ship money' fleet assembled in April and May 1637, Charles was less certain

¹²⁴ Fulton, *The Sovereignty of the Sea*, p. 9.

¹²⁵ Fulton, *The Sovereignty of the Sea*, p. 10.

¹²⁶ Rodger, *The Safeguard of the Sea: A Naval History of Britain, Volume One 660-1649*, p. 351.

¹²⁷ Fulton, *The Sovereignty of the Sea*, p. 246.

¹²⁸ Fulton, *The Sovereignty of the Sea*, p. 274.

¹²⁹ Fulton, *The Sovereignty of the Sea*, p. 264.

¹³⁰ Fulton, *The Sovereignty of the Sea*, p. 288.

¹³¹ Fulton, *The Sovereignty of the Sea*, p. 313.

about their use. His desire to enforce sovereignty claims, conflicted with his desire to avoid outright conflict with the Dutch and French.¹³²

Subsequent 'ship money' fleets in 1637 and 1638 achieved little, with the 1637 fleet failing to issue licenses to a large Dutch fishing fleet when confronted by 23 Dutch men-of-war. By contrast, the 1638 fleet intercepted shipments of arms bound from Rotterdam and Bremen to Scotland.¹³³ Nevertheless, the Dutch continued to fish off the English coast, and increasingly Charles was no longer sovereign of even his own seas.

Cromwell applied similar rules to Dutch fishermen, requiring, for example, that their ships submit to visit and search and that their fishing boats take licenses for operations in English waters. On 26 June 1652, Blake, with about 60 ships, was sent to Scottish waters to stop the Dutch herring fishery and intercept homebound East-Indiamen. Although he dealt severely with the escorting warships, many of the herring busses¹³⁴ reached Holland – to return in 1653 with additional escorts.¹³⁵

The First English-Dutch War, which began in 1652, was fought mainly over striking the flag in English waters and English rights to visit and search at sea. There was also an underlying element of commercial rivalry focused on the North Sea herring fishery.¹³⁶ After the restoration, Charles II (1660-1685) tried unsuccessfully, to insist on licenses for foreign fishing in English waters.¹³⁷ Thus, not all constabulary operations were successful and political imperatives could prevent effective naval constabulary action.

At the end of the 18th century in the newly independent USA, development of the USN reacted to a perceived need for constabulary operations. In 1798, with France attacking American commerce, Secretary of War McHenry asked Congress how the government could '... preserve character abroad, esteem for the Government at home, safety to our sea property and protection to our territory and sovereignty'? He recommended

¹³² Fulton, *The Sovereignty of the Sea*, pp. 319-21.

¹³³ Fulton, *The Sovereignty of the Sea*, p. 327.

¹³⁴ Busses were 17th and 18th century Dutch and English fishing craft (mainly herring) broad beamed and usually carrying two or three masts. Kemp, ed. *The Oxford Companion to Ships and the Sea*, pp. 122-23.

¹³⁵ Fulton, *The Sovereignty of the Sea*, pp. 406-7.

¹³⁶ J.D. Davies, 'A Permanent National Maritime Force, 1642-1689', Hill, ed. *The Oxford Illustrated History of the Royal Navy*, p. 68.

¹³⁷ Fulton, *The Sovereignty of the Sea*, p. 14.

adding 26 ships to the Navy ' ... to serve as convoys, (and) protect our fisheries, coasts and harbours'.¹³⁸ Later, in 1807, Secretary of the Navy Robert Smith asked Congress to fund an additional 188 gunboats, some to be kept in reserve. Those in active service were to be 'a police force to maintain order and discourage insults by visiting warships.'¹³⁹

Resource Protection – Legal Limits

In the 19th century, while the RN was engaged in anti-slavery work off the African coast, there was constabulary work closer to home. Some of it was done by the Coast Guard formed in January 1822. During the 1840s, the Coast Guard with 76 cutters undertook fishery protection tasks off the Scottish coast.¹⁴⁰ Thus, despite its great overall strength, the RN did not monopolize constabulary work and while the Coast Guard concentrated on customs-related work the RN assisted in other operations.

Renewed moves in the 19th century extended control of coastal waters to protect fisheries. In 1824 and 1827, for example, the Dutch government decreed that their fishermen could not operate within six miles of the British coast.¹⁴¹ Subsequently, an 1839 British-French Treaty established a limit of three miles from the British coast for French fishermen.¹⁴² Through the 1892 North Sea Convention, seven European countries accepted a three mile limit for fishing off the British coast.¹⁴³ In the mid- 19th century, the Russian Navy applied the three mile limit from the shores of Russian-America (now Alaska) and in parts of the Pacific-Russian coast.¹⁴⁴ Broader fishing zones were sought by some coastal states, primarily because developments in fishing technology allowed longer voyages. With a fishing fleet about seven times larger than that of all other countries combined, Britain strongly favoured narrow fishing zones.¹⁴⁵

¹³⁸ Kenneth J. Hagan, *This People's Navy–The Making of American Seapower*, The Free Press, New York, NY., 1991, p. 41.

¹³⁹ Hagan, *This People's Navy–The Making of American Seapower*, p. 69.

¹⁴⁰ Graham Smith, *King's Cutters: The Revenue Service and the War Against Smuggling*, Conway Maritime Press, London, 1983, p. 136.

¹⁴¹ Anand, *Origin and Development of the Law of the Sea*, p. 146.

¹⁴² Anand, *Origin and Development of the Law of the Sea*, p. 146.

¹⁴³ Anand, *Origin and Development of the Law of the Sea*, p. 146. The seven countries were, France, Belgium, the Netherlands, Denmark, Norway, Sweden and Germany.

¹⁴⁴ Fulton, *The Sovereignty of the Sea*, p. 585.

¹⁴⁵ Anand, *Origin and Development of the Law of the Sea*, p. 148.

These developments preceded greater activity in the 20th century as the demand for fish grew, along with the desire to protect 'national' fishing grounds. Consequently, navies and coast guards became more involved in regulating foreign fishing craft operating in their waters. Early in the 20th century, for example the US Coast Guard continued a broad range of constabulary operations, including the protection of marine species.¹⁴⁶ More significantly, the beginning of offshore oil exploitation in 1947,¹⁴⁷ together with growing threats to coastal fisheries by distant water fishing states, caused disputes between coastal states protecting their economic interests with wider zones and the maritime powers trying to maintain the status quo.¹⁴⁸

Fishery protection became a low key task for the RN after the Second World War. It began with reconstitution of the Fisheries Protection Squadron, initially with just a few frigates and smaller vessels. The frigates protected British trawlers fishing off Norway and Iceland, where 'rights' were sometimes disputed.¹⁴⁹ In 1958, for example, Iceland declared a 12 mile fishing zone,¹⁵⁰ and the British responded by sending RN ships to protect its trawlers operating in that zone. The British claimed that the Icelandic action interfered with freedom of the seas.¹⁵¹ This, the first of the 'Cod Wars' lasted over a year, before Britain conceded many of Iceland's claims.

Britain extended its exclusive fishing zone to 12 miles in September 1964, thereby increasing pressure on the Fishery Protection Squadron. Subsequently, the second and third 'Cod Wars' erupted in 1973 and 1975-6 and saw RN frigates and destroyers being roughly treated by Icelandic gunboats, and British fishing rights being further eroded.¹⁵² The sturdily built Icelandic Coast Guard gunboats were better able to withstand physical encounters and the RN warships were severely constrained in the

¹⁴⁶ Irving H. King, *The Coast Guard Expands 1865-1915: New Roles, New Frontiers*, Naval Institute Press, Annapolis, Maryland, 1996, p. 150.

¹⁴⁷ Daniel Yergin, *The Prize: The Epic Quest for Oil, Money and Power*, Simon and Schuster, New York, NY., 1991, p. 429.

¹⁴⁸ Anand, *Origin and Development of the Law of the Sea*, p. 232

¹⁴⁹ Grove, *Vanguard to Trident: British Naval Policy Since World War Two*, p. 330.

¹⁵⁰ This was subsequently extended to 200 miles in mid-1975. Grove, *Vanguard to Trident: British Naval Policy Since World War Two*, p. 332.

¹⁵¹ J. R. Hill, 'The Realities of Medium Maritime Power, 1946 to the Present', in Hill, ed., *The Oxford Illustrated History of the Royal Navy*, p. 390.

¹⁵² Hill, 'The Realities of Medium Maritime Power, 1946 to the Present', in Hill, ed., *The Oxford Illustrated History of the Royal Navy*, p. 393.

use of main armament.¹⁵³ Britain responded by declaring a 200 mile fishing zone in December 1976 and introduced several new offshore patrol vessels.¹⁵⁴

The 'Cod Wars' involved constabulary operations by the Icelandic forces and military operations by the RN and highlighted the advantage held by the 'home' side in defending sovereign rights against maritime states with tightly constrained rules of engagement. Rules of engagement were the key to these struggles, as the RN would have prevailed if allowed less constrained use of force.

Hill maintains that experiences such as the Cod Wars illustrated that maintaining good order at sea was facing increasing complexity; including sophisticated international fishing efforts, the beginnings of the exploitation of undersea oil and gas, control of ship-sourced pollution from tanker accidents and gun-running associated with Irish Republican Army operations in Northern Ireland.¹⁵⁵ He also noted that these problems occupied many of the RN's 'small ships' and led to the misemployment of large ones.¹⁵⁶ At the beginning of the 21st century the RAN also had to use major surface combatants for constabulary tasks, leading to some criticism of the inefficient use of highly trained crews and expensive ships for policing tasks.¹⁵⁷ Yet, the RAN leadership at the time acknowledged that constabulary work was an intrinsic element of the Navy's role.¹⁵⁸ In the Cod Wars, however, whatever ships Britain assigned to the task would not have brought success, without the political will to overcome forcibly the Icelandic Coast Guard.

A dramatic worsening of Britain's economic position in the mid-1970s led to substantial public spending cuts, which included the Services. Cuts to the RN's

¹⁵³ Grove, *Vanguard to Trident: British Naval Policy Since World War Two*, p. 332.

¹⁵⁴ Grove, *Vanguard to Trident: British Naval Policy Since World War Two*, p. 333.

¹⁵⁵ Hill, 'The Realities of Medium Maritime Power, 1946 to the Present', in Hill, ed., *The Oxford Illustrated History of the Royal Navy*, p. 395.

¹⁵⁶ Hill, 'The Realities of Medium Maritime Power, 1946 to the Present', in Hill, ed., *The Oxford Illustrated History of the Royal Navy*, p. 395.

¹⁵⁷ David Stevens, 'To disrupt, deter and deny: sealing Australia's maritime borders', in Bruce Elleman and S.C.M. Paine, *Naval Blockades and Seapower: Strategies and counter-strategies, 1805-2005*, Routledge, Abingdon, UK, 2006, p. 231.

¹⁵⁸ Vice Admiral Chris Ritchie RAN, 'Positioning Our Navy for the Future', in Jack McCaffrie, ed., *Positioning Navies For The Future*, Halstead Press, Sydney, 2006, p. 22. Admiral Ritchie strongly disagreed with those who thought that the Navy found constabulary operations distasteful and indicated that these operations would grow in importance for the RAN.

support and ammunition stocks impacted on readiness at a time when protection of the 'offshore estate' was becoming more important.¹⁵⁹ Major oil and gas fields were opening up in the North Sea and fisheries were increasingly under national control. Even with a long history of RN involvement, offshore protective duties had never been central concerns.¹⁶⁰

Although that remains the case, the RN still contributes significantly to Britain's offshore constabulary task.¹⁶¹ For example, the Fishery Protection Squadron comprises 10 vessels, operates throughout the British EEZ and in recent years has conducted annually around 1,500 boardings of foreign fishing vessels.¹⁶² The Squadron is also involved in protection of the North Sea oil and gas platforms and is supplemented for local and offshore protective operations by the Gibraltar and Cyprus Squadrons.¹⁶³ The Squadron also patrols the Falklands Islands fishing zone.¹⁶⁴

The USA experienced challenges with the growth of the fishery conservation task through the 1960s. It involved the Coast Guard countering the expanding efforts of Japanese and Russian fishing fleets in Alaskan waters, and patrolling in the Florida Straits against illegal Cuban fishing.¹⁶⁵ The latter task grew with the extension of US fishing jurisdiction to 12 miles in October 1966.¹⁶⁶ Military readiness was also tested, with the Coast Guard Commandant of that time successfully arguing for the service to

¹⁵⁹ Grove, *Vanguard to Trident: British Naval Policy Since World War Two*, pp. 329-30.

¹⁶⁰ Grove, *Vanguard to Trident: British Naval Policy Since World War Two*, p. 330.

¹⁶¹ There were reports, however, of a significant cut in patrol days for 2008; down to 600 from 800 in 2007. Jasper Copping, 'Fish stocks at risk from protection patrol cuts', *London Telegraph* 17 February 2008.

<<http://www.telegraph.co.uk/earth/main.jhtml?xml=/earth/2008/02/17/eafish117.xml>> (12 June 2008).

¹⁶² *UK Defence Statistics 2006*, Table 7.5: 'Number of vessels boarded by the Royal Navy Fishery Protection Squadron within British fishing limits...'

<www.dasa.mod.uk/natstats/ukds/2006.c7/table75.html> (15 May 2007). The Squadron conducted 1,486 boardings in 2010. See, *Fishery Protection: The RN Looking After a Whole Industry*, <<http://www.royalnavy.mod.uk/News-and-Events>> (22 October 2013).

¹⁶³ *About Defence: The Royal Navy*,

<www.mod.uk/DefenceInternet/Organization/KeyFactsAboutDefence> (15 May 2007).

Gibraltar Squadron <www.royal-navy.mod.uk> (15 May 2007); *Cyprus Squadron: The Royal Navy Cyprus Squadron*, <www.royal-navy.mod.uk> (15 May 2007).

¹⁶⁴ *Fishery Protection: The RN Looking After a Whole Industry*,

<<http://www.royalnavy.mod.uk/News-and-Events>> (22 October 2013).

¹⁶⁵ Robert Erwin Johnson, *Guardians of the Sea, History of the United States Coast Guard 1915 to the Present*, Naval Institute Press, Annapolis, Maryland, 1987, p. 339.

¹⁶⁶ Johnson, *Guardians of the Sea, History of the United States Coast Guard 1915 to the Present*, p. 339.

participate in the Vietnam War: both smaller patrol craft and the large cutters deployed. Despite the heightened security situation in the US following the September 2001 terrorist attacks, the Coast Guard also deployed for military tasking in Operation *Enduring Freedom* against Iraq.¹⁶⁷

These instances of the US Coast Guard undertaking military operations are revealing.¹⁶⁸ The nation with the world's largest and most capable navy has on several occasions in the last half century called on its coast guard to assist with foreign military operations.¹⁶⁹ Yet, the US Coast Guard, the largest and most capable in the world and larger than many navies, has also called on the USN to assist with constabulary operations in the distant and recent past.¹⁷⁰ For the constabulary function, even the largest and most capable coast guard still needs naval assistance, and in turn the US Coast Guard cannot always avoid involvement in military operations. Consequently, where navies exist alongside coast guards, they cannot expect entirely to avoid constabulary work.

Resources Protection - Under the Law of the Sea Convention

The offshore protection task expanded significantly with the introduction of the 1982 LOSC, which provided *inter alia* a comprehensive regime of maritime zones and

¹⁶⁷ YN 1 Thomas Heavey, USCGR, 'A report from Iraq', in *Coast Guard Reservist Magazine*, Vol., L, No. 3, May-June 2003. <www.uscg.mil/history/OIF_USCGR_Article.html> (6 February 2008).

¹⁶⁸ In saying that, there is a need to recognize that the Coast Guard does have mandated military responsibilities, through a 1995 agreement between the Secretaries of Defense and Transportation which allocated the Coast Guard five specific national defence missions. *Coast Guard Publication 1- U.S. Coast Guard: America's Maritime Guardian*, Washington DC., 1 January 2002, p. 12.

¹⁶⁹ Military operations in which the Coast Guard has participated since 1975 include; Grenada in 1983, Panama in 1989, The Gulf War in 1990-91, Kosovo in 1999 and Operation Iraqi Freedom in 2003. 'The Coast Guard at War', *Coast Guard History*, U.S. Coast Guard Historian's Office, Washington, DC., 2007. <<http://www.uscg.mil/history/>> (7 February 2008).

¹⁷⁰ The first such occasion was the use of the USN in 1808 to assist the Revenue Cutter Service in maintaining an embargo against US merchant ships trading internationally. King, *The Coast Guard Under Sail: The U.S. Revenue Service 1789-1865*, p. 46. More recently, during the 1980s the USN contributed E-2C early warning aircraft, S-3 and P-3 patrol aircraft and surface ship patrols on both coasts, to assist with drug interdiction. Charles M Fuss Jr., *Sea of Grass: The Maritime Drug War 1970-1990*, Naval Institute Press, Annapolis, MD., 1996, p. 175. These patrols are still taking place. 'USS *Rentz* Arrives in 4th Fleet to Conduct Counter Drug Operations and UNITAS', *America's Navy*, 7 August 2013, <http://www.navy.mil/submit/display.asp?story_id=75826> (13 December 2013).

associated regulations. The LOSC established the EEZ, an area beyond and adjacent to the territorial sea and extending no more than 200 nautical miles from the baselines used to measure the breadth of the territorial sea.¹⁷¹ Within its EEZ a coastal state has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superadjacent to the sea-bed and of the sea-bed and its subsoil.¹⁷²

Within the EEZ, a coastal state must determine the allowable catch of the living resources and must ensure that over-exploitation of these resources does not endanger stocks. Coastal states must also promote optimum use of the living resources in the EEZ and where they cannot harvest the entire allowable catch they must give other states access to the surplus.¹⁷³ Where nationals of other states fish in an EEZ they must comply with the relevant laws and regulations of the coastal state.¹⁷⁴

The need to protect maritime resources is gaining global acceptance. In 1995, for example, the Chinese Premier, Li Peng, declared that the Chinese Army had to strengthen its air and naval capabilities to '... safeguard the sovereignty and territorial integrity of the motherland and our maritime rights and interests'.¹⁷⁵ This statement reflected the robust approach that China has taken towards its maritime claims in the South China Sea. In 1992, China announced formal claims to both the Spratly and Paracel Islands and to all sea-bed resources lying in adjacent areas of the South China Sea.¹⁷⁶ Then, in addition to awarding drilling concessions to Western firms off the Vietnamese coast, China deployed its navy to protect their operations.¹⁷⁷

These activities occurred in contested waters; various parts of the South China Sea being claimed by Vietnam, Taiwan, Malaysia, the Philippines and Brunei, and virtually all of it by China.¹⁷⁸ Chinese activities have also led to significant disagreements and

¹⁷¹ United Nations, *The Law of the Sea: United Nations Convention on the Law of the Sea*, p. 18.

¹⁷² United Nations, *The Law of the Sea: United Nations Convention on the Law of the Sea*, p. 18.

¹⁷³ United Nations, *The Law of the Sea: United Nations Convention on the Law of the Sea*, pp. 20-1.

¹⁷⁴ United Nations, *The Law of the Sea: United Nations Convention on the Law of the Sea*, p. 21.

¹⁷⁵ Michael T. Klare, *Resource Wars: The New Landscape of Global Conflict*, Metropolitan Books Henry Holt and Co., New York, NY, 2001, p. 11.

¹⁷⁶ Klare, *Resource Wars: The New Landscape of Global Conflict*, p. 116.

¹⁷⁷ Klare, *Resource Wars: The New Landscape of Global Conflict*, p. 123.

¹⁷⁸ Klare, *Resource Wars: The New Landscape of Global Conflict*, pp. 118-9. Hanns J. Buchholz, *Law of the Sea Zones in the Pacific Ocean*, Institute of Southeast Asian Studies, Singapore, 1987, p. 30.

minor naval clashes as claimants have tried to establish or maintain their sovereign rights.¹⁷⁹ Despite the importance of oil and gas, most armed clashes in the South China Sea have involved the pursuit of illegal fishing activities.¹⁸⁰ Responding to similar difficulties in the Gulf of Thailand, Vietnam and Thailand reached an agreement, signed in June 1999, to mount joint naval patrols against illegal fishing.¹⁸¹

Southeast Asia and the South China Sea especially, continue to be the focus of maritime boundary disputes made more prominent because of competition for access to oil, gas and fish. The common factor in disputes is China's extensive but not clearly articulated claim to the South China Sea and its islands and reefs, based on the 'nine dash line' map.¹⁸² There is also evidence of recent escalation in Chinese pressure since Xi Jinping assumed leadership of the Chinese Communist Party in November 2012.¹⁸³ Vietnam and the Philippines have expressed the strongest opposition to China's claims, but neither has been able to counter China's growing use of coastguard-like forces to enforce its claims.¹⁸⁴

In East Asia the quest for offshore resources and the uncertainty over maritime boundaries has led to increasing involvement by regional navies in constabulary work and to growing tensions, especially between China and Japan in the East China Sea.¹⁸⁵ Table 3-1 below outlines numerical changes to nine East Asian navies and coast guards over the last two decades. The figures are limited to vessels capable of open ocean operations - no smaller than corvettes - and thus defence of EEZ sovereign rights. All of the forces have experienced some force structure growth, primarily in frigate and corvette strength, reflecting an increasing interest in maritime security.

¹⁷⁹ Klare, *Resource Wars: The New Landscape of Global Conflict*, pp. 125-6. This example refers to the dispute between China and the Philippines over Mischief Reef in 1995—which has yet to be resolved.

¹⁸⁰ Klare, *Resource Wars: The New Landscape of Global Conflict*, pp. 122-3.

¹⁸¹ 'Asia Pacific, In Brief—Thailand, Vietnam to Launch Patrols', in *Jane's Defence Weekly*, Vol., 029, Issue 023, 10 June 1998,;

<<http://intranet.defence.gov.au/jrl/janes/jdw98/jdw98/jdw01950.htm>> (21 September 2005).

¹⁸² Zhiguo Gao and Bing Bing Jia, 'The Nine-Dash Line in the South China Sea: History, Status, Implications', *American Journal of International Law*, Vol. 107, No. 1, January 2013, p. 98.

¹⁸³ Alexander Nicoll, ed., *Strategic Survey 2013: The Annual Review of World Affairs*, Routledge, Abingdon, Oxon, 2013, p. 356.

¹⁸⁴ Nicoll, ed., *Strategic Survey 2013: The Annual Review of World Affairs*, p. 357.

¹⁸⁵ Nicoll, ed., *Strategic Survey 2013: The Annual Review of World Affairs*, pp. 322-3.

Country	Year	
	1989/90	2012
CHINA		
Destroyers/Frigates	51	76
INDONESIA		
Frigates/Corvettes	17	30
JAPAN		
Cruisers/Destroyers	43	32
Frigates/Corvettes	34	60
MALAYSIA		
Frigates/Corvettes	4	14
PHILIPPINES		
Frigates/Corvettes	-	3
SINGAPORE		
Frigates/Corvettes	6	12
SOUTH KOREA		
Cruisers/Destroyers	9	8
Frigates/Corvettes	31	46
TAIWAN		
Cruisers/Destroyers	26	4
Frigates/Corvettes	4	73
VIETNAM		
Frigates/Corvettes	9	30

Table 3-1: A Comparison of East Asian Surface Combatants¹⁸⁶

Coast guards and a range of other marine policing forces have emerged in East Asia. As non-naval organizations, their employment relieves navies from some or all of the constabulary function, and may limit the potential for conflict. Their capabilities vary greatly, from port security to offshore patrolling and most of them comprise a mix of small and large patrol craft, as well as more capable offshore patrol vessels. Table 3-2 illustrates the strength, in 2012, of the various inshore patrol forces in each of the nine countries listed in Table 3-1 above.

¹⁸⁶ The information in the tables is taken from; Captain Richard Sharpe RN, ed., *Jane's Fighting Ships 1989-90*, Jane's Information Group, Coulsdon, Surrey, 1989 and Commodore Stephen Saunders RN, ed., *Jane's Fighting Ships 2005-2006*, Jane's Information Group, Coulsdon, Surrey, 2005. See also, James Hackett, ed., *The Military Balance 2013*, Routledge, Abingdon, Oxon, 2013, pp. 286-337.

Country	Patrol Craft Strength
China	582
Indonesia	173
Japan	362
Malaysia	84
Philippines	61
Singapore	99
South Korea	50
Taiwan	136
Vietnam	32

Table 3-2: East Asian Coast Guard and Marine Police Forces¹⁸⁷

Reflecting the rising importance of both living and non-living maritime resources and the need to secure them, Russia published a new military doctrine in April 2000. Among the functions allotted to the Navy, was ‘ ... creation of the conditions for the security of economic activity and the protection of the Russian Federation’s national interests in the territorial sea, on the continental shelf and in the exclusive (offshore) economic zone of the Russian Federation and on the high seas’.¹⁸⁸

The Pacific Ocean provides an excellent example of resource protection involving navies or other maritime forces. The Western and Central Pacific Ocean supports the largest tuna fishery in the world; some 60 per cent of the total annual catch.¹⁸⁹ Most fishing is done by distant water fishing nations, including Japan, South Korea, Taiwan and the USA and most of the catch is being taken in national zones.¹⁹⁰

Many Pacific island States had no capacity to monitor fishing in their extensive EEZs until the provision of patrol boats under the Australian Pacific Patrol Boat project. Under this project 22 patrol boats were provided to 12 States from 1987 to 1997.¹⁹¹ They are operated by agencies including the navies of Fiji and Papua New Guinea and the

¹⁸⁷ Hackett, ed., *The Military Balance 2013*, pp. 286-333.

¹⁸⁸ Klare, *Resource Wars: The New Landscape of Global Conflict*, p. 11.

¹⁸⁹ *Western and Central Pacific Fisheries Commission*, Department of Agriculture, Fisheries and Forests, <<http://www.daff.gov.au/fisheries/international/wcpfc>> (17 October 2013).

¹⁹⁰ Satish Chand, *Multilateral Governance of Fisheries: Management and Cooperation in the Western and Central Pacific Tuna Fisheries*, School of Pacific and Asian Studies, Australian National University, Canberra, 2003, p. 3. <https://crawford.anu.edu/pdf/staff/satish_chand> (17 October 2013).

¹⁹¹ Anthony Bergin, *The Pacific Patrol Boat Project: A Case Study of Australian Defence Cooperation*, Department of International Relations, Research School of Pacific Studies, Australian National University, Canberra, 1994, p. 15.

police forces of the Solomon Islands and Tuvalu. In many cases they are the only surveillance and enforcement capacity available to the Pacific island states and are used extensively to counter illegal fishing, violation of fishing license conditions and to monitor catch reporting.¹⁹² For most of the States operating the Pacific Patrol Boats, resource protection is their major security challenge.

Since 2008 the US Coast Guard has instituted bilateral 'shiprider' programs with nine Pacific Island Countries. The programs enable enforcement officials of the Pacific Island Countries to embark in Coast Guard cutters for patrols of their EEZs and to enforce their laws in those zones. In 2011, over 40 boardings were conducted, with 82 per cent of the fishing vessels found to be compliant with their licence conditions.¹⁹³

MARITIME BORDER PROTECTION

Introduction

Protecting a nation's maritime borders presents different challenges to protecting land borders. In the latter case sovereignty is always an issue but with maritime borders both sovereign rights and sovereignty can be challenged. Challenges to sovereign rights occur outside territorial waters, within the EEZ and within the continental shelf extension. They can be manifested in various ways, including piracy and illegal fishing¹⁹⁴ as well as violations of quarantine regulations, illegal people and cargo movement, smuggling and terrorism.

Border Protection - Early Experience

Some of the earliest recorded examples of border protection in support of fiscal regulation involved the Roman Navy. In the 1st and 2nd centuries CE the Roman Empire had squadrons based in several locations; some of them involved in constabulary operations. The Alexandria squadron, for example, enforced the strict

¹⁹² Bergin, *The Pacific Patrol Boat Project: A Case Study of Australian Defence Cooperation*, p. 35.

¹⁹³ *U.S. Coast Guard Partnering in Oceania*, <<https://community.apan.org>> (22 October 2013).

¹⁹⁴ Piracy and illegal fishing have been covered separately in the chapter because historically they have been the most significant constabulary tasks.

regulations of that port and the other Nile exits.¹⁹⁵ A separate force, the *potamophylacia*, exercised police and fiscal supervision and levied tolls over the Nile and other waterways.¹⁹⁶

Extending into the 3rd century CE, Roman naval squadrons operated along the Danube and Rhine rivers, performing border protection and assisting fiscal agencies by collecting tolls.¹⁹⁷ The Danube squadron may also have controlled navigation on the river and excluded the barbarians from it.¹⁹⁸ Anand claims that a maritime customs service existed in China from the 8th century CE and suggests similar arrangements may have existed in Indian and Southeast Asian waters in the 7th century CE.¹⁹⁹

Much later in England, officers were appointed by Henry III (1216-1272) and other monarchs as warders, keepers and guardians of the sea and coasts and as governors and captains of the Navy - Admirals from the 13th century.²⁰⁰ In that era, there is little evidence to show whether England prohibited navigation or fishing or imposed dues and conditions for the privilege of doing so; whereas other States like Venice and Denmark did so.²⁰¹ By 1275, England and the Continent were engaging in a significant wool trade which attracted customs dues.²⁰² While the Navy had a role in ensuring such dues were paid, by late in the 14th century its decay under the rule of Edward III (1327-1377) meant that England was unable to exercise good order at sea.²⁰³

Border protection - anti-smuggling operations

Although the 'ship-money' fleets undertook constabulary work for the customs organization, specifically to prevent tobacco smuggling, the Navy did not retain sole responsibility for matters such as combating illicit trade. The first mention of Customs' 'smacks' or small craft, came in 1661, with the reported seizure of mercury and other

¹⁹⁵ Starr, Jr., *The Roman Imperial Navy 31 B.C. - A.D. 324* p. 112.

¹⁹⁶ Starr, Jr., *The Roman Imperial Navy 31 B.C. - A.D. 324*, pp. 112-13.

¹⁹⁷ Starr, Jr., *The Roman Imperial Navy 31 B.C. - A.D. 324*, pp. 124-5.

¹⁹⁸ Starr, Jr., *The Roman Imperial Navy 31 B.C. - A.D. 324*, p. 137.

¹⁹⁹ Anand, *Origin and Development of the Law of the Sea*, pp. 20-1.

²⁰⁰ Fulton, *The Sovereignty of the Sea*, p. 31.

²⁰¹ Fulton, *The Sovereignty of the Sea*, p. 33.

²⁰² Loades, *England's Maritime Empire Seapower, Commerce and Policy 1490-1690*, p. 15.

²⁰³ Fulton, *The Sovereignty of the Sea*, p. 33.

medicinally-related drugs.²⁰⁴ By 1685 there were 10 such smacks operating from at least nine ports, including London, Dover and Southampton. There was also an excise service with its own craft, which remained separate from the Customs until 1809.²⁰⁵ In the 1690s there was an increase in import duties of all kinds to finance William III's wars against France.²⁰⁶

Then and later, there was a direct relationship between the level of duties and the level of smuggling. An Act of Parliament was passed in 1696 directing the RN to provide eight frigates and sloops to challenge wool smugglers.²⁰⁷ This was the first recorded official RN cooperation with Customs to prevent smuggling.²⁰⁸ The emergence of the Customs craft was an acknowledgment that aspects of the constabulary function, such as revenue collection, were best allocated to a dedicated organization.

The *Wool Act 1698* led to creation of a 'Landguard' supplementing the work of the so-called 'Waterguard', because of mounting concerns over illicit activities at sea.²⁰⁹ From August of that year, for the first time, revenue cutters were deployed to cover the entire English and Welsh coasts. This marked the true foundation of the Revenue Cutter Service in Britain, with its 21 cutters and a new centralized administration.²¹⁰ In a reaction that has more recent echoes, some politicians doubted the value of the Service and argued that the Navy should be responsible for the work. Because the Navy was chronically short of people, also like today, in 1702 all of the customs sloop crews were to be transferred to the RN; but it was only partly implemented.²¹¹ The resulting situation formalized the existence in Britain of at least two organizations with offshore constabulary responsibilities; the RN and the coast guard-like Revenue Cutter Service.

²⁰⁴ Smith, *King's Cutters: The Revenue Service and the War Against Smuggling*, p. 11.

²⁰⁵ Smith, *King's Cutters: The Revenue Service and the War Against Smuggling*, p. 16. The date shown in the book is 1909, but later reference confirms that it should have been 1809.

²⁰⁶ Smith, *King's Cutters: The Revenue Service and the War Against Smuggling*, p. 20.

²⁰⁷ Smith, *King's Cutters: The Revenue Service and the War Against Smuggling*, p. 20.

²⁰⁸ Smith, *King's Cutters: The Revenue Service and the War Against Smuggling*, p. 20.

²⁰⁹ The 'Landguard' comprised about 50 officers located on the south coast and tasked with monitoring the movement on land of wool clips. It was supported by a re-established 'Waterguard' based on seven south coast ports. Smith, *King's Cutters: The Revenue Service and the War Against Smuggling*, pp. 20-1.

²¹⁰ Smith, *King's Cutters: The Revenue Service and the War Against Smuggling*, p. 23.

²¹¹ Smith, *King's Cutters: The Revenue Service and the War Against Smuggling*, p. 24.

Further attempts by the British to assert sovereign rights at sea included the *Hovering Acts* passed in 1736 and later. These Acts allowed for the seizure of vessels destined for British ports and carrying specified cargoes, at distances of up to four, eight and in one case, 100 leagues.²¹² The Acts were repealed in 1876 because of a fear that a 12 nautical mile customs zone might become a territorial sea too wide to patrol.²¹³ That apart, the constabulary tasks of the RN became less important during the 18th century which was a period of almost constant naval wars.²¹⁴

Reliance on a navy for constabulary tasks has the attendant drawback that during wartime, the navy will be focused on combat-related operational matters. The need for the constabulary task and especially the revenue raising element, may remain or even increase in importance in wartime, but the capacity to meet the task will diminish.

The years 1720 to 1820 were possibly the zenith of smuggling in Britain and a period when the authorities appeared sometimes to lose control.²¹⁵ For example, in 1734, 54,000 lbs of tea and 123,000 gallons of brandy were seized on the Sussex, Kent and Essex coasts - perhaps one fifth of the amounts successfully landed.²¹⁶ The tension between the needs of the RN during war and the need to control illicit maritime activities continued to emerge. In 1744, there were 24 Revenue Cutter Service vessels around the British coast and many of them were transferred temporarily to the RN. Those not transferred were mainly quarantine vessels, because of the fear of a plague outbreak.²¹⁷

By the late 18th century the revenue services had expanded their forces and graduated to newer and bigger craft, although they were still smaller and less well armed than the smugglers.²¹⁸ By 1783, the Excise Service had six cutters and by 1790 the Customs

²¹² A league, at sea, is generally taken to be three nautical miles; more accurately it is 3.18 nautical miles. Kemp, ed., *The Oxford Companion to Ships and the Sea*, p. 472.

²¹³ Anand, *Origin and Development of the Law of the Sea*, p. 141.

²¹⁴ Fulton, *The Sovereignty of the Sea*, p. 21. Confirmation of Fulton's point can be gained by reference to chapters 11, 15-18, 21-23, 28 and 30 of Rodger, *The Command of the Ocean: A Naval History of Britain, 1649-1815*.

²¹⁵ Smith, *King's Cutters: The Revenue Service and the War Against Smuggling*, p. 37.

²¹⁶ Smith, *King's Cutters: The Revenue Service and the War Against Smuggling*, p. 38.

²¹⁷ Smith, *King's Cutters: The Revenue Service and the War Against Smuggling*, pp. 50-1.

²¹⁸ Smith, *King's Cutters: The Revenue Service and the War Against Smuggling*, pp. 67-8.

Service²¹⁹ had 40 vessels and an associated £42,000 annual maintenance liability.²²⁰ At this time, Scotland had its own Customs and Excise Services with several vessels, while the Irish Revenue Board had its own vessels for customs and excise duties. Yet naval vessels continued to be seconded to anti-smuggling duties, especially in peacetime. Nevertheless, there was an assessment in 1779 that almost four million gallons of brandy and five or six million pounds of tea were being smuggled into Britain each year.²²¹

Relations between the RN and the Customs Service were sometimes poor and there was particular resentment at the 'pressing' of Customs personnel into the Navy.²²² Similarly, Customs and Excise men often disputed the right to search apprehended vessels, But, despite their combined efforts, in the last two decades of the 18th century smugglers had become so dominant they could supply regular orders for goods.²²³ Much of the blame fell on 'lazy cutter officers' but the real cause was the high level of duties that made smuggling so attractive.²²⁴ This issue and the reform of the archaically managed Customs Service were taken up in the early decades of the 19th century.²²⁵

The reports of a Select Committee in 1789 formed the basis of anti-smuggling policy for the next 40 years. Among the outcomes were a reduction in the duty on tea and an increase in the area under jurisdiction at sea from two to four leagues.²²⁶ Customs also ceased its long-standing practice of engaging vessels under contract, such that by 1789 the Service comprised 30 vessels, all directly controlled by the Customs Board. The Napoleonic wars, beginning in 1793 once again saw the Revenue Services lose many good men to the RN. Many of the cutters also helped the Navy in patrolling and carrying dispatches.²²⁷ This demonstrates that in wartime, however necessary

²¹⁹ By way of clarification, Customs and Excise remained separate organizations until 1909 and their seagoing elements were known as the 'Waterguard.' Smith, *King's Cutters: The Revenue Service and the War Against Smuggling*, pp. 8 and 16.

²²⁰ Smith, *King's Cutters: The Revenue Service and the War Against Smuggling*, pp. 53-4.

²²¹ Smith, *King's Cutters: The Revenue Service and the War Against Smuggling*, p. 75.

²²² Smith, *King's Cutters: The Revenue Service and the War Against Smuggling*, p. 56.

²²³ Smith, *King's Cutters: The Revenue Service and the War Against Smuggling*, p. 69.

²²⁴ Smith, *King's Cutters: The Revenue Service and the War Against Smuggling*, p. 71.

²²⁵ Smith, *King's Cutters: The Revenue Service and the War Against Smuggling*, p. 71.

²²⁶ Smith, *King's Cutters: The Revenue Service and the War Against Smuggling*, p. 77.

²²⁷ Smith, *King's Cutters: The Revenue Service and the War Against Smuggling*, pp. 94 and 96.

constabulary tasks are, they will be subject to overriding military priorities, even where dedicated constabulary organizations exist.

From 1810, reorganizations put the revenue services on a different footing which significantly curbed the smuggling trade. In 1810, the Customs and Excise Services were combined and called the Preventive Waterguard.²²⁸ Shortly after the end of the Napoleonic Wars, the Treasury put the Waterguard under the command of a senior naval officer and transferred the cutters to Admiralty control.²²⁹ This was accompanied by yet another reorganization, leading to a more professional service, but one that lacked the previous *esprit de corps*. One reason for this was the ambivalence with which junior naval officers approached duty in the cutters.²³⁰

There was still dissatisfaction with the Waterguard performance, including a perceived lack of coordinated effort and overall strategy.²³¹ The Prince Regent appointed a committee which recommended returning the Preventive Waterguard to Customs control, but with the Admiralty directing the nomination and promotion of all personnel. The committee also led to the formal establishment of the Coast Guard on 15 January 1822, effectively as an adjunct to the RN.²³² The impact was immediate. In its first year, the Coast Guard seized over one million gallons of spirits, over 22 million pounds of tea and over 11 million pounds of tobacco.²³³ Uncertainty over navigation and boundaries were major impediments to gaining convictions against smugglers; seizure of goods and vessels notwithstanding.²³⁴

Border Protection - Anti-slaving Operations

The RN's constabulary work took another turn early in the 19th century, with the enactment on 25 March 1807, of legislation abolishing the slave trade. Previously,

²²⁸ Smith, *King's Cutters: The Revenue Service and the War Against Smuggling*, p. 104. The amalgamation came after a decree in 1809. The term Waterguard continued to be used until 1972.

²²⁹ Smith, *King's Cutters: The Revenue Service and the War Against Smuggling*, p. 106.

²³⁰ Smith, *King's Cutters: The Revenue Service and the War Against Smuggling*, p. 108.

²³¹ Smith, *King's Cutters: The Revenue Service and the War Against Smuggling*, p. 125.

²³² Smith, *King's Cutters: The Revenue Service and the War Against Smuggling*, pp. 125-6.

²³³ Smith, *King's Cutters: The Revenue Service and the War Against Smuggling*, p. 127.

²³⁴ Smith, *King's Cutters: The Revenue Service and the War Against Smuggling*, p. 129.

British ships had carried a large proportion of the slaves from Africa to the Americas.²³⁵ At sea enforcing abolition was compromised because only the ships of countries supporting the British could be boarded, and even they were not always obliging. After 1822 a boarding party only had to find 'clear and undeniable proof that slaves had been on board' but that was often contested in court.²³⁶ The RN itself considered this work to be '... its most unrewarding, tedious, unhealthy and strenuous task,...'²³⁷ Disease led to the death of over one quarter of the West African Squadron in 1829.²³⁸

Over the first 40 years of the RN's anti-slaving work only about one eighth of the slaves were freed, amidst criticism of the cost and effectiveness of the Navy's African Squadron efforts. Nevertheless, many slaves were freed in the 1830s, with the numbers increasing from 1,487 in 1832 to 5,992 in 1836.²³⁹ By 1850 the trade had largely ceased on the west coast of Africa, while the close of the American Civil War ended the trade from southern Africa.²⁴⁰ A difficult situation on the east coast of Africa, with slaving dhows often outrunning the Squadron's sailing vessels, meant that slaving was not fully curbed there before 1890.²⁴¹

These anti-slaving operations were effectively constabulary operations. The earliest were off the east coast of Africa under Captain William Owen. He attempted to establish a British Protectorate over Mombasa in 1823, but was repudiated by his government.²⁴² Nevertheless, Owen succeeded in maintaining naval supervision of Mombasa for two years, during which he left a small garrison in the town and worked

²³⁵ Roger Morris, 'Endeavour, Discovery and Idealism, 1760 - 1895', Hill, ed. *The Oxford Illustrated History of the Royal Navy*, p. 242.

²³⁶ Morris, 'Endeavour, Discovery and Idealism, 1760 - 1895', Hill, ed. *The Oxford Illustrated History of the Royal Navy*, p. 242.

²³⁷ Paul Kennedy, *The Rise and Fall of British Naval Mastery*, MacMillan Press, London, 1976, rev.ed. 1983, p. 165.

²³⁸ Kennedy, *The Rise and Fall of British Naval Mastery*, p. 165.

²³⁹ Letter from Rear Admiral Sir Patrick Campbell, Commander-in-Chief Cape of Good Hope Station to the Secretary of the Admiralty, 28th of April 1838, in Hattendorf, Knight, Pearsall, Rodger and Till, eds., *British Naval Documents 1204-1960*, p. 626.

²⁴⁰ Morris, 'Endeavour, Discovery and Idealism, 1760 - 1895', Hill, ed. *The Oxford Illustrated History of the Royal Navy*, p. 242.

²⁴¹ Morris, 'Endeavour, Discovery and Idealism, 1760 - 1895', Hill, ed. *The Oxford Illustrated History of the Royal Navy*, p. 245.

²⁴² Raymond C. Howell, *The Royal Navy and the Slave Trade*, Croom Helm, Beckenham, Kent, 1987, p. 8.

against the slave trade.²⁴³ Arguably, Owen was attempting to uphold the 1807 British Anti-Slavery Laws in waters adjacent to a territory at least nominally under British protection. Furthermore, the local sultan and some 2,000 British-Indian merchants in the region relied on British naval protection through the 1830s and 1840s.²⁴⁴

While the operations were not supporting British laws in or near British waters, they were conducted in support of British laws, where British jurisdiction was exercised and where there was British support for local rulers. The difficulty in categorizing the operations is also aggravated by the nature of the British colonizing process. As Preston noted, for most of the 19th century '... the British Empire was predominantly an "informal" empire, an empire of influence rather than government'.²⁴⁵

Border Protection - 19th and 20th Century Problems

Constabulary work continued closer to Britain. During the 1840s the Coast Guard had marked success against smugglers. Success had its own cost, with increasing operating costs and diminishing smuggling resulting in about one third of the cutters paying off after 1849. The Coast Guard suffered more losses with the transfer of about 3 000 men to the Navy at the outbreak of the Crimean War in 1854.²⁴⁶ The war highlighted the RN's failure adequately to man the Fleet for war and resulted in the Navy recommending the takeover of the Coast Guard, partly to provide a naval reserve.²⁴⁷ Over Customs Board objections this happened in October 1856, leaving Customs with virtually no vessels. In the same year Britain, on signing the Declaration of Paris, agreed to forego its 'maritime right' to stop and seize goods in neutral vessels in time of war.²⁴⁸ Signatories to that agreement also determined to end all forms of state-sponsored privateering or seizure of merchant vessels for profit.²⁴⁹

²⁴³ Howell, *The Royal Navy and the Slave Trade*, p. 8.

²⁴⁴ Howell, *The Royal Navy and the Slave Trade*, pp. 8-10.

²⁴⁵ Preston, *Send a Gunboat: A study of the Gunboat and its role in British policy 1854-1904*, p. 32.

²⁴⁶ Smith, *King's Cutters: The Revenue Service and the War Against Smuggling*, p. 141.

²⁴⁷ Smith, *King's Cutters: The Revenue Service and the War Against Smuggling*, p. 142.

²⁴⁸ Arthur Herman, *To Rule the Waves: How the British Navy Shaped the Modern World*, Harper Collins, New York, NY, 2004, p. 444.

²⁴⁹ 'Declaration respecting maritime law, Paris, 16 April 1896', *ICRC Treaties and States Parties to Such Treaties*, <<http://www.icrc.org/applic/ihl.nsf/Treaty>> (18 October 2013).

The size and operational scope of the Coast Guard were trimmed in the years prior to 1879 and 1905. The extent of the second of these cuts, which closed 35 stations and left only six cutters in service, caused concern within the Customs Board.²⁵⁰ There is a parallel here with the Australian experience in the 1970s and 1980s, when surveillance and patrol operations increased with the appearance of a 'threat', but were reduced as the threat was countered.²⁵¹ Both countries seem to have preferred reacting to a threat than the more expensive option of threat prevention.

By the outbreak of the First World War, the Coast Guard was again a considerable force and breaking with an unhappy tradition, it took no direct part in this war. Predictably, it was subject to another review in 1922, which recommended that the Customs and Excise Board establish its own coast-watching service. The new Coast Preventive Force would support the Waterguard and carry out the revenue protection task.²⁵²

Although large scale smuggling was minimal by the 1930s, concern grew over the lack of a substantial maritime presence along the British coast. Smuggling increased greatly after the Second World War, with high taxes and duties, and rationing spurring the entrepreneurial spirit. Tobacco, alcohol and nylon stockings were the most favoured goods and many ex-military personnel engaged in the trade. Neither the Coast Preventive Service nor the Waterguard could cope and in response, the latter organization grew by about 50 per cent over the five years to 1950.²⁵³

Simultaneously and amidst post-Second World War cutbacks, the RN maintained one or two frigates in the Persian Gulf to counter '... slavers and other disturbers of law and order'.²⁵⁴ The RN was also involved in preventing illegal Jewish immigration into

²⁵⁰ Smith, *King's Cutters: The Revenue Service and the War Against Smuggling*, p. 142.

²⁵¹ Derek Woolner, *Australian Coastal Surveillance: A History and Commentary, Basic Paper No. 3* 1984, Department of the Parliamentary Library, the Parliament of the Commonwealth of Australia, Canberra, 1984, pp. 11-12.

²⁵² Smith, *King's Cutters: The Revenue Service and the War Against Smuggling*, p. 160.

²⁵³ Smith, *King's Cutters: The Revenue Service and the War Against Smuggling*, p. 167.

²⁵⁴ Grove, *Vanguard to Trident: British Naval Policy Since World War Two*, p. 127.

Palestine from mid-1946 to mid-1948.²⁵⁵ This was a constabulary task because of Britain's responsibility for the mandated territory of Palestine at the time.²⁵⁶

Smuggling continued to prosper through the 1950s, involving large commercial quantities of goods. In 1959 over 400 vessels were challenged inside the three mile limit, of which 29 were seized. In the 1960s cigarette smuggling remained rife on the English south coast and in the 1970s, for the first time in hundreds of years, drugs began to appear, along with illegal migrants.²⁵⁷ This trend has been maintained, although the traditional smuggled goods - tobacco and alcohol - remain part of the trade.²⁵⁸

The RN's smaller ships, notably the Hong Kong Squadron, became involved in stemming the large outflow of illegal migrants from China in the 1970s. The extent of the outflow threatened to destabilize the territory and the use of fast 'snakeboats' posed a challenge to the local naval force. This squadron remained in place after the withdrawal from east of Suez, specifically for policing duties.²⁵⁹

Today, the RN still conducts constabulary operations, mostly using specialized vessels and mine countermeasures vessels. Ships of the Fisheries Protection Squadron operate under contract to the Department for Environment, Food and Rural Affairs and other ships patrol Northern Ireland waters to counter terrorism.²⁶⁰ Evidence of the level of Fisheries Protection Squadron activity is clear from the 1486 boardings conducted in 2010-11 and the associated 496 infringements issued.²⁶¹

Border Protection—the American Experience

In 1797, when trouble began with France, Congress directed the US Revenue Cutter Service to stop US citizens from privateering against ships of friendly nations, to

²⁵⁵ Grove, *Vanguard to Trident: British Naval Policy Since World War Two*, pp. 155-6.

²⁵⁶ *Palestine Facts: British Mandate – Mandate Ends*, Accessed at <http://www.palestinefacts.org/pf_mandate_mandate_end.php> (17 June 2007).

²⁵⁷ Smith, *King's Cutters: The Revenue Service and the War Against Smuggling*, pp. 177-8.

²⁵⁸ Smith, *King's Cutters: The Revenue Service and the War Against Smuggling*, p. 178.

²⁵⁹ Grove, *Vanguard to Trident: British Naval Policy Since World War Two*, p. 302.

²⁶⁰ *BR 1806: British Maritime Doctrine*, p. 187.

²⁶¹ *The Royal Navy: Providing Cross-Government Approach to Security*, <<http://www.royalnavy.mod.uk>> (18 October 2013).

defend the nation's coast and to repel attacks on American commerce in American waters.²⁶² These directions also led to the generation of a new fleet for the Revenue Cutter Service.²⁶³ In 1798 with the French attacking American commerce, Secretary of War McHenry recommended to Congress that the USN strength be increased by 26 ships for coastal protection.²⁶⁴

By the end of the quasi-war with France in 1800 the Revenue Cutter Service roles had expanded considerably. They included prevention of smuggling and protecting public health through quarantine regulation enforcement. After 1794 the Revenue Cutter Service also became involved in preventing the export of slaves.²⁶⁵

By the end of the Second Seminole War in 1842²⁶⁶ the revenue being collected by the Revenue Cutter Service had dropped enough for Congress to question the Service's value. Abolition was considered, along with USN assumption of the role, partly because Revenue Cutter Service funding was controlled by the Secretary of the Treasury and not Congress.²⁶⁷ The move failed, with counter-arguments that revenue collection was not Navy business. Both the USA and Britain determined, therefore, that revenue collection was best conducted by a dedicated service, other than the Navy.

The Revenue Cutter Service tried to prevent slave trading before the American Civil War. The anti-slavery laws made this complicated, for example by requiring the Revenue Cutter Service to return runaway slaves to their masters.²⁶⁸ Its effectiveness was further reduced, with some Revenue Cutter Service masters owning slaves themselves, some local authorities being uncooperative and some states having no anti-slavery laws.²⁶⁹

²⁶² King, *The Coast Guard Under Sail: The U.S. Revenue Service 1789 - 1865*, p. 22.

²⁶³ King, *The Coast Guard Under Sail: The U.S. Revenue Service 1789 - 1865*, p. 22.

²⁶⁴ Hagan, *This People's Navy—The Making of American Seapower*, p. 41.

²⁶⁵ King, *The Coast Guard Under Sail: The U.S. Revenue Service 1789 - 1865*, pp. 31-2.

²⁶⁶ This was a conflict which aimed to remove recalcitrant Seminole Indians from their Florida lands. The tribe had earlier agreed to relocate to land to the west of Florida. Alan Brinkley, *The Unfinished Nation: A Concise History of the American People, Vol. One.*, 2nd ed., McGraw-Hill, New York, NY, 1997, pp. 247-8.

²⁶⁷ King, *The Coast Guard Under Sail: The U.S. Revenue Service 1789 - 1865*, pp. 110-11.

²⁶⁸ King, *The Coast Guard Under Sail: The U.S. Revenue Service 1789 - 1865*, p. 145.

²⁶⁹ King, *The Coast Guard Under Sail: The U.S. Revenue Service 1789 - 1865*, pp. 146-7.

In 1882 the Secretary of the Navy, William Chandler, noted the naval character of the Revenue Cutter Service and asked that USN officers be employed in it. He had too few ships at the time and thought the experience would be valuable for the officers.²⁷⁰ Furthermore, he argued that the Revenue Cutter Service should become part of the USN, except for the small harbour cutters, which could remain with the Treasury Department.²⁷¹ The Head of the Revenue Marine Bureau deflected this attack on Revenue Cutter Service autonomy but another attempt in 1899 was supported by the Revenue Cutter Service officers who wanted the better pay of the naval officers. Other efforts in 1891, 1892 and 1902 were successfully resisted by Treasury Secretary Foster.²⁷²

In the 1880s, the Revenue Cutter Service engaged in sanitary coastal patrols to prevent the introduction of cholera and yellow fever.²⁷³ By contrast, the 1890s were marked by serious problems with illegal Chinese immigration and opium smuggling on the west coast.²⁷⁴ On the east coast the Revenue Cutter Service patrolled off Florida, enforcing US neutrality in the dispute between Cuba and Spain, with Cuban sympathizers trying to support the island.²⁷⁵

The US Coast Guard came into being on 30 January 1915 as an amalgamation of the Revenue Cutter Service and the Life-Saving Service.²⁷⁶ Operations in the first decade of the 20th century included immigration and quarantine patrols, supporting neutrality laws, prevention of smuggling, suppression of mutinies and the maintenance of military skills for cooperation with the USN in wartime.²⁷⁷ With the end of the First World War, the Coast Guard sought immediate release from USN authority but was frustrated by Secretary of the Navy, Josephus Daniels. He believed that vessels of all government agencies should be under USN control and saw retention of the Coast Guard as the first step in achieving this. A Bill to this effect was introduced to Congress

²⁷⁰ King, *The Coast Guard Under Sail: The U.S. Revenue Service 1789 - 1865*, pp. 54-5.

²⁷¹ King, *The Coast Guard Under Sail: The U.S. Revenue Service 1789 - 1865*, pp. 54-5.

²⁷² King, *The Coast Guard Expands 1865-1915: New Roles, New Frontiers*, pp. 59-60. Nevertheless, the Cutter Service School of Instruction was shut down in 1890 and until 1894 RCS officers were trained at the Naval Academy.

²⁷³ King, *The Coast Guard Expands 1865-1915: New Roles, New Frontiers*, p. 69.

²⁷⁴ King, *The Coast Guard Expands 1865-1915: New Roles, New Frontiers*, p. 74.

²⁷⁵ King, *The Coast Guard Under Sail: The U.S. Revenue Service 1789 - 1865*, p. 109.

²⁷⁶ King, *The Coast Guard Expands 1865-1915: New Roles, New Frontiers*, pp. 236-240.

²⁷⁷ King, *The Coast Guard Under Sail: The U.S. Revenue Service 1789 - 1865*, p. 150.

in January 1919.²⁷⁸ Congress elected to return the Coast Guard to Treasury control; thus beginning a long struggle. Many Coast Guard officers actually supported some form of amalgamation with the Navy, because of the expectation of better conditions and vessels.

During the 1920s the Coast Guard also experienced a significant expansion to cope with the smuggling which followed the introduction of the prohibition of the manufacture, sale, import and export of alcohol after 16 January 1920. Nevertheless, the Coast Guard did not immediately become explicitly responsible for this task.²⁷⁹ On assuming formal responsibility it assigned forces for the task, with normal Coast Guard duties becoming secondary responsibilities. To assist the authorities, Congress mandated that ships violating the laws of the USA anywhere within 12 miles of the coast might be boarded, searched, arrested and forfeited.²⁸⁰ This was not acceptable to other States and a 1924 convention with Britain confirmed the three mile territorial waters limit, but with the rider that boarding and search would be permitted within one hour's steaming of the American coast.²⁸¹ There was legislative progress with the 1936 enactment of a law giving the Coast Guard authority to board, inspect and if necessary seize US vessels on the high seas in defence of US laws.²⁸²

By the outbreak of the Second World War, the Coast Guard had become a significant organization with a breadth of responsibilities, within both US and international waters. Smuggling of both alcohol and narcotics remained active and counter-operations frequently engaged Coast Guard cutters and aircraft. By contrast there is little mention of USN involvement in such tasks to that point, either in the Coast Guard or USN histories.²⁸³

²⁷⁸ Johnson, *Guardians of the Sea, History of the United States Coast Guard 1915 to the Present*, p. 57.

²⁷⁹ Johnson, *Guardians of the Sea, History of the United States Coast Guard 1915 to the Present*, p. 80.

²⁸⁰ Johnson, *Guardians of the Sea, History of the United States Coast Guard 1915 to the Present*, p. 57.

²⁸¹ Johnson, *Guardians of the Sea, History of the United States Coast Guard 1915 to the Present*, p. 85.

²⁸² Johnson, *Guardians of the Sea, History of the United States Coast Guard 1915 to the Present*, p. 158.

²⁸³ The bibliography of US naval history by Paolo E. Coletta has no reference to smuggling in 9,900 entries. Paolo E. Coletta, *American Naval History: A Guide*, 2nd ed., The Scarecrow Press, Lanham MD., 2000. Johnson's history of the US Coast Guard contains no references to USN efforts on this front. Johnson, *Guardians of the Sea, History of the United States Coast Guard 1915 to the Present*.

The Korean War, beginning in 1950, exposed an issue that would return several times for the Coast Guard. There was no declaration of war and so transfer of the Coast Guard to the USN needed a Presidential executive order. This was not forthcoming.²⁸⁴ So the service remained with the Treasury for the duration of the conflict, but carried out tasks previously agreed with the USN. Effectively the Coast Guard continued its peacetime tasking, with coherent Coast Guard units. One of these duties was port security and in an eerie foreshadowing of current times, one of the motivations for increased port security was the fear that nuclear devices would be brought surreptitiously into US ports and detonated.²⁸⁵

Border Protection – Counter-drug Operations

The number of Cubans fleeing the Castro regime, often in unseaworthy craft, was another Coast Guard problem.²⁸⁶ This task expanded with the growth in refugee numbers and from 1973 the Coast Guard became deeply involved in drug interdiction. The Drug Enforcement Agency created in 1973, took overall responsibility, supported by the Coast Guard and Customs. Neither of the latter organizations, however, had any significant investigative capacity or authority.²⁸⁷ By 1976, the Coast Guard leadership accepted its growing law enforcement role and associated, but substantial, role in the maritime interdiction of drugs.²⁸⁸

Drug smuggling and Cuban refugees often overwhelmed the Coast Guard. Consequently, USN help was provided in various forms after the 1981 amendment to the *Posse Comitatus Act 1878*, allowing the US military to assist with civilian law enforcement.²⁸⁹ In 1978 for example, media reports revealed that USN Ocean Surveillance Satellite data had enabled the Drug Enforcement Agency and the Coast Guard to seize 40 drug ships.²⁹⁰ In 1980 the USN provided five amphibious ships, six

²⁸⁴ Johnson, *Guardians of the Sea, History of the United States Coast Guard 1915 to the Present*, p. 281.

²⁸⁵ Johnson, *Guardians of the Sea, History of the United States Coast Guard 1915 to the Present*, p. 281.

²⁸⁶ Johnson, *Guardians of the Sea, History of the United States Coast Guard 1915 to the Present*, p. 321.

²⁸⁷ Fuss, Jr., *Sea of Grass: The Maritime Drug War 1970-1990*, p. 26.

²⁸⁸ Fuss, Jr., *Sea of Grass: The Maritime Drug War 1970-1990*, p. 41.

²⁸⁹ Fuss, Jr., *Sea of Grass: The Maritime Drug War 1970-1990*, p. 89.

²⁹⁰ Fuss, Jr., *Sea of Grass: The Maritime Drug War 1970-1990*, p. 57. This was probably incorrect as the *Posse Comitatus Act* had not been amended at that time and it was being strictly adhered to.

minesweepers and patrol aircraft to help with the refugee exodus from Cuba.²⁹¹ There is evidence that the mere presence of USN ships temporarily reduced the drug trade.²⁹²

The USN and US Air Force contribution to these operations²⁹³ was formalized in later years and continues today.²⁹⁴ Beginning in the early 1980s it included the deployment of Coast Guard tactical law enforcement teams in USN ships. The first USN ship involved in a drug seizure was the United States Ship (USS) *Farragut* on 4 June 1982.²⁹⁵ Other USN efforts included the use of A-7 attack aircraft on threatening passes over suspect vessels, patrols by P-3 aircraft and the use of USS *Nimitz* carrier battle group ships and aircraft, also in 1982, while exercising in the Caribbean.²⁹⁶

In October 1984 the Coast Guard and Navy launched joint operation *Hat Trick* to counter drug-smuggling. The Navy contribution included a guided missile destroyer, a guided missile frigate, three fast hydrofoil patrol craft and three P-3 patrol aircraft.²⁹⁷ This partly successful operation concentrated on Gulf of Mexico and local Caribbean waters, but also went further afield. The Coast Guard-Navy 'Caribbean Squadron' formed for this operation continued to function long afterwards.²⁹⁸

Reflecting the seriousness of the drug problem, in late 1985 the War Gaming Department of the US Naval War College began what became annual anti-drug smuggling war games.²⁹⁹ By 1985 the USN contribution to drug seizures amounted to the arrest of 226 smugglers, the seizure of 43 vessels, 962,274 lbs of marijuana and 46 lbs of cocaine.³⁰⁰ Yet, a RAND study noted that in the early 1980s, the USN contribution

²⁹¹ Johnson, *Guardians of the Sea, History of the United States Coast Guard 1915 to the Present*, p. 356.

²⁹² Fuss, Jr., *Sea of Grass: The Maritime Drug War 1970-1990*, pp. 168-9.

²⁹³ Initially, at least, this involved use of the USAF aerostat-based over the horizon radar at Cudjoe Key. Fuss, Jr., *Sea of Grass: The Maritime Drug War 1970-1990*, p. 90.

²⁹⁴ 'SOUTHCOM copes with fewer people, resources', *Air Force Times*, 15 October 2013, <<http://airforcetimes.com/article/21031015>> (18 October 2013).

²⁹⁵ Fuss, Jr., *Sea of Grass: The Maritime Drug War 1970-1990*, p. 96.

²⁹⁶ Fuss, Jr., *Sea of Grass: The Maritime Drug War 1970-1990*, pp. 96-7.

²⁹⁷ Fuss, Jr., *Sea of Grass: The Maritime Drug War 1970-1990*, p. 130.

²⁹⁸ Fuss, Jr., *Sea of Grass: The Maritime Drug War 1970-1990*, p. 130.

²⁹⁹ Fuss, Jr., *Sea of Grass: The Maritime Drug War 1970-1990*, p. 168.

³⁰⁰ Fuss, Jr., *Sea of Grass: The Maritime Drug War 1970-1990*, p. 169.

was limited by its inability to assign ships flexibly to counter-drug operations. This substantially limited Coast Guard cooperation with the Navy.³⁰¹

Throughout the 1980s, there was little success against the inflow of drugs and Congress and media pressed for better results. There were calls for greater military involvement, but this would have impacted on military readiness and therefore contravened the *Posse Comitatus Act Amendment*.³⁰² Nevertheless, in 1986 the USN contributions to interdiction included E-2C airborne early warning and control aircraft, S-3A and P-3 patrol aircraft on both coasts and surface ship patrols with embarked Coast Guard teams.³⁰³ Coast Guard ships and aircraft were the mainstay, supported also by US Customs aircraft and US Air Force early warning aircraft. This provided more evidence that even the largest and most capable coast guard in the world can be overwhelmed by the constabulary task.

Furthermore, when Congress made additional funds available for fast craft to counter the smugglers' fast boats and for shore-based radars to detect small craft, the money went not to the Coast Guard but to Customs, which had none of the experience or infrastructure to operate or support the equipment.³⁰⁴ One problem was the many, often conflicting, interests in Congress and the Administration, which led to the designation of Customs as the lead agency for drug interdiction.³⁰⁵

In the financial year 1989 *Defense Authorization Act*, the Department of Defense was designated unwillingly as the lead agency for '... detection and monitoring of both air and maritime drug smuggling targets approaching the United States'.³⁰⁶ An outcome of this decision was the establishment of joint task forces in Key West Florida, Alameda California and El Paso Texas, to detect and track smuggling targets. The joint task forces were staffed by all branches of the military and law enforcement agencies. Whatever the benefits of this move, initially it complicated the command and control

³⁰¹ Peter Reuter, Gordon Crawford and Jonathan Cave et. al., *Sealing the Borders: The Effects of Increased Military Participation in Drug Interdiction*, The RAND Corporation, Santa Monica, CA, 1988, pp. 51-2.

³⁰² Fuss, Jr., *Sea of Grass: The Maritime Drug War 1970-1990*, p. 89.

³⁰³ Fuss, Jr., *Sea of Grass: The Maritime Drug War 1970-1990*, p. 169.

³⁰⁴ Fuss, Jr., *Sea of Grass: The Maritime Drug War 1970-1990*, pp. 179-80.

³⁰⁵ Fuss, Jr., *Sea of Grass: The Maritime Drug War 1970-1990*, p. 206.

³⁰⁶ Fuss, Jr., *Sea of Grass: The Maritime Drug War 1970-1990*, p. 234.

arrangements with Defense, Customs, Coast Guard and the long-standing National Narcotics Border Interception Service each having overlapping responsibilities.³⁰⁷ Coincidentally, seaborne smuggling was giving way to aerial operations.

Counter-drug operations continued through the late 1980s and in one notable incident in June 1989 two RN ships, HMS *Alacrity* and the Royal Fleet Auxiliary (RFA) *Brambleleaf* assisted the US Coast Guard with a seizure off the Mexican coast, even though the British ships were not assigned to counter-drug operations.³⁰⁸ Congressional pressure again affected organization of the counter-drug efforts, with abolition of the National Narcotics Border Interception Service in 1989 and establishment of its 'drug czar' the Office of National Drug Control Policy.³⁰⁹ These actions were overshadowed by the ending of the Cold War and the associated enormous political changes. They may also have been overshadowed by the belief within the Coast Guard and Navy that they had '... practically shut down the marijuana traffic across the Caribbean'.³¹⁰

Nevertheless, the smugglers adapted to the pressure applied by the US authorities. One such adaptation was the use by Colombian smugglers of semi-submersibles, first intercepted in 1993.³¹¹ Still by 1994 the USN and Coast Guard reduced substantially the vessels dedicated to counter-drug operations, and in February of that year, the Caribbean Squadron was disestablished.³¹² As in Australia, '... deterrence has an easily defined cost, but people debate its value'.³¹³ These actions were accompanied by yet another organizational change, with the joint task forces becoming joint interagency task forces, including more civilian law enforcement officers. These were placed under Coast Guard authority, with the Commandant responsible nationally for drug interdiction.

³⁰⁷ Fuss, Jr., *Sea of Grass: The Maritime Drug War 1970-1990*, pp. 234-5.

³⁰⁸ Fuss, Jr., *Sea of Grass: The Maritime Drug War 1970-1990*, pp. 262-3.

³⁰⁹ Fuss, Jr., *Sea of Grass: The Maritime Drug War 1970-1990*, p. 274.

³¹⁰ Fuss, Jr., *Sea of Grass: The Maritime Drug War 1970-1990*, p. 278. The quote is from Admiral Paul Yost, then outgoing Coast Guard Commandant.

³¹¹ Fuss, Jr., *Sea of Grass: The Maritime Drug War 1970-1990*, pp. 281-2.

³¹² Fuss, Jr., *Sea of Grass: The Maritime Drug War 1970-1990*, p. 284.

³¹³ Fuss, Jr., *Sea of Grass: The Maritime Drug War 1970-1990*, p. 284.

Border Protection – Since 11 September 2001

Both the USN and the Coast Guard continue to perform the constabulary function; the USN decidedly in the supporting role. Since the terrorist attacks on 11 September 2001, there has been a renewed focus on elements and conduct of the constabulary function. The demands of homeland security and the ongoing military operations in Afghanistan and Iraq continue to stress both the USN and the Coast Guard.

Several initiatives have been taken by the US in response to the September 2001 attacks. They include: the Container Security Initiative which involves Coast Guard and Border Protection officers in pre-screening of containers bound for the USA; the International Ship and Port Facility Security (ISPS) Code adopted by the International Maritime Organization (IMO), outlines minimum security standards for ports and ships above 500 tonnes; the Proliferation Security Initiative (PSI) which aims to combat the proliferation of weapons of mass destruction by vessels on the high seas; and the Customs-Trade Partnership Against Terrorism which offers expedited processing of cargo for compliance with US-mandated cargo security procedures³¹⁴

ENVIRONMENTAL MANAGEMENT

Introduction

Environmental concerns and the establishment and enforcement of environmental laws have been relatively recent additions to the constabulary function. An early example of environmental protection is provided by the regulations enforced in Sydney during the first decade of the colony of New South Wales, near the end of the 18th century. Among the responsibilities of the Naval Office, the forerunner of the Customs service, were rules which banned the dumping of corpses, stones, gravel, ballast or iron hoops in the harbour.³¹⁵

³¹⁴ Peter Chalk, *The Maritime Dimension of International Security: Terrorism, Piracy, and Challenges for the United States*, The RAND Corporation, Santa Monica CA., 2008, pp. 38-9.

³¹⁵ David Day, *Smugglers and Sailors: The Customs History of Australia 1788-1901*, Australian Government Publishing Service, 1988, p. 20.

The sea, as an environment, has been taken for granted for centuries.³¹⁶ It has been a critical source of food and medium of transport, yet as recognized only recently, it is also greatly affected by human activities.³¹⁷ The 1998 report from the UN's 1995 Independent Commission on the World Oceans noted a 'crisis of the oceans' caused by, among other things, pollution.³¹⁸ Till assessed that the growing importance of the seas, and by implication the growing recognition of it, would likely have significant implications for navies of the world, including their involvement in the suppression of maritime crime.³¹⁹

Environmental Protection – Anti-pollution Operations

Marine pollution has significant acute and chronic effects on the marine environment and marine life, and it originates at sea and on land. Alien marine species introduced through the discharge of ships' ballast water are among the most important sea-based origins of pollution. One estimate projects that more than 7,000 species are transported around the world daily in this way and about two million gallons of ballast water arrive in US waters every hour.³²⁰

Oil and other liquid spills from ships are another major sea-based source of marine pollution. Despite education, there are over 7,000 spills of oil and other hazardous substances in US waters each year, amounting to some 2.5 million gallons and clean up efforts costing some \$US48 million.³²¹ As ships of many kinds become larger the environmental impact of such spills is exacerbated. The potential was demonstrated fully in the 1989 grounding of the *Exxon Valdez* in Alaskan waters which released 10.1 million gallons of oil with devastating effect.³²² Land-based activity is an even more

³¹⁶ Till, *Seapower: A Guide for the Twenty-First Century*, p. 329

³¹⁷ Committee on Marine Area Governance and Management of the National Research Council, *Striking a Balance: Improving Stewardship of Marine Areas*, National Academy Press, Washington, D.C., 1997, p. 17.

³¹⁸ Mario Soares (Chair), *The Ocean Our Future: The Report of the Independent World Commission on the Oceans*, Cambridge University Press, Cambridge, 1998, p. 330.

³¹⁹ Till, *Seapower: A Guide for the Twenty-First Century*, pp. 330 and 332.

³²⁰ Admiral Thad W Allen, *The U.S. Coast Guard Strategy for Maritime Safety, Security and Stewardship*, U.S. Department of Homeland Security, Washington, DC., 2007, p. 23.

³²¹ Allen, *The U.S. Coast Guard Strategy for Maritime Safety, Security and Stewardship*, p. 71.

³²² Allen, *The U.S. Coast Guard Strategy for Maritime Safety, Security and Stewardship*, p. 71.

significant source of marine pollution.³²³ This includes coastal development and the associated destruction of ecosystems as well as run off of chemicals and other wastes.³²⁴

The difficulty of detecting and apprehending those responsible adds to the problem of maritime environmental degradation.³²⁵ It stands to be substantially worsened by the expected tripling of maritime trade by 2020.³²⁶ Damage caused in the US by the zebra mussel between 1993 and 2003 costing \$US3 billion to remediate indicates the problem that can be created by, for example, the introduction of invasive species in ships' ballast water.³²⁷ More recent figures indicate that globally the damage from all invasive aquatic species is annually about \$100 billion.³²⁸

Consequently, there is a growing need to ensure the safety and seaworthiness of ships, and the portents are poor as marine management practices have not kept pace with increasing environmental pressures.³²⁹ A common problem is the complex maritime legal regimes, which often involve international, national, regional and local legislation. The US system, for example, is said to be '... characterized by a confusing array of laws, regulations and practices at federal, state and local levels, and agencies that implement and enforce existing systems operate with mandates that often conflict with each other'.³³⁰ No mechanism existed for establishing a common vision and common objectives and a national marine council was proposed as a solution to US problems. It subsequently emerged as the National Ocean Council.³³¹

³²³ Robin Warner, 'Environmental Concerns: Their Impact on Activities at Sea', in Martin Tsamenyi and Max Herriman, eds., *Rights and Responsibilities in the Maritime Environment*, Centre for Maritime Policy, University of Wollongong, Wollongong, NSW, 1996. p. 39.

³²⁴ Soares (Chair) *The Ocean Our Future: The Report of the Independent World Commission on the Oceans*, p. 98.

³²⁵ Allen, *The U.S. Coast Guard Strategy for Maritime Safety, Security and Stewardship*, p. 17.

³²⁶ Allen, *The U.S. Coast Guard Strategy for Maritime Safety, Security and Stewardship*, p. 17.

³²⁷ Allen, *The U.S. Coast Guard Strategy for Maritime Safety, Security and Stewardship*, p. 17.

³²⁸ Dandu Pughuic, 'Invasive species: ballast water battles', *Seaways*, March 2010, p. 5.

<<http://www.imo.org/KnowledgeCentre>> (22 October 2013).

³²⁹ Committee on Marine Area Governance and Management of the National Research Council, *Striking a Balance: Improving Stewardship of Marine Areas*, p. 11.

³³⁰ Committee on Marine Area Governance and Management of the National Research Council, *Striking a Balance: Improving Stewardship of Marine Areas*, p. 117.

³³¹ Committee on Marine Area Governance and Management of the National Research Council, *Striking a Balance: Improving Stewardship of Marine Areas*, p. 117. See also, *About the National Ocean Council*, <<http://www.whitehouse.gov/administration/eop/oceans/policy/>> (22 October 2013).

This initiative marks a move towards an integrated or ‘whole of government’ approach to marine environmental protection, which is being adopted to varying degrees by several countries.³³² The Soares report noted the lack of effective law enforcement mechanisms within the international community meant that the maritime security burden has traditionally fallen on navies and coast guards.³³³ The report also argued that involving navies in oceans governance can be controversial, not least because of the freedom which navies enjoy to operate in the EEZs of foreign countries.³³⁴

Some successes have been achieved and States have been advised to use their intelligence and military authorities for environmental security, in partnership with civilian authorities who may well have the primary responsibility for protecting the marine environment. Till acknowledges that navies have a role and that, with coast guards, they can mediate disputes between sea users - for example, whalers and non-government organizations.³³⁵

Till also argues that navies can avert or clean up pollution associated with shipping accidents, and can provide the first response to and command and control of pollution incidents. He also recommends that navies should themselves avoid being the source of pollution.³³⁶ The Soares report went further, recommending that navy and coast guard roles be reoriented to enable enforcement of legislation over non-military threats to maritime security, including ecological aspects. It noted also that navies could do more through sharing information and the capabilities needed to safeguard environmental security.³³⁷

Despite the growing significance of marine environmental protection, navies have not yet contributed greatly to it. This is so in Britain and the USA. In Britain, for example, the Maritime and Coastguard Agency is the ‘competent authority’ for responding to

³³² Committee on Marine Area Governance and Management of the National Research Council, *Striking a Balance: Improving Stewardship of Marine Areas*, pp. 143 and 152-3.

³³³ Soares (Chair) *The Ocean Our Future: The Report of the Independent World Commission on the Oceans*, p. 41.

³³⁴ Soares (Chair) *The Ocean Our Future: The Report of the Independent World Commission on the Oceans*, p. 41.

³³⁵ Till, *Seapower: A Guide for the Twenty-First Century*, p. 332.

³³⁶ Till, *Seapower: A Guide for the Twenty-First Century*, p. 332.

³³⁷ Soares (Chair) *The Ocean Our Future: The Report of the Independent World Commission on the Oceans*, p. 17.

pollution from shipping and offshore installations.³³⁸ The Agency has in place a detailed plan including the responsibilities of other government authorities, such as the Ministry of Defence. Defence is responsible for dealing with ‘... pollution incidents from warships and other MOD [Ministry of Defence] ships operated for non-commercial purposes’.³³⁹ Operational commitments permitting, Defence (the RN primarily) is also invited to assist the Maritime and Coastguard Agency on a cost reimbursement basis.³⁴⁰ Confirming the relatively minor place environmental protection has in the RN’s tasks, it rates only a brief mention in BR 1806 (3rd edition) *British Maritime Doctrine*. The document notes that military assistance to government departments can include support for pollution control operations.³⁴¹

There is evidence that British authorities are not content with environmental management arrangements because of the many responsible authorities, and because of the legislative complexity. There are some 80 British Acts of Parliament for English and Welsh coastal management alone.³⁴² Consequently, authorities are seeking to establish an integrated coastal management regime.³⁴³ Defence and the RN especially, is unlikely to be more involved in new arrangements, simply because the efforts at integration will meet enough challenges without simultaneously changing levels of responsibility.

In the USA, maritime environmental protection is one of the five core roles of the Coast Guard.³⁴⁴ The Coast Guard’s stewardship roles include: ‘Safeguard [ing] U.S. marine resources, threatened and endangered species, and the ocean from unlawful acts and

³³⁸ *Maritime and Coastguard Agency*, <<http://www.scottish.parliament.uk/business/committees/enquiries/marine/documents/MCAsubmission.pdf>> (1 April 2008).

³³⁹ Maritime and Coastguard Agency, *National Contingency Plan for Marine Pollution from Shipping and Offshore Installations–Appendix A*. <http://www.mcga.gov.uk/c4mca/mcga-environmental/mcga-dops_cp_environmental-co...> (1 April 2008).

³⁴⁰ Maritime and Coastguard Agency, *National Contingency Plan for Marine Pollution from Shipping and Offshore Installations–Appendix A*.

³⁴¹ BR 1806, *British Maritime Doctrine*, 3rd ed., p. 63

³⁴² Rhoda C. Ballinger, ‘A Sea Change at the Coast’, Jonathan Potts and Hance D. Smith, *Managing Britain’s Marine and Coastal Environment: Towards a Sustainable Future*, Routledge, Abingdon, 2005, p. 189.

³⁴³ Ballinger, ‘A Sea Change at the Coast’, Potts and Smith, *Managing Britain’s Marine and Coastal Environment: Towards a Sustainable Future*, p. 190

³⁴⁴ Captain Bruce Stubbs, USCG, and Scott C. Truver, PhD., *America’s Coast Guard: Safeguarding U.S. Maritime Safety and Security in the 21st Century*, Anteon Corporation, Arlington, VA., Undated, p. 1.

environmental degradation.’³⁴⁵ This stewardship includes measures to counter pollution and the spread of invasive species. In the event of spills or other forms of pollution, the Coast Guard coordinates responses as the Federal On-Scene Coordinator for the coastal zone.³⁴⁶

This role has a longer history than might be expected. It dates from the *Timber Act 1822* which tasked the Revenue Cutter Service with protecting government timber from poachers.³⁴⁷ More recently, the *Oil Pollution Act 1924* forbade the discharge of oil into US coastal waters and led to additional tasking for the Coast Guard in monitoring compliance.³⁴⁸ Still more recently and following the *Exxon Valdez* oil spill in Alaskan waters in 1987, the *Oil Pollution Act 1990* gave the Coast Guard more oversight powers, including increased responsibilities for response, inspection and investigation of breaches of the Act.³⁴⁹ Consequently, the US Coast Guard now has three National Strike Teams, located on the east, west and Gulf of Mexico coasts, to deal with hazardous material spills.³⁵⁰

While the Coast Guard has primary responsibility for marine environmental protection, there are several other federal and state agencies which have jurisdiction over marine and coastal areas. They include the National Oceanographic and Atmospheric Administration, which has responsibility for the marine sanctuary program, fisheries management and for providing the states with a national framework for coastal management.³⁵¹ The Department of Defense is noted as having a ‘... keen interest in marine area governance...’.³⁵²

³⁴⁵ Allen, *The U.S. Coast Guard Strategy for Maritime Safety, Security and Stewardship*, p. 13.

³⁴⁶ Allen, *The U.S. Coast Guard Strategy for Maritime Safety, Security and Stewardship*, p. 14.

³⁴⁷ Stubbs, and Truver, *America’s Coast Guard: Safeguarding U.S. Maritime Safety and Security in the 21st Century*, p. 20.

³⁴⁸ Stubbs, and Truver, *America’s Coast Guard: Safeguarding U.S. Maritime Safety and Security in the 21st Century*, p. 21.

³⁴⁹ Stubbs, and Truver, *America’s Coast Guard: Safeguarding U.S. Maritime Safety and Security in the 21st Century*, p. 21.

³⁵⁰ Stubbs, and Truver, *America’s Coast Guard: Safeguarding U.S. Maritime Safety and Security in the 21st Century*, p. 21.

³⁵¹ Committee on Marine Area Governance and Management of the National Research Council, *Striking a Balance: Improving Stewardship of Marine Areas*, p. 14.

³⁵² Committee on Marine Area Governance and Management, of the National Research Council, *Striking a Balance: Improving Stewardship of Marine Areas*, p. 14.

The USN is very keen, firstly to ensure it continues to enjoy freedom to operate without serious restrictions caused by environmental protection legislation. Therefore the USN seeks cooperation from the navies of the North Atlantic Treaty Organization (NATO) and NATO Partnership for Peace countries to increase both protection standards and interoperability.³⁵³ The USN also maintains a large oil spill contingency planning and response capability. The second and associated priority is to ' ... demonstrate leadership...as an environmental steward of the oceans...on which we train'.³⁵⁴ The USN involvement in marine environmental protection concentrates firstly on avoiding being the source of pollution. The USN does not foresee a significant role as a regulator of environmental laws, beyond responding to incidents caused by others.

CONCLUSIONS

The need to provide good order at sea emerged in classical times, initially in response to sporadic acts of piracy. Where necessary, order was provided by the naval forces of the day. Over time, the task expanded as resource protection, border protection and environmental management all emerged as issues demanding regulatory action. The task of maintaining good order at sea also became more complex, as regulation increasingly relied on evolving national and international legal systems.

Although ensuring good order at sea began as a task for navies, change in the nature of the task demanded different responses. This was most evident in the 17th century in both Britain and in the US, where governments sought to tax aspects of the growing maritime trade. Collection of revenue was seen to be a task unsuited to navies and consequently specialized revenue collection organizations were established in both countries.

³⁵³ RDML James A. Symonds, USN, 'We are not alone', *Currents*, Winter 2007, p. 4. <http://www.enviro-navair.navy.mil/currents/winter2007/Win07_N45_Outlook.pdf> (12 April 2008).

³⁵⁴ ADML Vern Clark, USN, *Vision...Presence...Power: 2005 Guide to U.S. Navy Programs*, Department of the Navy, Washington, DC, 2005, p. 37, <<http://www.navy.mil/navydata/policy/vision/VIS05>> (12 April 2008).

Subsequently, in both countries, the respective navies and a variety of other organizations have met the demands of providing good order at sea; a role which has become known as the constabulary function for navies. How these organizations are used differs greatly in both countries. In the USA, the Coast Guard has primary responsibility for the constabulary function, assisted by the USN for specific tasks, such as countering drug smuggling. The Coast Guard also has a military function and is called on occasionally to support the USN in military operations. In Britain, the RN has retained a greater level of responsibility for the constabulary function, but without the expectation that the civilian organizations will assist in military operations.

In other parts of the world a similarly varied approach is taken to the maintenance of good order at sea. Combinations of navies, coast guards and marine police units carry the responsibility, depending on the resources available to individual countries and the nature and extent of the offshore constabulary task. The continuing involvement of navies in the maintenance of good order at sea can impact on their readiness to conduct military operations and in some cases is maintained only reluctantly.

Essentially, even where coast guards or other related organizations and navies co-exist, navies inevitably retain some level of responsibility for the constabulary function; the maintenance of good order at sea. Not even the biggest coast guards can always manage the threats from illegal activity at sea.

CHAPTER FOUR

THE EVOLUTION OF THE CONSTABULARY FUNCTION OF NAVIES: THE AUSTRALIAN EXPERIENCE FROM FEDERATION TO 1975

INTRODUCTION

In waters off the Australian coast piracy has never been a major threat. The other constabulary function tasks have emerged at various times and to differing degrees, with both resource protection and border protection gaining attention in colonial days because of the need to protect fisheries, whaling and sealing, and to counter smuggling. Environmental protection has become a significant constabulary task only relatively recently.

This chapter examines the development of the constabulary function in Australia from the time of Federation to December 1975, when the High Court upheld Commonwealth legal authority over the territorial sea and continental shelf, from the low water mark.¹ It will demonstrate that the constabulary function has developed reactively, responding *ad hoc* to emerging threats rather than with a policy-driven approach. There has been a political dimension to the constabulary function over the years. This was evident in the racist approach to immigration legislation at the time of Federation and subsequent racist overtones in responses to illegal fishing in northern waters.

The chapter identifies key issues influencing the constabulary function, which has been seen as a primarily civilian task in Australia, both by government and at times by the Navy. The impact of these issues on successive governments, including their legislative responses to developments in the constabulary function will be illustrated. Finally, the implications of the constabulary function for the Navy will be identified.

The Development of the Constabulary Function

This chapter considers the constabulary function from Federation in 1901, from which point Australia has had its own national naval force, which became the Royal

¹ The period to 2012 will be covered in subsequent chapters.

Australian Navy (RAN)² and a national body of legislation. For completeness, the arrangements made during the 19th century among the former colonies and States will be introduced. For many years leading up to Federation, the Royal Navy (RN) maintained a squadron in Australia which undertook some constabulary tasks. Prior to the establishment of the Australia Station in 1859 RN ships were detached from the East Indies Station for service in New South Wales, beginning in 1821.³

Before Federation, Queensland, South Australia and Victoria maintained their own naval forces.⁴ They did this because of perceived threats and because the RN ships, when based in Sydney, rarely showed an interest in the other colonies.⁵ The limits placed on the operations of colonial navies meant that these forces were sometimes tasked with constabulary and other duties.

As Australia became settled and as economic activity grew, maritime security, including good order at sea, became more important.⁶ For some years it was also problematic; a major problem being that until 1856 Britain was the authority on the Australian coast, and naval matters were reported directly to London.⁷ The problem was compounded because before 1859 the RN had had no permanent presence on the Australian coast. Consequently, the local response to maritime law enforcement was *ad hoc* and even legally doubtful.

The status of the colonial naval vessels, especially after the 1859 establishment of the RN's Australia Station, and after the proclamation of the 1865 *Colonial Naval Defence*

² The Commonwealth inherited the modest State naval forces at Federation, but the decision to take full responsibility for the nation's naval defence was not made until 1910. The Acts of Parliament of the Commonwealth of Australia passed in the session of 1910, *Naval Defence Act 1910*, Government Printer, Victoria, 1911, p. 79.

³ John Bach, *The Australia Station: A History of the Royal Navy in the South West Pacific 1821 – 1913*, New South Wales University Press, Kensington, NSW, 1986, p. 13.

⁴ South Australia, Queensland and Victoria maintained naval forces while Tasmania operated an anti-smuggling schooner for nine years from 1835. See Colin Jones, *Australian Colonial Navies*, Australian War Memorial, Canberra, ACT, 1986, p. 15, Ross Gillett, *Australia's Colonial Navies*, Naval Historical Society of Australia, Garden Island, NSW, 1982, pp. 29, 59 and 70.

⁵ Bach, *The Australia Station: A History of the Royal Navy in the South West Pacific 1821 – 1913*, p. 83.

⁶ For examples of law enforcement and traditional maritime security issues see H.M. Cooper, *A Naval History of South Australia and Other Historical Notes*, The Hassell Press, Adelaide, 1950, p. 78 and Jones, *Australian Colonial Navies*, p. 13.

⁷ Bach, *The Australia Station: A History of the Royal Navy in the South West Pacific 1821 – 1913*, p. 84.

Act, was contentious. The Act enabled Australian colonies to provide and use their own warships and crews under prescribed conditions.⁸ There was, however, tension between the Imperial defence responsibilities and outlook of the RN Squadron and the local defence focus of the colonial navies.⁹ There was little connection or communication between the tiny colonial navies and the ships of the RN's Australia Station. Furthermore, the British Admiralty was very doubtful about the legal status of these colonial ships.¹⁰

The involvement of the Victorian ship *Victoria* in the Maori Wars led the Admiralty to declare that colonial ships would only operate outside territorial limits when commanded by officers holding commissions from the Crown.¹¹ This determination, and the applicability of the *Colonial Naval Defence Act* only within the three miles of territorial waters,¹² would make life difficult for the colonial navies in any role. Much later the limitation on operating outside territorial limits led to the South Australian ship *Protector* being specially commissioned as Her Majesty's Ship for service in China in 1900.¹³

Before Federation, the ships of the colonial naval forces were rapidly aging and were too small for any real blue-water operations.¹⁴ Similarly, the other colonial authorities were not well situated to provide for security offshore. The Western Australian Customs organization, for example, had no vessel to patrol its coast during the 1880s.¹⁵

⁸ 'Function VF 63 Defence', Public Record Office Victoria, <<http://www.access.prov.vic.gov.au/public/component>> (3 October 2007).

⁹ Bach, *The Australia Station: A History of the Royal Navy in the South West Pacific 1821 – 1913*, p. 179.

¹⁰ Bach, *The Australia Station: A History of the Royal Navy in the South West Pacific 1821 – 1913*, p. 177. The doubt expressed applied to Australian waters and beyond.

¹¹ Jones, *Australian Colonial Navies*, p. 20.

¹² Bob Nicholls, 'Colonial naval forces before federation', in David Stevens and John Reeve, eds., *Southern Trident: Strategy, history and the rise of Australian Naval Power*, Allen and Unwin, Crows Nest, NSW, 2001, p. 128.

¹³ G.L. Macandie, *The Genesis of the Royal Australian Navy*, Government Printer, Sydney, 1949, p. 12.

¹⁴ Bob Nicholls, *The Colonial Volunteers: The defence forces of the Australian colonies 1836 – 1901*, Allen and Unwin, Sydney, 1988, p. 160.

¹⁵ David Day, *Smugglers and Sailors: The Customs History of Australia 1788-1901*, Australian Government Publishing Service, Canberra, 1988, p. 360.

Since Federation, the constabulary function in Australia has been defined historically by three major features. Firstly, the four major tasks associated with the function were for many years undertaken sporadically and reactively in response to emerging threats. Secondly, the area of Australia's maritime jurisdiction¹⁶ has not been matched by the level of resources available to police it. Consequently, there has been an emphasis on economy of effort with respect to the constabulary function, rather than threat management or deterrence. Thirdly, the role of the Navy in the constabulary function emerged relatively slowly before the introduction of the Attack class patrol boats in 1967.

FROM FEDERATION TO 1918: WHITE AUSTRALIA RULES

Introduction

In this and in succeeding chapters law enforcement at sea and its challenges will be examined according to the problems each generated for the government of the day. Examination of border protection, which has been one of the two the most significant challenges, will include prohibited immigration, customs and quarantine matters. Resources protection, the other long-standing and more significant law enforcement challenge, focused initially on a range of fishing activities but expanded later to include oil and gas platforms. Environmental protection, the third of the major tasks received little attention in the years immediately after federation, but subsequently has become significant.

Law Enforcement at Sea

Notwithstanding an occasional report about possible piracy,¹⁷ immediately after Federation the focus was on border protection; prohibited immigration, customs

¹⁶ Australia's maritime jurisdiction was limited to the 3nm territorial sea until declaration of the 12nm Australian Fishing Zone in 1967 and then declaration of the 200nm Australian Fishing Zone and Exclusive Economic Zone in 1979. See *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 55, 12 May 1967, pp. 2033-4, and Warwick Gullett, *Fisheries Law in Australia*, LexisNexis Butterworths, Chatswood, NSW, 2008, p. 209.

¹⁷ There was a claim by Mr Mahon (Coolgardie, WA) in the House of Representatives on 4 July 1907, that the WA coast was occasionally visited by pirates who captured local pearling boats. Mr Deakin promised action to prevent it happening but did not specify what that action might

offences and quarantine being the most prominent threats. Preventing prohibited immigrants from landing was the biggest task confronting the law enforcement authorities and was considered a powerful motivator for Federation itself.¹⁸ Over a century later managing an influx of asylum seekers by sea is again the major element of the constabulary function.

The depth of feeling on this issue was apparent during Parliamentary debate in September 1901, which expressed the fear that 'We have something like 800 million Chinese and Japanese within easy distance of Australia, from whom we have to fear contamination'.¹⁹ This sentiment was reinforced in the Senate just two months later, with commentary that Australia ought to have complete control over entry to the country and that 'brute force' may be needed to achieve it.²⁰ Senator O'Connor (New South Wales) expressed the prevailing feeling most forcefully:

we ought to have complete control over the admission of foreigners, and ought never to put ourselves in the position of having an Act upon our statute-book under which a foreigner coming under a certain description may claim the right to enter our community without our being able to say him nay.²¹

Similar sentiments may be more carefully expressed today, but there is no doubt that the fears still gripping Australians, confronted by asylum seekers arriving in boats, are long-standing and deep-seated.

Politicians believed they knew that 'coloureds' could enter in one of two ways; landing by ship or by slow infiltration in small numbers, both of which were believed to be happening.²² Yet, law enforcement authorities had no way of knowing if such infiltration was occurring or of preventing it. Suggesting the issue was one for

be. *Commonwealth Parliamentary Debates*, House of Representatives, Vol. XXXVI, 4 July 1907, p. 81.

¹⁸ Myra Willard, *History of the White Australia Policy to 1920*, Melbourne University Press, Melbourne, 1923, p. 19.

¹⁹ *Commonwealth Parliamentary Debates*, the House of Representatives, Vol. IV, 6 September 1901, p. 4631.

²⁰ *Commonwealth Parliamentary Debates*, the Senate, Vol. VI, 15 November 1901, p. 7349.

²¹ *Commonwealth Parliamentary Debates*, the Senate, Vol. VI, 15 November 1901, p. 7349.

²² *Commonwealth Parliamentary Debates*, House of Representatives, Vol. IV, 6 September 1901, pp. 4627-8.

resolution by the armed forces, Prime Minister Barton pointed out that Australia could not afford to build a Navy because of the Constitution's 'Braddon clause'.²³

Another significant issue relating to the constabulary function emerged soon after Federation. In August 1903, questions were raised about policing of disputes among pearlers in the north-west or Thursday Island without our own vessels, given that Australia could not expect the (British) Admiralty to respond.²⁴ Senator O'Connor suggested that such work was for the police and not for warships.²⁵ Yet there is evidence that the RN Australian Squadron became involved in constabulary work, if only once.²⁶

Despite warships of various kinds having been involved in such policing for centuries, this exchange of views set a tone in Australia that still resonates sometimes. Thus, despite the historical experience there remains ambivalence over the role of navies in the constabulary function, at the political level as well as within the RAN itself.²⁷

Fish poaching had long been occurring in Australian territorial waters, especially along the north-west coast.²⁸ State authorities had recognized over-fishing as a problem, because as early as 1909 there were reports of waters closed during breeding season or all year round for stock management.²⁹ Overfishing had become such a problem that the fishery along the Coburg Peninsula was closed between 1903 and 1905.³⁰ Another issue that drew attention to the need for more regulation was the suspicion that pearls

²³ This clause (87) of the Australian Constitution determined that for 10 years after the establishment of the Commonwealth, at least three quarters of Commonwealth revenue derived from customs duties and excise would be returned to the States. *The Australian Constitution*, Australian Government Publishing Service, Canberra, 1975, p. 57.

²⁴ *Commonwealth Parliamentary Debates*, the Senate Vol. XVI, 20 August 1903, p. 3930.

²⁵ *Commonwealth Parliamentary Debates*, the Senate Vol. XVI, 20 August 1903, p. 3930.

²⁶ *Official Year Book of the Commonwealth of Australia 1901-1911*, No. 5 - 1912, McCarron, Bird and Co., Melbourne, 1911, p. 471.

²⁷ For a recent example of this, see the remarks of the then Chief of Navy, Vice Admiral Chris Ritchie at the 2004 International Seapower Conference in Sydney. He found it necessary to emphasize the importance of the task in the face of sometimes ill-informed comment. Vice Admiral Chris Ritchie, 'Positioning Our Navy for the Future', Jack McCaffrie, ed., *Positioning Navies for the Future*, Halstead Press, Sydney, 2006, p. 22.

²⁸ *Official Year Book of the Commonwealth of Australia 1901-1911*, No. 5 - 1912, p. 471.

²⁹ *Official Year Book of the Commonwealth of Australia 1901-1909*, No. 3 - 1910, McCarron, Bird and Co., Melbourne, 1910, p. 473.

³⁰ David Day, *Contraband and Controversy: The Customs History of Australia From 1901*, Australian Government Publishing Service, Canberra, 1996, p. 67.

were being exported illegally. The Northern Territory Administration reported that 31 pearling boats had been active in 1907, and 26 in 1908. Yet no pearls were declared from their activities.³¹ There was also a fear that the Macassans involved would facilitate illegal Chinese immigration.³²

Smuggling was another border protection issues meriting attention at the time, not least because of the need to maximize revenue from customs duties and tariffs. This was acknowledged in the Senate in September 1901, in discussing the need for Customs officers to have the power to board arriving ships and inspect their cargoes and stores, to ensure collection of all duties.³³ Senator Charleston indicated the seriousness of the quest for revenue, when he noted that:

The Customs officers seek to prevent ships from selling goods on board, not to prevent the consumption of ships' stores by those on board. They wish to be able to say – "We shall seal up these goods and leave you so much for your own consumption from day to day whilst you are in port, but we want to protect the revenue, and we cannot allow you to sell goods on board ship".³⁴

Other concerns included claims of alcohol smuggling in and around New Guinea³⁵ and smuggling of weapons from Queensland to the Solomon Islands in 1903.³⁶

Not all aspects of the border protection task were legislated for immediately after Federation, suggesting that issues such as immigration and revenue generation had highest priority. Quarantine remained in State hands until the passing of the *Quarantine Act 1908*³⁷ which initiated the first important Federal health service. Administration of the Act, which concentrated on arriving ships, and associated persons, goods, animals and plants, was placed within the Department of Trade and Customs. By 1913, all major human and animal and plant quarantine stations had been

³¹ *Government Resident's Report on the Northern Territory, 1908*, Palmerston, NT, 1908, p. 10.

³² Day, *Contraband and Controversy: The Customs History of Australia From 1901*, p. 67.

³³ *Commonwealth Parliamentary Debates*, Senate, Vol. IV, 4 September 1901, p. 4415.

³⁴ *Commonwealth Parliamentary Debates*, Senate, Vol. IV, 4 September 1901, p. 4415.

³⁵ *Commonwealth Parliamentary Debates*, Senate, Vol. XV, 20 August 1903, p. 3931.

³⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. XVII, 8 October 1903, p. 5879.

³⁷ The Acts of the Parliament of the Commonwealth of Australia passed in the Session of 1907-08, *Quarantine Act 1908*, Government Printer, Victoria, 1908, p. 24.

transferred to Commonwealth control.³⁸ Arrangements in Western Australia and Tasmania saw the *Quarantine Act* administered by the State Health Departments, with the Chief Medical Officer acting as Chief Quarantine Officer. In New South Wales, South Australia and Queensland a Commonwealth Chief Medical Officer administered the Act and in Victoria the Director of Quarantine administered the Act from the central office.³⁹ State Agricultural Department officers also acted as Quarantine Officers for plant and animal inspections.⁴⁰

Although quarantine did not appear among the highest legislative priorities after Federation, and while there were no reported major health threats, a swine fever outbreak in 1901⁴¹ and a smallpox scare in Sydney in 1913 highlighted potential problems.⁴² There was also a growing awareness of the need to expand quarantine facilities throughout the country. For example, in October 1911 a ship was sent from northern waters to the Sydney quarantine station, to deal with a smallpox case, because there was no quarantine station in the north.⁴³

The Government Response

At Federation the new Commonwealth Government was badly placed to undertake the constabulary function at sea. The existing law enforcement authorities were still State-based and had limited resources. These organizations included State Customs, Immigration, Fisheries and Quarantine Departments and Naval Forces.

Commonwealth policy-making and administrative capacity was extremely limited in the early days; the original government departments comprising only Parliament, External Affairs, Attorney-General's, Home Affairs, Treasury, Trade and Customs,

³⁸ *Official Year Book of the Commonwealth of Australia 1901-1912*, No. 6 - 1913, McCarron, Bird and Co., Melbourne, 1913, p. 1094.

³⁹ *Official Year Book of the Commonwealth of Australia 1901-1912*, No. 6 - 1913, p. 1095.

⁴⁰ *Official Year Book of the Commonwealth of Australia 1901- 1913*, No. 7 - 1914, McCarron, Bird and Co., Melbourne, 1914, p. 970.

⁴¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. III, 26 July 1901, p. 3148.

⁴² L. E., Groom, *Nation Building in Australia: The Life and Works of Sir Littleton Ernest Groom*, Angus and Robertson Ltd., Sydney, 1941, p. 106.

⁴³ Day, *Contraband and Controversy: The Customs History of Australia From 1901*, p. 99. While Day does not explain the lack of a quarantine station in the north, the then very limited extent of the Commonwealth government public service is likely to have been the main cause.

Defence and Post Master General's.⁴⁴ Of the civilian departments only Customs had any water craft; these being inspection boats based in major ports. Their seagoing capacity had diminished from the situation in the mid-19th century when the NSW Customs Department had oceangoing vessels.⁴⁵ By Federation most States had no Customs boats for harbour or adjacent waters operations and relied on hiring vessels to inspect arriving and departing ships.⁴⁶

Following Federation and despite its limitations, the Commonwealth Customs Department seemed to be the department best placed '... to enforce the laws designed to protect and promote the security and prosperity of the new nation'.⁴⁷

Enforcement of the *Immigration Restriction Act 1901* was carried out by Customs officers on behalf of the External Affairs Department. Customs officers were also empowered to enforce State laws. This was demonstrated as early as January 1901 with a notice in the *Northern Territory Times and Gazette* to the effect that the South Australian Collector of Customs and his officers (as well as the Northern Territory Government Resident) could refuse entry to aliens.⁴⁸

The Commonwealth *Appropriation Act 1902* details the funds allocated to Commonwealth departments for that year, including the Customs Departments in the various states. These allocations, listed in Table 4-1 below, illustrate starkly the limited assets available to Customs.

The naval forces available from the pre-Federation State navies were derisory, with Queensland the only state to allocate funds to support any vessels; HM Ships *Gayundah* and *Paluma*.⁴⁹ One reason for the poor condition of the State navies was that after 1891 those States with navies (South Australia, Victoria and Queensland) ceased

⁴⁴ The Acts of the Parliament of the Commonwealth of Australia passed in the session of 1902, *Appropriation Act 1902*, Government Printer, Victoria, 1903, p. 259.

⁴⁵ Day, *Contraband and Controversy: The Customs History of Australia From 1901*, p. 21.

⁴⁶ Day, *Contraband and Controversy: The Customs History of Australia From 1901*, p. 21.

⁴⁷ Day, *Contraband and Controversy: The Customs History of Australia From 1901*, p. 4.

⁴⁸ *Northern Territory Times and Gazette*, 4 January 1901, p. 4.

⁴⁹ The Acts of Parliament of the Commonwealth of Australia passed in the session of 1902, *Appropriation Act 1902*, p. 93. Despite the provision of the *Defence Act 1903* cited below, the status of these ships is not clear as the *Appropriation Act 1903-04* alludes to HMQS *Gayundah* and HMS *Paluma*. The Acts of Parliament of the Commonwealth of Australia passed in the session of 1903, Government Printer, Victoria, 1904, p. 221.

development,⁵⁰ no doubt anticipating Federation and the transfer of responsibilities to the Commonwealth. The *Defence Act 1903* formalized the status of the State navies by transferring them to the Commonwealth. 'The Naval and Military forces existing at the commencement of the Act shall be deemed to have been raised under this Act'.⁵¹

State	Customs Function	Funds
NSW	Repairs to steam launches 12 boatmen	£265
VIC	Repairs and support for steam launches 10 boatmen	£1 500
QLD	12 Cox'ns and boatmen	£1 656
SA	Semaphore Customs and Harbour Boat	£1 063
WA	1 Cox'n	£150

Table 4 – 1: Customs Assets and Funding, 1902⁵²

Prime Minister Deakin agreed to institute more rigorous Customs inspections to counter alleged gun running to the Solomon Islands.⁵³ Deakin's options were limited, because of the poor state of the Customs Service and the parlous state of the Commonwealth Naval Forces. At the time, Customs officers were prevented from taking leave because of staff shortages.⁵⁴ The 1,000 or so Customs officers stationed around the coast were stretched in their efforts to meet the entire protective task, which also came to include environmental protection, with prevention of native bird exports an early challenge.⁵⁵

At that early stage, government had not decided if Australia would build its own navy or whether it would continue to rely on the RN Squadron, based in Sydney and partly

⁵⁰ Robert Hyslop, *Australian Naval Administration 1901-1939*, The Hawthorn Press, Melbourne, 1973, p. 31.

⁵¹ The Acts of the Parliament of the Commonwealth of Australia passed in the session of 1903, *Defence Act 1903*, Section 34, Government Printer, Victoria, 1904, p. 441 et seq.

⁵² The Acts of Parliament of the Commonwealth of Australia passed in the session of 1902, pp. 260-265, *Appropriation Act 1902*, pp. 27-32.

⁵³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. XVII, 8 October 1903, p. 5879.

⁵⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. XVII, 14 October 1903, p. 6103.

⁵⁵ Day, *Contraband and Controversy: The Customs History of Australia From 1901*, p. 25. See also The Acts of the Parliament of the Commonwealth of Australia, 1901-1911, Vol. 1, *Customs Act 1910*, Government Printer, Melbourne, 1913, p. 191.

funded by Australia.⁵⁶ After lengthy debate in the Parliament the matter was resolved, in the short term, by passing the *Naval Agreement Act 1903*, allowing for the continued reliance on the RN Squadron, but at an increased cost of £200,000 per year.⁵⁷

Debate on the *Naval Agreement Bill 1903* at no stage suggested that naval defence included the constabulary function.⁵⁸ The very limited personnel strength inherited from State naval forces precluded the Federal Government from undertaking any naval function in the early days. The table below reflects the strengths in 1908.

Personnel Status	NSW	VIC	QLD	SA	TOTAL
Permanent	4	115	52	37	208
Partly Paid	305	232	342	118	997

Table 4-2: Naval Personnel Strength 30 June 1908⁵⁹

In 1910, with a decision having been made to form an Australian Navy, the *Naval Defence Act 1910*, left the future employment of the Navy open to interpretation. The Act noted that ‘The Permanent Naval Forces ... shall at all times be liable to be employed on any naval service...’.⁶⁰ Without necessarily anticipating the constabulary function, the Act empowered the Governor General to ‘... acquire ships... for Naval defence, or for services auxiliary to Naval Defence ...’.⁶¹

The shortage of naval or other vessels meant that there was virtually no capacity to intercept ships that might bring prohibited immigrants to Australia. The situation at that time was different to that faced by Australia with successive waves of asylum

⁵⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. III, 31 July 1901, p. 3302. Sir William McMillan (Wentworth) noted that Australia was then paying £125,000 per year for naval defence.

⁵⁷ The Acts of the Parliament of the Commonwealth of Australia, 1901-1911, Vol. 1, *Naval Agreement Act 1903, Schedule, Article 8*, Government Printer, Melbourne, Vic., 1913, pp. 308-311.

⁵⁸ *Commonwealth Parliamentary Debates*, Vol. XIV, Senate and House of Representatives, pp. 2126-2180, 2241-2264 and 2310-2359.

⁵⁹ *Official Year Book of the Commonwealth of Australia 1901-1908*, No. 2 - 1909, McCarron, Bird and Co., Melbourne, 1909, p. 1087.

⁶⁰ The Acts of Parliament of the Commonwealth of Australia passed in the session of 1910, *Naval Defence Act 1910, Section 31*, Government Printer, Victoria, 1911, p. 83.

⁶¹ The Acts of Parliament of the Commonwealth of Australia passed in the session of 1910, *Naval Defence Act 1910, Section 41-1 (a)*, p. 85.

seekers beginning in 1976. At Federation and for years afterwards, the traffic in prohibited immigrants was carried mostly in commercial ships engaged in legitimate trade with Australia. For example, in the first three months of 1901, 89 Malays landed in Western Australia and on 28 August 1901, 51 Afghans landed in Melbourne.⁶²

The fear of Asian immigration remained. In 1914, echoing earlier fears, the *Daily Standard* in Brisbane reported illegal immigrants allegedly pouring in through the north.⁶³ One Member of Parliament, Mr Finlayson (Brisbane) called for a Navy destroyer to be sent on patrol of northern waters as Customs appeared unable to keep Asians out of tropical Australia.⁶⁴ The Government was caught in a quandary. Politically, it was unpalatable to leave northern shores apparently unguarded, but the cost of an effective customs barrier across the north was prohibitive.⁶⁵

During the First World War, the RAN Brigade conducted border protection tasks, which although military in nature, involved law enforcement. The Brigade conducted examination services of merchant shipping in all defended ports and manned coastal patrols using specially commissioned sloops and gunboats.⁶⁶ These activities could have led to a peacetime law enforcement role for the Navy immediately after the First World War as hinted at in the report on Australia's naval defence presented by Viscount Jellicoe of Scapa in 1919.⁶⁷

A ship of the RN Australian Squadron occasionally searched the north coast for fish poachers, while engaged on other work.⁶⁸ Equally unusual at the time, Customs approached the authorities in the Celebes Islands (now Indonesia) to check for illegal

⁶² *Commonwealth Parliamentary Debates*, House of Representatives, Vol. IV, 28 August 1901, p. 4247.

⁶³ "'White Australia Flouted": The Yellow Menace - An Open Door', *The Daily Standard*, 2 April 1914, p. 4.

⁶⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 73, 16 April 1914, p. 95.

⁶⁵ Day, *Contraband and Controversy: The Customs History of Australia From 1901*, p. 83.

⁶⁶ *Official Year Book of the Commonwealth of Australia 1901-1918*, No. 12 - 1919, McCarron, Bird and Co., Melbourne, 1919, p. 1027.

⁶⁷ Admiral of the Fleet Viscount Jellicoe of Scapa, *Naval Defence Report on the Naval Mission to the Commonwealth of Australia: Appendix 1*, p. 37, Government Printer, Melbourne, 1919.

⁶⁸ *Official Year Book of the Commonwealth of Australia 1901-1911*, No. 5-1912, p. 471.

fishing originating there.⁶⁹ These were sporadic responses to ongoing problems for which the Commonwealth had no adequate solution.

Fisheries management and regulation remained a State responsibility for many years.⁷⁰ Immediately after Federation the domestic fishing industry was poorly developed, although Malays from Macassar had long been fishing in north-western waters.⁷¹ The need for uniform fisheries legislation was recognized early and by 1914 all the States were moving towards uniform legislation.⁷² The pearling industry was subject to a Royal Commission in 1912, which examined the prospect of removing all Asian labour from the industry. Ultimately, the Royal Commission determined that nothing was to be gained from such a move and that 'White Australia' was not threatened by the existing arrangements.⁷³

The *Beaches, Fishing Grounds and Sea Routes Protection Act 1932*, was the first significant marine environmental protection legislation.

Legislative Developments

The preoccupation with border protection was manifested initially in two immigration-related acts, both of which underlined the strong desire to keep Australia as a home for white people. These were the first two policy-related bills presented in the Parliament.⁷⁴ The desire for a 'White Australia' had been a strong motivating factor towards Federation.⁷⁵ The first of the Acts was the *Pacific Island Labourers Act 1901* which reflected the distaste felt by some in the community over the employment of Pacific Islanders in the Queensland sugar industry. The Act legislated against the intake of additional Pacific Islander labour from 31 March 1904 and from the date of assent, 17 December 1901, legislated against Pacific Islanders working without a

⁶⁹ *Official Year Book of the Commonwealth of Australia 1901-1911*, No. 5-1912, p. 471.

⁷⁰ *Official Year Book of the Commonwealth of Australia 1901-1909*, No. 3-1910 p. 478.

⁷¹ *Official Year Book of the Commonwealth of Australia 1901-1908*, No. 2-1908, p. 478.

⁷² *Official Year Book of the Commonwealth of Australia 1901-1913*, No. 7-1914, p. 400.

⁷³ *Official Year Book of the Commonwealth of Australia 1901-1916*, No. 10- 1917, McCarron, Bird and Co., Melbourne, 1917, p. 403.

⁷⁴ Gavin Souter, *Acts of Parliament: A Narrative History of the Senate and House of Representatives*, Melbourne University Press, Melbourne, 1988, p. 62.

⁷⁵ Willard, *History of the White Australia Policy to 1920*, p. 19.

license.⁷⁶ It also provided for the deportation of the Pacific Islanders from 31 December 1906.⁷⁷

The *Immigration Restriction Act 1901* reflected the fear of invasion by Asians. The fear was racially based, as was pointed out by Professor Pearson, who stated that 'We are guarding the last part of the world in which the higher races can live and increase freely for the higher civilization'.⁷⁸

These fears were catered for in the 1901 legislation which required immigrants to be able to write a passage of 50 words in a European language directed by an Immigration or Customs officer.⁷⁹ Other restrictions in the Act related to criminals, those with particular diseases, the poor and those indentured on low wages.⁸⁰ Exemptions included members of the King's regular land and sea forces.⁸¹ Nevertheless, the primary function of the Act was to exclude non-Europeans. The Act also allowed for the expulsion of prohibited immigrants.

Enforcement powers associated with the *Immigration Restriction Act 1901* rested with officers appointed under the Act and Customs officers.⁸² Police officers from any State and all officers under the Act also had the power to prevent any prohibited immigrant from entering Australia.⁸³ There were no specific powers of search in the Act, but officers could require masters of vessels to muster their crews before sailing. ⁸⁴ They could also detain vessels from which prohibited immigrants had entered Australia.⁸⁵

⁷⁶ The Acts of the Parliament of the Commonwealth 1901-02, *Pacific Island Labourers Act 1901, Sections 3 and 4*, Government Printer, Melbourne, 1902, p. 314.

⁷⁷ The Acts of the Parliament of the Commonwealth 1901-02, *Pacific Island Labourers Act 1901, Section 8*, pp. 314-5.

⁷⁸ Groom, *Nation Building in Australia: The Life and Works of Sir Littleton Ernest Groom*, p. 19.

⁷⁹ The Acts of Parliament of the Commonwealth 1901-02, *Immigration Restriction Act 1901, Section 3*, p. 317.

⁸⁰ Willard, *History of the White Australia Policy to 1920*, p. 21.

⁸¹ The Acts of Parliament of the Commonwealth 1901-02, *Immigration Restriction Act 1901, Section 3*, p. 317.

⁸² The Acts of Parliament of the Commonwealth 1901-02, *Immigration Restriction Act 1901, Section 2*, p. 318.

⁸³ The Acts of Parliament of the Commonwealth 1901-02, *Immigration Restriction Act 1901, Section 14*, p. 321.

⁸⁴ The Acts of Parliament of the Commonwealth 1901-02, *Immigration Restriction Act 1901, Sub-section 3 (k)*, p. 318.

⁸⁵ The Acts of Parliament of the Commonwealth 1901-02, *Immigration Restriction Act 1901, Section 10*, p. 320.

By 1905 the 1901 Act needed to be amended, principally because of controversy over its explicitly racist foundation. Objections were raised in London, as had occurred with previous State immigration legislation before Federation,⁸⁶ and in Japan. The Japanese Government objected to the 1901 legislation, even as it was being debated in Parliament, because of its racist basis and threatened to stop the Japanese Mail Steamship Co. trading with Australia.⁸⁷ It was to appease the Japanese that the *Immigration Restriction Amendment Act 1905*⁸⁸ changed the basis of the dictation test from being a European language to being a 'prescribed language'. This gave the examining officer the opportunity to choose a language unfamiliar to the prospective immigrant. The 1905 Act also introduced some concessions; such as allowing the temporary entry of Japanese, for the pearling industry, Indian students, merchants and some others.⁸⁹ Nevertheless, the reality was that white people would not be subjected to the dictation test.

The *Immigration Restriction Act* was changed again in 1908 and 1910, in response to claims that Asians were illegally entering the country as stowaways. The *Immigration Restriction Act 1908* identified ships' masters' responsibilities with respect to stowaways, who were considered to be prohibited immigrants.⁹⁰ The Act also permitted officers to search any vessel in port or within the territorial sea for stowaways. The *Immigration Restriction Act 1910* provided broad powers to stop and search any vessel, or vehicle, or enter any premises where there was a reasonable chance of finding prohibited immigrants.⁹¹

The only other significant immigration-related legislation before 1918 was the wartime *War Precautions Act 1914* which *inter alia*, prohibited aliens from landing or embarking

⁸⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. IV, 26 September 1901, p. 5267.

⁸⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. I, 11 June 1901, pp. 845 and 855.

⁸⁸ *The Acts of the Parliament of the Commonwealth of Australia passed in the Session of 1905*, Government Printer, Melbourne, 1906, p. 45.

⁸⁹ Willard, *History of the White Australia Policy to 1920*, p. 27.

⁹⁰ *The Acts of the Parliament of the Commonwealth of Australia passed in the Session of 1908*, *Immigration Restriction Act 1908*, Section 3, Government Printer, Melbourne, 1909, pp. 5-6.

⁹¹ *The Acts of the Parliament of the Commonwealth of Australia passed in the Session of 1910*, *Immigration Restriction Act 1910*, Section 8, Government Printer, Melbourne, 1911, p. 13.

in the Commonwealth.⁹² While there was a concentration on keeping certain kinds of people out of Australia, the supporting legislation did not anticipate that prohibited immigrants would arrive in any way other than regular merchant shipping. Consequently, the legislation made no provision for employing the Navy for enforcement. Admittedly, the paucity of the naval forces at hand and the onset of the First World War, would have been factors in this decision.

Customs legislation was also a high priority for the Commonwealth Parliament in 1901, although the first Customs legislation, the *Customs Act 1901*, concerned revenue generation and collection more than border protection.⁹³ The powers associated with the Act, which aimed to ensure that all tariffs and duties were paid, were useful in dealing with other illegal activities. For example the Act allowed for control of all imported goods and goods on board ships within port limits. Control also included the right to examine all such goods and the associated right to board ships to do so.⁹⁴

Although early immigration laws did not provide for at sea enforcement, that was not the case with the *Customs Act*. *Section 59* directed that arriving ships heave to within one league of the coast for boarding if so directed by Customs.⁹⁵ Furthermore, commanders or officers-in-command of any ship or boat in His Majesty's Service or in the service of the Commonwealth or Customs, providing they showed the proper flag or ensign, had the right to chase a ship and compel it to stop.⁹⁶ If the chased vessel ignored lawful signals or directions to stop, it could be fired at or into, to ensure compliance.⁹⁷ *Section 185*, of the Act had definite border protection and constabulary function connotations, giving officers the power to require a ship hovering within one

⁹² The Acts of the Parliament of the Commonwealth of Australia passed in the Session of 1914-15, *War Precautions Act 1914, Section 5*, Government Printer, Melbourne, 1916, p. 13.

⁹³ Geoffrey Sawyer, *Australian Federal Politics and Law 1901-1929*, Melbourne University Press, Melbourne, 1956, p. 16.

⁹⁴ The Acts of the Parliament of the Commonwealth of Australia passed in the Session 1901-02, *Customs Act 1901, Sections 30 and 49*, Government Printer, Melbourne, 1902, p. 66.

⁹⁵ The Acts of the Parliament of the Commonwealth, 1901-02, *The Customs Act 1901, Section 59*, p. 70.

⁹⁶ The Acts of the Parliament of the Commonwealth, 1901-02, *Customs Act 1901, Section 184*, p. 88.

⁹⁷ The Acts of the Parliament of the Commonwealth 1901-02, *Customs Act 1901, Section 184*, p. 88.

league of the coast to leave within 12 hours.⁹⁸ The Act's powers extended to officers of the Customs Service, police and of His Majesty's forces.⁹⁹

The *Customs Act 1901*, contained provisions for dealing with smuggling.¹⁰⁰ These provisions were extended in the revised *Customs Act 1910* which *inter alia* prohibited the export of certain flora and fauna¹⁰¹ and enabled any Customs or police officer to arrest anyone reasonably suspected of smuggling or importing or exporting prohibited goods.¹⁰² This Act in dealing with flora and fauna was the first, admittedly tangential, attempt at border protection-related environmental legislation. The only other significant Customs legislation with a constabulary function focus before the end of the First World War was the *Customs Act 1914*, which allowed for the wartime proclamation of the prohibition of the export of any goods.¹⁰³

Although the need to regulate quarantine as a federal matter was recognised¹⁰⁴ it was 1908 before the first legislation appeared. The *Quarantine Act 1908* provided for internal and external quarantine to prevent the spread of human, animal and plant disease.¹⁰⁵ The Minister for Trade and Customs assumed responsibility, a factor of the very limited federal bureaucracy at that time, and the Act was enforced by Quarantine officers or any other officers appointed under the Act.¹⁰⁶ The Act allowed for powers to be delegated to the States and did not affect the previous operation of State Acts.¹⁰⁷

⁹⁸ The Acts of the Parliament of the Commonwealth 1901-02, *Customs Act 1901, Section 185*, p. 88.

⁹⁹ The Acts of the Parliament of the Commonwealth, 1901-02, *Customs Act 1901, Section 203*, p. 91.

¹⁰⁰ The Acts of the Parliament of the Commonwealth, 1901-02, *Customs Act 1901, Section 231*, p. 96.

¹⁰¹ The Acts of the Parliament of the Commonwealth of Australia passed in the Session of 1910, *Customs Act 1910, Sub-section 112 (1)*, Government Printer, Melbourne, 1911, p. 94.

¹⁰² The Acts of the Parliament of the Commonwealth of Australia passed in the Session of 1910, *Customs Act 1910, Sub-section 210 (1)*, p. 95.

¹⁰³ The Acts of the Parliament of the Commonwealth of Australia passed in the Session of 1914-15, *Customs Act 1914, Sub-section 1A*, Government Printer, Melbourne, 1916, p. 51.

¹⁰⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. III, 26 July 1901, p. 3148. A comment to that effect was made by Sydney Smith (Macquarie) in the context of a perceived swine fever threat.

¹⁰⁵ Sawyer, *Australian Federal Politics and Law 1901-1929*, p. 69.

¹⁰⁶ The Acts of the Parliament of the Commonwealth of Australia passed in the Session of 1908, *Quarantine Act 1908, Sections 5 and 8*, pp. 25-6.

¹⁰⁷ The Acts of the Parliament of the Commonwealth of Australia passed in the Session of 1908, *Quarantine Act 1908, Sections 6 and 10*, pp. 25-6.

Under the Act, Quarantine officers were empowered to board any vessel in any port or place in Australia to conduct quarantine inspection.¹⁰⁸ Additionally, officers could have a vessel stopped for boarding and could, in writing, order into quarantine a vessel suspected to be infected.¹⁰⁹

The initial legislation was followed by the *Quarantine Act 1912*, which established the separate federal Quarantine Service.¹¹⁰ This Act and a further amending act, the *Quarantine Act 1915*, placed more responsibility on the masters and owners of vessels to take health precautions and also established detailed restrictions for ships in quarantine; specifically for the control and eradication of vermin and other pests.¹¹¹

Implications for the Navy

Successive governments failed to provide enough resources for law enforcement at sea until the latter part of the 20th century, when the political benefits of providing deterrent border protection began to outweigh the cost. The call in 1914 for a Navy destroyer to undertake a constabulary task reflected a Parliamentary expectation that this was a role for the Navy. It may also have simply suggested that despite its limitations, only the Navy could possibly have responded.

Yet, there was no evidence of any institutional acceptance that constabulary work should be a Navy task, or that it was at all important. None of the early Parliamentary debates mentions it: the sole focus of the naval debate was on the defence of Australia against naval attack and whether the country could rely on the Imperial Navy for protection.¹¹² For all of the historical association of navies with the constabulary

¹⁰⁸ The Acts of the Parliament of the Commonwealth of Australia passed in the Session of 1908, *Quarantine Act 1908, Section 70*, p. 37.

¹⁰⁹ The Acts of the Parliament of the Commonwealth of Australia passed in the Session of 1908, *Quarantine Act 1908, Sections 25 and 35*, pp. 29 and 31.

¹¹⁰ The Acts of the Parliament of the Commonwealth of Australia passed in the Session of 1912, *Quarantine Act 1912, Sub-section 8A (1)*, Government Printer, Melbourne, 1913, p. 25.

¹¹¹ The Acts of the Parliament of the Commonwealth of Australia passed in the Session of 1914-15, *Quarantine Act 1915, Section X*, Government Printer, Melbourne, 1916, p. 176.

¹¹² See for example, *Commonwealth Parliamentary Debates*, House of Representatives, Vol. XXVI, 29 August 1905, pp. 1618-1625; Vol. XXVI, 7 September 1905, pp. 1987-2002; and Vol. XXVII, 5 October 1905, pp. 3231 - 3243.

function, Australia’s politicians made no early formal connection between their strongly expressed desire for border security and the Navy as a provider.

With the keen focus on prohibited immigrants and despite the lack of any means of interception at sea, the evidence (see Table 4.3 below) suggests that the number of people refused entry to Australia was small in raw numbers and as a proportion of the overall intake. It also shows (Column 1) that administration of the dictation test was an effective way of screening unwanted immigrants and that the intake of primarily European migrants (Column 2) was substantial, especially in the years before the First World War.

Year	Persons admitted who passed the dictation test¹¹³	Persons admitted without passing the dictation test	Persons refused admission
1909	1	83,324	108
1910	-	94,523	42
1911	-	139,020	83
1912	-	163,990	187
1913	-	140,251	109
1914	-	110,701	54
1915	-	70,436	56
1916	-	59,140	233
1917	-	53,036	13

Table 4-3: Persons Admitted or Refused Admission to the Commonwealth under the Provisions of the Immigration Restriction Act, 1909-1917.¹¹⁴

Because of the lack of naval or other law enforcement vessels Australia’s border at this point was not at sea, but in the ports through which foreign ships passed. Consequently, there was great interest in ensuring that the immigration laws were upheld. The level of interest might have been described as extreme when Mr MacDonald (Kennedy) asked Prime Minister Barton about a claim that five coloured

¹¹³ The ‘dictation test’ was introduced in the *Immigration Restriction Act 1901* and made more onerous in the *Immigration Restriction Act 1905*. It allowed Immigration Officers to test prospective immigrants in languages unfamiliar to them with the object of excluding them.

¹¹⁴ *Official Year Book of the Commonwealth of Australia 1901-1917*, No. 11-1918, McCarron, Bird and Co., Melbourne, 1918, p. 1166.

men had deserted from one ship and two from another.¹¹⁵ Further interest was expressed a few years later, when more effective patrolling of the coast, and vessel inspections, to prevent people and opium smuggling were demanded in Parliament.¹¹⁶ In the following year, 1909, there was a call for '... some sort of patrol on the north-west and northern coast of this country'.¹¹⁷ The request came from Mr Hughes, a future Prime Minister, who also suggested that the 'infant fleet' should be used for this purpose.¹¹⁸

The need for policing of Australian waters was well understood even if there was no readily available means of doing so. For example, Senator O'Connor believed that the police should have responsibility and that it was not a matter for 'a man-o-war'.¹¹⁹ Yet naval forces and Customs became involved subsequently. In April 1911 the *Gayundah*¹²⁰ sailed from Brisbane to check on illegal trepang (sea cucumber) and pearl fishing. On 25 May the vessel found Dutch schooners anchored at Scott's Reef off the north-west coast of Western Australia. After firing a warning shot and boarding the vessels, *Gayundah* arrested them and towed them to Broome.¹²¹

Nevertheless, in the first decades after Federation the Navy contributed little to the constabulary function. The poor state of pre-Federation State naval forces and the involvement of the newly formed RAN in the First World War contributed to this situation. Disagreement over the extent of Navy involvement, and the embryonic state of Commonwealth government departments, also exacerbated the situation.

¹¹⁵ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. VII, 29 January 1902, pp. 9373-4.

¹¹⁶ *Commonwealth Parliamentary Debates*, Senate, Vol. XLIV, 13 March 1908, p. 9007.

¹¹⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. LI, 2 September 1909, p. 2977.

¹¹⁸ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. LI, 2 September 1909, p. 2977.

¹¹⁹ *Commonwealth Parliamentary Debates*, Senate, Vol. IV, 20 August 1903, p. 3930.

¹²⁰ The *Gayundah* began life with the Queensland Navy in 1885, became part of the Commonwealth Naval Forces in 1901 and in 1911 was integrated with the RAN. Ross Gillett, *Warships of Australia*, Rigby, Adelaide, 1977, p. 109.

¹²¹ Jones, *Australian Colonial Navies*, p. 144.

1918 - 1945: EMBRYONIC EFFORTS

Resources Protection

The near-hysteria attending the fear of illegal immigrants abated after the First World War, although the issue emerged intermittently before 1945. The most high profile constabulary task was marine resource protection, associated with the pearl shell and trepang fishing activities in northern waters. Shortly after the First World War, there were 16 boats and 83 men working in Northern Territory pearl fisheries, all but two of the men Japanese and Koepang (then in the Dutch East Indies) natives.¹²²

Long-standing concerns over unreported taking of pearl shell in northern waters continued through the 1920s, paralleling the varying demand for pearl shell. From 1921 the industry declined because of reducing world prices.¹²³ In 1922-23 only two pearl shell boats and three trepang boats were still working in Northern Territory waters.¹²⁴ Recovery began in the late 1920s, with nine pearl shell boats operating in 1927.¹²⁵

Concerns over illegal activities rose with the recovery of the pearl shell industry. There was a claim that Malay poachers from the Dutch islands were gathering trepang off the north-west coast and were illegally treating it ashore on Australian territory.¹²⁶ Reports of this and other incidents to the Minister for Trade and Customs had no apparent effect, and led to claims by Mr Green (Kalgoorlie) that, 'The north-west coast is absolutely neglected by Commonwealth departments'.¹²⁷ With both resource protection and quarantine interests at stake a regular air service was demanded for the Kimberley, between Derby and Wyndham, to provide an information gathering

¹²² *Official Year Book of the Commonwealth of Australia 1901-1919*, No. 13 -1920, McCarron, Bird and Co., Melbourne, 1920, p. 1057.

¹²³ *Official Year Book of the Commonwealth of Australia* No. 15-1922, McCarron, Bird and Co., Melbourne, 1922, p. 944.

¹²⁴ *Official Year Book of the Commonwealth of Australia* No. 17 -1924, McCarron, Bird and Co., Melbourne, 1924, p. 610.

¹²⁵ *Official Year Book of the Commonwealth of Australia* No. 21-1928, Government Printer, Melbourne, 1928, p. 601.

¹²⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 114, 14 July 1926, p 4126.

¹²⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 114, 14 July 1926, p 4127.

capacity.¹²⁸ The expectation that the provision of this kind of surveillance was to be resolved by civilian authorities is striking.

Little more was heard of the surveillance issue until the 1930s when illegal, unreported and unregulated (IUU) fishing gained momentum and generated a belated government response. The attention given to these activities in the 1930s can be attributed to Japanese involvement and its association with fears of another war. These fears also manifested themselves in issues beyond IUU fishing.

In August 1930 Mr Nelson, (Northern Territory) spoke in Parliament of reports in the *Melbourne Herald* about Malays from Timor poaching pearl shell in northern waters and that there was '... not a single police patrol boat on the whole of the coast'.¹²⁹ Almost two years later, the Chief Pearling Officer was reported to have used the motor vessel (MV) *Maroubra* to search for contraband pearl shell among the Japanese pearl fishers; netting six tonnes of pearl shell.¹³⁰ This *ad hoc* response was to be replicated many times over the years before a more comprehensive and deterrence-based approach was initiated.

The concerns also extended beyond the Northern Territory to northern Queensland waters.¹³¹ *The Courier Mail* exposed some of the difficulties in an article on 21 September 1934. It noted the State's responsibilities for enforcing fishing regulations and some uncertainty about State and Commonwealth jurisdiction over the Great Barrier Reef.¹³² While the article also noted that Commonwealth responsibilities were limited to quarantine, customs and immigration matters, the fears that Japanese might be landing, especially on the Gulf of Carpentaria coast meant that Commonwealth involvement could not be ignored.

¹²⁸ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 114, 10 August 1926, p 5180.

¹²⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 126, 5 August 1930, pp. 5254-5.

¹³⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 133, 16 March 1932, p. 1162.

¹³¹ *Commonwealth Parliamentary Debates*, Senate, Vol. 145, 14 November 1934, p. 197.

¹³² 'Foreign Craft in Northern Waters', *The Courier Mail*, 21 September 1934, p. 14.

Concerns continued to grow, even if they sometimes resulted in spurious claims. For example, Senator Hardy (New South Wales) reported claims of some 59 Japanese pearling luggers operating in Torres Strait and accompanied by a naval destroyer in April 1936.¹³³ The report was dismissed by government and may have been explained by a sighting a few weeks later of 21 luggers accompanied by a larger mother ship near Melville Island in the Northern Territory.¹³⁴

In May 1936, Mr Riordan (Kennedy) led calls for the Navy to respond to the illegal activities.¹³⁵ The continuing Japanese presence was the primary cause of such demands. Yet, growing national apprehension over deteriorating world security may also have added to the concern felt about the Japanese pearl shell-gathering presence, which in 1938 was described as well-established from Broome to Thursday Island and along the East coast to Mackay.¹³⁶ Japanese pearling continued to cause concern in Australia as late as mid-1940 but, pearling ceased with the outbreak of the war in the Pacific.

Although a secondary issue, whaling began to gain some attention during the mid-1930s. Following the 1931 *Geneva Convention on Whaling*, Australia legislated for controls in 1935. The aim was to limit the taking of certain types of whales in Australian waters, beyond territorial waters limits, and including Antarctic waters. The restrictions applied only to Australian registered whaling ships and ships over which the Commonwealth otherwise had jurisdiction.¹³⁷

Predictably, there were questions relating to policing the law, given that Australia had failed to prevent the illegal taking of pearl shell.¹³⁸ Australia could not stop whaling in Antarctic waters either, as the Antarctic Territory claim was still British-based.¹³⁹

¹³³ *Commonwealth Parliamentary Debates*, Senate, Vol. 150, 23 April 1936, p. 838.

¹³⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 150, 8 May 1936, p. 1428.

¹³⁵ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 150, 6 and 7 May 1936, pp. 1332-3.

¹³⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 158, 7 December 1938, p. 2856.

¹³⁷ Sawyer, *Australian Federal Politics and Law 1929-1949*, p. 77.

¹³⁸ *Commonwealth Parliamentary Debates*, Senate, Vol. 147, 31 October 1935, p. 1177.

¹³⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 150, 30 April 1936, p. 1092.

Marine Environmental Protection

Marine environmental protection began gaining prominence during the interwar years. Almost immediately after the First World War concerns were expressed in Parliament about the destruction of seals and penguins around the Tasmanian and Macquarie Island coasts, with a call by Mr Glynn (Angas) for the Navy to patrol those areas.¹⁴⁰ Nevertheless, the issue lapsed and was not referred to again in Parliament. Similar concerns were aired in 1935 in relation to the Great Barrier Reef, signalling an awakening of the potential value of the Reef to the nation. The concern related to uncontrolled exploitation of trochus and bird life throughout the Reef.¹⁴¹

Marine pollution also received some attention between the wars. Not for the last time, in 1920 the Navy was accused of polluting Sydney harbour with oil and debris.¹⁴² The only other Parliamentary mention of any significant occurrence of marine pollution for the period related to ship-sourced pollution of Sydney's ocean beaches in 1938.¹⁴³

Border Protection

Illegal immigration was not significant in the 1920s and 1930s, although there is evidence of it. Senator Sir George Pearce noted in 1928 the case of 50 Chinese who had stowed away in the steam ship (S.S.) *Almkerk* for a voyage from Rotterdam to Australia late in 1927. Australian authorities learned of their presence in the ship before it sailed. The ship's Master was subsequently fined £100 while the Customs officers involved in the case shared a reward of £270.¹⁴⁴ The main fear during the period may have been the potential for numbers to increase because of reducing migrant intakes in the US from southern Europe.¹⁴⁵

¹⁴⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. LXXXIX, 20 and 22 August 1919, pp. 11699 and 11881.

¹⁴¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 146, 9 April 1935, p. 1071.

¹⁴² *Commonwealth Parliamentary Debates*, House of Representatives, Vol. XCII, 7 July 1920, p. 2551. The accusation was made by Mr Marks (Wentworth).

¹⁴³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 158, 8 December 1938, p. 2979.

¹⁴⁴ *Commonwealth Parliamentary Debates*, Senate, Vol. 119, 22 September 1928, p. 7233.

¹⁴⁵ Sawyer, *Australian Federal Politics and Law 1901-1929*, p. 238.

Reports of smuggling were limited primarily to passengers attempting to avoid duties on items of apparel at ports of entry. Details provided in Parliament suggest that it was a significant issue in the 1920s. Customs statistics for 1927, for example, showed eight successful prosecutions for goods valued at £2524 and the imposition of 15 fines for £1303.¹⁴⁶ A subsequent report in 1934 confirmed that such activity continued¹⁴⁷ and with the advent of international air travel another avenue opened for the transport of illicit goods.

Breaches of quarantine were insignificant during the period ending in 1945. Apart from fears that military personnel returning from the Second World War would bring exotic diseases,¹⁴⁸ the only other major border security concern was the introduction of international air travel in the 1930s, and the heightened risk associated with faster travel masking incubation that would become evident on longer sea voyages.¹⁴⁹

The Government Response

The current focus on border protection and the Navy contribution to it contrast starkly with the situation in the period between the two world wars and up to 1945. While relationships between the Federal and State Governments were still evolving, inadequate coordination was unsurprising. Additionally, the Federal Government was more likely to avoid potential overlaps of responsibility than to infringe deliberately on State responsibilities. The maritime law enforcement resources available to Federal and State authorities were also limited. Even with those qualifications, the dilatory, fragmented and essentially inadequate response to illegal activities, reflects poorly on the governments of the time.

After the First World War there was very little capacity in the north. During 1918 coastal patrols were being conducted with old ships, like *Gayundah*, which were too

¹⁴⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 115, 23 March 1927, p. 949. When these figures were presented in Parliament no time period was specified.

¹⁴⁷ 'Annual Report of the Auditor General upon the Treasurer's Receipts and Expenditure during the year ended 30th June 1934', pp. 64-5, *The Parliament of the Commonwealth of Australia, Papers Presented to Parliament 1934-5-6-7, Vol. II*, Government Printer, Canberra, pp. 2434-5. No publication date listed, but presumed to be 1937.

¹⁴⁸ *Commonwealth Parliamentary Debates*, Senate, Vol. 185, 27 September 1945, p. 5991.

¹⁴⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 145, 4 December 1934, p. 759.

slow.¹⁵⁰ *Gayundah* was capable of no more than 10 kts and was paid off on 23 August 1918.¹⁵¹ His Majesty's Australian Ship (HMAS) *Geranium*, a sloop, was the only naval contribution in the early 1920s. This ship was used primarily for hydrographic survey in northern waters,¹⁵² although there is Parliamentary reference to her conducting patrols as well.¹⁵³ The only other craft of note was the *Gunemba* which was used by Customs in the 1920s and like *Gayundah* was slow. *Gunemba*, which was built for Customs by the Department of Naval Construction, did not meet specifications, could not chase smugglers and was put up for sale.¹⁵⁴

Authorities today readily accept that surface patrol craft operate most effectively in response to detections made by aircraft, but that it may not have been appreciated as well in the 1920s. Consequently, there is no report of *Geranium's* Fairey floatplane being used for aerial reconnaissance. Even if the value of aerial reconnaissance had been appreciated, the Royal Australian Air Force (RAAF) at the time was unlikely to have been able to contribute. As noted in Parliament by Senator Hardy (New South Wales) in November 1932, a 1928 report by Sir John Salmond claimed that the Air Force was not fit to undertake operations alongside the Army and the Navy.¹⁵⁵

Throughout the inter-war years the Commonwealth neglected law enforcement at sea and the constabulary function, and seemed unable to reconcile the need for action with resource limits and differing State and Commonwealth legislative responsibilities. For example, as early as 1924, States' expressed reluctance to accept a commission to examine harmonization of the activities of State health departments.¹⁵⁶ This illustrates a tension existing to the present day, although circumstances have forced the two tiers of government to cooperate on law enforcement at sea.

¹⁵⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. LXXXV, 14 June 1918, p. 6145.

¹⁵¹ Gillett, *Warships of Australia*, p. 109.

¹⁵² Gillett, *Warships of Australia*, p. 189.

¹⁵³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. XCIII, 7 October 1920, p. 5428.

¹⁵⁴ *Commonwealth Parliamentary Debates*, Senate, Vol. 103, 12 July 1923, p. 987 and Vol. 104, 31 July 1923, p. 1802.

¹⁵⁵ *Commonwealth Parliamentary Debates*, Senate, Vol. 136, 3 November 1932, p. 1814.

¹⁵⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 108, 26 August 1924, p. 3561.

Cooperation developed slowly and even in the mid-1930s when concerns were being aired about IUU fishing in northern waters, the States were not amenable to agreement with the Commonwealth on fishing laws.¹⁵⁷ The problem was that the Commonwealth had legal powers only in Territory waters and there only out to three nautical miles, the territorial waters limit. State fisheries legislation covered the waters of each of the States, but again only out to three nautical miles.¹⁵⁸

Slowly and hesitantly the response became more rational. In answer to a plea from the member for the Northern Territory, Mr Nelson, for a response to '... poachers and mystery vessels in northern waters ...' the Assistant Minister for Defence, Mr Francis, advised the Parliament that in February 1933 a vessel had been sent to Thursday Island to deal with Customs breaches.¹⁵⁹ That a single vessel at Thursday Island dealing with Customs breaches could be suggested as a realistic response to pearl shell poaching across the 'Top End' reflects both the lack of government capacity to respond and any real sense of urgency.

The reference to 'mystery vessels' was also symptomatic of growing concerns in the north at government inability to provide any level of security in an increasingly less benign international environment. Reported but unconfirmed sightings included crew from a Japanese submarine coming ashore, and an unidentified flying boat over Darwin, both in March 1933.¹⁶⁰ Such reports gained credence from an official report by the Commanding Officer of HMAS *Geranium*¹⁶¹ who claimed that he had observed what could only have been activity designed '... to spy out the land'.¹⁶² The whole issue was complicated by additional claims that Japanese pearl fishers were molesting Aboriginal women. In Parliament, the Minister for Defence indicated that the matter was being addressed by the Department of the Interior.¹⁶³

¹⁵⁷ *Commonwealth Parliamentary Debates*, Senate, Vol. 145, 28 November 1934, p. 575.

¹⁵⁸ *Commonwealth Parliamentary Debates*, Senate, Vol. 151, 16 September 1936, p. 101.

¹⁵⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 138, 9 March 1933, p. 138.

¹⁶⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 138, 22 March 1933, p. 138 and *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 138, 6 April 1933, p. 953.

¹⁶¹ *Geranium* was surveying northern waters in the 1920s and 1930s.

¹⁶² *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 138, 28 March 1933, p. 514.

¹⁶³ *Commonwealth Parliamentary Debates*, Senate, Vol. 140, 16 June 1933, p. 2339.

The patrol boat in the Thursday Island area was operated by Customs and arrested and fined at least one foreign boat near the island in 1933.¹⁶⁴ The following year, the Government considered deploying three fast patrol craft, supplemented by aircraft, in the north.¹⁶⁵ Significantly, the departments assigned responsibility for this activity were the Department of Trade, Customs and the Department of Interior and not Defence or the Navy.¹⁶⁶ according to Captain Charles Haultain, who commanded Darwin's first patrol boat, the *Larrakia*, the Navy was not especially interested in becoming involved.¹⁶⁷ The Department of the Interior had some responsibility because of the allegations of Japanese pearl fishers interacting with Aboriginal women. Equally significant were the ineffectiveness of this response over the next few years and the lack of any sense of urgency from the authorities involved.

The Labor Government, which fell in January 1932, had committed to providing three patrol boats to operate near Darwin, Thursday Island and in New Guinea waters.¹⁶⁸ The commitment was maintained by the incoming United Australia Party Government. Parliament was told in March 1935 that the Darwin-based patrol boat would be 'very fast' and would be purchased by the Department of Defence for operation by the Department of the Interior.¹⁶⁹ It was to have a range of 600nm and a crew of three.

At this point the situation became confused, with the Minister of Trade and Customs telling Parliament on 22 March 1935 that Defence would patrol the Timor Sea with one boat (presumably based in Darwin), Customs would operate the boat based in Thursday Island and Interior (Territories Branch) would operate the third boat. He also

¹⁶⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 145, 7 December 1934, p. 914.

¹⁶⁵ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 144, 28 June 1934, p. 24.

¹⁶⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 144, 28 June 1934, p. 24.

¹⁶⁷ C.T.G. Haultain, *Watch off Arnhem Land*, Roebuck Society Publication No. 4, Canberra, 1971, p. 3.

¹⁶⁸ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 145, 7 December 1934, p. 914.

¹⁶⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 146, 13 March 1935, p. 16.

indicated that the Defence boat was operational.¹⁷⁰ Yet, the Minister advised that the Darwin-based boat would be used primarily for search and rescue of any downed aircraft on the newly established air route from Timor to Darwin.¹⁷¹

By October 1935 the Government conceded that the search and rescue priority for the Darwin-based boat meant that a second boat would be needed for offshore patrolling. When announcing that the patrol craft would be available in Darwin early in 1936 and be operated by the Department of the Interior for the Department of Civil Aviation, the Minister for Defence, Mr Parkhill, also announced that Customs would operate a second Darwin-based boat.¹⁷² Yet by March 1936 the first patrol craft had not reached Darwin. Having been built in England, it spent several weeks in Sydney being inspected by local boat builders, keen to see whether they could build similar craft – a 45 foot (14m) boat with a range of 1,000nm at 19 mph and a top speed of 26 mph!¹⁷³ The boat arrived in Darwin on 20 May 1936,¹⁷⁴ four years after it was first mooted and for a primary purpose which ignored the original reason for procuring the craft.

Although the patrol boat enjoyed early success against illegal Japanese pearling operations, it suffered significant and ultimately embarrassing mechanical problems. During a June 1937 patrol the *Larrakia* arrested two Japanese pearling boats and brought them to Darwin. Embarrassment arose from the need for the *Larrakia* to be towed part of the way by one of the captured boats ¹⁷⁵ and eventually from legal action by the owners of the Japanese boats.¹⁷⁶ The legal action was based on claims of wrongful detention after the *Larrakia* had fired across the bows of Japanese vessels.¹⁷⁷

¹⁷⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 146, 22 March 1935, p. 276.

¹⁷¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 146, 22 March 1935, p. 276.

¹⁷² *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 148, 21 November 1935, p. 1867.

¹⁷³ The speeds were noted in Parliament as miles per hour and not the more common knots. *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 149, 18 March 1936, pp. 296 and 335.

¹⁷⁴ 'Timor Patrol Boat', *Sydney Morning Herald*, 20 May 1936, p. 10.

¹⁷⁵ 'The LARRAKIA – Forced to Release Arrested Ship–Patrol Comedy', *The Canberra Times*, 17 June 1937, p. 4.

¹⁷⁶ 'Confiscated Luggers– Release Refused–Appeal to the High Court Likely', *The West Australian*, 7 July 1937, p. 19.

¹⁷⁷ 'More Writs from Japanese–Detention of Pearling Luggers Resented...', *The Advertiser*, 31 May 1938, p. 18.

This action resulted in the Commonwealth paying £8,000 damages to the Japanese owners.¹⁷⁸

While the Government response to illegal fishing in northern waters was clearly inadequate, there were other sporadic attempts made to provide surveillance. The use of the Darwin-based flying doctor's amphibious aircraft to locate the broken down *Larrakia* and that aircraft's reporting of potentially illegal pearling confirmed the benefits of aerial surveillance in extended ocean areas.¹⁷⁹ Not long before, the Federal Government formally recognized the potential value of aerial surveillance but realized that without surface response patrol craft it would be ineffective.¹⁸⁰

Thought was given to involving the RAAF in aerial surveillance, through a squadron to be based in Darwin.¹⁸¹ Consideration was also given to including naval vessels with the Customs patrol craft. However, the Government believed that such a response would be provocative.¹⁸² Possibly as a compromise, the Government agreed that the RAAF amphibian operating from HMAS *Moresby* on survey operations, would notify Northern Territory authorities of sightings.¹⁸³ In other areas, the response was equally haphazard. The Cairns Aquatic Club launch was hired for what was an uneventful Customs patrol as far as Thursday Island in mid-1936.¹⁸⁴

By the late 1930s government attention was drawn to more serious security issues and the prospect of war. Reflecting the growing unease, press reports encouraged a more serious approach to security in the north. There were suggestions of declaring special defence zones and establishing a minor naval base in Darwin.¹⁸⁵ Even so, initial responses to offshore security needs once the war began were little more comprehensive than what had gone before. At the end of 1939, yachtsmen were acting as voluntary coastal patrols. By late 1941 the RAN operated requisitioned coastal

¹⁷⁸ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 158, 17-18 November 1938, p. 1688.

¹⁷⁹ 'Air Patrol Need Stressed—Plane Cleared Coast of Sampans—Flocked Back', *The Courier-Mail*, 17 June 1937, p. 14.

¹⁸⁰ 'Northern Patrol—Air and Sea Measures', *Western Mail*, 18 March 1937, p. 14.

¹⁸¹ 'Northern Patrol - Air and Sea Measures', *Western Mail*, p. 14.

¹⁸² 'Powers of Patrol Officers', *The West Australian*, 6 April 1937, p. 15.

¹⁸³ 'Three Patrols Soon in Northern Waters', *The Advertiser*, 29 April 1937, p. 18.

¹⁸⁴ 'Cairns Launch's Cruise', *Cairns Post*, 22 June 1936, p. 7.

¹⁸⁵ 'Patrolling the North', *The Sydney Morning Herald*, 21 May 1937, p. 10.

steamers for mine warfare and by early 1942 small craft along the coast were being requisitioned and destroyed or moved inland.¹⁸⁶

Until the Second World War there was no apparent attempt to coordinate efforts to deal with illegal activities in territorial waters. This seems doubly inadequate given the relative lack of resources at both levels of government and thus the need to make best use of those available. The reality was that without some kind of permanent air surveillance backed by surface patrols State and Federal Governments simply had no way of knowing what was occurring offshore.

Legislative Outcomes

Comparatively little legislation related to the constabulary function passed between 1918 and 1945, and despite growing concern about IUU fishing in the 1930s, amendments to the immigration laws predominated, numerically. The likely reasons for this include the understandable preoccupation with deteriorating national and global economic conditions from the late 1920s and increasing uneasiness about global security from the mid-1930s. An inability to resolve difficulties caused by differing Commonwealth and State legal responsibilities also contributed.

Resources Legislation

While much Parliamentary attention to law enforcement at sea related to resources, primarily IUU fishing in the north and whaling in the south, the only related legislation was the *Whaling Act 1935*¹⁸⁷ which *inter alia* examined Commonwealth and State legislative responsibilities in waters adjacent to Australia and followed Australia's signing of the International Convention for the Regulation of Whaling in 1931.¹⁸⁸

¹⁸⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 170, 25 March 1942, pp. 370-1.

¹⁸⁷ The Acts of the Parliament of the Commonwealth of Australia passed during the year 1935, *Whaling Act 1935*, Commonwealth Government Printer, Canberra, 1935, p. 184.

¹⁸⁸ *Commonwealth Parliamentary Debates*, Vol. 147, Senate, 30 October 1935, p. 1104.

Nevertheless, the 1935 Act took effect only in Australian Antarctic waters¹⁸⁹ because *Section 51 (x)* of the Constitution allows the Commonwealth to regulate fisheries only beyond territorial seas and most States were not prepared to cede responsibility for whaling to the Commonwealth.¹⁹⁰ Individual State laws were needed to cover whaling in territorial waters before the Commonwealth could ratify the International Convention.

Action was needed to conserve whales at this time because of the introduction of factory ships, enabling whale catchers to remain at sea, instead of returning to port with each catch. The *Whaling Act 1935* enabled the registration of Australian whalers and it was policed by placing inspectors on whaling ships during the official whaling season, initially from 1 December 1935 to 1 March 1936. Officers designated under the Act were given powers of boarding and of arrest without a warrant.¹⁹¹ Other powers included exclusion of whaling ships from Australian ports unless licensed by the 1935 Act or so authorized by the government of their flag state.¹⁹²

The 1935 Act had limited impact on non-Australian whalers, among whom Japan had not then signed the 1931 International Convention.¹⁹³ Little has changed in the intervening 82 years, as Japan continues to catch whales in Antarctic waters. Although a member of the International Whaling Commission since 1951, Japan continues to catch whales as part of a scientific research program and is one of only two countries to do so since a moratorium was declared in 1986.¹⁹⁴

Environmental Legislation

The first marine environmental legislation of any substance was passed in 1932: it was also the only such legislation in the period from 1918 to 1945. The *Beaches, Fishing Grounds and Sea Routes Protection Act 1932* aimed to prevent fishing grounds being

¹⁸⁹ Australia gained control of a large part of previously British controlled Antarctica and adjacent waters through the *Australian Antarctic Territory Acceptance Act 1933*, *Commonwealth Parliamentary Debates*, Vol. 147, Senate, 30 October 1935, p. 1105.

¹⁹⁰ *Commonwealth Parliamentary Debates*, Vol. 147, Senate, 30 October 1935, p. 1104.

¹⁹¹ *Commonwealth Parliamentary Debates*, Vol. 147, Senate, 31 October 1935, p. 1179.

¹⁹² *Whaling Act 1935*, Section 6-1, p. 186.

¹⁹³ *Commonwealth Parliamentary Debates*, Vol. 147, Senate, 31 October 1935, p. 1178.

¹⁹⁴ International Whaling Commission, *Scientific Permit Whaling*, p. 1.

<<http://www.iwcoffice.org/conservation/permits.htm>> (13 January 2011).

fouled by sinking obsolete vessels and to protect the shore and especially beaches, from pollution by garbage deposited at sea. *Section 3-1* of the Act prohibited the discharge in Australian waters of rubbish, ashes or organic refuse, without written permission from the Director of Quarantine or Chief Quarantine Officer. *Section 4-1* of the Act prohibited the sinking of vessels without like permission.¹⁹⁵

Enacting such legislation was one thing; enforcing it was another. A question raised in Parliament by Mr Jennings (Watson) in December 1938 indicated that the Act was not being enforced and that ship-sourced pollution was still fouling Sydney's beaches.¹⁹⁶ The apparent lack of action mirrors the reluctance to act against alleged illegal fishing in northern waters throughout the 1930s and is at least partly accounted for by the Commonwealth's limited offshore jurisdiction. Another contributing factor was an apparent reluctance by the Commonwealth to resolve the legal issues and to take responsibility for a growing problem.

Immigration Legislation

In the arena of border protection, immigration legislation predominated, with *Immigration Acts* passed in 1920, 1924, 1925, 1930, 1932 and 1933. These Acts fine-tuned the earlier legislation. For example the *Immigration Act 1920*, extended the definition of prohibited immigrants to include those with specified health issues, anarchists and enemy aliens from the First World War.¹⁹⁷ Of contemporary interest, the *Immigration Act 1920* exempted Indian students from arbitrary conditions which applied to those wanting permanent residence but who were deemed unsuitable.¹⁹⁸

Subsequently, the *Immigration Act 1924* made application of the dictation test easier and the *Immigration Act 1925* responded to tightening of immigration into the USA, by imposing measures to limit immigration from Southern Europe to Australia.¹⁹⁹ This measure was based less on racial issues than on fears that a large influx of Southern Europeans would increase unemployment locally.

¹⁹⁵ *The Whaling Act 1935, Sections 3-1 and 4-1*, p. 212.

¹⁹⁶ *Commonwealth Parliamentary Debates*, Vol. 151, House of Representatives, 8 December 1938, p. 2979.

¹⁹⁷ *The Acts of the Parliament of the Commonwealth of Australia passed during the year 1920, Immigration Act 1920*, Government Printer Victoria, Melbourne, 1920, p. 160.

¹⁹⁸ *Commonwealth Parliamentary Debates*, Vol. XCI, Senate, 25 March 1920, p. 787.

¹⁹⁹ *Commonwealth Parliamentary Debates*, Vol. 110, House of Representatives, 25 June 1925, p. 456.

Customs Legislation

Five Customs Acts emerged in this period, the *Customs Acts 1923, 1930, 1934, 1935* and 1936. Very little of the legislation focused on border protection; most of it being related to changes to duties and tariffs.²⁰⁰ ²⁰¹ In contrast, the 1923 Act listed the circumstances in which vessels could be subject to seizure and forfeiture, including smuggling and hovering within one league of the coast.²⁰²

The 1923 Act also added aircraft to the craft that could be apprehended if suspected of illegality. Following the provisions in the original *Customs Act 1901*, commanders or officers-in-command of any ship, boat or aircraft in His Majesty's service, or in the service of the Commonwealth or Customs, if showing the proper flag or ensign, could pursue any ship or aircraft that failed to stop or land when lawfully directed to do so.²⁰³ The Act also allowed for ships or aircraft being pursued to be fired at or into, to compel them to bring to or land.²⁰⁴

The early *Customs Acts* are clear indications of the approach taken by successive governments to enforce maritime security. They are robust in their acceptance of the use of force, but in reality there were few ships or aircraft available to enforce the law. The 1923 Act is symptomatic of early government approaches to border security and the constabulary function: it took little account of the lack of enforcement capacity.

²⁰⁰ The Acts of the Parliament of the Commonwealth of Australia passed during the year 1930, Vol. XXVIII, *Customs Act 1930*, Government Printer, Canberra, 1930, p. 11.

²⁰¹ *Commonwealth Parliamentary Debates*, Vol. 144, House of Representatives, 29 June 1934, p. 118, and The Acts of the Parliament of the Commonwealth of Australia passed during the year 1936, Vol. XXXIV, *Customs Act 1936*, Government Printer, Canberra, 1936, p. 406.

²⁰² The Acts of the Parliament of the Commonwealth of Australia passed during the year 1923, Vol. XXI, *Customs Act 1923*, Government Printer, Melbourne, 1923, pp. 28-9. Subsequently, the Act of 1934 amended the one league distance to three miles. The Acts of the Parliament of the Commonwealth of Australia passed during the year 1934, Vol. XXXII, *Customs Act 1934, Section 59*, Government Printer, Canberra, 1934, p. 18.

²⁰³ The Acts of the Parliament of the Commonwealth of Australia passed during the year 1923, Vol. XXI, *Customs Act 1901-1923, Section 184*, Government Printer, Melbourne, 1923, p. 125.

²⁰⁴ *Customs Act 1901-1923, Section 184*, p. 125.

Quarantine Legislation

Only two quarantine acts were enacted during the period; the Acts of 1920 and 1924. The *Quarantine Act 1920* was a response to the haphazard way in which soldiers returning from Europe were managed during the influenza epidemic. The States were in charge but lacked uniformity and coherence in their management.²⁰⁵ The Act also provided for compulsory inoculations onboard ship or in designated quarantine areas. As in other instances of legislative overlap, the States feared that this legislation was the beginning of a Commonwealth takeover.²⁰⁶ Acknowledgment of this fear was one reason the Commonwealth was reluctant to accept border protection responsibilities for many years.

Despite the qualms associated with greater Commonwealth powers, the *Quarantine Act 1924* set out to extend them in a quarantine emergency, especially relating to plants and animals.²⁰⁷ It reflected the significant pest issues in some States and a grudging acknowledgement that quarantine was best managed centrally.²⁰⁸ Nevertheless, the 1924 Act retained the process of Commonwealth direction but State-based administration.

The Implications for the RAN Between the Wars

The constabulary function barely touched the RAN in the inter-war years. The main reasons for this were that the RAN was not configured for constabulary work, suffered debilitating cuts in ship and personnel numbers and thus, was not seen by government as a likely contributor to law enforcement at sea.

At the end of the First World War the RAN was a relatively strong force, structured for war. Its main units are listed in Table 4.5 below. There were also some auxiliary ships including a fleet oiler. For its time this was a compact, balanced force, reflecting recent

²⁰⁵ *Commonwealth Parliamentary Debates*, Vol. XCII, Senate, 5 August 1920, p. 3293.

²⁰⁶ *Commonwealth Parliamentary Debates*, Vol. XCII, Senate, 11 August 1920, p. 3402.

²⁰⁷ *Commonwealth Parliamentary Debates*, Vol. 108, House of Representatives, 5 September 1924, p. 4033.

²⁰⁸ *Commonwealth Parliamentary Debates*, Vol. 108, House of Representatives, 5 September 1924, p. 4042.

wartime experiences. None of its units was designed for constabulary work although the torpedo boat destroyers and sloops could have been used. Instead, those remaining in commission after the War were at times used as training ships.²⁰⁹

Warship type	No.	Warship type	No.
Battlecruiser	1	Light cruiser	6
Flotilla leader ²¹⁰	1	Turret ship	1
Torpedo boats 1 st class	1	Sloops	4
Torpedo boat destroyers	11	Submarines	6
Gunboat	1		

Table 4-4: The RAN in 1920²¹¹

The RAN's capacity for constabulary work diminished significantly during the 1920s. Firstly, in Parliament there were occasional calls for cutting the Navy, which was then seen to be too costly.²¹² Intriguingly, Senator Duncan (New South Wales) in one of the calls, noted that the only work the Navy would be called on to do in the near future '... will be merely police work in connexion (*sic*) with the Mandated Territories and the Territories belonging to the Commonwealth'.²¹³ Occasional Parliamentary comments, such as this one, highlight that however ill-suited and unprepared the RAN was for the constabulary task, it was the only Commonwealth government organization with any offshore patrol capacity. Government priorities nevertheless did not include law enforcement at sea and the associated constabulary function. The budget debates and statements in the early 1920s made no mention of them in discussion of Defence.²¹⁴

²⁰⁹ Gillett, *Warships of Australia*, p. 151.

²¹⁰ Flotilla leaders, in this case HMAS *Anzac*, were large destroyers, displacing about 1,660 tons as opposed to the 700 tons of the torpedo boat destroyers. Gillett, *Warships of Australia*, pp. 153 – 5.

²¹¹ *Official Year Book of the Commonwealth of Australia 1901-1920*, No. 14, Government Printer, Melbourne, 1921, p. 1007.

²¹² *Commonwealth Parliamentary Debates*, House of Representatives, Vol. XCIV, 14 October 1920, p. 5665.

²¹³ *Commonwealth Parliamentary Debates*, Senate, Vol. XCVII, 11 October 1921, p. 11809.

²¹⁴ 'Naval Defence Statement by the Minister for the Navy, Explanatory of the Estimates 1920-21', *The Parliament of the Commonwealth of Australia, Parliamentary Papers 1920-21*, Vol. V, Government Printer, Melbourne, 1921, pp. 73-87, *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 108, 7 August 1924, pp. 65-78, and *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 111, 13 August 1925, p. 1382.

Following the Washington Naval Disarmament Conference and the associated *Treaty for the Limitation of Armament*, signed on 6 February 1922,²¹⁵ RAN strength was cut. Ships in commission reduced from 25 to 13 and personnel numbers dropped from 4 843 in 1921 to 3 500 in 1923.²¹⁶ The Washington Treaty impact was compounded by the global economic downturn from the late 1920s. By 1930 the RAN had only four ships in commission; HMA Ships *Australia (II)*, *Canberra*, *Albatross* and *Anzac*.²¹⁷ So dire was the situation that consideration was given to abolishing the RAN as an independent organization, as an economy measure.²¹⁸ At this point the RAN could not undertake any kind of constabulary tasking; *Anzac* being the only ship in any way suitable for such work.

Although this was the Navy's nadir in respect of warship numbers, recovery was slow and did not always occur for predictable reasons. By 1933 a sloop was being built in Sydney's Cockatoo Island dockyard, as relief work for the unemployed. As Mr Harrison (Bendigo) pointed out, the ship was intended only for '... survey work, and other necessary but purely peaceful activities'.²¹⁹ By late 1933, however, the need for re-armament emerged as fears of another war grew.²²⁰ Thus, at a time when the Government was beginning to act against illegal fishing in northern waters, its perception of the Navy's role was being shaped by the growing possibility of war. This remained the case throughout the remainder of the 1930s and the Second World War.

²¹⁵ Stephen Roskill, *Naval Policy Between the Wars: Volume 1—the Period of Anglo-American Antagonism 1919-1929*, Collins, London, 1968, p. 328.

²¹⁶ *Official Year Books of the Commonwealth of Australia 1923, No. 17, and 1924, No. 18*, Government Printer, Melbourne, 1924 and 1925, p. 622 and p. 592.

²¹⁷ *Commonwealth Parliamentary Debates*, Senate, Vol. 125, 9 July 1930, p. 3834.

²¹⁸ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 130, 17 June 1931, p. 2693. The question was put by Mr Lyons (Wilmot) and not rejected outright by Minister for Defence Chifley.

²¹⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 139, 25 May 1933, p. 1852.

²²⁰ The estimates debate on Defence in November 1933 focused entirely on re-armament. *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 142, 16-17 November 1933, pp. 4706-49 and 21 November 1933, pp. 4836-64.

1945-1975: THE COMMONWEALTH STIRS

Resources Protection

After the Second World War resource protection remained the most important constabulary task; becoming more complex as whaling, distant water fishing and the discovery of oil and gas offshore generated new demands. The importance of the task reflected the intent of other nations to fish in waters over which Australia could claim rights, the prospects for offshore oil and gas discoveries with significant economic implications for Australia and Australia's confused and inadequate offshore legal regime.

Attention focused first on the pearling industry, with fears that the Japanese would reappear because of local labour shortages.²²¹ Subsequent reports of Japanese pearlers operating off the coasts of north-west Australia and Papua New Guinea drew calls for naval patrols and an indication that there was little capacity available. The patrol craft at Manus Island in Papua New Guinea was undergoing maintenance when the pearlers were reported off the coast.²²² Subsequent expressions of concern over pearling were overtaken by the declining demand for pearl shell, being replaced by plastic for many uses.²²³ Nevertheless, observation of the Japanese pearling operations in 1959 was conducted by an RAN oceangoing tug, indicating the limitations of the surface patrol capacity.²²⁴

Whaling also grew in importance during the late 1940s, because of foreign activity in waters of interest to Australia and the establishment of a short-lived Australian industry. Foreign whaling activity began with reports of Japanese whalers in Antarctic waters and the prospect of Australia following suit.²²⁵ External Affairs Minister Evatt noted in Parliament that Japan was not serious about complying with International

²²¹ *Commonwealth Parliamentary Debates*, Vol. 215, House of Representatives, 21 November 1951, p. 2395, and Vol. 220, House of Representatives, 4 November 1952, p. 4030.

²²² *Commonwealth Parliamentary Debates*, Vol. 221, House of Representatives, 18 February 1953, p. 90.

²²³ *Commonwealth Parliamentary Debates*, Vol.17, Senate, 30 March 1960, p. 343.

²²⁴ *Commonwealth Parliamentary Debates*, Vol.16, Senate, 10 November 1959, p. 1291.

²²⁵ *Commonwealth Parliamentary Debates*, Vol. 189, House of Representatives, 13 November 1946, p. 179.

Whaling Regulations and thus Australia would not support further Japanese whaling expeditions in the Antarctic.²²⁶

In 1962, more whaling countries appeared not to be cooperating with the International Whaling Commission over the take of hump-back whales in Antarctic waters, with implications for whaling off the Australian coast. Furthermore, Russian whaling off the Australian coast may have led to a scarcity of whales in the 1962 season.²²⁷ Russian whalers continued to operate in waters off Australia amid concerns that RAN patrols might be needed to protect the local industry.²²⁸

Nevertheless, east coast whaling ceased in 1962 because of depleted stocks. While the whaling station in Albany Western Australia remained operational, the International Whaling Commission decided against setting sperm whale quotas for the Australian coast²²⁹ and Russian whalers continued to operate legally off the west coast.²³⁰ Whaling attracted little more attention during this period, apart from receiving an acknowledgement in Parliament that it was not being policed by the RAN either in Antarctic waters or the Indian Ocean as late as 1971.²³¹

Throughout the 1950s and 1960s concern grew in Australia at the extent of exploitation of local fish stocks; notably by Japanese, Chinese and Taiwanese fishers. Despite the very small Australian fishing industry, a constant theme was of sightings of foreign fishing fleets off the Australian coast, assumptions that they were fishing illegally and calls for naval patrols to stop them.

Early concerns included Japanese tuna fishing off the Queensland coast and in the Coral Sea.²³² By the early 1960s large Japanese tuna fishing fleets were also operating

²²⁶ *Commonwealth Parliamentary Debates*, Vol. 192, House of Representatives, 5 – 6 June 1947, p. 3689.

²²⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 37, 24 October 1962, p. 1861.

²²⁸ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 42, 21 April 1964, p. 297.

²²⁹ *Commonwealth Parliamentary Debates*, Senate, Vol. 26, 20 August 1964, p. 154.

²³⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 45, 25 March 1965, p. 420.

²³¹ *Commonwealth Parliamentary Debates*, Senate, Vol. 49, 28 September 1971, p. 880.

²³² *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 1, 13 October 1953, p. 1268.

off Western Australia amidst questions, from Mr Collard (Kalgoorlie) for example, as to why Australia had no comparable tuna industry.²³³ Throughout the 1960s the Japanese fleets fished off the east, west and southern coasts and generated concern in Parliament.²³⁴ Mr Fulton (Leichardt) complained about Japanese fishing operations in Torres Strait, and asked for patrol boats to protect Australian interests.²³⁵

The situation was exacerbated by the appearance of fishing vessels from Russia, South Africa, China and Taiwan in the late 1960s. Concerns grew that foreign fishing vessels were operating within the 12 nm fishing zone and even within the territorial sea. Calls grew for patrol boats to be based around the coast.²³⁶ Particular attention was demanded for patrols of the Gulf of Carpentaria during the 1960s especially, over fears that foreign fishers were ruining the local prawn industry.²³⁷ This followed claims of over 100 foreign fishing vessels in the Gulf in 1968 and no patrols to monitor their activities. Consequently, there was another call, from Mr Fulton, to establish a coast guard if the Services could not meet the demand for patrols.²³⁸

The discovery of offshore oil and gas deposits led to questions about protecting the associated infrastructure. Although oil was found in Exmouth Gulf (Western Australia) in 1954²³⁹ years passed before protection of the offshore infrastructure became a significant issue.

An intractable problem concerning access to offshore resources was the legal status of Australian waters. Throughout the 1960s Parliament debated the Commonwealth's offshore jurisdiction – whether it actually had any and what limits might apply.²⁴⁰ Debate also considered whether the States had any jurisdiction beyond the low water

²³³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 37, 15 November 1962, p. 2457.

²³⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 58, 19 March 1968, p. 220.

²³⁵ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 58, 2 May 1968, p. 1019.

²³⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 61, 12 November 1968, pp. 2703-4. Dr Patterson (Dawson) asked for more naval bases in the north and lamented the lack of a naval presence there.

²³⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 63, 21 May 1969, p. 2037.

²³⁸ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 59, 16 May 1968, p. 1550.

²³⁹ *Commonwealth Parliamentary Debates*, Senate, Vol. 4, 4 August 1954, p. 18.

²⁴⁰ See for example, *Commonwealth Parliamentary Debates*, Senate, Vol. 24, 10 September 1963, p. 426, and *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 61, 28 November 1968, p. 3420.

mark.²⁴¹ Resolution of this question was hampered by a mistaken perception that before Federation the colonies had acquired territorial seas. The question was not clarified by the differing opinions proffered by the Judges of the High Court in the case *Bonser v La Macchia* in 1969.²⁴²

The inadequacy of the resources available to patrol coastal waters and monitor the activities of Australian and foreign commercial fishers, was equally disturbing. There were claims that the coast from Cairns to Carnarvon was practically defenceless and even when the Navy acquired patrol boats in the 1960s there were complaints that they were too slow and too few.²⁴³

Marine Environmental Protection

The state of the marine environment became more pressing during this period as the importance of coastal waters for resources and tourism became better appreciated. Ship-sourced pollution, the health of the Great Barrier Reef, oil and gas rig safety and the need for legal clarity were the main problems.

Ship-sourced oil pollution appeared either as slicks from leaks, or deliberate discharge which sometimes washed ashore, and slicks from ships holed after running aground. During the period the most serious incident was the grounding of the *Ocean Grandeur* in Torres Strait on 3 March 1970, with a significant oil spill.²⁴⁴ This incident lent weight to earlier expressed concerns over tankers sailing inside the Great Barrier Reef, the potential for similar accidents there and the huge consequential environmental implications.²⁴⁵

²⁴¹ *Commonwealth Parliamentary Debates*, Senate, Vol. 58, 8 November 1973, p. 1735.

²⁴² Gullett, *Fisheries Law in Australia*, pp. 25-31.

²⁴³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 66, 12 March 1970, p. 414, and *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 71, 31 March 1971, p. 1206. These matters were raised by Mr Bryant (Wills) and Mr Drury (Ryan) respectively.

²⁴⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 66, 3 March 1970, p. 16.

²⁴⁵ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 63, 21 May 1969, p. 2095, notes that in the Financial Year 1966-67, 143 loaded international tankers used the Reef while another 190 tankers in ballast also did so.

Other important threats to the health of the Great Barrier Reef included the Crown of Thorns Starfish, commercial fishing and the potential for oil exploration on the Reef.²⁴⁶ The uncertainty as to State and Commonwealth jurisdiction which made the legal position on resource protection unclear had the same impact on marine environmental protection. Mr Fulton raised the matter twice in Parliament during 1968.²⁴⁷ The matter was raised again in 1971 along with a call for uniform marine oil pollution laws among the States and the Commonwealth.

Border Protection

During this period border protection matters drew less attention than resources and environmental protection. Nevertheless, smuggling became a greater problem, with drugs becoming especially prevalent, and a substantial export trade emerged in Australian native birds. Drug smuggling became a major issue in the 1960s with Asian drug rings becoming prominent.²⁴⁸ Customs reported that they had intercepted 112 drug shipments in the year to February 1967.²⁴⁹ Although the coastline remained very much open to smuggling, most of the drugs entered Australia through seaports and airports. By contrast, outward bird smuggling took place mainly from small ports, making the crime difficult to counter.²⁵⁰

The challenge of countering the smuggling trade was exacerbated by a shortage of Customs officers and by suggestions of corruption in 1969. Twenty four officers were charged with allowing the evasion of duties worth over \$2m. The problem was as much the result of the shortage of officers and disorganization within the Sydney office as it was corruption.²⁵¹

Quarantine remained a relatively high priority, with continuing concerns about foot and mouth disease being introduced through illegal landings by foreign fishers on the

²⁴⁶ *Commonwealth Parliamentary Debates*, Senate, Vol. 42, 20 August 1969, p. 167.

²⁴⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 58, 26 March 1968, p. 411, and 2 May 1968, p. 1037.

²⁴⁸ *Commonwealth Parliamentary Debates*, Senate, Vol. 38, 19 September 1968, p. 803.

²⁴⁹ *Commonwealth Parliamentary Debates*, Senate, Vol. 33, 28 February 1967, p. 121.

²⁵⁰ *Commonwealth Parliamentary Debates*, Senate, Vol. 47, 27 April 1971, p. 1010.

²⁵¹ *Commonwealth Parliamentary Debates*, Senate, Vol. 40, 18 March 1969, pp. 390, and 409.

north-west coast.²⁵² The beginning of the container trade and the growth of unscheduled light aircraft traffic to and from Southeast Asia, were also expected to generate challenges for quarantine officials.²⁵³

Immigration remained a relatively minor border protection issue, although some concerns were expressed about a small number of illegal immigrants. Some 1,674 people arrived in Australia without proper documentation; 1,542 by air, between 1967 and 1969. All but three were allowed to remain; discrepancies in documentation being mainly oversight by the travellers.²⁵⁴ Additionally, from 1967 to 1970, 2,315 seamen deserted from their ships in Australian ports, many remaining at large.²⁵⁵

The Government Response

Immediately after the Second World War the Commonwealth had many challenges in returning the country to a peacetime footing and managing public expectations. Consequently, little attention was paid to the constabulary function and the border protection and associated tasks. As political and public interest grew in resources protection and other offshore security issues, the Commonwealth was forced to act. As in earlier periods, however, the Government reaction was reluctant, poorly coordinated and until the end of this period, still limited by the lack of clarity in offshore sovereignty legislation.

Although there were fears in the immediate post-war years of another global war at any time, the Commonwealth Government strictly limited defence spending, especially in the early years. Prime Minister Chifley announced in 1947 that '... the Services should be small and efficient...'.²⁵⁶ They became small quickly and the Government

²⁵² *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 90, 3 October 1974, p. 2271.

²⁵³ *Commonwealth Parliamentary Debates*, Senate, Vol. 42, 16 September 1969, p. 837, and House of Representatives, Vol. 86, 12 November 1973, p. 3097.

²⁵⁴ *Commonwealth Parliamentary Debates*, Senate, Vol. 46, 22 October 1970, p. 1389.

²⁵⁵ *Commonwealth Parliamentary Debates*, Senate, Vol. 47, 16 March 1971, p. 555.

²⁵⁶ Hector Donohue, *From Empire Defence to the Long Haul: Post-war defence policy and its impact on naval force structure planning 1945-1955*, Maritime Studies Program, Canberra, 1996, p. 43.

admitted in 1947 that there were insufficient people to maintain reserve patrol craft in Brisbane.²⁵⁷ By 1948 the RAN permanent forces comprised only 6,859 people.²⁵⁸

Concerns over the limited capacity of the Services continued through the 1950s and early 1960s, with Labor's Kim Beazley (Senior) in late 1961 suggesting steps needing to be taken if '... we are ever to have what could be regarded as a deterrent navy as distinct from a police navy, which is what the Royal Australian Navy is'.²⁵⁹ Government incapacity to deal with the demands of the constabulary function was evident in its basing of the inadequate HMAS *Banks* in Darwin for both survey and patrol work.²⁶⁰

Because of concerns over foreign fishing throughout the 1950s there were several parliamentary calls for naval forces to be based in the north. Government responses pointed out that forces could be moved there if they were needed,²⁶¹ or that those already there were adequate. For example, Mr Osborne, the Minister for Air, was typically offhand in August 1958; identifying the RAN presence in northern waters as four ships engaged in survey operations and 'other tasks'.²⁶²

There were still suggestions that the constabulary function should not be a Defence responsibility. For example, in 1950 a patrol boat was operated by a Coastal Patrol Service in Darwin and consideration was given to bringing the patrol craft operated by the Native Affairs Department and the Police into the Coastal Patrol Service.²⁶³ Most revealing was the indication that the Navy had '... long pressed the point that warships were not built, equipped or manned to act economically as fisheries

²⁵⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 192, 3 June 1947, p. 3237.

²⁵⁸ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 196, 23 April 1948, p. 1112. There were also 4,248 Reservists.

²⁵⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 34, 5 October 1961, p. 1741.

²⁶⁰ *Banks* was a general purpose vessel with a top speed of only 10 kts, a crew of 16 and was very lightly armed. It was thus of limited use for offshore patrol work. Gillett, *Warships of Australia*, p. 264.

²⁶¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 218, 6 August 1952, p. 65.

²⁶² *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 20, 14 August 1958, p. 367.

²⁶³ 'Report on the Administration of the Northern Territory 1948-49', p. 22, *The Parliament of the Commonwealth of Australia, Papers Presented to Parliament 1950-51, Vol. II*, Government Printer, Canberra, 1951, p. 856.

surveillance vessels'.²⁶⁴ Later, in 1971, even after the Navy became formally involved, the Minister for the Navy openly questioned whether constabulary work was a task for the Navy or for a coast guard.²⁶⁵

An indication that the constabulary function would demand greater attention came with the Customs Department proposal in May 1969 to purchase aircraft for northern littoral surveillance and its suggestion that Australia should consider formation of a coast guard.²⁶⁶ While the government did not act on these proposals, it did establish an Interdepartmental Committee later in 1969 to examine the coastal surveillance needs.²⁶⁷ This was the first of several such committees over the following six years.

When the Government eventually engaged formally in the constabulary function its earlier reluctance remained evident. The purchase of patrol boats for the RAN in the mid-1960s responded to the need for additional forces to deal with Indonesian Confrontation. It was not a response to foreign fishing or other offshore activity in Australian waters.²⁶⁸ Twenty Attack Class patrol boats were commissioned in 1967 and 1968 and with Confrontation having ended in 1966, the patrol craft were available for other employment.

There was still no urgency to base them in northern waters, the focus of most concern over foreign fishing. Initial plans had the boats based in the southern States capital cities and in Darwin; with the majority in Fremantle, Melbourne and Sydney.²⁶⁹ By 1969 there were only four patrol boats in northern waters, but in 1970 the Government announced the building of a base in Cairns to support three boats.²⁷⁰ Even as the patrol boats assumed the constabulary function and conducted fisheries patrols, their shortcomings were exposed. The Attack Class proved to be too slow, poorly armed and

²⁶⁴ Robert Hyslop, *Aye Aye, Minister: Australian Naval Administration 1939-59*, Australian Government Publishing Service, Canberra, 1990, p. 131.

²⁶⁵ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 71, 31 March 1971, p. 1206.

²⁶⁶ R.G. Wilson, *Australian Coastal Surveillance: Images and Information*, thesis submitted for the degree of Doctor of Philosophy, University of New South Wales, 1985, p. 81.

²⁶⁷ Wilson, *Australian Coastal Surveillance: Images and Information*, p. 81.

²⁶⁸ Gillett, *Warships of Australia*, p. 227.

²⁶⁹ *Commonwealth Parliamentary Debates*, Senate, Vol. 48, 28 October 1965, p. 2388.

²⁷⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 69, 23 September 1970, p. 1499.

not well adapted for tropical operations.²⁷¹ By 1974, just seven years after the first of the Attacks commissioned, plans were in place to replace them, thereby giving substance to the criticisms.²⁷²

Legislative Development

The lack of capacity to enforce the law in Australian coastal waters underlay all challenges to the constabulary function. This became increasingly apparent as more attention was paid to coastal waters and as foreign fishing expanded in waters off the Australian coast. Ultimately it led to the enactment of ground breaking legislation which greatly increased Commonwealth control over coastal waters and of activities in them.

Resources Legislation

The first significant legislation was the *Fisheries Act 1952* which legislated for the management of fishing in 'Australian waters' beyond the three nautical mile territorial sea limit.²⁷³ Until then existing legislation (State and Commonwealth) was confined within the territorial sea. While the Act did not specify which waters outside the three nautical mile limit would be affected, it stated that certain of those waters would be proclaimed for the regulation of fishing.²⁷⁴ Debate on the *Fisheries Bill 1952* noted the economic importance of the Australian fishing industry, including pearling and whaling.

Parliament was influenced by expanding offshore legislative activism in other parts of the world, notably the USA, which claimed jurisdiction over the natural resources of its continental shelf.²⁷⁵ It was also influenced by the potential of increasing foreign fishing to affect Australian fisheries. Agreements to regulate these operations off the

²⁷¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vols. 48, 21 October 1965, p. 2057, 28 October 1965, p. 2381, and Vol. 64, 20 August 1969, p. 490.

²⁷² *Commonwealth Parliamentary Debates*, Senate, Vol. 61, 2 October 1974, p. 1577.

²⁷³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 216, 28 February 1952, p. 564. See also Gullett, *Fisheries Law in Australia*, pp. 18-25 for an explanation of the associated constitutional legal debate from before Federation.

²⁷⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 216, 28 February 1952, p. 564.

²⁷⁵ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 216, 28 February 1952, p. 565.

Australian coast would need the legal foundation provided by the 1952 Act.²⁷⁶ The Act was amended by the *Fisheries Act 1953*, which included the extra-territorial waters of Australia's external territories.²⁷⁷ It was further amended by the *Fisheries Act 1959* which provided the power to manage specific species or other categories of fish, in extra-territorial waters.²⁷⁸ This Act also ensured the licensing of all Australian commercial fishers. There was still no coherent program to establish an offshore legislative regime for Australia. The laws being passed reflect government reaction to pressures from industry and to a lesser extent the public.

The first legislative sign of major change came with the *Fisheries Act 1967*, which extended Australia's exclusive fishing zone to 12 nm, thus providing control of fishing to all waters between the three mile and 12 mile limits.²⁷⁹ The Act also introduced licensing for foreign fishing vessels, with a phase-in period for those vessels which had fished in Australian waters for some time.²⁸⁰ By formalizing Commonwealth responsibility for fisheries legislation beyond territorial waters and by acknowledging the growing presence of foreign fishers, this legislation responded to community concerns expressed frequently in the Parliament.

The legislative effort gained impetus in 1969 from a case brought against a fisher accused of using illegal equipment while fishing some six miles off the New South Wales coast (*Bonser v La Macchia*). The High Court found unanimously against the defendant, but the judges split on determining the inner limit of Commonwealth power over fisheries.²⁸¹ This case and the differing views of the High Court judges, led to more assertive Commonwealth legislative efforts.

²⁷⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 216, 28 February 1952, p. 565.

²⁷⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 221, 18 February 1953, p. 34.

²⁷⁸ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 23, 13 May 1959, p. 2033.

²⁷⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 55, 12 May 1967, pp. 2033-4.

²⁸⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 57, 24 October 1967, p. 2161.

²⁸¹ Gullett, *Fisheries Law in Australia*, p. 26. Three judges considered the inner limit was 3nm, one concluded it was at the low water mark and two judges offered no opinion.

More change, reflecting the increasing economic value of the fishing industry and recognition of the need to manage fish stocks, came in the *Fisheries Act 1973* which enabled more limitations to be placed on fishing in specific areas and with respect to specific species, and required licenses for fishing in these areas.²⁸² The Law also limited the amount of fishing gear carried by vessels and nominated penalties for illegal fishing, including suspension of license and forfeiture of vessels. The *Fisheries Act 1973* was enacted with the expectation that Australia's claim for a 200nm fishing zone would be upheld in law of the sea negotiations and lead to further legislation.²⁸³

The final piece of fisheries legislation in this period was the *Fisheries Act 1975* which was aimed at Indonesian commercial and other fishing activity off the Australian north-west coast.²⁸⁴ It limited Indonesian fishing off the Australian coast to areas near the Ashmore, Cartier and Scott Islands and reefs. This Act strictly limited the ability of Indonesian fishers to land when looking for fresh water, because of quarantine and illegal entry concerns.²⁸⁵

Non-living natural resources also gained attention in this period, not least because of the growing importance of offshore petroleum deposits and the still unresolved matter of Commonwealth and State jurisdiction beyond the low water mark. The first significant legislation was the *Petroleum (Submerged Lands) Act 1967*, providing a legislative framework for the exploration and exploitation of offshore petroleum adjacent to Australia.²⁸⁶ The Commonwealth and States' agreement to ensure legality of titles for search and production of petroleum, but without any impact on the States' constitutional claims, was an important aspect of the Act.²⁸⁷

²⁸² *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 85, 12 December 1973, p. 4635.

²⁸³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 85, 12 December 1973, p. 4634.

²⁸⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 93, 26 February 1975, pp. 797-8.

²⁸⁵ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 93, 26 February 1975, p. 798.

²⁸⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 57, 18 October 1967, p. 1941.

²⁸⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 57, 18 October 1967, p. 1941.

It took a change of government for real progress to be made and even then the contest for offshore sovereignty between the Commonwealth and the States was not resolved easily. On 10 May 1973, the new Labor Government introduced the *Seas and Submerged Lands Bill 1973*.²⁸⁸ This Bill expressed Labor frustration at the failure of the previous coalition Government to progress its own *Territorial Sea and Continental Shelf Bill 1970*, because of the differences between the Commonwealth and State Governments over offshore sovereignty.²⁸⁹

The 1973 Bill tried to remove doubts over the Commonwealth's exclusive rights to sovereign control of seabed resources from the low water mark to the outer limit of the continental shelf. Furthermore, it aimed to provide a legislative framework for offshore exploration and exploitation of petroleum and other minerals.²⁹⁰ The Government anticipated that the States would lodge legal claims against the Bill. The Opposition also failed to support the Bill, objecting especially to *Part III* which sought to establish a mining code for all minerals, which was to be managed by the Commonwealth, thereby impacting on the States' presumed powers.²⁹¹ In a very significant ruling the High Court of Australia, on 17 December 1975, upheld the *Seas and Submerged Lands Act 1973*, thus granting the Commonwealth legal authority over the territorial sea and continental shelf from the low water mark.²⁹²

The Commonwealth Government had attempted to enact a legal regime which would give it unprecedented offshore authority and which would, by design or by default, enable it to assume responsibility for the constabulary function in a comprehensive and coherent way not previously possible.²⁹³ Its new powers would be tested in different ways and in a relatively short time.

²⁸⁸ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 83, 10 May 1973, p. 2005.

²⁸⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 83, 10 May 1973, p. 2005. See also, *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 66, 16 April 1970, p. 1276 for the tabling of the 1970 Bill.

²⁹⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 83, 10 May 1973, p. 2005.

²⁹¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 83, 10 May 1973, pp. 2007-8.

²⁹² High Court of Australia, *NSW v Commonwealth* [1975] HCA 58; (1975) 135 CLR 337 (17 December 1975). <www.austlii.edu.au/au/cases/cth/HCA/1975/58.html> (23 September 2011). Five of the judges pronounced in favour without reservation, while two of the judges ruled in favour of specific parts of the legislation.

²⁹³ Coincidentally other legislation, such as the *Petroleum (Submerged Lands) Act 1973*, was being enacted to delimit the seabed boundaries between Australia and neighbouring countries. See,

Border Protection Legislation

Although Customs-related legislation dominated the border protection category from 1945 to 1975, little of it was significant for border protection. There were several *Customs Acts* passed between 1950 and 1963, which mainly amended and strengthened administrative and other processes.²⁹⁴ Nevertheless, as the period closed increasing interest in border protection was reflected in two Acts.

The *Customs Act 1967* was the first to reflect growing community and legal concerns over narcotic drugs and especially their illegal importation. This Act increased penalties for crimes associated with narcotics and also emphasized the responsibilities of captains of ships and aircraft with respect to allowing their craft to be used for smuggling.²⁹⁵ The *Customs Act (No. 2) 1971* had a similar focus and aimed to strengthen the law in relation to illegal importation of narcotic drugs. Despite the earlier legislation, the drug problem continued to worsen, with only about 15 per cent of the illegal substances being intercepted enroute to Australia.²⁹⁶

By 1973, the Customs focus had widened to include flora and fauna. The *Customs Act 1973* enabled Customs to include endangered fish species within its purview under the *CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora)* to which Australia had subscribed.²⁹⁷

Migration legislation during the period dealt primarily with administrative processes and while it reflected ongoing concerns over illegal entrants, it also introduced the first liberalization of racially-based immigration policy. The *Immigration Act 1948* improved

for example, *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 83, 2 May 1973, pp. 1585, 1971-73.

²⁹⁴ See for example, *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 211, *Customs Act 1950*, 29 November 1950, p. 3342, and *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 39, *Customs Act 1963*, 12 September 1963, p. 945.

²⁹⁵ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 55, 16 May 1967, p. 2182.

²⁹⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 75, 11-12 November 1971, p. 3420.

²⁹⁷ Prior to enactment of this legislation, fish were not subject to Customs legislation.

Commonwealth Parliamentary Debates, House of Representatives, Vol. 87, 26 November 1973, p. 3840.

regulation of migration agents and the deportation of stowaways.²⁹⁸ Subsequently, the *Immigration Act 1949* acted on a High Court ruling invalidating the prior issuing of certificates of exemption to thousands of persons who might otherwise have been declared prohibited immigrants, and required the retrospective application of the dictation test.²⁹⁹ The dictation test was replaced by a system of entry permits in the *Migration Act 1958*, which also liberalized other processes, including those associated with deportation. This Act recognized the damage which the dictation test was doing, especially to Australia's relationships with Asian countries and acknowledged that the test was no longer appropriate.³⁰⁰

The growth in air travel created a significant risk of introducing diseases from which Australia had remained free and resulted in the *Quarantine Act 1947* and the *Quarantine Act (No. 2) 1947*. The first Act applied stricter controls over the movement of people and animals that might prove to be health risks, while the second Act increased the Minister's powers in the case of any quarantine emergency.³⁰¹ Later, the *Quarantine Act 1969* revised the penalties for quarantine breaches and focused on the potential economic impact of any outbreak of foot and mouth disease.³⁰²

Environmental Legislation

Beginning in 1960, three successive Acts moved to reduce the potential for damage from spills or intentional discharge of oil at sea. The *Pollution of the Sea By Oil Act 1960* followed the coming into force in 1958 of the *International Convention for the Prevention of Pollution of the Sea by Oil, 1954*. It applied outside the territorial sea, and was followed by complementary State legislation to cover territorial waters. The 1960 Act specified

²⁹⁸ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 190, 28 October 1948, pp. 2359-61.

²⁹⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 202, 9 June 1949, pp. 806-7.

³⁰⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 11, 1 May 1958, p. 1396.

³⁰¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 192, 23 May 1947, pp. 2855-7, and Vol. 195, 4 December 1947, p. 3259.

³⁰² *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 60, 26 September 1968, p. 1601, and *Commonwealth Parliamentary Debates*, Senate, Vol. 40, 26 February 1969, p. 99.

distances offshore beyond which oil could be discharged, penalties for improper discharge, inspection and control mechanisms and the regulators' powers.³⁰³

The two later Acts, *Pollution of the Sea By Oil Acts 1965* and *1972*, extended these provisions. The 1965 Act extended the types and size of ships covered by the legislation, extended prohibited zones and totally prohibited discharge from new ships of greater than 20,000 tonnes. It also increased penalties for improper discharge.³⁰⁴ The 1972 Act reduced further the amount of oil that could be discharged and included the Great Barrier Reef as part of Australia's coastline, for protection.³⁰⁵ The strong focus on marine oil pollution was emphasized with the amendment to the *Navigation Act* in 1971, making ships' owners and masters responsible for oil spill clean-up.³⁰⁶

Public and parliamentary pressure for specific legislation to protect the Great Barrier Reef was rewarded partially with the establishment of Royal Commissions, with identical terms of reference, by the Commonwealth and Queensland Governments, in 1970. Both Royal Commissions examined the implications of drilling for petroleum on the Reef.³⁰⁷ Ultimately, the *Great Barrier Reef Marine Park Act 1975* was passed. It established the Marine Park Authority, which was to identify areas of the Reef to be included in the Marine Park and decide appropriate uses for the entire Reef.³⁰⁸ The Act prohibited any drilling on the Reef unless authorized by the Authority.

The Implications of the Constabulary Function for the RAN

Growing community and political interest in offshore activities around Australia after the Second World War had some significant impacts on the RAN. Firstly, the application of the Attack class patrol boats to the constabulary function in the late 1960s was evidence of government acceptance that the function was a Navy

³⁰³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 26, 30 March 1960, p. 740.

³⁰⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 45, 17 March 1965, p. 82.

³⁰⁵ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 81, 24 October 1972, p. 3085.

³⁰⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 71, 31 March 1971, pp. 1225-6.

³⁰⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 67, 5 May 1970, p. 1594.

³⁰⁸ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 95, 22 May 1975, p. 2679.

responsibility. Prior to that, as noted in Parliament in 1968, the Navy had conducted only incidental fisheries patrols.³⁰⁹

Secondly, the introduction of the Attacks and their allocation to fisheries patrols and to other law enforcement tasks, represented the acceptance of a new task by the RAN, which had significant long and short-term ramifications for the organization. Firstly, the RAN began operating from more bases, spread around the coast and developed new operating facilities in Cairns (1974) and Darwin (1970).³¹⁰ In the longer term this posed challenges, such as provision of industrial and other logistics support and provision of facilities for patrol boat crews and their families.

The new tasking also provided early command opportunities for junior officers³¹¹ and an excellent training environment. It also introduced the RAN to the complexities of the law of the sea and of Australia's own legal framework, which would evolve significantly in response to the growth of foreign maritime activity off Australia's coast.

Involvement in the constabulary function also brought the Navy into the public and political eye with an unaccustomed regularity. Much attention related to interceptions of foreign fishing vessels and the supposed inadequacies of the Attack Class patrol boats. Mostly, it was not contentious. But the Navy's leaders at the time were not politically astute and in the eyes of one observer, '... they had difficulty in understanding politics and they doubted whether politics was either valuable or essential'.³¹² Thus in late 1968 the Naval Board was forced to disagree publicly with the repeated assessments by the Fleet Commander (Rear Admiral 'Buster' Crabb) that the Navy needed 40 or 50 patrol boats, rather than the 20 in service.³¹³ The need for

³⁰⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 59, 29 May 1968, p. 1703.

³¹⁰ J.H. Straczek, *Royal Australian Navy A - Z: Ships, Aircraft and Shore Establishments*, Navy Public Affairs, Sydney, 1996, pp. C-2 and C-9.

³¹¹ Alastair Cooper, '1955-1972: The Era of Forward Defence', in David Stevens, ed., *The Royal Australian Navy: The Australian Centenary History of Defence*, Vol. III, Oxford University Press, South Melbourne, 2001, p. 201.

³¹² Tom Frame, *Where Fate Calls: The HMAS Voyager Tragedy*, Hodder and Stoughton, Sydney, 1992, p. 5.

³¹³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 61, 16 October 1968, p. 1993.

political astuteness would be demonstrated repeatedly in succeeding years, not least in respect of the Navy's involvement in the constabulary function.

CONCLUSIONS

The constabulary function of the Navy was very slow to develop after Federation and only became a formal part of Navy tasking after 1967 and the arrival of the Attack class patrol boats. This reflected the nation's approach to civil maritime security concerns, which also evolved gradually, in an *ad hoc* manner and sometimes grudgingly. Limited resources were a significant factor in the Federal Government's ability to respond to maritime security demands, along with restricted offshore jurisdiction, until a landmark High Court decision in December 1975.

Although illegal immigration and the need to maintain secure customs borders were the initial focus of the Federal Government, management of offshore resources became an important issue before the First World War and remained so for much of the period under review. Pearl and other fishing, including whaling, were joined towards the end of the period by offshore oil and gas as the predominant marine resource challenges. Concerns about the marine environment and the effects of marine pollution also grew slowly, but in the latter part of the period they became significant, with the Great Barrier Reef becoming a particular focus.

The Federal Government had few resources with which to respond to civil maritime security challenges in the first decades after Federation. Also, for many years responses seemed to be driven more by expected costs than by any desire to deter the challenges. The first serious surface patrols appeared in northern waters in the 1930s but it was many years before they were supported by aerial surveillance. Throughout the period there was no consensus as to whether Defence should be responsible for the constabulary function, a matter highlighted when the first true Navy patrol boat force, the Attack class, was not acquired specifically for constabulary work.

Commonwealth legislation relating to civil maritime security functions was relatively slow to emerge with two exceptions. Laws were passed very soon after the sitting of the first Parliament to restrict immigration and to enable the collection of revenue from

Customs duties and tariffs. They were followed by the *Quarantine Act 1908*. The first substantial marine environmental legislation was not passed until 1932. Fisheries legislation began appearing from 1952 and grew in importance and complexity as the Australian Fishing Zone (AFZ) was declared and ultimately extended to 200nm.

Other marine resource legislation appeared from 1967 in support of offshore oil and gas exploration, while long-standing legislation faced change because of domestic and international developments. Thus immigration law was modified to reflect the end of the so-called 'White Australia Policy' and Customs and Quarantine laws were amended to cater for the strong growth in international air travel. Customs legislation also responded to problems from the smuggling of drugs into Australia, and the smuggling of flora and fauna into and out of the country. Towards the end of the period, marine environmental legislation gained prominence, especially in response to international action to combat marine pollution and in acknowledgement of the increasing economic and environmental importance of the Great Barrier Reef.

Although the RAN conducted occasional patrols in support of the constabulary function from early post-Federation days, many years passed before the function was formally acknowledged. This reflected both ongoing uncertainty as to whether the function was properly a Navy one, and the fact that the RAN was generally a very small force, limited in every aspect of its operational responsibilities. Even when the Attack class boats appeared from 1967, they were not initially tasked primarily on constabulary operations. By the end of 1975, however, the patrol boat force was engaged deeply in the constabulary function in both northern and southern waters, for the first time providing the RAN with a significant peacetime public profile.

CHAPTER FIVE

THE EVOLUTION OF THE CONSTABULARY FUNCTION OF NAVIES: THE AUSTRALIAN EXPERIENCE - 1976 TO 1988

INTRODUCTION

From 1976 to 1988 development of the constabulary function in Australia was marked by several significant issues. Firstly, the 1975 High Court decision on offshore jurisdiction evolved to produce a compromise settlement with the States known as the *Offshore Constitutional Settlement*. Secondly, the extension of the Australian Fishing Zone (AFZ) from 12 nm to 200 nm and the declaration of an exclusive economic zone (EEZ) of the same width, extended the nature and extent of the constabulary function and demanded a more comprehensive government response. Thirdly, for the first time since Federation people began arriving irregularly by boat. These asylum seekers, later termed irregular maritime arrivals, have come in several waves since 1976. Their arrival has ignited old fears of invasion and has been exploited by political parties. Finally, government response to the changing demands of the constabulary function evolved slowly and hesitatingly, from *ad hoc* reactions to comprehensive deterrence involving the coordinated efforts of several government instrumentalities. This response emerged from a series of reviews conducted within and for the Government, which exposed the extent and complexity of the constabulary function and the means of enabling it.

This chapter continues examination of the evolution of the constabulary function in respect of the three main tasks associated with it in Australia. The chapter also analyzes the government response to those issues, including legislative action, and the implications for the Navy of the issues and government response to them. This analysis will demonstrate how the demands of maritime law enforcement expanded and how governments struggled to develop a coherent response. It will also demonstrate the growing involvement of the Navy in the constabulary function and the potential for this involvement to impact on other aspects of the Navy's operations.

FROM 1976 TO 1988: TRIAL AND ERROR

Border Protection-Immigration

From 1945 until 1975 resources protection had been the main focus of the constabulary function. There was a dramatic change after 1975 with the arrival of the first asylum seekers¹ attempting to make unauthorized landings in Australia by boat. Prior to 1975 refugees or asylum seekers, were virtually unknown in Australia.² Geographical isolation and restrictive immigration policies had combined to insulate the country from refugee flows common in other parts of the world. Consequently, the few irregular maritime arrivals before 1975 were dealt with individually by the Immigration Minister under the *Migration Act 1958*.³

Circumstances changed quickly with the outflow of refugees from Vietnam after the reunification of the country in 1975. The first boatload of Vietnamese irregular maritime arrivals, five men, arrived in Darwin on 26 April 1976. This began what became the first wave of then so-called 'boat people', some 2,059 people when the last of the wave arrived in August 1981.⁴ By October 1977, the eleventh boat carrying irregular maritime arrivals had arrived on the north coast⁵

By then, irregular maritime arrivals were causing concerns for more than the immigration authorities. A report that one group of Vietnamese had spent a week on the north-west coast awaiting rescue highlighted the quarantine implications,⁶ which also extended to the boats themselves. Arrival numbers were small during this first

¹ Several terms have been used to describe those people making their way to Australia by boat, ostensibly as refugees. The term current at the time of writing is 'irregular maritime arrivals' will be used from this point onward. *Border Protection Command*, <<http://www.bpc.gov.gov.au>> (23 May 2012).

² Andreas Schloenhardt, 'Australia and the Boat-People: 25 years of Unauthorised Arrivals', *UNSW Law Journal*, Vol. 23, No. 3, 2000, p. 36.

³ Schloenhardt, 'Australia and the Boat-People: 25 years of Unauthorised Arrivals', p. 36.

⁴ Janet Phillips and Harriet Spinks, *Boat Arrivals in Australia since 1976*, Department of Parliamentary Services, Canberra, 5 January 2011, p. 1.

⁵ *Commonwealth Parliamentary Debates*, Senate, Vol. 74, 4 October 1977, p. 1009.

⁶ *Commonwealth Parliamentary Debates*, Senate, Vol. 74, 17 August 1977, p. 128.

wave and by 1979 the rate of arrivals was slowing: 20 boats had come in 1978, but by November 1979 only six irregular maritime arrival boats had landed for the year.⁷

Indo-China was not the only source of irregular arrivals. There were occasional reports in the 1970s of Papua New Guinea natives entering Queensland illegally through the Torres Strait islands and staying in Cairns, Townsville and Weipa.⁸ Concerns were not limited to the illegal movement of people but extended to the potential introduction of exotic plant and animal diseases.⁹

The status of these first irregular maritime arrivals was the subject of parliamentary discussion, with the then Minister for Immigration, Michael McKellar, suggesting they were not 'illegal immigrants'. 'They have made unauthorized trips to Australia but as soon as they arrive they are processed in the normal way and given valid entry permits, so they are not illegal immigrants'.¹⁰ That judgment was questioned by those who argued that it represented an open invitation for refugees to come to Australia.¹¹ The differing views led to the first of many parliamentary debates on irregular maritime arrivals and especially the so-called 'people smugglers' who brought them.¹²

Border Protection-Quarantine

Closely related to irregular maritime arrivals was the fear of quarantine breaches, either by the arrivals themselves or by plants or animals in their possession. The matter was raised in Parliament in August 1978 and while there was acceptance that boats, their crews and passengers were correctly processed, concerns remained over disposal of the boats.¹³ Incidents such as that reported in Parliament by Senator Tate (Tasmania) on 24 May 1979 highlighted the potential for quarantine breaches and the difficulty in preventing them on the remote north and north-west coast of Australia.

⁷ *Commonwealth Parliamentary Debates*, Senate, Vol. 83, 23 November 1979, p. 2958.

⁸ *Commonwealth Parliamentary Debates*, Senate, Vol. 71, 23 February 1977, p. 283.

⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 114, 31 May 1979, p. 2734.

¹⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 109, 26 May 1978, p. 2591.

¹¹ *Commonwealth Parliamentary Debates*, Senate, Vol. 81, 2 May 1979, p. 1546.

¹² *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 119, 20 August 1980, p. 526.

¹³ *Commonwealth Parliamentary Debates*, Senate, Vol. 78, 22 August 1978, p. 231.

The Senator claimed that Quarantine officers had to charter a helicopter to access a refugee boat some 130km from Darwin and that the officers were left at the site for 36 hours with no communications.¹⁴

Unauthorized landings by foreign fishing vessels also caused quarantine concerns. As indicated by Minister for Health Mackellar, records of such landings were kept only from July 1978, with the introduction of the upgraded Civil Coastal Surveillance program. Twenty five landings were reported to late 1981, from some 54 foreign fishing vessel sightings that could have led to landings.¹⁵ In many cases investigated, illegal fishing had also taken place and where possible punitive action was taken.¹⁶

Other less intensive examples of quarantine breaches demonstrated ongoing concern about the adequacy of policing. These concerns included the arrival in Australia of insects carried in mail, and bird smuggling. The latter issue led to fears of an outbreak of Newcastle disease, which was prevented, at least once, by the interception of a smuggled infected bird.¹⁷

Border Protection-Customs

The illegal import of drugs and weapons and the export of drugs and fauna were also significant during the period,¹⁸ with drug smuggling becoming a major problem for Customs. In the late 1970s concerns emerged that unauthorized aircraft were bringing drugs into northern Australia, with several unidentified aircraft reported in early 1978.¹⁹ None of these reports was verified; continuing a history of similar reports, of ships or aircraft, from the remoter parts of Australia. Reports of unauthorized aircraft

¹⁴ *Commonwealth Parliamentary Debates*, Senate, Vol. 81, 24 May 1979, pp. 2082-3.

¹⁵ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 125, 17 November 1981, p. 2967.

¹⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 125, 17 November 1981, p. 2967.

¹⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 107, 11 October 1977, pp. 1842 and 1861.

¹⁸ The Parliament of the Commonwealth of Australia, *Australia's Peacetime Coastal Surveillance and Protection Arrangements—A Review*, The Commonwealth Government Printer, Canberra, 1984, p. 2-6.

¹⁹ *Commonwealth Parliamentary Debates*, Senate, Vol., 77, 24 May 1978, p. 1812.

importing drugs through the Sir Edward Pellew islands followed in 1984.²⁰ Ships were also suspected of being used for drug smuggling when, for example, drugs were found on beaches in Victoria, Western Australia and New South Wales during late 1975 and early 1976.²¹

While the inward smuggling of birds generated quarantine problems, their outward smuggling was also a serious matter for Customs officials. Between 1975 and 1982, 107 people were prosecuted for bird smuggling, 50 of them in New South Wales. More than 800 birds were recovered between 1979-80 and 18 October 1981, at a reported value of \$41,748.²²

Resources Protection

The activities of foreign fishing vessels operating off the Australian coast had long been a concern, even before the declaration of an AFZ. The expectation of a 200nm AFZ,²³ which was declared in November 1979, heightened anxiety.²⁴ One fear was that foreign fishers would gain access to the extended AFZ, through joint ventures with Australian companies, before stocks were fully assessed.²⁵ By 1979, 10 joint venture proposals had been received for fishing in Tasmanian waters, three having been approved, with Japanese, United States (US) and Polish companies.²⁶ The Japanese and Taiwanese proposals created the greatest fears, because of their long-standing interest in Australian fisheries and their significant capacity.

The scale of the problem was illustrated in a question by Mr Wentworth (Mackellar) in the House of Representatives on 19 May 1976. In response, Minister for Primary Industry Sinclair, noted that between July 1975 and April 1976 hundreds of foreign fishing vessels were sighted within 200nm of Australian territory, although some may

²⁰ *Commonwealth Parliamentary Debates*, Senate, Vol., 105, 13 September 1984, p. 997.

²¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 98, 30 March 1976, p. 1095.

²² *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 130, 11 November 1982, p. 3045.

²³ *Commonwealth Parliamentary Debates*, Senate, Vol., 82, 17 October 1979, p. 1389.

²⁴ The Parliament of the Commonwealth of Australia, *Australia's Peacetime Coastal Surveillance and Protection Arrangements—A Review*, p. 2-5.

²⁵ *Commonwealth Parliamentary Debates*, Senate, Vol., 76, 23 February 1978, p. 96.

²⁶ *Commonwealth Parliamentary Debates*, Senate, Vol., 82, 21 August 1979, p. 82.

have been multiple sightings of the same vessels. They included 604 Japanese, 699 Taiwanese and 214 unidentified vessels.²⁷

Similar figures were recorded for the period to February 1977.²⁸ At this time, vessels fishing outside the 12nm fishing zone were operating legally. Still, 22 fishing vessel masters were prosecuted for breaches of Australian fisheries laws between April 1976 and February 1977.²⁹ Despite fears of foreign fishers landing in remote areas and thereby compromising quarantine regulations, no more than six such landings were noted between 1 July 1975 and February 1977.³⁰ The anxiety felt over foreign fishing extended to Antarctic waters, and their potential for exploitation by foreign fishers. Work was already progressing on a draft law to regulate such activity.³¹

Japanese fishing activity encompassed long line fishing off North Queensland, which was allegedly depleting marlin stocks, to fishing off the Tasmanian coast, where some vessels forfeited their catch and gear for fishing inside the 12nm AFZ.³² Some criticism of Japanese fishing activity complained of it being predatory. There were claims by Mr Bowen (Kingsford-Smith) in 1978 that the Japanese were taking some 50 to 60,000 tonnes of bluefin tuna annually, compared to the Australian take of 10,000 tonnes, inside and beyond 200nm.^{33 34}

Complaints about Japanese fishing also included the terms of the Australian-Japanese Fishing Agreement negotiated in 1979. While placing limits on Japanese fishing in Australian waters, industry representatives noted that it failed to apply total allowable

²⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 99, 19 May 1976, pp. 2256-8.

²⁸ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 104, 21 April 1977, p. 1190.

²⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 104, 21 April 1977, p. 1190.

³⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 105, 26 April 1977, p. 1265.

³¹ *Commonwealth Parliamentary Debates*, Senate, Vol., 77, 9 May 1978, p. 1489.

³² *Commonwealth Parliamentary Debates*, Senate, Vol., 68, 25 May 1976, p. 1863, and Vol., 76, 22 February 1978, p. 21.

³³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 109, 11 May 1978, p. 2296.

³⁴ The Australian Fishing Zone outer limit was fixed at 200nm from the baseline in 1979. Warwick Gullett, *Fisheries Law in Australia*, LexisNexis, Butterworths, Chatswood, NSW, 2008, p. 209.

catch limits, was negotiated without industry consultation and allowed for catch of black marlin.³⁵

Taiwanese fishers were also extremely active and the source of many complaints and some regulatory action. In the early 1970s Taiwanese boats were being apprehended in Australian waters; four in 1972, two in 1973 and 1974, 25 in 1975 and 14 up to August 1976. In 1975, 11 boats were forfeited, with a further 12 in 1976.³⁶ At that time, in Parliament Mr Bungey claimed that the Northern Territory Administration believed the Taiwanese were using some of their vessels as 'bait' for Royal Australian Navy (RAN) patrol craft, so that those actually engaged in illegal fishing could escape.³⁷

The major source of complaints against the Taiwanese fishers was for clam fishing in or around the Great Barrier Reef, amid claims they knew the local waters better than our own Navy.³⁸ That about 50 per cent of giant clams in parts of the Great Barrier Reef were dead led to suspicions that fishing was to blame, and led to research to determine the actual cause.³⁹

The Opposition complained that licensing fees paid by Taiwan were too low and did not cover government costs. Furthermore, Senator Robertson (Northern Territory) asked the Government to encourage the Australian fishing industry.⁴⁰ This highlighted the fact that Taiwanese and Japanese had been fishing off the Australian coast for several years and it was only now, with the 200nm AFZ in place, that Australian interest awakened.⁴¹ For example, in 1978, the year before the 200nm AFZ was declared, Taiwanese fishers took 80,000 tonnes in waters off Australia, compared to 47,700 tonnes taken by Australian vessels.⁴²

³⁵ *Commonwealth Parliamentary Debates*, Senate, Vol., 83, 6 November 1979, p. 1946.

³⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 102, 2 December 1976, p. 3123.

³⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 104, 29 March 1977, p. 712.

³⁸ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 114, 31 May 1979, pp. 2725-6.

³⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 115, 21 August 1979, p. 392.

⁴⁰ *Commonwealth Parliamentary Debates*, Senate, Vol., 88, 24 March 1981, pp. 667-9.

⁴¹ *Commonwealth Parliamentary Debates*, Senate, Vol., 89, 7 April 1981, p. 1197.

⁴² *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 125, 14 October 1981, p. 2024.

The emerging poor state of tuna stocks was the result of long-term unmonitored fishing. In 1983 overfishing by Japanese and Australian boats, since the 1950s, was assessed to have reduced Southern Blue Fin Tuna stocks by about two thirds. Consequently catch and size limits were imposed.⁴³ An Industries Assistance Commission report on southern blue fin tuna in 1984 recommended that the Western Australian catch needed to be reduced by 75 per cent, while acknowledging the impact on employment and the need for Japanese fishers to accept a quota.⁴⁴

Environmental Protection

Environmental aspects of the constabulary function were concentrated in and around the Great Barrier Reef during this period, because of the growing awareness of its environmental and economic importance. The most contentious environmental issue was drilling for oil or gas on the Reef. While there had been no drilling, exploratory or otherwise, since 1971,⁴⁵ the Labor Opposition in the Commonwealth Parliament worried that the Queensland State Government and national Coalition Government would again allow it.⁴⁶ ⁴⁷ Despite statements by the Federal Government denying that it would allow drilling on the Great Barrier Reef, the lack of any legislative action continued to bother the Opposition. It led to a Matter of Public Interest being introduced to Parliament by Mr Cohen (Robertson) criticizing the Government for its lack of definitive action.⁴⁸ The enactment of the *Offshore Constitutional Settlement* in 1979 awarding the States rights over the first 3nm of the territorial sea led to further fears that the Queensland State Government would allow drilling on the Reef.⁴⁹

⁴³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 133, 8 December 1983, p. 3646.

⁴⁴ *Commonwealth Parliamentary Debates*, Senate, Vol., 105, 22 August 1984, p. 157.

⁴⁵ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 113, 29 March 1979, p. 1383.

⁴⁶ *Commonwealth Parliamentary Debates*, Senate, Vol., 72, 17 March 1977, p. 1089.

⁴⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 111, 26 October 1978, p. 2372.

⁴⁸ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 113, 4 April 1979, p. 1481.

⁴⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 114, 24 May 1979, p. 2374.

Ship-sourced oil spills were another environmental threat to the Great Barrier Reef, and to other areas. Several related questions were raised in Parliament, generally critical of an apparent lack of government action, including slowness in ratifying the *International Convention for the Prevention of Pollution from Ships 1973 (MARPOL 1973)*.⁵⁰ The magnitude of the problem is exemplified in the list of ship-sourced oil spills between 1 April 1977 and 17 November 1981, presented on 16 February 1982 in answer to a Parliamentary question by Mr Humphreys (Griffith). One thousand two hundred and sixty five reports had identified 768 spills.⁵¹

One of those spills occurred when the motor vessel (MV) *Anro Asia* grounded on Bribie Island in Moreton Bay on 29 October 1981, spilling 70-100 tonnes of bunker oil, some reaching the shore.⁵² The cleanup cost was assessed as \$284,784.⁵³ Concern for the environmental state of the Reef extended to Torres Strait, with the potential for groundings and oil spills in the Prince of Wales Channel.⁵⁴ The lack of a compulsory pilotage scheme there had drawn attention in the recent past,⁵⁵ but no action was taken.

Declaration of the entire Great Barrier Reef as a marine park was seen as one way of ensuring environmental protection. Consequently, the delays in progressing this matter raised warning signs for the Federal Labor Opposition, which feared that the Queensland State Government would still allow mining on the Reef.⁵⁶

Two other environmental problems emerged during this period, one exclusive to the Reef and the other with national ramifications. The first was the spread of the Crown of Thorns starfish from the north of the Great Barrier Reef. Despite earlier eradication efforts, it reappeared in the early 1980s. Some believed that Reef spearfishers enabled

⁵⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 121, 11 March 1981, p. 656.

⁵¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 126, 16 February 1982, pp. 191-6.

⁵² *Major Oil Spills in Australia: Anro Asia, Bribie Island, Queensland, 29 October 1981*, <http://www.amsa.gov.au/marine_environment_protection> (6 June 2012).

⁵³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 128, 18 August 1982, p. 609.

⁵⁴ *Commonwealth Parliamentary Debates*, Senate, Vol., 101, 29 November 1983, p. 2970.

⁵⁵ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 111, 26 October 1978.

⁵⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 121, 3 March 1981, p. 374.

this by taking their predators.⁵⁷ By 1985, this second infestation in 20 years had worsened and was described by Mr Connolly (Bradfield) as a 'serious threat' to the Reef.⁵⁸

The second problem was the introduction of exotic marine organisms through the discharge of ships' ballast water in Australian waters.⁵⁹ At that time there was no routine analysis of ballast water from foreign vessels⁶⁰ and the problem worsened, despite a funded study into the problem by New South Wales Fisheries.⁶¹

THE GOVERNMENT RESPONSE: POLICY DEVELOPMENT

Introduction

Government response to the demands of maritime law enforcement came in two forms; the development of policies and associated laws and the implementation of practical measures to support policies and laws. The period from 1976 to 1988 saw a succession of reviews into aspects of maritime law enforcement, the first comprehensive examination of the issue since Federation. The reviews were accompanied by several efforts to establish an effective aerial surveillance and surface response system, with the system still evolving in the late 1980s.

In the late 1970s the Government became aware of the significant legal issues relating to law enforcement at sea. Some of these issues were associated with the proposed establishment of an EEZ.⁶² They also included agreements with other countries and the formulation of legislation to cover resources exploitation.⁶³ Amongst the issues was whether Australia would claim a 200nm EEZ in its Antarctic territory. The

⁵⁷ *Commonwealth Parliamentary Debates*, Senate, Vol., 89, 14 May 1981, p. 1968.

⁵⁸ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 140, 22 February 1985, p. 81.

⁵⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 115, 29 August 1979, p. 791.

⁶⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 115, 29 August 1979, p. 791.

⁶¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 114, 30 May 1979, p. 2620.

⁶² *Commonwealth Parliamentary Debates*, Senate, Vol., 72, 15 March 1977, p. 153.

⁶³ *Commonwealth Parliamentary Debates*, Senate, Vol., 72, 15 March 1977, p. 153.

Government was also forced to revisit offshore sovereignty, because the States were found to retain some rights despite the 1975 High Court ruling,⁶⁴ and because it was administratively sensible for the States to retain some rights and responsibilities, such as administration of recreational boats. The consequent 1979 *Offshore Constitutional Settlement* required much negotiation and vested in each State proprietary rights and title in respect of the seabed and adjacent territorial sea – to a limit of three miles – with reservations for national purposes, such as defence.⁶⁵

Later in the period the propriety of having Defence Force officers enforcing civil law against Australian citizens was questioned⁶⁶ Both the Constitution and the Defence Act place limitations on Australian Defence Force (ADF) officers in this respect. For example, except where specific Acts nominate ADF officers as enforcement officers, the Governor General has formally to call out the Defence Force for such activities.⁶⁷

Policy Development - the Early Reviews

The period from 1976 to 1988 marked the first time any Australian government attempted to develop a coordinated approach to the key issues associated with the constabulary function. New threats and extensions to offshore zones, which greatly extended the area of maritime legal responsibility, determined the need for more sophisticated options than merely reacting to threats as they occurred.

In this period governments of both major parties established 11 reviews, mostly targeted against coastal surveillance, while the Royal Commission on Drugs in 1980 examined coastal surveillance in relation to illegal drug importation. The first review

⁶⁴ See Attorney General's Department, *Offshore constitutional settlement: A milestone in co-operative federalism*, Australian Government Publishing Service, Canberra, 1980, p. 4. The note refers to a High Court case *Pearce v. Florenca* (1976) in which the Court upheld WA State fisheries law in the territorial sea.

⁶⁵ 'Australia's Offshore Legal Jurisdiction: Part 1 – History & Development', *Australia and New Zealand Maritime Law Journal*, Vol. 25, No. 1, 2011, p. 9. The agreed arrangement in the Offshore Constitutional Settlement are listed at Attorney General's Department, *Offshore constitutional settlement: A milestone in co-operative federalism*, pp. 6-8.

⁶⁶ The Parliament of the Commonwealth of Australia, *Australia's Peacetime Coastal Surveillance and Protection Arrangements—A Review*, p. 7-8.

⁶⁷ The Parliament of the Commonwealth of Australia, *Australia's Peacetime Coastal Surveillance and Protection Arrangements—A Review*, p. 7-8. The *Defence Act 1903, Section 51A*, lays out in detail the conditions under which the Defence Force may be used to curb domestic violence. *Defence Act 1903 – Sect 51A*, <<http://www.austlii.edu.au>> (2 October 2012).

began in January 1978 as an Interdepartmental Committee of department heads, tasked to review current coastal surveillance.⁶⁸ The Government announced its findings on 9 July 1978.⁶⁹ The Committee report demonstrated acceptance of the need for a comprehensive approach to surveillance. It recommended a surveillance and enforcement capacity combining deterrence of breaches of customs, health, immigration and fisheries laws, with the highest practicable protection of national quarantine interests.⁷⁰

This review was the first comprehensive analysis of Australia's coastal surveillance and reflected growing public interest in the arrival of irregular maritime arrivals and the recognition that distance no longer provided a barrier against exotic disease, drug smuggling or other threats to border security. Similarly, the review acknowledged Australia's unique challenges; including a sparse population, especially in the north, and relative proximity to Southeast Asia.⁷¹ While it noted the complexities related to Australia's federal system of government and the consequent sharing of responsibility for offshore resources management,⁷² the Committee should have also acknowledged the extent of coastline that needed patrolling and protection.

Significant review recommendations which were accepted included the introduction of daily air surveillance of the north coast, principally in support of quarantine management, extension of Royal Australian Air Force (RAAF) maritime patrol aircraft surveillance of the AFZ to deter illegal fishing, a significant increase in surveillance flying hours, and greater RAN patrol boat availability for civil enforcement operations.⁷³ The review also recommended air patrols of the approaches to Darwin, specifically to deal with the Indo-Chinese irregular maritime arrival boats.

⁶⁸ The Parliament of the Commonwealth of Australia, *Australia's Peacetime Coastal Surveillance and Protection Arrangements—A Review*, p. 1-3.

⁶⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 110, 15 August 1978, p. 296.

⁷⁰ The Parliament of the Commonwealth of Australia, *Australia's Peacetime Coastal Surveillance and Protection Arrangements—A Review*, p. 1-3.

⁷¹ The Parliament of the Commonwealth of Australia, *Australia's Peacetime Coastal Surveillance and Protection Arrangements—A Review*, p. 1-3.

⁷² The Parliament of the Commonwealth of Australia, *Australia's Peacetime Coastal Surveillance and Protection Arrangements—A Review*, p. 1-3.

⁷³ The Parliament of the Commonwealth of Australia, *Australia's Peacetime Coastal Surveillance and Protection Arrangements—A Review*, p. 1-3. The recommendation was for an increase to 27 000

A further Coastal Surveillance Review was conducted in 1981. Initially, the intention had been to consider the outcomes of the 1978 Review after two years, but difficulties in implementing some recommendations delayed this until late 1981.⁷⁴ Focused on the cost-effectiveness of the coastal surveillance regime, this was a holdover from earlier times when the cost of surveillance seemed as important as operational achievement. Yet it also foreshadowed a lengthy and indecisive effort to determine how best to fund coastal surveillance and how to determine cost-effectiveness. The 1981 Review therefore concluded that there was an urgent need for departments critically to examine their surveillance needs, so that resources could be applied most efficiently.⁷⁵

Furthermore, the 1981 Review recommended that each department using civil surveillance services should pay in full for the service - the 'user pays' approach. This Review also considered that user departments should bear the costs of any equipment that Defence acquired specifically for coastal surveillance.⁷⁶ The review also proposed that in future the 'user pays' principle should apply to the use of ADF assets in coastal surveillance, noting that in 1983-84 the anticipated P-3 maritime patrol aircraft and Fremantle class patrol boat effort was expected to amount to 40 per cent of the total surveillance budget; that is \$8.3m of \$20.7m.⁷⁷ Furthermore, the 1981 Review argued that the cost of conventional surveillance systems to counter unauthorized flights importing drugs would be prohibitive.⁷⁸

Sandwiched between these two surveillance reviews was the *Royal Commission of Inquiry into Drugs* of 1980. This Inquiry focused on the impact of illegal drugs on Australian society, and investigated how drugs entered the country. The Inquiry was particularly interested in unauthorized aircraft taking advantage of the empty

hours per year, up from 4 600 in 1977/78. Delays in acquiring civil charter aircraft meant that the increased target was not met initially.

⁷⁴ Paul Eccles, *Civil Coastal Surveillance*, a paper presented by the Department of Transport and Construction in Port Hedland, October 1982, p. 4.

⁷⁵ The Parliament of the Commonwealth of Australia, *Australia's Peacetime Coastal Surveillance and Protection Arrangements—A Review*, p. 6-5.

⁷⁶ The Parliament of the Commonwealth of Australia, *Australia's Peacetime Coastal Surveillance and Protection Arrangements—A Review*, p. 6-5.

⁷⁷ The Parliament of the Commonwealth of Australia, *Australia's Peacetime Coastal Surveillance and Protection Arrangements—A Review*, p. 6-6.

⁷⁸ The Parliament of the Commonwealth of Australia, *Australia's Peacetime Coastal Surveillance and Protection Arrangements—A Review*, p. 6-12.

expanses and many disused airfields in the north. For example, at the close of hearings on 5 September 1979 the Inquiry had records of 109 unresolved aircraft sightings, with firm dates and locations for them.⁷⁹

The *Royal Commission* recommended: a surveillance regime focused on, but not exclusively confined to, the north; that the Australian Coastal Surveillance Centre should manage all elements of surveillance and response; that States, the ADF and other government authorities should attach liaison officers to the Australian Coastal Surveillance Centre; and that the Customs Nomad aircraft should transfer to Australian Coastal Surveillance Centre control while the Customs patrol craft should be upgraded.⁸⁰

Policy Development - the Beazley Review

The election of a Labor Government in March 1983 brought an almost immediate new focus to coastal surveillance and the constabulary function. The new Ministers of Defence and Transport jointly asked the Minister for Aviation (Kim Beazley) to:

... examine Australia's needs for coastal surveillance and protection in peacetime and how they are met, and to report and make recommendations.⁸¹

This comprehensive review, the first undertaken at ministerial level, surveyed three major issues; what kind and level of surveillance and law enforcement capacity was needed, what arrangements and capacity existed, together with their costs and effectiveness, and what recommendations were needed to improve the arrangements while managing cost.⁸² The long-standing focus on cost remained in place. The Review asserted that the primary justification of a coastal surveillance regime was economic and thus the regime should not cost more than the potential loss of resources;

⁷⁹ *Australian Royal Commission of Inquiry into Drugs Report, Book B*, Australian Government Publishing Service, Canberra, 1980, p. B365.

⁸⁰ *Australian Royal Commission of Inquiry into Drugs Report, Book B*, pp. B441-2.

⁸¹ The Parliament of the Commonwealth of Australia, *Australia's Peacetime Coastal Surveillance and Protection Arrangements—A Review*, p. 1-1.

⁸² The Parliament of the Commonwealth of Australia, *Australia's Peacetime Coastal Surveillance and Protection Arrangements – A Review*, The Commonwealth Government Printer, Canberra, 1984, Annex A-1.

notwithstanding the admitted difficulty in adopting such a quantitative approach.⁸³ The Review also acknowledged that not even the most comprehensive surveillance system could guarantee that objectives would always be met and that the benefits of any surveillance system might be, for the most part, unquantifiable.⁸⁴ Adding to the complexity, an internal Department of Health review had shown that the aerial surveillance program was excessive for quarantine purposes on the basis of the Department's threat assessment.⁸⁵

Major recommendations of the Beazley Review, announced in mid-1984, resulted in significant change to the coastal surveillance regime. Although the focus on drug-smuggling was unsurprising, the organizational arrangement selected to support it was unexpected. Management of the surveillance program was transferred to the Australian Federal Police, because of their existing responsibility for a significant part of the protection regime.⁸⁶ A Coastal Protection Unit was to be established within the Australian Federal Police, which had no previous experience of maritime surveillance. The Unit would operate within the existing Australian Coastal Surveillance Centre, jointly with the Department of Transport.⁸⁷ Under this arrangement, the Department of Transport would manage the Centre and retain responsibility for maritime safety and search and rescue. Notably, the ADF was to continue with offshore aerial surveillance and surface response.

For management, the Standing Interdepartmental Committee on coastal surveillance was to remain in place and a Standing Advisory Committee-Coastal Protection and Surveillance was to be established at Commonwealth and State levels.⁸⁸ This committee

⁸³ The Parliament of the Commonwealth of Australia, *Australia's Peacetime Coastal Surveillance and Protection Arrangements—A Review*, p. 3-1.

⁸⁴ The Parliament of the Commonwealth of Australia, *Australia's Peacetime Coastal Surveillance and Protection Arrangements—A Review*, p. 3-2.

⁸⁵ The Parliament of the Commonwealth of Australia, *Australia's Peacetime Coastal Surveillance and Protection Arrangements—A Review*, p. 3-5.

⁸⁶ The Parliament of the Commonwealth of Australia, *Australia's Peacetime Coastal Surveillance and Protection Arrangements—A Review*, p. 7-11.

⁸⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 136, 30 March 1984, p. 1154.

⁸⁸ The Parliament of the Commonwealth of Australia, *Australia's Peacetime Coastal Surveillance and Protection Arrangements—A Review*, p. 7-11.

was to examine the need for night surveillance and for civil airspace surveillance,⁸⁹ noting that civilian charter aircraft would continue to be used for surveillance. Individual departments were still to be responsible for defining threats and risk for the allocation of surveillance assets.

Significantly, the user pays principle was to remain in place, including for the use of ADF assets beyond a level determined to be the Defence 'justifiable contribution'.⁹⁰ Equally important, Quarantine continued to fund the surveillance program and claimed the right to maximize value for its own needs.⁹¹ This was contrary to the Review recommendations, and apparently inconsistent with the Health Department's assessment that the effort devoted to quarantine was excessive.

In Parliament the Opposition focused on the Government's proposed 'rationalization' of coastal surveillance, which was to deliver more effective performance through better management. Accordingly, it criticized a claimed reduction in annual surveillance flying hours from 20,200 to 14,600.⁹² Thus, while the Beazley Review was a comprehensive and lengthy analysis of coastal surveillance, doubts remained as to whether it had identified what needed to be done, how best to do it and what it should cost.

Policy Development - the Later Reviews

In May 1986 a Sub-committee of the House of Representatives Standing Committee on Expenditure tabled a report entitled *Footprints in the Sand*, which examined the implementation of the earlier Beazley Review. It recommended several changes, confirming that the Beazley Review had not solved the coastal surveillance problem. The major proposed change would have further complicated the management arrangements by moving some Coastal Protection Unit responsibilities from the

⁸⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 136, 30 March 1984, pp. 1154-5.

⁹⁰ The Parliament of the Commonwealth of Australia, *Australia's Peacetime Coastal Surveillance and Protection Arrangements—A Review*, pp. 7-11 and 12.

⁹¹ Hugh Hudson, *Northern Approaches: a report on the administration and management of civil coastal surveillance in northern Australia*, Australian Government Publishing Service, Canberra, 1988, p. 4.

⁹² *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 136, 3 May 1984, p. 1817.

Federal Police and Special Minister of State to the Department of Transport. This would have made the Minister for Transport responsible for the coordination of civil coastal surveillance.⁹³ Additionally, the Federal Police would have staffed the three regional Coastal Protection Units and senior officials from the Federal Police and Customs were to have been attached to Transport, to ensure coordination.⁹⁴ However, the Government decided against this major change so soon after the Beazley Review.⁹⁵

Footprints in the Sand reported that the attention to illegal drugs importation recommended in the Beazley Review had not been achieved. The Federal Police advised that the existing patrols, with Customs' surveillance and intelligence gathering, provided effective management of the perceived threat⁹⁶ and that aerial surveillance alone was not especially effective against drug trafficking.⁹⁷ This report also confirmed that the surveillance program still focused on quarantine and fisheries. The Health Department's Dr Proudfoot argued that 'The basis of the littoral surveillance program is a quarantine program. There are spin offs to other services – Customs and Immigration – but it is primarily a quarantine program'.⁹⁸

Nevertheless, in December 1987 an independent review into Australia's quarantine program (*The Lindsay Review*) determined that aerial surveillance was of little quarantine value. Quarantine authorities decided that the biggest quarantine threat existed at Australia's major air and seaports.⁹⁹ Yet, the Quarantine Service continued to fund aerial surveillance¹⁰⁰ and thus determined surveillance priorities.¹⁰¹ The *Lindsay*

⁹³ House of Representatives Standing Committee on Expenditure, *Footprints in the sand: inquiry into coastal surveillance coordination*, Australian Government Publishing Service, Canberra, 1986, p. 22.

⁹⁴ House of Representatives Standing Committee on Expenditure, *Footprints in the sand: inquiry into coastal surveillance coordination*, p. 22.

⁹⁵ Hudson, *Northern Approaches: a report on the administration and management of civil coastal surveillance in northern Australia*, p. 5.

⁹⁶ House of Representatives Standing Committee on Expenditure, *Footprints in the sand: inquiry into coastal surveillance coordination*, p. 10.

⁹⁷ House of Representatives Standing Committee on Expenditure, *Footprints in the sand: inquiry into coastal surveillance coordination*, p. 19.

⁹⁸ Department of Primary Industry and Energy, *Australian Quarantine Requirements for the Future: Report of the Quarantine Review Committee*, Australian Government Publishing Service, Canberra, May 1988, p. 189.

⁹⁹ The Parliament of the Commonwealth of Australia, *Australia's Peacetime Coastal Surveillance and Protection Arrangements—A Review*, p. 3-3.

¹⁰⁰ David Day, *Contraband and Controversy: The Customs History of Australia From 1901*, Australian Government Publishing Service, 1996, p. 433.

Review recommended a more flexible approach to quarantine protection, with a focus on the Torres Strait and the capacity to react to emerging threats.¹⁰²

The final review of this period, Hugh Hudson's *Northern Approaches*, showed that government was still unsure about border protection and it recommended yet more organizational change. The Review was a response to *Footprints in the sand* and preceded the renewal of Skywest's aerial surveillance contract on 30 March 1989.¹⁰³

Northern Approaches recognized the growing complexity of surveillance and response tasks and the need for aircraft and patrol craft capable of responding to the needs of several government agencies.¹⁰⁴ The review contended that the level of surveillance then being provided was not commensurate with Australia's 200nm AFZ claim¹⁰⁵ and remarked on the need for night surveillance.¹⁰⁶ *Northern Approaches* recommended the establishment of an independent agency, within the Department of Transport and Communications, directly responsible to its Minister.¹⁰⁷

The review recommended strongly a move from the long-standing 'user pays' system to one in which the entire program would be funded within the Department of Transport and Communications.¹⁰⁸ This reflected the ongoing difficulty in attributing surveillance costs, especially when there were multiple beneficiaries.¹⁰⁹ The funding was to be sufficient to cover core tasking – at least 10,000 flying hours per year.¹¹⁰ Economy of effort continued to dominate in establishing new surveillance regimes. For

¹⁰¹ Day, *Contraband and Controversy: The Customs History of Australia From 1901*, p. 429.

¹⁰² Hudson, *Northern Approaches: a report on the administration and management of civil coastal surveillance in northern Australia*, pp. 5-7.

¹⁰³ Hudson, *Northern Approaches: a report on the administration and management of civil coastal surveillance in northern Australia*, p. 8.

¹⁰⁴ Hudson, *Northern Approaches: a report on the administration and management of civil coastal surveillance in northern Australia*, pp. 18-9.

¹⁰⁵ Hudson, *Northern Approaches: a report on the administration and management of civil coastal surveillance in northern Australia*, p. 40.

¹⁰⁶ Hudson, *Northern Approaches: a report on the administration and management of civil coastal surveillance in northern Australia*, p. 36.

¹⁰⁷ Hudson, *Northern Approaches: a report on the administration and management of civil coastal surveillance in northern Australia*, pp. 19 and 24..

¹⁰⁸ Hudson, *Northern Approaches: a report on the administration and management of civil coastal surveillance in northern Australia*, pp. 24 and 32.

¹⁰⁹ Hudson, *Northern Approaches : a report on the administration and management of civil coastal surveillance in northern Australia*, p. 38.

¹¹⁰ Hudson, *Northern Approaches: a report on the administration and management of civil coastal surveillance in northern Australia*, p. 32.

example, *Northern Approaches* reported the Great Barrier Reef Marine Park Authority's claim that the Great Barrier Reef surveillance conducted by Skywest could be provided more cheaply with less capable aircraft, because of the relatively benign Reef geography.¹¹¹ Thus, cost and not performance continued to be the driving force.

THE GOVERNMENT RESPONSE: PRACTICAL MEASURES

The Government's practical response comprised two elements of the constabulary function; aerial surveillance and surface response. Aircraft equipped with search sensors, including radar, are excellent surveillance platforms, covering large areas relatively quickly. Surface vessels, much more limited in their search capacity, provide the only means of responding to aerial detections; being able to stop, inspect and detain suspect vessels. Aerial surveillance was conducted largely by the RAN and the RAAF in the early part of the period, but later became primarily a civilian contract aircraft responsibility with RAAF support. Surface response was a responsibility of the RAN with Customs support throughout the period.

Early Inadequacies - Aerial Surveillance

The first wave of irregular maritime arrivals and the extension of the AFZ to 200nm were catalysts in developing a more coherent approach to border protection and the constabulary function. Both events illustrated the inadequacy of maritime surveillance especially in the north. A third factor was the claim by the 1980 *Australian Royal Commission into Drugs* that authorities still could not determine the extent of coastal incursions.¹¹² This situation still existed four years later, when Senator Kilgariff (Northern Territory) claimed in Parliament that illegal flights were being made into the north; the *Northern Territory News* reporting 22 in the previous three years.¹¹³ Despite investigation, the claims could not be substantiated.

The achievements of aerial surveillance and the full extent of the task were difficult to quantify. In 1975-76 there were 473 foreign fishing vessel sightings, increasing to 505 in

¹¹¹ Hudson, *Northern Approaches: a report on the administration and management of civil coastal surveillance in northern Australia*, p. 54.

¹¹² *Australian Royal Commission of Inquiry into Drugs Report, Book B*, p. 428,

¹¹³ *Commonwealth Parliamentary Debates, Senate, Vol.*, 106, 24 October 1984, p. 2413.

1975-76.¹¹⁴ Figures for 1982-83 indicate that 74 sightings were made; 32 off Queensland, 19 off Western Australia and 16 off the Northern Territory.¹¹⁵ These figures suggest the north was the focus of potential illegal activity, that surveillance was concentrated there and that the level of illegal activity was variable. There was very little ground-based radar search capability to supplement the aerial patrols. The RAAF had only two portable surveillance radars, one of which was located in Darwin.¹¹⁶ Even with a limited range against surface targets, it could have provided a useful short-range warning function against vessels approaching Darwin.

Aerial surveillance was also diminished by the inadequacy of operational planning. Specifically, flight schedules were too predictable and were limited to daylight hours;¹¹⁷ the aircraft being unable to identify contacts detected by radar at night.¹¹⁸ There were questions about the adequacy of the Side-Looking Airborne Radar fitted to Shrike surveillance aircraft operating over the Great Barrier Reef. Skywest, the contractor, was forced to provide an aircraft fitted with 360° (all-round) scan.¹¹⁹ Furthermore, coordination between Commonwealth and State-based surveillance efforts was inadequate.¹²⁰

The problems were underscored by an inability of government to focus clearly on establishing an effective surveillance program led by a suitable authority. Debate in Parliament sometimes questioned whether surveillance was a military or civil

¹¹⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 108, 4 April 1978, p. 1081.

¹¹⁵ The Parliament of the Commonwealth of Australia, *Australia's Peacetime Coastal Surveillance and Protection Arrangements—A Review*, p. 3-13. The figures in this report do not specify whether the sightings were foreign fishing vessels.

¹¹⁶ The Parliament of the Commonwealth of Australia, *Australia's Peacetime Coastal Surveillance and Protection Arrangements—A Review*, p. 5-4.

¹¹⁷ The Parliament of the Commonwealth of Australia, *Australia's Peacetime Coastal Surveillance and Protection Arrangements—A Review*, pp. 6-10, and 6-11.

¹¹⁸ The Parliament of the Commonwealth of Australia, *Australia's Peacetime Coastal Surveillance and Protection Arrangements—A Review*, p. 6-11.

¹¹⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 143, 22 August 1985, p. 219.

¹²⁰ The Parliament of the Commonwealth of Australia, *Australia's Peacetime Coastal Surveillance and Protection Arrangements—A Review*, p. 6-2.

responsibility.¹²¹ The Labor Opposition's Mr Gordon Scholes strongly suggested that surveillance was a Defence responsibility:

I want to make it absolutely clear that in my opinion the protection of Australia's sovereignty is a defence responsibility and should be undertaken on that level. The Government should make it quite clear that that is its policy decision and should then require the defence forces to meet that obligation. I understand the reluctance of the defence forces. It is a question of money. Who pays?¹²²

Similar views were held outside Parliament with *The Australian* in July 1978 decrying what it called 'stopgap measures'. The newspaper proposed that coastal surveillance should be '... an integral part of our defence system ...' and should eventually be conducted by a coast guard.¹²³

The Government view, provided by Mr Connolly (Bradfield) did not necessarily support this position.

However, a clear distinction must be made between peacetime law enforcement and the protection of the nation's sovereignty. I suspect that on this point the honourable member for Corio and speakers from the Government side will have some area of disagreement.¹²⁴

Early Inadequacies - Surface Response

The surface response capacity, represented by the Attack class patrol boats, was inadequate. For example, an Indonesian fishing vessel dropped two Indonesians ashore north of Broome on 31 December 1983 and it took two days to find the boat, hidden by mangroves, and longer to find those who had landed.¹²⁵ Such instances highlighted the difficulty in preventing such landings and the limited capacity to respond to them.

¹²¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 108, 4 April 1978, p. 912.

¹²² *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 108, 4 April 1978, p. 912.

¹²³ Day, *Contraband and Controversy: The Customs History of Australia From 1901*, p. 427.

¹²⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 108, 4 April 1978, p. 914.

¹²⁵ Day, *Contraband and Controversy: The Customs History of Australia From 1901*, p. 428.

The patrol boats themselves were also criticized. A case was made for smaller boats able to operate effectively in shallow inshore waters, such as along the Kimberley coast.¹²⁶ Yet, Dr Richardson (Tangney) called for new patrol craft with long-range detection systems for the north and north-west and Mr Thompson (Leichardt) voiced Opposition complaints that the project for the new Fremantle class patrol craft was proceeding too slowly.¹²⁷

Predictably the authorities relying on these surveillance operations became dissatisfied with the inadequacies. Among these were the Departments of Primary Industry, Immigration and Resources and Industry. Primary Industry was dissatisfied with the irregularity of sighting and identification of foreign fishing vessels and the lack of surface response vessels to enforce licensing provisions. Primary Industry also asked for more cost-effective patrol aircraft than the RAAF P-3 Orions. They needed smaller, simpler aircraft, stationed around the coast.¹²⁸

There were concerns that the focus on illegal fishing and quarantine meant that issues such as smuggling were neglected.¹²⁹ Unease generated by perceptions of inadequate surveillance was often reflected in Parliamentary debates and resulted in calls such as Senator Kilgarriff's for P-3 Orions and warships to be based in Darwin and for the Jindalee Over the Horizon Radar, when operational, to be used for surveillance of the north.¹³⁰

Developments in Aerial Surveillance

The Government response to inadequacies in surveillance and response included a greater involvement by the Navy. Three RAN S-2E Tracker anti-submarine patrol

¹²⁶ The Parliament of the Commonwealth of Australia, *Australia's Peacetime Coastal Surveillance and Protection Arrangements—A Review*, p. 6-14.

¹²⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 98, 26 February 1976, p. 312, and Vol., 105, 27 May 1977, p. 2027. The first Fremantle class boat was commissioned in March 1980.

¹²⁸ The Parliament of the Commonwealth of Australia, *Australia's Peacetime Coastal Surveillance and Protection Arrangements—A Review*, p. 3-10.

¹²⁹ The Parliament of the Commonwealth of Australia, *Australia's Peacetime Coastal Surveillance and Protection Arrangements—A Review*, p. 7-1.

¹³⁰ *Commonwealth Parliamentary Debates*, Senate, Vol., 76, 28 February 1978, p. 170; 1 March 1978, pp. 249-50; and 2 March 1978, p. 270.

aircraft deployed to Broome on Operation *Trochus* in early 1975 and again in 1976. Supported by infrequent RAAF P-3 flights this was the first significant use of ADF aircraft for coastal surveillance and resulted in a long term decline in illegal trochus shell fishing by Indonesians off the north-west coast.¹³¹ Operation *Trochus* continued until 1980.¹³² Another S-2E Tracker detachment began flying from Darwin in November 1977, responding to the first of several waves of irregular maritime arrivals, coming from Southeast Asia.¹³³ The Trackers were replaced by civilian contract Nomad aircraft in 1980.

Navy Tracker aircraft also undertook coastal surveillance operations in southern waters for Operation *Estes*. This operation involved daily flights in the vicinity of the oil and gas platforms in Bass Strait, in response to safety concerns relating to passing merchant shipping. The fitting of X-band search radar to Bass Strait platforms and the withdrawal of the Trackers from service ended this surveillance operation.¹³⁴

While foreign fishing was the catalyst for Navy Tracker aircraft to begin coastal surveillance operations, the initial influx of Vietnamese irregular maritime arrivals or 'boat people' led to the initiation of RAAF aerial surveillance. A C-47 Dakota transport aircraft flew visual search sorties between Darwin and Broome from October 1977 until replaced by the Trackers.¹³⁵ RAAF P-3 Orion maritime patrol aircraft began civil coastal surveillance operations by supplementing the Trackers on Operation *Trochus* with fortnightly flights.¹³⁶

The RAAF contribution increased significantly, with the P-3 range and endurance ideal for offshore fisheries surveillance. There was also an expectation, as early as 1978, that the Jindalee Over the Horizon Network would enter service and assist coastal surveillance.¹³⁷ Irregular maritime arrivals and a growing interest in foreign fishing

¹³¹ Day, *Contraband and Controversy: The Customs History of Australia From 1901*, p. 423.

¹³² *Flying Stations: A Story of Australian Naval Aviation*, Allen and Unwin, St. Leonards, NSW, 1998, p. 223.

¹³³ *Flying Stations: A Story of Australian Naval Aviation*, p. 242.

¹³⁴ *Flying Stations: A Story of Australian Naval Aviation*, p. 256.

¹³⁵ Day, *Contraband and Controversy: The Customs History of Australia From 1901*, p. 423.

¹³⁶ The Parliament of the Commonwealth of Australia, *Australia's Peacetime Coastal Surveillance and Protection Arrangements—A Review*, p. 5-10.

¹³⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 111, 24 October 1978, p. 2193.

activities in coastal waters saw a substantial increase in coastal surveillance. For example the combined civil and military aerial surveillance flying hours jumped from 5,000 in 1977-78 to a planned 27,000 in 1978-79.¹³⁸ Of this total, the P-3s flew 6,000 hours.¹³⁹ Over time, the P-3s' rate of effort reduced and by 1981 they were conducting from two to four AFZ patrols per month.¹⁴⁰ In the three years from 1977-78 to 1979-80 the P-3s averaged 2,376 hours annually.¹⁴¹

Using the P-3 for coastal surveillance was controversial. The aircraft and their crews were capable, but were a very expensive means of conducting coastal surveillance, and had difficulty meeting all commitments. For example, in 1984 they could provide only 1,200 of the 2,000 hours requested for coastal surveillance, because of training commitments to the Navy following that Service's loss of its own fixed wing aircraft.¹⁴² Another limiting factor was that each of the two P-3 squadrons of 10 aircraft had only six crews.¹⁴³ By 1988, Australian fisheries authorities had become unhappy with the P-3 reduced annual rate of effort, now from 2,500 hours to 700 hours, the aircraft cost and the offshore focus which was not optimal for their fisheries surveillance needs.¹⁴⁴

The withdrawal from service of the Navy Trackers, and questions about their cost-effectiveness in the coastal surveillance role,¹⁴⁵ together with the P-3 cost and availability issues, encouraged the introduction of civil contract aircraft for aerial surveillance. The ongoing and still current use of the P-3s, and questioning of their cost-effectiveness, highlights the long-standing debate in Australia as to the role of the military in law enforcement at sea and the associated constabulary function.¹⁴⁶

¹³⁸ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 111, 26 October 1978, pp. 2388-9.

¹³⁹ Day, *Contraband and Controversy: The Customs History of Australia From 1901*, p. 426.

¹⁴⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 122, 14 May 1981, p. 2496.

¹⁴¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 124, 19 August 1981, p. 541.

¹⁴² *Commonwealth Parliamentary Debates*, Senate, Vol., 103, 31 May 1984, p. 2257.

¹⁴³ *Commonwealth Parliamentary Debates*, Senate, Vol., 103, 31 May 1984, p. 2257.

¹⁴⁴ Hudson, *Northern Approaches: a report on the administration and management of civil coastal surveillance in northern Australia*, p. 9.

¹⁴⁵ The Parliament of the Commonwealth of Australia, *Australia's Peacetime Coastal Surveillance and Protection Arrangements—A Review*, p. 6-9.

¹⁴⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 114, 23 May 1979, p. 2320.

Civil contract-provided coastal surveillance is now the preferred solution, but it has been a long and painful journey. Cost was a major factor in the initial and subsequent decisions.¹⁴⁷ This meant that aircraft performance was initially limited and consequently the civil aircraft were confined to inshore or 'littoral' surveillance while military aircraft flew the offshore missions.

The first two civil surveillance contracts were established by the Department of Transport, each for two years. One had aircraft conducting daily quarantine-related surveillance flights, between Geraldton and Cairns, and the other dedicated three aircraft to Customs tasks.¹⁴⁸ An indication of the initial surveillance capability is evident from the choice of aircraft for the quarantine task, the Rockwell Shrike Commander 500, a six seat twin-engined high-wing aircraft, excellent for visual search but with no electronic search or localization sensors.¹⁴⁹ These aircraft were therefore limited to littoral visual search. Scheduled surveillance hours flown for the first three financial years of civil coastal surveillance were: 1977-8: 4,200 hours; 1978-9: 13,800 hours; 1979-80: 23,126 hours.¹⁵⁰

As the civil surveillance program progressed two issues became clear. Firstly, the emphasis on economy remained fundamental. This was highlighted by the Minister for Transport in a reply to a Parliamentary question on the calling of tenders for new surveillance contracts. Mr Hunt noted that:

We will continue to use the resources of the Department of Defence and civil tendering arrangements which are undoubtedly the most economic way to provide a valuable coastal surveillance service for this country.¹⁵¹

It was raised again just five years later in 1987, when Senator McGibbon commented:

This Government has an obsession with the Jindalee Over the Horizon Radar system...because it seems a cheap option ... for knowing who is coming and going around the northern half of Australia. That is an absolutely fundamental requirement, but Jindalee will not satisfy it.¹⁵²

¹⁴⁷ Day, *Contraband and Controversy: The Customs History of Australia From 1901*, p. 426.

¹⁴⁸ *Commonwealth Parliamentary Debates*, Senate, Vol., 79, 9 November 1978, p. 1921.

¹⁴⁹ <http://en.wikipedia.org/wiki/Aero_Commander_500_family> (24 August 2012).

¹⁵⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 121, 10 March 1981, p. 625.

¹⁵¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 127, 25 March 1982, p. 1398.

¹⁵² *Commonwealth Parliamentary Debates*, Senate, Vol., 122, 9 October 1987, p. 915.

The second issue was the lack of expertise in the Department responsible for establishing the surveillance contracts, which became evident in the management of two sets of contract negotiations and impacted on the surveillance performance. The first contract related to surveillance sensors, noting that some of the civil aircraft, Nomads, had been fitted with search radar by the early 1980s. A change of surveillance provider for Great Barrier Reef surveillance in mid-1984 meant a change of aircraft type and a switch from the Nomad with all-round search radar to the Shrike Commander, now fitted with side-looking radar.¹⁵³ Experience demonstrated quickly that the side-looking radar was less effective, needing more flying hours than an all-round scan radar-equipped aircraft to search the same area.¹⁵⁴ This unfortunate outcome, together with the recommended 5,600 hours per year cut to surveillance flying resulted in a reversal of the radar decision.¹⁵⁵

The second contract-related problem was even more significant and involved the awarding of a coastal surveillance contract to Amman Aviation in 1987. Subsequent revelations in Parliament indicated that the Department of Aviation had concerns about the company's aviation credentials and that the Victorian Police had other suspicions.¹⁵⁶ Tender selection criteria that favoured accepting the most technically competent bid were probably undermined by the need also to select the cheapest compliant bid.¹⁵⁷ Prolonged Parliamentary scrutiny determined that the tender process had been inadequate and Amman's contract was cancelled soon after the company took over the surveillance task.¹⁵⁸

¹⁵³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 136, 3 May 1984, p. 1817.

¹⁵⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 136, 3 May 1984, p. 1817.

¹⁵⁵ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 143, 22 August 1985, p. 219.

¹⁵⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 156, 18 September 1987, p. 356.

¹⁵⁷ *Commonwealth Parliamentary Debates*, Senate, Vol., 121, 13 May 1987, p. 2748.

¹⁵⁸ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 156, 18 September 1987, p. 356.

Surface Response Developments

In a reversal of the aerial surveillance situation, surface response became and remained primarily a naval task, with civil support mainly from the Customs National Maritime Unit. In 1978, the Navy added two patrol boats to the seven already committed to the constabulary function, to manage the increasing number of Vietnamese irregular maritime arrivals.¹⁵⁹ The constabulary work included Operation *Trochus* in the late 1970s and resulted in Darwin and Cairns becoming the focus of Navy patrol boat activity from as early as 1972.¹⁶⁰ In July 1977 the Customs patrol craft *Jerboa* joined the Navy patrol boats in Darwin, and other Customs boats were based in Cairns and Broome. Customs moved its Cairns and Darwin-based boats to Geraldton and Port Hedland in December 1978, reflecting the changing focus of operations.¹⁶¹ *Jerboa* was to be replaced in Darwin by another patrol craft.¹⁶² The Department of Transport's lighthouse supply ship *Cape Pillar* also took on patrol duties during 1979, indicating how irregular maritime arrivals stretched the existing surveillance and response resources.¹⁶³

While the major surveillance and response activities continued in northern waters, Navy patrol boats joined the naval aircraft engaged in oil and gas platform surveillance in Bass Strait. The Attack class boats were unsuited to this work because of their limited capacity to operate in the frequent high seas in the area. As early as September 1977, replacements for the Attack class were announced.¹⁶⁴ These would be 15 boats designed by the British firm Brooke Marine, would be 10m longer than the Attack class and have a speed of up to 30kts.¹⁶⁵ They became the Fremantle class, the first being accepted on 5 March 1980.¹⁶⁶

¹⁵⁹ Day, *Contraband and Controversy: The Customs History of Australia From 1901*, p. 426.

¹⁶⁰ Ross Gillett, *Warships of Australia*, Rigby, Adelaide, 1977, p. 227.

¹⁶¹ Day, *Contraband and Controversy: The Customs History of Australia From 1901*, p. 426.

¹⁶² *Commonwealth Parliamentary Debates*, Senate, Vol., 80, 1 March 1979, p. 406.

¹⁶³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 114, 30 May 1979, p. 2699.

¹⁶⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 106, 22 September 1977, p. 1482.

¹⁶⁵ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 106, 22 September 1977, p. 1482.

¹⁶⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 117, 25 March 1980, p. 1138.

Fisheries patrols in southern waters, involving some of the Navy's minesweepers reflected the heavy constabulary function workload. As an example, Her Majesty's Australian Ship (HMAS) *Curlew* caught a Japanese fishing vessel inside the Tasmanian Fishing Zone in February 1978. Subsequent prosecution led to the loss of catch and fishing gear by the Japanese.¹⁶⁷ Fisheries patrols were also conducted frequently within the Great Barrier Reef. At least 30 foreign fishing vessels were apprehended for illegal fishing in the reef area during the 1970s and illegal, unreported and unregulated (IUU) fishing remained a problem into the 1980s.¹⁶⁸

Growing surveillance and response activity in the north and north-west led to the usual calls for a greater military presence, including an additional patrol boat base in the north-west.¹⁶⁹ The Government decided against building such a base¹⁷⁰ and despite recent calls to re-examine the issue it has not yet gained enough support within Defence. Consequently, the 2012 Force Posture Review '... recommended Navy upgrades to Western Australia's North West commercial ports in Exmouth, Dampier, Port Hedland and Broome to allow access by larger warships'. It recommended no new permanent bases.¹⁷¹ Following earlier abortive efforts in 1989, the future of permanent naval bases in the north-west appears bleak.¹⁷² Reliance on access to commercial ports has risks, as merchant ships have priority for berths, even having naval ships moved so that they can come alongside.¹⁷³

As the Navy presence in the north expanded to meet the demands of the constabulary task, Customs also tried to boost its efforts. In November 1985 the patrol craft *Jabiru* relocated from Geraldton to Darwin and was tasked with extensive patrolling in

¹⁶⁷ *Commonwealth Parliamentary Debates*, Senate, Vol., 76, 22 February 1978, p. 21.

¹⁶⁸ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 121, 26 March 1981, p. 1065.

¹⁶⁹ *Commonwealth Parliamentary Debates*, Senate, Vol., 74, 19 August 1977, p. 348.

¹⁷⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 125, 30 October 1981, p. 2792.

¹⁷¹ Senator Alan Eggleston, 'Old game of wait and see for increased North West military presence', media release, 1 February 2012.

<<http://www.senatoralaneggleston.com/Newsroom/News/tabid/94>> (27 August 2012).

¹⁷² Prior to the 1989 election Defence Minister Beazley announced that a patrol boat base would be built in Port Hedland, but nothing came of it. Senator Alan Eggleston, 'Senate Estimates reveal North West defence presence neglected', media release, 15 February 2012.

<<http://www.senatoralaneggleston.com/Newsroom/MediaReleases/tabid/91>> (27 August 2012).

¹⁷³ Discussion with patrol boat commanding officers at Darwin Naval Base 2 May 2011.

conjunction with Coastwatch aircraft.¹⁷⁴ Two other 'J' class patrol craft continued operating from Broome and Port Hedland while one of the new Minister class patrol craft operated from Geraldton.¹⁷⁵

Quarantine, Customs and the Environment Demand Attention

Increases in foreign fishing, together with the appearance of the first irregular maritime arrivals, demanded other law enforcement responses from government. In addition to the growing Customs presence in the north Quarantine officers were dispatched to Karratha and Port Hedland in late 1976.¹⁷⁶ Fear of unauthorized landings leading to outbreaks of diseases such as foot and mouth disease, meant that all reported or suspected landings by foreign fishing vessels or other craft were followed up by Quarantine officers.¹⁷⁷ The ease and frequency with which people moved across Torres Strait meant that a Quarantine officer was stationed at Thursday Island to check all arrivals.¹⁷⁸ Illegal drug importation, as identified by the *Williams Royal Commission* remained a serious problem and by the mid-1980s Australian Federal Police units had been established in north-west Western Australia, Darwin and north Queensland.¹⁷⁹

The growing importance of environmental management, especially for the Great Barrier Reef, an ever more popular tourist destination, also demanded government action. Practical measures included the decision to inspect all oil tankers in their first Australian port of call.¹⁸⁰ By 1982 the Department of Transport was responsible for the National Plan to Combat Pollution of the Sea by Oil. The plan was tested periodically through exercise and relied partly on placing stockpiles of dispersant and pollution control equipment around the coast.¹⁸¹

¹⁷⁴ Day, *Contraband and Controversy: The Customs History of Australia From 1901*, p. 430.

¹⁷⁵ Day, *Contraband and Controversy: The Customs History of Australia From 1901*, p. 430.

¹⁷⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 101, 3 November 1976, p. 2261.

¹⁷⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 110, 12 September 1978, pp. 887-8.

¹⁷⁸ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 112, 21 November 1978, p. 3146.

¹⁷⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 139, 10 September 1984, p. 913.

¹⁸⁰ *Commonwealth Parliamentary Debates*, Senate, Vol., 80, 22 February 1979, p. 162.

¹⁸¹ *Commonwealth Parliamentary Debates*, Senate, Vol., 93, 22 February 1982, p. 310.

GOVERNMENT RESPONSE: LEGISLATION

Introduction

Much maritime legislation during the period 1976 to 1988 was notable for its incrementalism. Politicians consistently had difficulty in responding adequately to the rapid change in the nature and scope of threats to maritime security, as well as to the increasing volume of international regulation. Law making was further complicated by the propensity for activities in one sphere to require legislation relating to several others. For example, the placing of oil and gas platforms within the EEZ demanded legislation covering the environment, immigration, customs and quarantine, as well as financial regulation. As a result, many laws were enacted during the period and subsequently amended, sometimes repeatedly.

The 1979 *Offshore Constitutional Settlement* was an important influence on legislation. It was produced to resolve issues relating to State and Commonwealth offshore responsibilities, in the wake following the 1975 High Court decision on offshore sovereignty. Other important influences included irregular maritime arrivals and illegal drug importation. Nevertheless, the most substantial legislative effort involved resources and the environment. Offshore resource exploitation, along with its international dimension, was the major catalyst for new legislation. Similar pressures existed in the maritime environment, with protection of the Great Barrier Reef becoming a priority, along with the ratification of international conventions on preventing marine pollution.

Legislative Developments: General

The entire legislation section examines the Government's legislative response to law enforcement at sea challenges. In doing so it considers the significant Bills presented to Parliament for each main categories of law enforcement and clarifies the problems faced by law makers in keeping pace with emerging law enforcement challenges.

The *Crimes At Sea Act 1978* which covered crimes at sea and in foreign ports or harbours, applied the criminal law of the appropriate State or territory to offences

committed on or from Australian ships on overseas, inter-state or inter-territory voyages.¹⁸² The Act also applied, in special cases, to foreign ships beyond the territorial sea. Significantly, this Act heralded a move to reduce Australian reliance on Imperial legislation.¹⁸³ Together with the subsequent *Crimes (Offences At Sea) Act 1979* the 1978 Act reflected the agreements between States and the Commonwealth resulting in the *Offshore Constitutional Settlement*.

Offshore Constitutional Settlement. Following the agreement with the States that led to the *Offshore Constitutional Settlement* several Bills were introduced to give effect to the Settlement. Two of these Bills became the *Coastal Waters (State Powers) Act 1980* and the *Coastal Waters (State Title) Act 1980*.¹⁸⁴ They gave the States power and title over the territorial sea and over the land underneath coastal waters adjacent to the States, to the three nautical mile limit.¹⁸⁵ The *Coastal Waters (Northern Territory) Title Act 1980* did the same for the Northern Territory. Other related Acts were the *Petroleum (Submerged Lands) Amendment Act 1980*, *Fisheries Amendment Act 1980*, *Navigation Amendment Act 1980* and *Historic Shipwrecks Amendment Act 1980*.¹⁸⁶ These latter four Acts clarified Commonwealth and State offshore responsibilities, with, for example, the *Petroleum Act* establishing Commonwealth responsibility beyond three nautical miles and the *Fisheries Act* providing joint authority of specified fisheries, and confirming Commonwealth responsibility beyond three miles, while allowing for Commonwealth responsibility also from the low water mark where two or more States are involved.¹⁸⁷ The Labor Party opposed these Bills because they strengthened State powers at the expense of the Commonwealth.¹⁸⁸

¹⁸² *Commonwealth Parliamentary Debates*, Senate, Vol., 78, 22 August 1978, p. 241.

¹⁸³ *Commonwealth Parliamentary Debates*, Senate, Vol., 78, 22 August 1978, p. 241. This move was confirmed by the introduction of the *Admiralty Bill 1988* which gave Australia a comprehensive and contemporary uniform law governing the exercise of admiralty jurisdiction by Australian courts. *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 160, 24 March 1988, p. 1336.

¹⁸⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 118, 23 April 1980, pp. 2165-70.

¹⁸⁵ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 118, 23 April 1980, pp. 2165 and 2170.

¹⁸⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 118, 23 April 1980, pp. 2173-81.

¹⁸⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 118, 23 April 1980, pp. 2173-7.

¹⁸⁸ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 118, 1 May 1980, p. 2575.

Subsequently, the *Torres Strait Treaty (Miscellaneous Amendments) Act 1984* was introduced to enable ratification of the *Torres Strait Treaty 1978*. The novelty and complexity of some provisions, including those relating to fisheries, caused difficulties. This Act ensured that Australian fisheries legislation no longer applied to the Treaty protected zone, or other waters to which the *Torres Strait Fisheries Act 1984* applied.¹⁸⁹ Ten Commonwealth Acts were affected by the *Torres Strait Treaty Act* so that traditional people of the Torres Strait could continue conducting traditional activities, as far as possible, without compromising Australian border security. The *Migration and Quarantine Acts* provided specially for Papua New Guinea citizens entering the protected area, and the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* was amended to allow traditional hunting.¹⁹⁰ Similarly the *Customs Act* was amended to allow exemptions for traditional activities, while maintaining controls over the movement of prohibited substances.

Legislative Developments: Border Protection

Although irregular maritime arrivals became a major border protection matter during the period, the first migration-related legislation was more broadly focused and hinted at tough measures to come. The *Migration Amendment Act 1979*, aimed to tighten regulations and enforcement, with a special concentration on people who stayed beyond visa limits and who attempted to work without permits.¹⁹¹ Allegedly 57,000 people were in Australia illegally at the time.¹⁹²

The first legislation specifically aimed at unauthorized arrivals by sea (and air) was the *Immigration (Unauthorised Arrivals) Act 1980*. The Act aimed to curb activities of the 'people smugglers' by penalizing 'masters, owners, agents and charterers of vessels'.¹⁹³ It was not specifically aimed at their passengers, who could qualify as refugees.

¹⁸⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 133, 19 October 1983, p. 1899.

¹⁹⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 133, 19 October 1983, p. 1899.

¹⁹¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 114, 10 May 1979, pp. 2095-7.

¹⁹² *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 114, 10 May 1979, p. 2097.

¹⁹³ Schloenhardt, 'Australia and the Boat-People: 25 years of Unauthorised Arrivals', p. 38.

Responding to 53 boats carrying 2,067 irregular maritime arrivals over the previous five years, the Act delivered penalties of up to \$A100,000 or 10 years gaol for bringing more than five 'relevant' persons into Australia.¹⁹⁴ It was followed by an amending Act six months later; the *Immigration (Unauthorised Arrivals) Amendment Act 1980*, which extended the jurisdiction of the earlier Act to Christmas Island and widened powers of boarding.¹⁹⁵ Yet another amending Act, the *Migration Amendment Act 1983* added penalties for document forgery and misuse and facilitated the deportation of non-citizens.¹⁹⁶

The use of Amendment Acts became quite widespread in border protection legislation during this period. This reflected the rapid evolution and growing complexity of the problems. Yet, it also reflected the long-standing reactive nature of Australia's approach to border protection and the constabulary function. Customs and Quarantine legislation clearly illustrated this trend.

Customs. Customs legislation during this period concentrated on dealing with an alarming growth in illegal drug importation and evidence of organized criminal involvement.¹⁹⁷ The *Customs Amendment Act 1977* raised the maximum penalties for drug trafficking to \$A100,000 or up to 25 years gaol.¹⁹⁸ Subsequent Amendment Acts took additional steps against drug crimes. Invariably, they appeared as reactions to criminal initiatives rather than reflecting any ability by law enforcement authorities to gain the initiative. The *Customs Amendment Act 1979* attacked the source of the drug trade by providing for eavesdropping and increasing trafficking penalties to include life imprisonment.¹⁹⁹ The *Customs Amendment Act (No. 2) 1979*, related to consequent

¹⁹⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 118, 1 May 1980, p. 2517.

¹⁹⁵ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 120, 27 November 1980, p. 154.

¹⁹⁶ Schloenhardt, 'Australia and the Boat-People: 25 years of Unauthorised Arrivals', p. 39.

¹⁹⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 107, 2 November 1977, p. 2690.

¹⁹⁸ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 107, 2 November 1977, p. 2690.

¹⁹⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 113, 8 March 1979, p. 794.

changes to telecommunications and Australian Security Intelligence Organisation legislation.²⁰⁰

While the *Customs Amendment Act (No.3) 1980* dealt only with minor offences, the *Customs Amendment Act 1981* implemented several recommendations from the *Williams Royal Commission of Inquiry into Drugs 1980*. These included moving responsibility for narcotics control beyond the Customs barrier to the Australian Federal Police and extending Customs control over ships and aircraft to 12nm from the coast for foreign craft.²⁰¹

During the period, two unsuccessful Customs Bills aimed to prevent the export of goods rather than control imports. The *Customs Amendment Bill (No. 2) 1981* sought to prevent sand mining on, and prohibit the export of rutile from, Fraser and Moreton Islands.²⁰² Similarly, the *Customs (Nuclear Materials and Hardware) Prohibition Bill 1983* was introduced to ban the export and import of nuclear material.²⁰³ That both were private members' Bills probably explains their failure.

The final piece of relevant Customs legislation for the period demonstrated the awakening within Government that new approaches were needed for successful border protection. The *Customs Administration Act 1985* established the Australian Customs Service as a separate entity within the Department of Industry, Technology and Commerce, while noting that the Service had previously been transferred six times among several organizations.²⁰⁴

From 1976 to 1988, quarantine legislation produced incremental changes, strengthening controls and raising penalties. The *Quarantine Amendment Act 1979* and the *Quarantine Amendment Act 1984* increased penalties because of the fear of animal and plant diseases being introduced; including by foreign fishers landing unauthorized

²⁰⁰ *Commonwealth Parliamentary Debates*, Senate, Vol., 80, 8 March 1979, p. 649.

²⁰¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 122, 7 May 1981, p. 2136.

²⁰² *Commonwealth Parliamentary Debates*, Senate, Vol., 91, 19 August 1981, p. 81.

²⁰³ *Commonwealth Parliamentary Debates*, Senate, Vol., 100, 12 October 1983, p. 1416.

²⁰⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 142, 20 May 1985, p. 2755.

in the north.²⁰⁵ Fear of foot and mouth disease and its potential economic impact was a catalyst for these Acts.²⁰⁶ The *Quarantine Amendment Act (No. 2) 1979* extended airport and seaport baggage and premises search powers to Quarantine officers.²⁰⁷

Quarantine management advanced with the establishment of the quarantine station on the Cocos Islands in late 1981. The *Quarantine Amendment Act 1981* updated the *Quarantine Act* to reflect the forthcoming availability of the Cocos Islands station and its comprehensive disease control arrangements.²⁰⁸ As with Customs, changes in quarantine administration saw responsibility for animal and plant quarantine move, in this case to the Department of Primary Industry, a change given effect by the *Quarantine Amendment Act 1985*.²⁰⁹

Resources Legislation

The *Offshore Constitutional Settlement 1979*, and the introduction of a 200nm AFZ and subsequently a full EEZ, led to the enactment of a great deal of legislation involving the exploitation of living and non-living resources. The Government also sponsored several bilateral fishing agreements with Japan and Taiwan.

Extension of jurisdiction over foreign fishers to 200nm came with the *Fisheries Amendment Act 1978*, which also closed the Gulf of Carpentaria to foreign fishing, ending a long-standing grievance on the part of local prawn fishers.²¹⁰ This Act also obliged Australia to assess AFZ total allowable catches. Later, the *Fisheries Legislation Amendment Act 1985* provided legislative cover for the development of fisheries

²⁰⁵ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 110, 16 August 1978, p. 380.

²⁰⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 135, 7 March 1984, p. 663.

²⁰⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 114, 6 June 1979, p. 2998.

²⁰⁸ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 122, 9 April 1981, p. 1566.

²⁰⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 140, 22 February 1985, p. 89.

²¹⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 108, 13 April 1978, p. 1515.

management plans to prevent over exploitation.²¹¹ This was important considering the limited fish stocks in Australian waters.

Maritime security legislation continued responding incrementally to policy development. The *Fishing Legislation Amendment Act 1984* generated administrative changes to three related laws, provided licensing arrangements and allowed for the entry of unlicensed foreign fishing vessels to Australian ports for repairs.²¹² Subsequently, the *Fishing Legislation Amendment Act 1987* introduced administrative measures that implemented a series of related laws and strengthened powers of enforcement in Australian fisheries.²¹³ In the same year the *Fisheries Amendment Act 1987* implemented the treaty between South Pacific States and the USA, allowing US tuna purse seining in all Forum Fisheries Agency zones under a single license. Access to the AFZ was initially limited to part of the Coral Sea.²¹⁴

Establishment of the 200nm AFZ and the relatively small scale of Australia's ocean fishing industry led to the enactment of several agreements with foreign governments or companies for licensing fishing in the AFZ. These were intended to manage foreign fishing because of disquiet within the Australian industry.²¹⁵ One legislative expression of the disquiet was the *Continental Shelf (Living Natural Resources) Amendment Act 1978*. The Act made it difficult for foreign fishers to avoid prosecution for IUU fishing on technical grounds.²¹⁶ It also aimed to prevent sedentary species being taken with the defence that the catch was not for commercial purposes.²¹⁷

²¹¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 141, 17 April 1985, p. 1288.

²¹² *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 133, 7 December 1983, p. 3364. The other affected laws were the *Fishing Industry Research Act 1969*, *Fisheries Act 1952*, and the *Continental Shelf (Living Natural Resources) Act 1968*.

²¹³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 156, 18 September 1987, p. 329. The other laws affected were the *Continental Shelf (Living Natural Resources) Act 1984*, *Fisheries Act 1952* and the *Torres Strait Fisheries Act 1984*.

²¹⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 157, 28 October 1987, p. 1619.

²¹⁵ *Commonwealth Parliamentary Debates*, Senate, Vol., 83, 6 November 1979, p. 1946. This Parliamentary discussion noted that up to 350 Japanese long liners were calling at Australian ports each year.

²¹⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 108, 13 April 1978, p. 1519.

²¹⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 108, 13 April 1978, p. 1519.

The Australian-Japanese Fishing Agreement of October 1979 was the first of a series of annual agreements which placed conditions on fishing within the AFZ.²¹⁸ The conditions included exclusion from some waters, position reporting each two days, catch and effort reports each six days, and the right to inspect vessels at any time.²¹⁹ The Agreement did not specify allowable catch limits and was made without local industry consultation.²²⁰ The licensing of Japanese fishing vessels carried a fee amounting in 1983 to \$A2.275m for the 290 vessels involved.²²¹ At about \$A9,000 per vessel it does not seem to be reasonable compensation for access to Australian fishing grounds.

The Government also set up joint ventures with foreign companies as a means of ensuring Australian fishing industry participation in the expanded fisheries opportunities and of exposing the local industry to foreign expertise.²²² The earliest of these joint ventures involved Japanese, US and Polish companies wanting to fish in Tasmanian waters. They began in 1979 for two year periods.²²³ The Polish joint-venture also examined the fishing potential of sub-Antarctic waters.²²⁴ A later agreement between the Commonwealth and the Kaohsiung Fishing Boat Commercial Guild intended to foster a joint venture for fishing in northern Australian waters, but the Opposition feared it merely facilitated access to the AFZ for the Taiwanese.²²⁵ Licensing of Taiwanese trawlers ceased there from 1990, because of the growing activity by Australian stern trawlers.²²⁶

Development of Australia's offshore oil and gas generated legislation to protect those resources and the surrounding marine environment. The *Petroleum (Submerged Lands-*

²¹⁸ International Environmental Agreements (IEA) Database Project, *IEA-Designated lineages: Australia Japan Tuna Long Line*, < <http://iea.uoregon.edu/page.php> > (26 September 2012). The full title of the Agreement was Subsidiary Agreement on Fisheries Between the Government of Australia and the Government of Japan Concerning Tuna Long Line Fishing.

²¹⁹ *Commonwealth Parliamentary Debates*, Senate, Vol., 83, 19 November 1979, p. 2430.

²²⁰ *Commonwealth Parliamentary Debates*, Senate, Vol., 83, 13 November 1979, p. 2170.

²²¹ *Commonwealth Parliamentary Debates*, Senate, Vol., 101, 1 December 1983, p. 3091.

²²² *Commonwealth Parliamentary Debates*, Senate, Vol., 105, 23 August 1984, p. 280.

²²³ *Commonwealth Parliamentary Debates*, Senate, Vol., 82, 21 August 1979, p. 82.

²²⁴ *Commonwealth Parliamentary Debates*, Senate, Vol., 83, 24 October 1979, p. 1750.

²²⁵ *Commonwealth Parliamentary Debates*, Senate, Vol., 126, 23 March 1988, p. 1217.

²²⁶ David C. Ramm, *Australia's Northern Trawl Fishery: Fisheries Report No. 32*, Department of Primary Industry and Fisheries, Darwin, May 1994, p. 1.

Miscellaneous Amendments) Act 1981 extended provisions of the existing legislation²²⁷ to the continental shelf of the Coral Sea. By contrast, there was an environmental aspect to the *Petroleum (Submerged Lands) Amendment Act 1984* which, *inter alia*, declared an area around the Bass Strait oil and gas platforms prohibited to Australian ships over 200 tons, and to all Australian ships in case of a terrorist threat.²²⁸ Foreign vessels had already been prohibited from entering the area through International Maritime Organization (IMO) advisory measures promulgated in October 1982. The Act also prescribed fines for related offences. Environmental matters featured also in the *Sea Installations Act 1987*, which ensured that proposals for offshore installations were technically sound and environmentally safe.²²⁹

The introduction of offshore oil and gas platforms created a need for legislation beyond the resources sector such as the *Off-shore Installations (Miscellaneous Amendments) Act 1982*. The intent of this Act was to mandate that, 'When the installations are attached to the seabed, they will become under the legislation, part of Australia'.²³⁰ This decision had customs, quarantine and immigration implications and therefore required changes to the relevant Acts; the *Customs Act 1901*, *Excise Act 1901*, *Quarantine Act 1908*, and the *Migration Act 1958*²³¹ to ensure that the installations were not used for illegal purposes, such as the importing of illegal drugs. Furthermore, the Act allowed platforms to be installed without having to be imported through an Australian port.²³² Subsequently, the *Sea Installations (Miscellaneous Amendments) Act 1987* further amended the four Acts listed above '... to give to officers administering the respective Acts power over such installations, ships, aircraft, persons and goods arriving with or at the installations or departing overseas from such installations'.²³³ The main change from the 1982 Act was

²²⁷ The *Petroleum (Submerged Lands) Act 1967*, as amended in 1980, established 500 metre safety zones around offshore installations and set penalties for infringement of the zones. The Parliament of the Commonwealth of Australia, *Australia's Peacetime Coastal Surveillance and Protection Arrangements—A Review*, p. 2-7.

²²⁸ *Commonwealth Parliamentary Debates*, Senate, Vol., 106, 16 October 1984, p. 1704.

²²⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 154, 2 April 1987, p. 1950.

²³⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 127, 22 April 1982, p. 1822.

²³¹ The Parliament of the Commonwealth of Australia, *Australia's Peacetime Coastal Surveillance and Protection Arrangements—A Review*, p. 2-7.

²³² *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 127, 22 April 1982, p. 1822.

²³³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 154, 2 April 1987, p. 1951.

to extend coverage, from the installations and the ships and aircraft supporting them, to include the people involved and their movements.

Environmental Legislation

A wealth of environmental legislation was enacted between 1976 and 1988, with most attention on protecting the Great Barrier Reef, as well as more general marine pollution management. Domestic pressures were mostly responsible for the Barrier Reef legislation, but the enactment of international regulations for managing pollution of the sea produced the impetus for local marine pollution laws.

Legislation covering the Great Barrier Reef was iterative. As the extent of the Park grew the environmental and commercial management issues expanded and became more complex. The first Act relating to the Great Barrier Reef during the period was the *Great Barrier Reef Marine Park Amendment Act 1978*. This Act amended the area covered by the Marine Park, closing it off at the tip of Cape York Peninsula and excluding Saumarez Reef, because it belonged in the Coral Sea Islands Territory.²³⁴ Legislative incrementalism was evident in the tabling of the *Great Barrier Reef Marine Park (Capricornia Section) Regulations* in May 1981. The regulations covered a 12,000 sq km section of the Marine Park where fishing was to be limited and monitored, and where minerals exploration was to be banned.²³⁵ Opposition criticism centred on Government failure to gazette the entire Great Barrier Reef as a marine park.²³⁶

Nevertheless, by 30 October 1983, 98.5 per cent of the Great Barrier Reef had been declared as Marine Park and the *Great Barrier Reef Marine Park Amendment Act 1983* formalized management issues, such as having the Queensland National Parks and Wildlife Service take on routine management of the Marine Park for the Park Authority.²³⁷ The Act also highlighted the need for Commonwealth and State

²³⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 108, 6 April 1978, p. 1140.

²³⁵ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 123, 28 May 1981, p. 2771.

²³⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 123, 28 May 1981, p. 2771.

²³⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 133, 2 November 1983, p. 2178.

involvement in offshore management and the potential for difficulties therein. The first of two unsuccessful attempts to further enhance the status of the Marine Park, the *Great Barrier Reef Marine Park Amendment (Prohibition of Mining or Drilling Activities) Bill 1985* proposed to prohibit '... operations for the recovery of minerals, or for any purpose ancillary to such operations, ... within the marine park'.²³⁸

The final Great Barrier Reef Marine Park environmental Acts for this period highlighted the increasing attractiveness of the Reef as a tourist destination and its ongoing importance to the fishing industry. The *Sea Installations Act 1987*, established a regulatory mechanism before the first floating hotel was opened within the Great Barrier Reef.²³⁹ Then, the *Great Barrier Reef Marine Park Amendment Act 1988* increased fines for breaches of the Act, to \$A10,000 for individuals and \$A50,000 for corporations. Because of the growing difficulty of policing the vast Marine Park the powers of inspectors were expanded. Search and seizure powers were extended to allow apprehension of offenders outside the Marine Park.²⁴⁰

The first legislation aimed at management of pollution at sea illustrated the growing influence of international law and was presented as a package of six Acts entitled 'Protection of the Sea'.²⁴¹ The essential elements of this group of Acts, the last two of which dealt with funding pollution clean-up measures, were that: Australia implemented the *International Convention on Civil Liability for Oil Pollution Damage 1969* with the 1976 Protocol;²⁴² ships carrying more than 2,000 tonnes of oil as cargo needed

²³⁸ *Commonwealth Parliamentary Debates*, Senate, Vol., 112, 28 November 1985, p. 2435. This Bill and the subsequent *Environmental Protection (Sea Dumping) Bill 1985* were introduced by the Australian Democrats Party and failed to win majority support in the Parliament.

²³⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 156, 7 October 1987, p. 890.

²⁴⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 164, 28 November 1988, p. 3376.

²⁴¹ The set of Acts comprised the *Protection of the Sea (Civil Liability) Act 1981*, *Protection of the Sea (Powers of Intervention) Act 1981*, *Protection of the Sea (Discharge of Oil from Ships) Act 1981*, *Navigation (Protection of the Sea) Act 1981*, *Protection of the Sea (Shipping Levy) Act 1981* and *Protection of the Sea (Shipping Levy Collection) Act 1981*. *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 121, 5 March 1981, p. 486.

²⁴² *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 121, 5 March 1981, p. 486. At this point, Australia had not ratified the *International Convention for the Prevention of Pollution from Ships of 1973 (MARPOL)*. See *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 121, 11 March 1981, p. 656.

to have pollution liability insurance;²⁴³ Ministers could act against the threat of pollution by Australian or foreign flag shipping on the high seas or in the territorial sea;²⁴⁴ Australia retained through customary law the power to '... protect its territory and coastal sea ...';²⁴⁵ and Australia could prohibit discharge of oil within 50 nautical miles of the outer edge of the Great Barrier Reef,²⁴⁶ and maintain survey and construction standard requirements in the one piece of legislation.²⁴⁷

Legislation to prevent or manage marine pollution developed quickly during this period, with the result that many Acts passed by Parliament amended or superseded earlier laws, or ensured compliance with evolving international regulation. One such Act was the *Environmental Protection (Sea Dumping) Act 1981*, the purpose of which was to '... control marine pollution through dumping and incineration, by implementing the *Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter*, together with amendments to the convention introduced in 1978 and 1980'.²⁴⁸ The Act applied to '... Australian vessels, aircraft or platforms believed to be engaged in dumping and vessels and aircraft loading in Australia or in Australian waters matter which is to be dumped'.²⁴⁹

In 1983 the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* was introduced by the incoming Labor Government, following similar lapsed legislation proposed by the Coalition Government. It gave effect to the *International Convention for the Prevention of Pollution from Ships of 1973-78 (MARPOL)* providing uniform controls over ship-sourced pollution.²⁵⁰ Delay in enacting complementary State and Territory

²⁴³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 121, 5 March 1981, p. 486.

²⁴⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 121, 5 March 1981, p. 486.

²⁴⁵ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 121, 5 March 1981, p. 486.

²⁴⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 121, 5 March 1981, p. 486.

²⁴⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 121, 5 March 1981, p. 486. This provision responded to the detection of breaches in more than half of tanker inspections carried out in 1977 and 1978. *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 121, 11 March 1981, p. 656

²⁴⁸ *Commonwealth Parliamentary Debates*, Senate, Vol., 90, 5 June 1981, p. 2784.

²⁴⁹ *Commonwealth Parliamentary Debates*, Senate, Vol., 90, 5 June 1981, p. 2784.

²⁵⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 129, 21 October 1982, p. 2391.

legislation to support MARPOL led to the introduction of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1986* to cover ' ... all ships in the territorial sea and the sea on the landward side of the territorial sea'.²⁵¹ The Act contained provisions allowing State legislation to prevail where it applied. This Act was complemented by the *Environment Protection (Sea Dumping) Amendment Act 1986*, which amended the 1981 Act of the same name.²⁵² In this case, updating was required because Australia had ratified the *Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter*, the *London Dumping Convention 1972*.

Australia made several anti-dumping related international commitments. These included signing the South Pacific Nuclear Free Zone Treaty which prohibited the dumping of radioactive waste at sea within the Treaty area, including the territorial seas of contracting parties.²⁵³ Australia also negotiated the *Convention for the Protection of the Natural Resources and Environment of the South Pacific Region* – (SPREP) to regulate the dumping of wastes at sea and preclude the sea dumping of radioactive matter anywhere in a defined South Pacific region.²⁵⁴

The final update was the *Protection of the Sea Legislation Amendment Act 1986*, enabling Australia to implement particular annexes of MARPOL and the 1969 *Convention on Oil Pollution Damage*, thereby ensuring greater control over ship sourced pollution.²⁵⁵ The Act also enabled Australia to implement the 1984 protocol to the *International Convention on Civil Liability for Oil Pollution Damage 1969*. This provided coverage out to 200nm and offered additional protection to sensitive areas like the Great Barrier Reef.²⁵⁶

²⁵¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 146, 19 February 1986, p. 869.

²⁵² *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 149, 27 May 1986, p. 4039.

²⁵³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 149, 27 May 1986, p. 4039.

²⁵⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 149, 27 May 1986, p. 4039.

²⁵⁵ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 151, 8 October 1986, p. 1676. The Bill aimed to amend the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* and the *Navigation Act 1912*,

²⁵⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 151, 8 October 1986, p. 1676.

Other significant environmental legislation included two Acts associated with Antarctica. The *Antarctic Treaty (Environment Protection) Act 1980* focused on protecting wildlife and protecting the ecology, through giving measures agreed under the *Antarctic Treaty* the force of Australian law.²⁵⁷ The *Antarctic Marine Living Resources Conservation Act 1981* allowed Australia to implement the *Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR)* which protects harvested species and the entire ecosystem.²⁵⁸ Thirdly, the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*, strengthened export and import controls relating to endangered wildlife species in line with the *Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)*.²⁵⁹ The Act proposed significant penalties for individuals and organizations breaching the Act's conditions.

During the 1970s international pressure grew for a global moratorium on whaling. To ensure consistency with the *International Convention for the Regulation of Whaling*, The Australian Government introduced the *Whaling Amendment Bill 1978*.²⁶⁰ This was to confer jurisdiction over whaling throughout the AFZ, but with qualifications that would not apply to other fishing. Specifically, Australia would have no whaling jurisdiction over '... vessels or aircraft which are flying the flag of, or registered in, a foreign country that is a party to the International Whaling Conventions and whose use in connection with whaling is duly authorised by that country and is not in contravention of any of the provisions of the schedule to the Convention'.²⁶¹ Although the Bill did not pass, support for whale conservation was provided by the *Whale Protection Act 1980*, which prohibited capture and killing of cetaceans by anyone in the AFZ, and beyond the 200nm limit by Australians. This Act imposed penalties of up to

²⁵⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 118, 22 May 1980, p. 3110.

²⁵⁸ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 121, 26 March 1981, p. 1007.

²⁵⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 127, 6 May 1982, p. 2391.

²⁶⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 108, 13 April 1978, p. 1519.

²⁶¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 108, 13 April 1978, p. 1519.

\$A100,000.²⁶² These legislative moves were early sallies in an ongoing attempt to outlaw all whale hunting.

The Implications of the Constabulary Function for the RAN

Before the 1970s the RAN's involvement in constabulary operations was episodic and improvised. The Navy rarely had vessels specifically designed for the work. The 200nm limit AFZ and subsequently EEZ, increasing interest in the maritime environment, and the first wave of irregular maritime arrivals, demanded change. For the Navy, this came as the Attack class patrol boats; the mainstay of the surface response capability, until their replacement by the larger and more capable Fremantle class.

It also involved the Navy's carrier-based anti-submarine warfare patrol aircraft for some eight years, before their replacement by civil contract aircraft. Despite the significant Navy commitment to the constabulary function from 1976 to 1988, debate continued as to whether the task was inherently military or civilian. Nevertheless, there was a sense that the demand for civil surveillance would increase with the anticipated expansion of Australia's resource zone.²⁶³ Discussion of the matter often accompanied calls for the creation of a coastguard. On the other hand, Paul Dibb in his 1986 *Review of Australia's defence capabilities*, cautioned against allowing the civil coastal surveillance commitment to distort Defence Force capabilities and priorities.²⁶⁴

In 1976 the Labor Opposition's Kim Beazley (Senior) (Fremantle) stated in Parliament that there was: '... the very great need in this country for what there is in the U.S.A.-a coastguard, or, alternatively, a properly equipped maritime police'.²⁶⁵ Just two years later *The Australian* newspaper called for the entire task to be '... an integral part of our

²⁶² *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 118, 23 April 1980, p. 2185.

²⁶³ *Australian Defence*, Australian Government Publishing Service, Canberra, November 1976, p. 16.

²⁶⁴ Paul Dibb, *Review of Australia's defence capabilities*, Australian Government Publishing Service, Canberra, March 1986, p. 44.

²⁶⁵ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 98, 2 March 1976, p. 434.

defence system ...' but eventually to be run by a coastguard.²⁶⁶ By 1978 Labor politicians were convinced the task was one for Defence, with Mr. Gordon Scholes (Corio) making the claim in Parliament²⁶⁷ and Senator Lewis asking whether the use of Tracker and Orion aircraft would not be more economical than the creation of an entirely new organization.²⁶⁸ These statements encapsulated the uncertainty over law enforcement at sea.

By May 1983 when the future of the Navy's fixed-wing aviation was in doubt, the former Coalition Government's Minister for Defence was quoting Labor's claim in February 1982 that it would use the Navy Tracker aircraft for coastal surveillance and would base three of them in Townsville or Cairns.²⁶⁹ In government just over a year later Labor decided to retire the Trackers and rely on civil contract surveillance aircraft.²⁷⁰ By 1988 it was the Coalition, now in opposition, imploring the Government to, '...give the defence forces a proper and meaningful job to do to control and coordinate coastal surveillance and put some guts and efficiency into it'²⁷¹ Defence, in evidence before the 1983 Beazley review, indicated that coastal surveillance was not its responsibility.²⁷²

The main impact of indecisiveness on the Navy was felt by the two Tracker squadrons which were involved in coastal surveillance operations, from Broome, Darwin and Nowra between 1975 and 1983. The almost continuous deployment of three VS 816 aircraft and their crews in Broome and Darwin from 1975 to 1980 significantly reduced the anti-submarine capability of the squadron. It also stretched the squadron's logistics organization, which had simultaneously to support operations from Broome or Darwin and Nowra or HMAS *Melbourne*. Normally, it operated from only one location, Nowra

²⁶⁶ Day, *Contraband and Controversy: The Customs History of Australia From 1901*, p. 427.

²⁶⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 108, 4 April 1978, p. 912.

²⁶⁸ *Commonwealth Parliamentary Debates*, Senate, Vol., 76, 8 March 1978, p. 424.

²⁶⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 131, 11 May 1983, p. 391.

²⁷⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 131, 11 May 1983, p. 391. The decision was made ostensibly on cost comparison grounds, noting also that with the retirement of HMAS *Melbourne* the primary rationale for keeping the Tracker aircraft ceased to exist.

²⁷¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 159, 23 February 1988, p. 508.

²⁷² *Commonwealth Parliamentary Debates*, House of Representatives, Vol., 145, 13 November 1985, p. 2660.

or the carrier *Melbourne*. The Bass Strait surveillance, conducted by the training squadron, VC 851, had less impact, but it meant that the highest priority for serviceable aircraft was always the surveillance task, at the expense of training commitments.²⁷³

The most serious impact on the squadrons was the Government decision to prefer civil contract aircraft for the ongoing coastal surveillance task, mainly because of cost.²⁷⁴ This led to the withdrawal from service of the Trackers and the loss to the ADF of a capable anti-submarine and surveillance capability. It also led to the loss of a considerable number of aircrew who sought opportunities elsewhere; the RAAF, the Royal Navy (RN), Royal Air Force or airlines.

Nevertheless, until that point the implications for the two squadrons had not been entirely negative, with opportunities to participate in nationally important tasks being seen as a welcome change from training and exercising. Apart from the associated improved morale, the coastal surveillance operations enabled both squadrons to continue developing surface surveillance skills, which had become increasingly important during the 1970s. This was sometimes to the detriment of anti-submarine warfare training.²⁷⁵

The greatest impact of the expanding constabulary task and government response fell on the Navy's patrol boat force, which had been involved since the Attacks entered service in late 1967.²⁷⁶ The ongoing uncertainty, relating to whether the constabulary task should belong to the military, did not impact significantly on the patrol boat force. The need for surface response forces was evident and the Navy was best placed to provide them. At the time, the Customs 'fleet' was capable only of inshore work and was dedicated primarily to port operations.²⁷⁷

²⁷³ From April 1981 to May 1982 the writer was responsible for managing the Squadron's training and operations programs.

²⁷⁴ *Commonwealth Parliamentary Debates*, Senate, Vol., 103, 30 May 1984, p. 2164.

²⁷⁵ From the writer's own experience with both squadrons at the time, beginning in the early 1970s the emphasis in training moved from anti-submarine warfare to surface surveillance in support of strike operations by the A-4 Skyhawk attack aircraft.

²⁷⁶ Colin Jones, 'Early years of the coastal patrol', David Stevens, ed., *Maritime Power in the 20th Century*, Allen and Unwin, St. Leonards, NSW, 1998, p. 159.

²⁷⁷ The 'J' class patrol boats of the 1970s were only 13m long and had a range of only 500nm. They and the predecessor Collector class boats were not suitable for offshore work. M.J.

Had a decision been made to establish a coast guard then the Navy's patrol boat force would almost certainly have been affected. Informal surveys conducted in 2004, when the issue was proposed by Labor in opposition, suggested that the patrol boat force would lose a majority of its personnel through transfers to a new coast guard.²⁷⁸ A similar result would have been expected had a coast guard been proposed between 1976 and 1988, because naval personnel would have transferred in expectation of a more predictable life.

One of the most tangible implications for the Navy was the confirmation of patrol boat basing in the north – Cairns and Darwin. Initially the Attack class patrol boats had been based around the Australian coast, with seven in Sydney, two in Darwin, and one in each of Fremantle, Jervis Bay, Melbourne, Westernport Bay, and Brisbane.²⁷⁹ As the task of monitoring and dealing with illegal fishing, potential quarantine breaches and irregular maritime arrivals grew, the focus shifted to the north and north-west. Eventually, patrol boat basing became concentrated in Cairns and Darwin. By 1988 the disposition of the new Fremantle class was, six in Darwin, five in Cairns, two in HMAS *Stirling* (Western Australia), one in Sydney and one in Westernport Bay.²⁸⁰

A major outcome of this new basing regime was the expansion of the Navy's 'footprint' in Australia with the addition of two new home ports in Cairns and Darwin. Basing the patrol boats in the north brought a demand for housing for families and support services associated with the maintenance and operation of the boats. There was a commensurate reduction in the patrol boat presence in southern Australia. That would become an issue later with the expansion of foreign fishing in the Southern Ocean.

Operationally, the major implication for the Navy of increasing involvement in the constabulary function, was the establishment of a need for patrol boats more capable

Bannon, *The Evolution of the Role of Australian Customs in Maritime Surveillance and Border Protection*, Master of Maritime Studies Thesis, University of Wollongong, 2007, pp. 65-6.

²⁷⁸ Informal discussion in early 2005, between the writer and a member of the Prime Minister's 2004 Task Force on Offshore Maritime Security.

²⁷⁹ Jones, 'Early years of the coastal patrol', Stevens, ed., *Maritime Power in the 20th Century*, p. 159.

²⁸⁰ Department of Defence, *Annual Report 1988-89*, Australian Government Publishing Service, Canberra, 1988, p. 100. At this time, three of the Attack class remained in service for reserve duties and were based in Adelaide, Hobart and Fremantle.

than the Attack class which had significant sea-keeping limitations.²⁸¹ Despite their better performance at sea, economy measures dictated that the new Fremantle class retained the Second World War vintage 40mm Bofors guns.²⁸² Even with their greater size and better sea-keeping ability, the Fremantles were not entirely satisfactory, and their eventual replacements, the Armidale class, were 57m vessels.²⁸³ Implicit in the decision to follow the Attack class with the Fremantles, was acknowledgment by the Navy that the constabulary task had become a long-term role.

The constabulary task, brought the Navy frequently and almost always positively, to the notice of the public, for the first time in peacetime. The Navy's other peacetime activities rarely attracted any media attention. The constabulary function was different, as video coverage for TV news, of boardings and detention of foreign fishing vessels and irregular maritime arrival boats, became and remained newsworthy. Consequently, the Attack and Fremantle class boats, their crews and activities, became the subject of two successful TV drama series called *Patrol Boat* in 1979 and 1982.²⁸⁴ For a Service which operated primarily 'out of sight and out of mind' constabulary work provided a consistent reminder to the public of its value. The publicity generated by the constabulary task proved also to assist Navy recruiting.

The constabulary function had an important personnel impact within the Navy. Firstly, as constabulary work became an apparently permanent part of the Navy's role it became an attractive alternative to other surface ships for many junior officers and sailors. The nature of the work, the camaraderie associated with small crews and the attraction of Cairns and Darwin as home ports all contributed to this. The constabulary function also generated important command experience and training opportunities, especially for junior officers. The paying off of HMAS *Melbourne* in 1982 had deprived

²⁸¹ Jones, 'Early years of the coastal patrol', Stevens, ed., *Maritime Power in the 20th Century*, p. 166.

²⁸² Peter Jones, '1972 - 1983: Towards Self-Reliance', in David Stevens ed., *The Royal Australian Navy: The Australian Centenary History of Defence Volume III*, Oxford University Press, South Melbourne, 2001, p. 222.

²⁸³ <http://www.navy.gov.au/HMAS_Armidale>. (1 September 2012)

²⁸⁴ Jones, '1972 - 1983: Towards Self-Reliance', Stevens ed., *The Royal Australian Navy: The Australian Centenary History of Defence Volume III*, p. 232.

the Fleet of a significant number of at sea training places, for which the Fremantles provided some compensation.²⁸⁵

Secondly, constabulary work built a substantial body of expertise and experience in new skills. Most noteworthy was expertise gained in boarding and inspection operations, in a variety of conditions and operational circumstances. This became more significant when Navy surface combatants engaged in interception operations in the Persian Gulf and Arabian Sea during the lead-up to the 1991 Iraq War, a task they continue to perform.

CONCLUSIONS

From 1976 to 1988 the constabulary function evolved rapidly in response to significant growth in the nature and scope of the law enforcement at sea task. For the first time since Federation, illegal drug importation, IUU fishing, quarantine, marine environmental protection and irregular maritime arrivals all manifested as problems simultaneously. This demanded a more coherent and comprehensive response than the hitherto episodic reaction to individual events.

Both Coalition and Labor Governments struggled to develop an adequate response and had difficulty moving away from a primarily cost-driven approach. A succession of government reviews of coastal surveillance and related matters provided the means of responding to the new developments. Additional resources were allocated to the constabulary function and incremental organizational improvements were made. Although the response capacity for law enforcement at sea was not optimal by the end of the period, it was much improved.

There was also an unprecedented amount of supporting legislation passed. The eventual agreement between the Commonwealth and the States and Territories on offshore sovereignty was a catalyst for this. Other important factors were the expanding influence of international conventions governing maritime law, especially

²⁸⁵ Conversation with Rear Admiral James Goldrick, RAN Reserve on 2 October 2012. Admiral Goldrick had experience of this issue both as a Commanding Officer of the Fremantle class patrol boat, HMAS *Cessnock* and subsequently as Commander Border Protection Command.

relating to the marine environment and the economic importance of offshore resources. Policy development which had to adjust continually to changing and growing threats also generated substantial legislation.

Whether the constabulary function should be a military one remained in dispute. How this dispute would be resolved in the future would have repercussions for the Navy, with the formation of a coast guard having the potential to strip the Navy of its patrol boats and some or all of the crews.

For the Navy, the most important implication of its constabulary function between 1976 and 1988 was that a previously ad hoc and periodic commitment became formal and long term. This meant the acquisition of appropriate patrol craft, based to reflect the focus of operations; that is in northern Australia. Thus the Fremantle class boats were acquired and new bases built in Darwin and Cairns.

These implications affected personnel, through training commitments and the move of families to the north, together with extensions to the Navy's logistics chain. While the focus on constabulary operations may have been a diversion for naval aircraft, their employment proved to be worthwhile for the Navy. Conversely, the replacement of the naval aircraft by civilian contract aircraft for aerial surveillance led to the retirement of the Navy's fixed-wing anti-submarine aircraft and the loss of a valued capability.

For the first time, however, the public gained a perception of the Navy's contribution to Australia's peacetime border security, while the Navy itself came to appreciate the value of one of its less glamorous tasks. The earlier discomfort with media attention dissipated and was replaced by the realization that the attention provided excellent publicity. Consequently, the Navy relished the publicity glare associated with two television series about the patrol boat activities and their contribution to the nation.

CHAPTER SIX

THE EVOLUTION OF THE CONSTABULARY FUNCTION OF NAVIES: THE AUSTRALIAN EXPERIENCE - 1989 TO 2001

INTRODUCTION

The period from 1989 to 2001 maintained the main constabulary function trends examined in the previous chapter. Law enforcement at sea demanded responses to concurrent and continuing threats in geographically diverse locations. New waves of irregular maritime arrivals, resources management and environmental stewardship placed the greatest demands on constabulary organizations and forces. Illegal, unreported and unregulated (IUU) fishing continued to pose a significant challenge, while quarantine and illegal drug importation matters arose occasionally, and with less impact.

With the organizational changes detailed in Chapter 5 settled at least for the time being, the major developments during the period were the setting aside of political bipartisanship in dealing with irregular maritime arrivals and the introduction of harsher and increasingly less humanitarian policies. This change of approach, from the second half of 2001 coincided with a rise in numbers and with a boost in the Navy's commitment to the constabulary function.

This chapter examines the development of the law enforcement at sea problems that continued to demand government response between 1989 and 2001. It focuses on the opening of the Southern ocean to foreign fishing and the emergence of another wave of irregular maritime arrivals. The chapter also identifies the continuing importance of quarantine and marine environmental issues.

Government responses are presented in three discrete sections. The first exposes the development of government policy for each major challenge and demonstrates the influence of international agreements on national policy. The second section examines the continuing evolution of the practical response to maritime law enforcement needs, with special attention to organization and resource matters. The final section

demonstrates the explosion of related legislation, much of it reflecting international influences.

Chapter Six concludes with consideration of the implications for the Navy of the constabulary function, which grew significantly in scope and complexity. Issues examined include the tasking of the patrol boat force and increasingly other elements of the Fleet, patrol boat capability and basing and the ramifications of the constabulary tasking for Navy people.

FROM 1989 TO 2001: THE DEATH OF BIPARTISANSHIP

Resources Protection

Up to 2001 resource protection was consistently the biggest law enforcement at sea problem, despite border protection having a higher public profile. Issues ranged from traditional fishing by Indonesians in the Australian Fishing Zone (AFZ) to commercial fishing by foreign and Australian fishers and concerns over fish stocks. A complicating factor was the opening of the Southern Ocean to fishing, especially in the late 1990s, and the challenges for Australian authorities which initially lacked any monitoring or deterrence capability.

In the early 1990s, Indonesian fishing in the Arafura Sea and off the north-west coast of Western Australia caused concern for fish stocks.¹ Concern was also expressed in Parliament because of higher numbers of foreign fishing vessels operating in the AFZ. By April 1991, 70 foreign fishing vessels had been reported for the calendar year, a rise of 400 per cent over the same period in 1990.²

After some quiet years, foreign fishing vessels began to generate further concern in 1998. By mid-year a record 50 foreign fishing vessels had been caught fishing illegally in the AFZ.³ Australia and New Zealand took action against Japan at the International Tribunal for the Law of the Sea in July 1999, because of the growing pressure on fish

¹ *Commonwealth Parliamentary Debates*, Senate, Vol. 133, 4 May 1989, p. 1789.

² *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 176, 11 April 1991, p. 2434.

³ *Commonwealth Parliamentary Debates*, Senate, Vol. 191, 22 June 1998, p. 3678.

stocks.⁴ Although the case, to stop Japan's experimental southern bluefin tuna experimental catch program failed, Japan agreed to limit the program to the satisfaction of both Australia and New Zealand.⁵

The Southern Ocean gradually became a focus of activity through the late 1990s. Attention was first drawn to it in Parliament during 1996, with reports of a huge increase in trawling near Heard and MacDonalld Islands.⁶ Questions continued to be raised about illegal, unreported and unregulated (IUU) fishing in that region, with reports of 15 incidents between April and October 1997.⁷

During the period fish stocks, tuna and shark especially, were being depleted by over-fishing and the matter was exacerbated by under-reporting of catch. From 1989 the Government was considering a joint moratorium with New Zealand, on southern blue fin tuna, following a 50 per cent reduction in allowable catch in the previous year.⁸ Following consultation with the four State Ministers involved and with the South East Trawl Management Advisory Committee a quota management system was introduced in the South east Trawl Fishery.⁹ As the Minister for Primary Industry, Mr Kerin, noted, 'Basically the problem is overcapitalisation and too many boats chasing too few fish'.¹⁰

The problem was not limited to tuna stocks, with similar fears expressed in relation to orange roughy and gemfish.¹¹ Nevertheless, attention was kept on tuna, with the Director of the Pacific Islands Forum Fisheries Agency noting in 1995 that since taking 81,000 tonnes of southern blue fin tuna in 1961, Australia's catch had continually

⁴ Southern Bluefin Tuna Case–Australia and New Zealand v. Japan Award on Jurisdiction and Admissibility, August 4, 2000 rendered by the Arbitral Tribunal constituted under Annex VII of the United Nations Convention on the Law of the Sea, <https://icsid.worldbank.org/ICSID/FrontServlet?requestType=ICSIDPublicationsRH&actionVal=ViewAnnouncePDF&AnnouncementType=archive&AnnounceNo=7_10.pdf > (22 November 2012).

⁵ Southern Bluefin Tuna Case–Australia and New Zealand v. Japan Award on Jurisdiction and Admissibility August 4, 2000, p. 88.

⁶ *Commonwealth Parliamentary Debates*, Senate, Vol. 181, 12 December 1996, p. 7325.

⁷ *Commonwealth Parliamentary Debates*, Senate, Vol. 188, 17 November 1997, pp. 8946-7.

⁸ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 167, 5 October 1989, p. 1571.

⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 171, 9 May 1990, p. 117.

¹⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 171, 9 May 1990, p. 117.

¹¹ *Commonwealth Parliamentary Debates*, Senate, Vol. 145, 14 May 1991, p. 3229.

declined to the 11,750 tonnes caught in 1994. He called for better stock management.¹² Catch quotas were agreed for southern bluefin tuna from 1995; for Australia 5,265 tonnes, 6,065 tonnes for Japan, and 420 tonnes for New Zealand.¹³

Fisheries management concerns continued, however, with an Australian National Audit Office Report into the Australian Fisheries Management Authority in 1996.¹⁴ The lack of reliable information on fish stocks and the consequent inability to establish sustainable yields were among the main shortcomings uncovered.¹⁵ Despite a lull in expressions of concern over fish stocks, the problem did not disappear.

The continuing under-reporting of catch compounded tuna stock management problems. Japanese long line tuna boats were caught twice under-reporting their catch and their crews were prosecuted in 1990.¹⁶ Some years later, Japanese tuna boats left Hobart after a difference of opinion on stock levels between Japanese and Australian scientists.¹⁷

Border Protection - Immigration

From 1989 irregular maritime arrivals became the main border protection problem and remained a source of concern throughout the period. While earlier irregular maritime arrivals came from Southeast Asia, subsequent waves came from Southwest and South Asia as well. Table 6-1 below shows the number of irregular maritime arrivals in

¹² *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 199, 8 February 1995, p. 730.

¹³ *Commonwealth Parliamentary Debates*, Senate, Vol. 177, 6 May 1995, p. 327.

¹⁴ *Audit Report Summaries, Australian Fisheries Management Authority: Commonwealth Fisheries Management*, Audit Report No. 32 1995-96, 25 June 1996, <<http://www.anao.gov.au/Publications/Audit-Reports?year=1995-1996&portfolio=2>> (24 November 2012). Among the reported shortcomings were a lack of administrative policies for fisheries management, too few statutory management plans and a lack of information on the environmental impact of commercial fishing.

¹⁵ *Audit Report Summaries, Australian Fisheries Management Authority: Commonwealth Fisheries Management*, Audit Report No. 32 1995-96, 25 June 1996, p. 2.

¹⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 172, 21 August 1990, p. 1115.

¹⁷ *Commonwealth Parliamentary Debates*, Senate, Vol. 175, 16 November 1995, p. 2548.

Australia and the number of boats in which they arrived. There is a discernible spike in arrivals at the turn of the century.¹⁸

Year	No. of Boats	No. of People (excludes crew)
1989	1	26
1990	2	198
1991	6	214
1992	6	216
1993	3	81
1994	18	953
1995	7	237
1996	19	660
1997	11	339
1998	17	200
1999	86	3721
2000	51	2939
2001	43	5516

Table 6-1: Irregular Maritime Arrivals 1989 - 2001¹⁹

Early in the period irregular maritime arrivals came mainly from Cambodia, Vietnam and China and landed in widely separated parts of the mainland, from Darwin to the Kimberley coast of Western Australia.²⁰ In one case, irregular maritime arrivals were on the coast for 16 days before being found, raising quarantine fears as well.²¹ The arrival of 139 Chinese by ship in the Torres Strait in June 1997 attracted attention because of the large number of irregular maritime arrivals and the apparently well-organized nature of the venture.²² In the mid to late 1990s irregular maritime arrivals began arriving also by aircraft, carrying either fraudulent identification or none at all.²³ At about this time, Bangladeshis began appearing on the north coast, in some cases

¹⁸ This table is taken from Janet Phillips and Harriet Spinks, 'Boat Arrivals in Australia since 1976', *Parliament of Australia, Department of Parliamentary Services*, Canberra, 11 February 2011, Appendix A.

¹⁹ Phillips and Spinks, 'Boat Arrivals in Australia since 1976', Appendix A.

²⁰ *Commonwealth Parliamentary Debates*, Senate, Vol. 144, 11 March 1991, p. 1548, and House of Representatives, Vol. 183, 2 April 1992, p. 1817.

²¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 183, 2 April 1992, p. 1817.

²² *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 214, 17 June 1997, p. 5356.

²³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 221, 28 May 1998, p. 4129.

having been brought by Indonesian fishers, who were paid relatively large sums of money.²⁴ Gradually rising numbers of irregular maritime arrivals in the late 1990s led the Minister for Justice and Customs, Senator Vanstone, to put the matter in perspective as part of a global problem, which remained relatively minor in Australia's case.

No-one denies that the recent arrivals by boat are a serious problem, but it does need to be kept in context. Ten times the number of illegal immigrants attempted to enter Australia via scheduled airline flights than (sic) by unauthorised boats in 1997-98. In contrast to that, overstays on legitimate visas are also a problem, and there are estimated to be some 51,000 overstayers in December 1997. There were 348 people who arrived by boat between 1 July 1998 and 30 April of this year. That is already double the number who arrived in the previous year. So we do need to understand what is driving the increase in attempts at coming into Australia.²⁵

Nevertheless the increase in numbers of irregular maritime arrivals during 1999, with some 1,200 of the 3,721 for the year arriving in November alone, brought a renewed focus to the problem.²⁶ Irregular maritime arrivals arriving as far south as Port Kembla in May 1999 added a new dimension to the problem, which had been confined to northern waters.²⁷ Similar increases appeared also in 2000 and 2001 before the flow reduced dramatically for several years.

The Government ascribed the spike in numbers at the turn of the century to Australia's attractiveness and to its laws, through which 75 per cent of claimants for asylum were granted refugees status.²⁸ Furthermore, the Government pointed out that refugee assessment in other countries and by the United Nations High Commissioner for Refugees produced less satisfactory results, from the applicants' point of view. The turn of the century also witnessed three incidents which polarized political responses to the problem and generated unprecedented public interest and reaction.

²⁴ *Commonwealth Parliamentary Debates*, Senate, Vol. 191, 22 June 1998, p. 3678.

²⁵ *Commonwealth Parliamentary Debates*, Senate, Vol. 196, 25 May 1999, p. 5285.

²⁶ Adrienne Millbank, 'Boat People, Illegal Migration and Asylum Seekers: in Perspective', *Current Issues Brief*, 13 1999-2000, Parliament of Australia, Canberra, 14 December 1999, p. 1.

²⁷ Sam Bateman, 'Securing Australian Maritime Approaches', *Security Challenges*, Vol. 3, Number 3, August 2007, p. 110.

²⁸ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 242, 27 August 2001, p. 30286.

The first of the incidents occurred in August 2001, in the lead-up to a Federal election. The Motor Vessel (MV) *Tampa* rescued 434 irregular maritime arrivals from a sinking Indonesian vessel at the request of Australian search and rescue authorities.²⁹ The *Tampa*, which had been heading for Indonesia was forced by threats from those it had rescued, to turn for Christmas Island. Refused permission to enter the territorial sea,³⁰ the *Tampa* remained at 12nm from Christmas Island until several irregular maritime arrivals threatened to jump overboard.³¹ The *Tampa's* captain then took the ship to within four miles of Christmas Island, where 45 Special Air Service soldiers boarded it to provide medical assistance to the irregular maritime arrivals and prevent them from landing in Australian territory.³² After a prolonged standoff the passengers were taken by Royal Australian Navy (RAN) ships for processing in Nauru and New Zealand.³³

The second major incident became known as the 'children overboard' incident which occurred in early October 2001, during the election campaign. The suspected irregular maritime arrival vessel, which became known as Suspect Illegal Emigrant Vessel (SIEV) 4, had been detected heading for Christmas Island, with irregular maritime arrivals on the upper deck wearing life jackets. Australian authorities believed they may have been preparing to sabotage the vessel and take to the sea to ensure rescue by the RAN.³⁴

In fraught circumstances, under instructions from the Government, a boarding party from Her Majesty's Australian Ship (HMAS) *Adelaide* turned SIEV 4 back towards Indonesian waters. Not long after, the boat became disabled and people began jumping into the water, thus forcing the rescue that the Government wanted to avoid.³⁵ Somehow, information reached authorities in Canberra that some irregular maritime arrivals had thrown their children overboard.³⁶ Although this claim has been the

²⁹ Anthony Heiser, 'Border Protection; UNCLOS and the M.V. Tampa Incident 2001', *Australia and New Zealand Maritime Law Journal*, Vol. 16, 2002, p. 92.

³⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 242, 29 August 2001, p. 30516.

³¹ Heiser, 'Border Protection; UNCLOS and the M.V. Tampa Incident 2001', p. 93.

³² Heiser, 'Border Protection; UNCLOS and the M.V. Tampa Incident 2001', p. 93.

³³ Heiser, 'Border Protection; UNCLOS and the M.V. Tampa Incident 2001', p. 94.

³⁴ David Marr and Marian Wilkinson, *Dark Victory*, Allen and Unwin, Crows Nest, NSW, 2003, p. 181.

³⁵ Marr and Wilkinson, *Dark Victory*, pp. 183-5.

³⁶ Marr and Wilkinson, *Dark Victory*, p. 186.

subject of much debate and subsequent investigation, it provided government with a picture of callousness that played well in some segments of Australian society leading to the election.

The last of these incidents was the sinking of a vessel, which became known as SIEV X. On October 19 2001, the overcrowded boat, carrying about 400 men, women and children, encountered poor weather and suffered engine failure.³⁷ SIEV X sank, not far from the southern coast of Java, with the loss of 352 lives; only 44 survived.³⁸ Neither the exact location of the sinking, nor the failure of Indonesian or Australian authorities to locate the boat, have been explained by the subsequent official investigations.

Each of these three events is very important in the development of the challenge posed by irregular maritime arrivals. Firstly, they have pointed to a growing sense of desperation among those trying to get to Australia by irregular means, which in some cases has been heightened by having family members already in Australia. Secondly, they have reflected hardening attitudes towards irregular maritime arrivals and have been used politically in a way not previously seen in Australia, to the advantage of the political parties prepared to adopt hard line policies.

Border Protection - Customs

Throughout the period to 2001 the biggest Customs challenge was illegal drug importation. Figures produced in October 1992 indicate the scale of the problem at that time. From 1 January 1992, 29kg of heroin worth \$35m, 200kg of cocaine worth \$160m and 7 tonnes of cannabis resin worth \$105m were seized by Customs.³⁹ The leap in drug seizures from 162kg in 1971-2, to 5,071kg in 1991-2 demonstrated the seriousness of the challenge.⁴⁰ Yet, in the early 1990s only about 1.5 per cent of shipping containers were being inspected for drugs. Illegal drugs were also entering Australia through Torres Strait and the local residents themselves expressed fears about the trade.⁴¹ Fears

³⁷ Marr and Wilkinson, *Dark Victory*, p. 230.

³⁸ Marr and Wilkinson, *Dark Victory*, p. 237.

³⁹ *Commonwealth Parliamentary Debates*, Senate, Vol. 157, 14 October 1992, p. 1790.

⁴⁰ *Commonwealth Parliamentary Debates*, Senate, Vol. 158, 26 May 1993, p. 1393.

⁴¹ *Commonwealth Parliamentary Debates*, Senate, Vol. 171, 7 June 1995, p. 990.

were also expressed, principally by the Labor Opposition, that only about 10 per cent of heroin was being intercepted on entry to Australia.⁴²

Bird smuggling, into and out of Australia, was an occasional challenge for Customs. In 1990 for example, Senator Vallentine (Western Australia) accused US Air Force personnel of taking birds from Australia in regular flights that serviced facilities in Australia such as North West Cape and Pine Gap.⁴³ Illegal bird imports were considered a greater threat, because of the potential introduction of exotic diseases. This matter was rarely mentioned in the Parliament after 1993.⁴⁴

Occasionally, doubts were raised about the performance of Customs in its border protection role, with budget, organizational and cultural issues blamed for shortcomings. In 1989 questions were asked in Parliament about the impact of budget cuts on Customs capacity.⁴⁵ Subsequently, in 1994 and 1995 the Coalition Opposition claimed the Customs presence in Torres Strait was inadequate, with possible illegal people movement the main problem.⁴⁶ The Government continually defended reduced Customs officer numbers on the basis of improved technology.⁴⁷

Border Protection - Quarantine

Quarantine provided several challenges for border security from 1989 to 2001. These ranged from serious outbreaks of plant and animal diseases to the export of diseased animals. The nature and extent of quarantine breaches led to severe doubts about the capacity of the Australian Quarantine and Inspection Service (AQIS) to ensure its elements of border security and questions as to the efficacy of quarantine policy.

⁴² *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 214, 26 June 1997, p. 6487.

⁴³ *Commonwealth Parliamentary Debates*, Senate, Vol. 141, 6 November 1990, p. 3477.

⁴⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 191, 22 December 1993, p. 4606.

⁴⁵ *Commonwealth Parliamentary Debates*, Senate, Vol. 135, 7 September 1989, p. 1225.

⁴⁶ *Commonwealth Parliamentary Debates*, Senate, Vol. 167, 13 October 1994, pp. 1651-2, and Vol. 171, 7 June 1995, p. 977.

⁴⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 206, 28 May 1996, p. 1508.

Two plant disease issues involving New Zealand apples alleged to be contaminated by fire blight and the unwitting importation of Papaya fruit fly, were both potentially damaging to local primary industry. Fire blight first gained attention in 1990⁴⁸ but achieved public prominence only with a suspected outbreak in the Melbourne Botanical Gardens in May 1997.⁴⁹ That the discovery was made by a New Zealand Ministry of Agriculture Chief Plants Officer raised suspicions, given New Zealand's ongoing efforts to export apples to Australia.⁵⁰ The outbreak was successfully contained,⁵¹ but it was many years before New Zealand apples gained import clearance.

Papaya fruit fly was first detected in Torres Strait in 1993, among fears of repeat incursions and damage to local industry, with claims that AQIS procedures were not sufficiently strict.⁵² Similar fears attended moves to allow banana imports from the Philippines, and local growers insisted on risk analysis.⁵³ Later claims that Philippine bananas carried 23 diseases heightened the fears of local growers.⁵⁴ With each of these issues, there was an element of local industry protection which complicated the AQIS task and led to claims of unfair trade practices. This was further complicated by Senator Margetts' (Western Australia) claim that the Uruguay Round of the General Agreement on Tariffs and Trade reversed the onus of proof regarding quarantine regulations, effectively making a country's decisions to retain a disease-free status a trade barrier.⁵⁵

Before a major review in 1992 not much AQIS attention had been paid to the potential for fish and seafood diseases, primarily because of a lack of knowledge.⁵⁶ The prospect

⁴⁸ *Commonwealth Parliamentary Debates*, Senate, Vol. 139, 9 May 1990, p. 164.

⁴⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 213, 27 May 1997, p. 4096.

⁵⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 214, 23 and 26 June 1997, pp. 6034 and 6373.

⁵¹ 'Fire blight: Exotic threat to Western Australia', *Agriculture Western Australia Fact Sheet*, No. 47/2000, October 2000.

<http://www.agric.wa.gov.au/objtwr/imported_assets/content/pw/ph/dis/fn/fs04700.pdf> (5 December 2012).

⁵² *Commonwealth Parliamentary Debates*, Senate, Vol. 174, 23 October 1995, p. 2245.

⁵³ *Commonwealth Parliamentary Debates*, Senate, Vol. 206, 10 October 2000, p. 18243.

⁵⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 259, 27 November 2003, p. 23214.

⁵⁵ *Commonwealth Parliamentary Debates*, Senate, Vol. 174, 26 September 1995, p. 1434.

⁵⁶ *Commonwealth Parliamentary Debates*, Senate, Vol. 172, 22 June 1995, p. 1648.

of salmon imports from New Zealand and Canada, which had salmon diseases unknown in Australia, generated concerns as to AQIS' competence to deal with the matter.⁵⁷ Problems continued to arise, including with the illegal import of Thai prawns for bait, and quarantine breaches with the import of salmon products from Vietnam and Russia.⁵⁸

One of the major quarantine controversies concerned the import of cooked chicken meat in 1997. The decision to permit the imports ignored strong representations from the local industry but with assurances from AQIS, together with what was described as a very high quarantine barrier.⁵⁹ A subsequent outbreak of Newcastle disease proved costly for the chicken meat industry in New South Wales, with the destruction of nearly two million chickens in northern New South Wales. Although unrelated, this incident heightened the concerns of the local chicken meat industry regarding chicken meat imports.⁶⁰

The period from 1989 witnessed unprecedented attention to quarantine and to AQIS as the relevant border protection agency. The challenges and problems related above ensured that the organization was scrutinized. Its task was made more difficult by allegations of staff-cutting and misapplication of resources. In late 1995, for example, the Coalition Opposition argued that AQIS focused too much on export controls, rather than on import controls.⁶¹ A motion to debate a Matter in the Public Interest was moved on AQIS' poor performance in North Queensland, where inspection of a boat imported from Taiwan failed to discover Formosan termite which could have damaged the local sugar industry.⁶²

Performance pressures felt by AQIS would only have increased with speculation in Parliament in late 2000 that elements of the organization were being assessed for

⁵⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 229, 27 September 1999, p. 10559.

⁵⁸ *Commonwealth Parliamentary Debates*, Senate, Vol. 232, 7 March 2005, p. 227.

⁵⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 212, 6 March 1997, p. 2257. See also *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 217, 20 November 1997, p. 10990.

⁶⁰ *Commonwealth Parliamentary Debates*, Senate, Vol. 195, 30 April 1999, pp. 4701-2.

⁶¹ *Commonwealth Parliamentary Debates*, Senate, Vol. 175, 15 November 1995, pp. 2987-88.

⁶² *Commonwealth Parliamentary Debates*, Senate, Vol. 176, 1 December 1995, p. 4592.

outsourcing to the private sector.⁶³ Although nothing came of the matter then, AQIS began using contractors for some functions.

Marine Environmental Protection

The marine environment remained important for the constabulary task during this period from 1989. Most of the earlier problems continued to pose challenges, while several new problems arose. As the pre-eminent marine environmental attraction in Australia, the Great Barrier Reef held the attention of relevant authorities. Land-sourced pollution became an increasingly significant issue for Reef environmental management. Sewage runoff has increased with coastal residential and other development, becoming a problem near Heron Island as early as 1989.⁶⁴

River runoff from mining in Papua New Guinea became another source of pollution with the potential to affect the Great Barrier Reef, and the Torres Strait. In 1989, \$200,000 were allocated for a study into the matter.⁶⁵ Runoff from a variety of land sources continued to affect the Great Barrier Reef, throughout the period.

Oil spills from ships, caused by sinking, grounding or inadvertent leaks from machinery, also caused marine environmental damage. While pollution of this kind could occur anywhere on the coast,⁶⁶ the potential for damage was most serious on the Reef. Similarly, the prospect and reality of shipping accidents within the Reef resulted in compulsory pilotage for all ships over 70m in length and for all oil tankers.⁶⁷ Yet, in the early stages, not all ships complied with the requirements.⁶⁸

Several other environmental issues caused problems within the Great Barrier Reef Marine Park (GBRMP). Gill netting led to the death of some of the dugong population⁶⁹

⁶³ *Commonwealth Parliamentary Debates*, Senate, Vol. 206, 2 November 2000, p. 18975.

⁶⁴ *Commonwealth Parliamentary Debates*, Senate, Vol. 132, 7 March 1989, p. 531.

⁶⁵ *Commonwealth Parliamentary Debates*, Senate, Vol. 135, 16 October 1989, p. 1875.

⁶⁶ One such leak off the Victorian coast in 1990 led to deaths of penguins. *Commonwealth Parliamentary Debates*, Senate, Vol. 139, 1 June 1990, p. 1734.

⁶⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 174, 5 December 1990, p. 4460.

⁶⁸ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 176, 29 November 1995, p. 4123.

⁶⁹ *Commonwealth Parliamentary Debates*, Senate, Vol. 194, 16 February 1999, p. 2020.

and inadequate regulation allowed unsustainable trawling.⁷⁰ The crown of thorns starfish again began infesting parts of the Reef, despite the earlier remedial measures and, in the view of the Labor Opposition, because of inadequate funding.⁷¹

The discharge of ballast water in Australian waters by visiting ships introduced invasive pests and became one of the most worrying marine environmental problems. Early concerns related to Tasmanian waters and fishing industry fears that inaction would damage their livelihoods. AQIS estimated about 60 million tonnes of ballast water were being discharged annually in Australia.⁷² Media reports identified bulk carriers using ports in the north west of Western Australia as the main culprits, being responsible for up to 58 million tonnes of ballast water each year.⁷³

The investigation also found that 14 species of fish, algae, invertebrates and seaweeds had been introduced by ballast water by mid-1991, confirming the fears of the Tasmanian fishers – even if the problem was mostly remote from them.⁷⁴ But, the ballast water problem spread from north-west Western Australia, introducing exotic worms to Port Phillip Bay during 1994, and subsequently to Cockburn Sound in Western Australia.⁷⁵

Living organisms were not the only source of such problems for the marine environment. The Pasminco company angered Tasmanian rock lobster fishermen by dumping Jarosite (a byproduct of zinc refining) in local waters, even though no environmental degradation had been noted.⁷⁶ Well-founded fears were expressed over traces of Tributyltin, a hull preservative, with toxic properties, being found in mussels growing near the Cockburn Sound naval base in Western Australia in 1994.⁷⁷

⁷⁰ *Commonwealth Parliamentary Debates*, Senate, Vol. 196, 26 May 1999, p. 5453.

⁷¹ *Commonwealth Parliamentary Debates*, Senate, Vol. 211, 27 August 2001, p. 26745.

⁷² *Commonwealth Parliamentary Debates*, Senate, Vol. 136, 30 August 1989, p. 652.

⁷³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 179, 20 August 1991, p. 10.

⁷⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 179, 20 August 1991, p. 10.

⁷⁵ *Commonwealth Parliamentary Debates*, Senate, Vol. 167, 10 October 1994, p. 1323.

⁷⁶ *Commonwealth Parliamentary Debates*, Senate, Vol. 155, 12 October 1992, p. 1627.

⁷⁷ *Commonwealth Parliamentary Debates*, Senate, Vol. 167, 11 October 1994, p. 1475.

Another new, serious and costly problem during this period emerged with the realization that many merchant ships trading through Australian ports were unsafe. Environmental pollution was not the only threat posed by these ships, with crew safety and economic loss equally worrisome. One early example was the MV *Berlina*, which was delayed in Port Kembla late in 1991, to rectify numerous serious defects.⁷⁸ It was the fourth ship held in Port Kembla in similar circumstances within the previous year.⁷⁹ The seriousness of this matter was highlighted when the Greek tanker *Kirki* lost its bow off the Western Australian coast on 21 July 1991. Although the major section of the tanker was towed to safety, some 17,280 tonnes of light crude oil were lost. Only current and weather conditions prevented serious marine pollution along the Western Australian coastline.⁸⁰ A subsequent Matter of Public Interest motion in the House of Representatives on 14 November 1991 pointed out that of 21 bulk carriers lost between January 1990 and August 1991, six had sunk after loading in Australian ports, underlining the need for urgent action.⁸¹

Management of whales presented yet another challenge. Australia wanted to ban all whaling in the Southern Ocean, while Japan continued its scientific whaling program, and Russia showed interest in establishing a similar program.⁸² A new concern emerged in the mid-1990s; the impact of Navy ships and their activities on migrating whales.⁸³ While the danger of collisions with ships was the initial concern, it expanded to include the possible impact of ship sonar transmissions on whales,⁸⁴ especially because of several unexplained whale strandings worldwide.⁸⁵

⁷⁸ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 180, 5 November 1991, p. 2361.

⁷⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 180, 5 November 1991, p. 2361.

⁸⁰ *Australian Maritime Safety Authority*, 'Major Oil Spills in Australia–*Kirki*, Western Australia, 21 July 1991, <http://www.amsa.gov.au/marine_environment_protection/major_oil_spills_in_australia/Kirki/index.asp> (12 December 2012).

⁸¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 181, 14 November 1991, pp. 3065 and 3067.

⁸² *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 196, 24 August 1994, p. 263.

⁸³ *Commonwealth Parliamentary Debates*, Senate, Vol. 178, 17 June 1996, p. 1675.

⁸⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 273, 11 August 2005, p. 179.

⁸⁵ 'Lethal Sounds: The use of military sonar poses a deadly threat to whales and other marine mammals', *Natural Resources Defense Council*, revised 20 June 2008, <<http://www.nrdc.org/wildlife/marine/sonar.asp>> (13 December 2012).

THE GOVERNMENT POLICY RESPONSE: INTERNATIONAL ENGAGEMENT

The more comprehensive policy response noted from 1976 to 1988 developed further up to 2001. Policy development during this period featured international influence; reflected in Australian government decisions to accede to international agreements, promoting marine environmental protection, and engaging with neighbouring countries to ensure the effectiveness of domestic policies with international implications.

Resources Management

One of the earliest policy developments was the agreement with Indonesia to manage more effectively the 1974 Memorandum of Understanding (MOU) relating to traditional Indonesian fishing activities in the AFZ.⁸⁶ The difficulties in managing fishing in the agreed areas (the MOU Box) necessitated many meetings between Indonesian and Australian officials, before resolution was achieved after 2001.

Other significant initiatives for managing fish stocks throughout the AFZ involved tuna, other high value fish stocks and Japan, one of the most important fishing nations active in the AFZ. In 1989 the Government restricted Japanese tuna fishing off the New South Wales coast, with seasonal closure of some waters and finally a permanent prohibition against fishing within 50nm of the coast.⁸⁷

Despite these measures, Japanese tuna fishing remained a concern, including through under-reporting of catch. In May 1993 the Governments of Australia, New Zealand and Japan signed the legally binding *International Convention for the Conservation of Southern Bluefin Tuna* to establish sustainable quotas.⁸⁸ At the first meeting of the Commission for the Conservation of Southern Bluefin Tuna in May 1994, southern bluefin tuna

⁸⁶ *Commonwealth Parliamentary Debates*, Senate, Vol. 133, 4 May 1989, p. 1789.

⁸⁷ *Commonwealth Parliamentary Debates*, Senate, Vol. 136, 27 September 1989, p. 1420.

⁸⁸ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 188, 10 May 1993, p. 396.

quotas were confirmed and all southern bluefin tuna fishing nations were encouraged to sign the Convention.⁸⁹

The legally binding agreement proved inadequate for stock management. In 1999 the Australian Government decided to prosecute Japan for breaching its agreed southern bluefin tuna limits.⁹⁰ Against Australian and New Zealand objections, Japan had instituted a unilateral experimental fishing program to enable a take beyond the agreed quota.⁹¹ This was strikingly similar to Japan's scientific whaling program.

There was an overarching acknowledgement of the need to manage fish stocks sustainably, and acceptance that some stocks were already significantly threatened. International agreements were one imperfect means of imposing sustainable exploitation rates. Domestically, more practical policies were enacted because of dwindling fish stocks. Thus, the way was cleared for quota management, with agreement by the States and acceptance by the fishing industry.⁹²

Yet, more robust and effective policies were needed. An Australian National Audit Office audit report of the Australian Fisheries Management Authority (AFMA) in June 1996 pointed to serious problems, including insufficient information on fish stock levels and a propensity by AFMA to set catch levels more likely to keep industry viable than to maintain or recover stocks.⁹³

Border Protection - Immigration

Increasing numbers of irregular maritime arrivals also demanded a comprehensive policy response, which made it increasingly difficult for the arrivals to gain entry to and remain in Australia. In 1990 the Joint Standing Committee on Migration

⁸⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 194, 31 May 1994, p. 1057. Southern blue fin quotas agreed were 5,265 tonnes per annum for Australia, 6,065 tonnes per annum for Japan and 420 tonnes per annum for New Zealand.

⁹⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 226, 10 June 1999, pp. 6718-9.

⁹¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 226, 10 June 1999, p. 6719.

⁹² *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 171, 9 May 1990, p. 117.

⁹³ *Australian Fisheries Management Authority: Commonwealth Fisheries Management Performance Audit, Summary*, Australian National Audit Office, Canberra, 25 June 1996, p. 3.

Regulations presented a report entitled '*Illegal Entrants in Australia: Balancing Control and Compassion*'. The report examined the impact of existing migration legislation and regulations, noting *inter alia* that, ' ... the Committee is unaware of any other developed country which has automatic and mandatory deportation for nearly all of its illegals... '.⁹⁴ The report dealt with people already in Australia illegally, and much of its 'compassion' referred to dealing with them fairly. Nevertheless the report also concluded that only about 4,000 of the estimated 90,000 people in Australia illegally would be permitted to stay. The tough Government policy was supported by the Coalition Opposition.⁹⁵

Almost a decade later, the preferred mix of control and compassion had not deterred irregular maritime arrivals, prompting the Minister for Justice and Customs, Senator Amanda Vanstone, to claim that, ' ... detection and interception are not the problem – primarily because these people want to be found, intercepted and brought to the Australian mainland'.⁹⁶ The Government then responded with what later became known as the Pacific Solution, which included offshore processing and detention of irregular maritime arrivals⁹⁷ and the introduction of Temporary Protection Visas which limited access to family reunions and provided no guarantee of further entry for holders who left Australia.⁹⁸

Other initiatives included hosting a regional consultation on illegal migration in April 1994 and engaging closely with Indonesia, which in late 1999 broke a false passport ring operating in the country.⁹⁹ A Regional Cooperation Agreement, concluded with Indonesia in 2001, aimed to prevent the onward movement of irregular maritime arrivals from Indonesia.¹⁰⁰

⁹⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 172, 11 September 1990, p. 1560.

⁹⁵ *Commonwealth Parliamentary Debates*, Senate, Vol. 140, 16 October 1990, p. 3142.

⁹⁶ *Commonwealth Parliamentary Debates*, Senate, Vol. 200, 22 November 1999, p. 10276.

⁹⁷ Victoria Palmer and Julie Matthews, 'Excising Democracy: Ethical Irresponsibility, Refugees and Migration Zones', *Social Alternatives*, Vol. 25, No. 3, Third Quarter 2006, p. 27.

⁹⁸ *Commonwealth Parliamentary Debates*, Senate, Vol. 200, 22 November 1999, p. 10276.

⁹⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 230, 24 November 1999, p. 12521.

¹⁰⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 242, 30 August 2001, p. 30666.

Border Protection - Quarantine

Management of quarantine protection was much less controversial than was illegal immigration during the period. AQIS had been subject to the Lindsay Review from late 1988, which found that the Service was both effective and efficient in its operations.¹⁰¹ Increasingly, however, AQIS struggled to maintain biosecurity standards while not limiting free trade, and thus the import and export of live animals and foodstuffs. An early expression of this struggle was the call in Parliament for AQIS to be privatized.¹⁰² The Labor Government was also disposed to reduce AQIS staffing in the early 1990s but intended to retain service levels, in part by relying on industry to instigate effective quality assurance processes.¹⁰³

Over time, AQIS gained more funding and staff to enable it to meet its regulatory responsibilities. In 1997, funding was boosted by \$76m and by a further \$100m in 1998, including funds for additional shipping container inspection.¹⁰⁴ Pressure to allow food imports generated a strong focus on AQIS risk management processes, which were based on, ' ... a conservative, but not a zero-risk, approach to the management of biosecurity risks. This approach is consistent with the World Trade Organization's *Agreement on the Application of Sanitary and Phytosanitary Measures...* '.¹⁰⁵ The acceptance of a level of biosecurity risk often led to questions about the dangers to Australian primary industry, as for example when bananas from the Philippines were undergoing an 18 to 24 month risk assessment in 2000.¹⁰⁶

Border Protection - Customs

Unlike AQIS, the Customs Service was accused of performing poorly. In a review entitled '*The Turning Point*' in 1994, Customs was severely criticized for, among other

¹⁰¹ *Commonwealth Parliamentary Debates*, Senate, Vol. 137, 28 November 1989, p. 3439.

¹⁰² *Commonwealth Parliamentary Debates*, Senate, Vol. 146, 17 June 1991, pp. 4675-6.

¹⁰³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 181, 26 November 1991, p. 3262.

¹⁰⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 213, 26 May 1997, p. 3968, and Vol. 220, 26 March 1998, p. 1716.

¹⁰⁵ *Risk Assessment Handbook 2011*, Department of Agriculture, Fisheries and Forests–Biosecurity Australia, Canberra, 2011, p. 6.

¹⁰⁶ *Commonwealth Parliamentary Debates*, Senate, Vol. 206, 10 October 2000, p. 18,243.

matters, being insular, lacking strategic direction and avoiding critical decisions.¹⁰⁷ In response, the Comptroller General resigned and 386 other officers left the Service through voluntary redundancy or retirement.¹⁰⁸ The dramatic action taken to improve management was long overdue, given that the organization had been subject to 20 reviews in the previous 20 years, with little evident benefit to performance.¹⁰⁹ Of the \$32m allocated for Customs reforms, \$24.6m paid for redundancies and \$5.7m was allocated to business improvement.¹¹⁰

Marine Environmental Protection

Environmental policy developments in response to the challenges of the period were broad and were influenced by international organizations and protocols. Dealing with marine pollution from oil spills was a high priority and in 1989, with the *Exxon Valdez* pollution disaster fresh in many minds,¹¹¹ Australia had oil spill plans at the Commonwealth and State levels, together with response equipment stored around the coast.¹¹² Following the *Kirki* incident off the Western Australia coast in July 1991, when a pollution disaster was averted, the Government called for a thorough review of the national plan to combat marine pollution from oil spills.¹¹³ Additional measures were taken in later years to deal with emerging problems.

To preserve diminishing whale populations, Australia agreed to support a French proposal for a whale sanctuary in the Southern Ocean, south of 40°S. The proposal was accepted overwhelmingly by the International Whaling Commission in May 1994.¹¹⁴ The Australian Minister for the Environment, Senator Hill, also made clear that the aim for whale conservation was, ' ... implementation of a permanent international ban on

¹⁰⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 192, 8 February 1994, p. 511.

¹⁰⁸ *Commonwealth Parliamentary Debates*, Senate, Vol. 168, 15 November 1994, p. 3053.

¹⁰⁹ *Commonwealth Parliamentary Debates*, Senate, Vol. 162, 9 February 1994, p. 620.

¹¹⁰ *Commonwealth Parliamentary Debates*, Senate, Vol. 164, 12 May 1994, p. 758.

¹¹¹ On March 24, 1989, the tanker *Exxon Valdez*, en route from Valdez, Alaska to Los Angeles, California, ran aground on Bligh Reef in Prince William Sound, Alaska. Within six hours the *Exxon Valdez* spilled approximately 10.9 million gallons of its 53 million gallon cargo of crude oil. The Encyclopedia of Earth, *Exxon Valdez oil spill*,

<http://www.eoearth.org/article/Exxon_Valdez_oil_spill?topic=58075> (3 January 2013).

¹¹² *Commonwealth Parliamentary Debates*, Senate, Vol. 132, 10 April 1989, p. 1248.

¹¹³ *Commonwealth Parliamentary Debates*, Senate, Vol. 148, 15 October 1991, p. 1981.

¹¹⁴ *Commonwealth Parliamentary Debates*, Senate, Vol. 164, 30 May 1994, p. 822.

commercial whaling'.¹¹⁵ In June 2000, the Government, hosting an International Whaling Commission meeting in Adelaide, proposed a whale sanctuary for the South Pacific.¹¹⁶ Additional action included listing six species of whale in the *Convention on Conservation of Migratory Species*.¹¹⁷

The Commonwealth and State Governments moved to establish marine parks around the Australian coast and to limit activities within them. Thus, the Federal Government established a 25 year strategic plan for the Great Barrier Reef Heritage Area, with funding supplied by the Queensland Government.¹¹⁸ Furthermore, the Queensland Government banned fishing in its national parks, upsetting recreational fishers, among others.¹¹⁹ Protective actions were also taken in other parts of the coast. The South Australian Government declared the Great Australian Bight Marine Park, while in 1998 the Tasman Sea Mounts Marine Reserve was established in an area about 100nm south of Tasmania.¹²⁰

Government policy response to challenges in the Torres Strait included the establishment of formal mechanisms with the Papua New Guinea Government in 1989, to consider the potential for Torres Strait to become polluted by mining in that country.¹²¹ Shipping safety in Torres Strait was also considered and by 1991 most commercial ships transiting the strait were using pilots - 1,337 of 1,407 ships in that year.¹²² Consequently, the Government decided against imposing compulsory pilotage then.

Attention also focused on the mortality of sea birds as by-catch in commercial fishing. The 13th annual *Convention for the Conservation of Antarctic Marine Living Resources* (CCAMLR) meeting in Hobart during November 1994 considered measures to reduce

¹¹⁵ *Commonwealth Parliamentary Debates*, Senate, Vol. 178, 18 June 1996, p. 1687.

¹¹⁶ *Commonwealth Parliamentary Debates*, Senate, Vol. 204, 29 June 2000, p. 16016.

¹¹⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 248, 25 September 2002, p. 7234.

¹¹⁸ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 208, 20 August 1996, p. 3326.

¹¹⁹ *Commonwealth Parliamentary Debates*, Senate, Vol. 166, 22 September 1994, p. 1287.

¹²⁰ *Commonwealth Parliamentary Debates*, Senate, Vol. 193, 10 December 1998, p. 1675.

¹²¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 165, 28 February 1989, p. 129.

¹²² *Commonwealth Parliamentary Debates*, Senate, Vol. 155, 8 October 1992, pp. 1524-5.

the mortality rates.¹²³ Soon after, the Government nominated 11 albatross species for protection within the *Convention on Conservation of Migratory Species of Wild Animals*.¹²⁴

The Government acted to combat the introduction of invasive pests through the discharge of ships' ballast water, with a range of measures introduced in late 1999, to take effect from 2001.¹²⁵

Organizational Issues

Following numerous reviews into coastal surveillance and other aspects of border protection during the 1980s, the period from 1989 to 2001 was relatively settled. The major organizational matters were the evolution of Coastwatch into a multi-agency organization, generally accepted as being effective and efficient, and Labor's proposition that only a dedicated coastguard could meet Australia's border protection needs.

Following the establishment of Coastwatch within Customs in July 1988, Defence became a major contributor to it. Intelligence sharing became more pervasive and Defence participated in the establishment of the National Surveillance Centre, which became operational within Coastwatch on 26 January 2000.¹²⁶ The status of Coastwatch within Customs evolved, making it more independent of the parent body; thereby reducing an apparent bias towards Customs operations.¹²⁷

There were three noteworthy reviews during the period, of which, the Prime Minister's Coastal Surveillance Task Force, reporting in June 1999 was the first.¹²⁸ The Task Force Report noted the global illegal immigration problem, its cost to Australia and the potential for serious quarantine breaches. The Report proposed strengthening Coastwatch with a \$124m package, including stronger official representation in source

¹²³ *Commonwealth Parliamentary Debates*, Senate, Vol. 168, 14 November 1998, pp. 2968-9.

¹²⁴ *Commonwealth Parliamentary Debates*, Senate, Vol. 180, 19 November 1996, p. 5613.

¹²⁵ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 229, 13 October 1999, p. 11476.

¹²⁶ Joint Committee of Public Accounts and Audit, *Review of Coastwatch: Report 384*, the Parliament of the Commonwealth of Australia, Canberra, 2001, pp. 49 and 62.

¹²⁷ Joint Committee of Public Accounts and Audit, *Review of Coastwatch: Report 384*, p. 123.

¹²⁸ M.W. Moore-Wilton, *Prime Minister's Coastal Surveillance Task Force Report*, Canberra, June 1999.

countries, additional surveillance aircraft and flying hours, and the establishment of a National Surveillance Centre in Canberra.¹²⁹ It also foreshadowed the use of the Jindalee Over the Horizon Radar Network while acknowledging its limitations in searching for small surface vessels.¹³⁰ Other significant recommendations included the establishment of Coastwatch as an autonomous group within the Customs Service, with a serving ADF officer as Director General.¹³¹

The need for a dedicated coast guard for effective law enforcement at sea had been questioned in Parliament and in the media intermittently since Federation. The issue appeared again at and after the turn of the 21st century, when the Labor Opposition argued strongly for a coastguard. In Parliament during August 1999, Labor sought the Government's views on formation of a coast guard. In response the Minister for Justice and Customs noted that Labor's 1984 Review of Coastal Surveillance had itself rejected the notion of a coast guard.¹³²

The expanding demands of law enforcement at sea led to gradual, uneven, but definite increase in funding for the organizations involved. Table 6-2 below illustrates the doubling of Coastwatch funding over seven financial years during the 1990s.¹³³

Financial Year	Expenditure (\$m)
1990-91	16.6
1991-92	23.7
1992-93	23.1
1993-94	22.7
1994-95	23.8
1995-96	28.8
1996-97	35.2

Table 6-2: Coastwatch Expenditure 1990-91 to 1996-97¹³⁴

¹²⁹ Moore-Wilton, *Prime Minister's Coastal Surveillance Task Force Report*, pp. I, A-1 and A-2.

¹³⁰ Moore-Wilton, *Prime Minister's Coastal Surveillance Task Force Report*, p. 8.

¹³¹ Moore-Wilton, *Prime Minister's Coastal Surveillance Task Force Report*, p. A-2.

¹³² *Commonwealth Parliamentary Debates*, Senate, Vol. 198, 25 August 1999, p. 7722.

¹³³ Graham Giles, 'Role of Coastwatch', Anthony Bergin and Mohd Sidik Shaik Osman, eds., *National Coordination of Maritime Surveillance and Enforcement*, Australian Defence Studies Centre, University College, Australian Defence Force Academy, Canberra, 1996, p. 28.

¹³⁴ Giles, 'Role of Coastwatch', p. 28.

THE GOVERNMENT RESPONSE IN PRACTICE: UPGRADING CAPABILITY

Organization

From 1989 to 2001 Defence committed strongly to aerial surveillance and surface response. For example, in 1990 the RAN provided 1,800 patrol boat days, while the Royal Australian Air Force (RAAF) provided 700 P-3C flying hours at a total cost of \$23.6m.¹³⁵ The patrol boat commitment remained consistent for some years but P-3C hours varied according to tasking priorities. Thus in 2001 they provided only 250 hours – about 20 individual sorties.¹³⁶ This reflected the patrol boats' primary tasking for the constabulary function, whereas the P-3s had a range of other national and Air Force tasks competing for attention. At this time, the Government claimed its surveillance and response ensured that 98.6 per cent of all irregular maritime arrivals were intercepted when trying to enter Australia.¹³⁷

Coastwatch made the main contribution towards aerial surveillance with its fleet of contracted aircraft, increasingly capable with successive iterations of the surveillance contracts. By 2001 Coastwatch was operating five Dash 8-200 maritime patrol aircraft fitted with radar, forward-looking infra-red camera and low light TV, and a comprehensive communications outfit. They were supplemented by three smaller and shorter range Reims F406 aircraft, with similar if more limited equipment fit. There were also seven less capable aircraft used for visual surveillance. Among these were a number of Britten Norman Islanders which had previously been criticized for lack of speed.¹³⁸ Completing the fleet were two Bell Long Ranger helicopters, equipped for surveillance and used for Torres Strait and Great Barrier Reef work.¹³⁹

Similar evolution has been evident in the development of the surface response capability. This has applied to the Navy from the original inadequate Attack class and to the Customs patrol boat fleet. For Customs, the Bay class provided a genuine, if

¹³⁵ *Commonwealth Parliamentary Debates*, Senate, Vol. 139, 24 May 1990, p. 1000.

¹³⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 242, 20 August 2001, p. 29709.

¹³⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 242, 20 August 2001, p. 29709.

¹³⁸ *Commonwealth Parliamentary Debates*, Senate, Vol. 175, 21 November 1995, p. 3390.

¹³⁹ Joint Committee of Public Accounts and Audit, *Review of Coastwatch: Report 384*, p. 66.

limited, oceangoing capability from 1999 and 2000.¹⁴⁰ Unlike the Navy patrol boats, the Bay class did not carry fixed armament at first.¹⁴¹ Deck-mounted machine guns were fitted later,¹⁴² to counter the more aggressive responses of some foreign fishing vessels. For the Navy, the 42m Fremantles were a significant advance on the Attack class boats, but they still lacked sea keeping and endurance commensurate with their operating environment. Although the Defence White Paper of 1994, *Defending Australia*, indicated that the next generation of patrol craft would be capable of inshore surface warfare, the next White Paper, *Defence 2000: Our Future Defence Force*, simply announced plans for a new class of patrol boat to enter service from 2004-05.¹⁴³

Examining the potential of other technology solutions became increasingly important in the government response to maritime security threats. Considerations included over the horizon radar, remotely piloted vehicles, airborne early warning and control aircraft, satellites and ground-based radars.¹⁴⁴ Some of these were either unavailable when initially examined - airborne early warning and control aircraft and the Global Hawk remotely piloted vehicle for example - or proved to be too expensive, as in the case of satellites.¹⁴⁵ Those seriously considered were the Jindalee Over the horizon Radar Network and ground wave radar. Early expectations for Jindalee were high, as expressed by Mr Beddall, the then Minister for Small Business and Customs in August 1990. He suggested that, ' ... Jindalee is expected to be able to detect ships and aircraft up to 3,000km away...should be able to provide a deterrent to illegal immigration and drug smuggling ... '.¹⁴⁶ The Prime Minister's Coastal Surveillance Task Force report in June 1999, acknowledged that Jindalee was not optimized for surface vessel search.¹⁴⁷

¹⁴⁰ 'Australian Customs 38m', *AUSTAL Defence Products*, <<http://www.austal.com/en/products-and-services/defence-products/patrol-boats/australian-customs-38m.aspx>> (16 January 2013).

¹⁴¹ Joint Committee of Public Accounts and Audit, *Review of Coastwatch: Report 384* p. 107.

¹⁴² Australian Customs and Border Protection Service, 'Customs and Border Protection Bay Class Vessels', <<http://www.customs.gov.au/webdata/resources/files/BayClassVesselsFactSheet.pdf>> (16 January 2013).

¹⁴³ *Defence 2000: Our Future Defence Force*, Department of Defence, Canberra, 2000, p. 91. The Armidales, lacking any real combat capability, began to enter service in July 2006.

¹⁴⁴ Joint Committee of Public Accounts and Audit, *Review of Coastwatch: Report 384*, pp. 79-82.

¹⁴⁵ Joint Committee of Public Accounts and Audit, *Review of Coastwatch: Report 384*, pp. 79-82.

¹⁴⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 172, 23 August 1990, p. 1466.

¹⁴⁷ Moore-Wilton, *Prime Minister's Coastal Surveillance Task Force Report*, June 1999, p. 8.

Experience would show that Jindalee had limited capability against the generally smaller and wooden-hulled boats normally used for people smuggling.¹⁴⁸

Resources

Between 1989 and 2001 a substantial aerial surveillance and surface response effort was mounted against IUU fishing around the Australian coast. Early in the period, the Government claimed success in the Great Barrier Reef as a result of surveillance by Coastwatch, RAAF and Queensland National Parks and Wildlife Service aircraft, along with RAN and Queensland Government patrol boats.¹⁴⁹ There were frequent interceptions and apprehensions of boats alleged to be engaged in IUU fishing. For example in December 1999, HMAS *Gladstone* apprehended a Korean fishing boat in northern waters, within the AFZ and unusually, had to open fire to stop the boat. The Korean crew was subsequently prosecuted.¹⁵⁰ Indonesian fishing boats featured strongly in incidents at this time, with 285 Type II and III Indonesian fishing vessels apprehended between March 1996 and December 1999.¹⁵¹

Even more noteworthy was the apprehension in the Southern Ocean involving the Australian Customs Service patrol vessel *Southern Supporter*. In April 2001, the Togolese-registered *South Tomi* was chased across the Southern Ocean from the Heard and McDonald Island EEZ to the vicinity of Cape Town, South Africa. There an Australian Defence Force (ADF) boarding party, assisted by South African Navy ships boarded the *South Tomi* and escorted it to Fremantle.¹⁵²

¹⁴⁸ See Natalie O'Brien, 'Border radar fiasco', *The Age*, 3 July 2011, <<http://www.theage.com.au>> (17 June 2013). Border Protection Service in a response to a Freedom of Information request admitted that the Jindalee Over the horizon Radar Network had not detected any asylum seeker vessels during the previous two years.

¹⁴⁹ *Commonwealth Parliamentary Debates*, Senate, Vol. 144, 12 March 1991, p. 1742.

¹⁵⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 230, 6 December 1999, p. 12813.

¹⁵¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 231, 15 March 2000, p. 14825.

¹⁵² Cameron Moore, *ADF On the Beat: A Legal Analysis of Offshore Enforcement by the Australian Defence Force*, Centre for Maritime Policy, University of Wollongong, Wollongong, 2004, pp. 92-3.

Border Protection - Immigration

In responding to irregular maritime arrivals in the late 1990s, the Government provided funds for two additional fixed wing surveillance aircraft and night-capable helicopters for the Torres Strait.¹⁵³ This funding, \$124m over four years, also enabled positioning of Immigration Officers in source and transit countries. These placements enabled better cooperation from these countries, with for example, Indonesia preventing more than 100 asylum seekers with false papers, flying from Kupang to Darwin.¹⁵⁴

Other physical measures included the repatriation, during 1995, of Chinese irregular maritime arrivals in accordance with an MOU agreed with the Chinese Government.¹⁵⁵ Although the Australian Government claimed that the repatriations had led to a cessation of people leaving China for Australia, almost 300 arrived at Cocos and Christmas Islands in May 1996. They too were repatriated.¹⁵⁶

Border Protection - Customs

Smuggling of illegal goods remained a problem and Customs began to concentrate more on port security with the resurgence of terrorism. Throughout the period there was a strong focus on drug smuggling and the 46 per cent rise in drug interceptions at air and seaports in the financial year 1988-89 was evidence of effective work, and undoubtedly of a growing problem.¹⁵⁷ The extent of the problem - and of Customs success - can be seen in the dramatic growth in drug seizures from 162kg in 1971-72, to 5,071kg in 1991-92.¹⁵⁸

¹⁵³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 227, 28 June 1999, p. 7568.

¹⁵⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 227, 24 June 1999, p. 7455.

¹⁵⁵ *Commonwealth Parliamentary Debates*, Senate, Vol. 174, 26 September 1995, pp. 1470-1.

¹⁵⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 206, 27 May 1996, p. 1410.

¹⁵⁷ *Commonwealth Parliamentary Debates*, Senate, Vol. 138, 12 December 1989, p. 4309.

¹⁵⁸ *Commonwealth Parliamentary Debates*, Senate, Vol. 158, 26 May 1993, p. 1393.

Drug seizures continued to increase through the 1990s, with a record cannabis haul of five tonnes being made in 1996¹⁵⁹ and 25 tonnes of cannabis seized in the first half of 1997, amid concerns that Customs was merely scratching the surface of the illegal trade.¹⁶⁰ Drug seizures were also made directly from ships occasionally; the MV *Uniana* in October 1998, and an ocean-going tug in July 2001, for example. The terrorist attacks in the USA on 11 September 2001 brought a new urgency to port security. For example, in 1996, all 1,003,886 incoming sea consignments were screened for risk associated with drug smuggling, with only 8,382 assessed as posing any risk.¹⁶¹

Border Protection - Quarantine

Practical responses to quarantine threats resembled the Customs measures, including x-ray inspection of incoming shipping containers as well as mail and air cargo. There were also funding and staffing increases in 2001, with AQIS staff directly involved in border protection increasing by 70 per cent, and more detector dogs and inspection equipment.¹⁶² The Government also allocated \$10m for a public campaign entitled 'Quarantine Matters' for three years from 2001-02.¹⁶³

Marine Environmental Protection

Among the most significant environmental measures of the period was the introduction in 1990, with International Maritime Organization (IMO) agreement, of compulsory pilotage through part of the Great Barrier Reef. Within the northern part of the Inner Reef and Hydrographers' Passage all ships greater than 70m in length as well as all loaded tankers and gas carriers, regardless of length, were subject to the regulation.¹⁶⁴ From 2000 other environmental management initiatives were introduced for the Great Barrier Reef; including a 40 per cent increase in aerial surveillance which

¹⁵⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 210, 5 December 1996, p. 7858.

¹⁶⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 214, 18 June 1997, p. 5604.

¹⁶¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 218, 4 December 1997, p. 12359.

¹⁶² *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 242, 20 August 2001, p. 29711.

¹⁶³ *Commonwealth Parliamentary Debates*, Senate, Vol. 218, 4 March 2003, p. 9059.

¹⁶⁴ *Commonwealth Parliamentary Debates*, Senate, Vol. 141, 26 November 1990, p. 4401.

led to numerous convictions, new measures for aquaculture waste management and new zoning plans for the northern part of the Reef.¹⁶⁵

The April 1991 MV *Kirki* incident (see above) led to a review of marine pollution control measures. Specific measures included allocation of \$5.6m for equipment to enable better initial response to spills in high risk areas, implementation of a national training program, enhanced rapid response measures, better command and control and more effective integration of government and industry response capacity.¹⁶⁶

THE LEGISLATIVE RESPONSE: BILLS, BILLS AND MORE BILLS...

Between 1989 and 2001, the Government's legislative response grew in scope and complexity. Most legislation was for the immigration and the environment, although resources and quarantine legislation also featured. With over 150 Bills related to aspects of the constabulary function presented, only those with a significant impact on the major law enforcement at sea problems are considered below.

Resources Legislation

Marine resources legislation dealt almost entirely with fisheries management, beginning with the *Fisheries Administration Act 1991* which emerged from a comprehensive review of Commonwealth fisheries management completed in 1989. The review established the need to prevent over-exploitation of Australian fisheries, ensure sustainable exploitation and efficient commercial fishing operations, and to ensure that fishers paid for the right to exploit fish stocks.¹⁶⁷ The *Fisheries Administration Act 1991* established the Australian Fisheries Management Authority, along with the Fishing Industry Policy Council and the Fisheries Research and Development Corporation.¹⁶⁸ The subsequent *Fisheries Management Act 1991* gave AFMA the powers to meet its responsibilities.¹⁶⁹ This Act acknowledged that fisheries

¹⁶⁵ *Commonwealth Parliamentary Debates*, Senate, Vol. 201, 14 March 2000, p. 12702.

¹⁶⁶ *Commonwealth Parliamentary Debates*, Senate, Vol. 159, 6 September 1993, p. 916.

¹⁶⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 174, 6 December 1990, p. 4644.

¹⁶⁸ *Fisheries Administration Act 1991*, <<http://www.comlaw.gov.au/Details/C2005C00182>> (17 June 2013).

¹⁶⁹ *Commonwealth Parliamentary Debates*, Senate, Vol. 146, 6 June 1991, p. 4571.

management included management of both fish stocks and the number of licensed fishers.¹⁷⁰

There was a succession of fisheries-related Bills after the change of government in 1996, indicating the growing concern for effective fish stocks management and moves by international authorities to participate in that task. The *Fisheries Legislation Amendment Act (No. 1) 1998*, formalized a voluntary ban on taking black marlin throughout the AFZ and imposed fines of up to \$13,750 for breaches.¹⁷¹ Then the *Fisheries Legislation Amendment Act (No. 1) 2000*, introduced new powers and sanctions against foreign fishers especially in remote regions such as the north-west coast and the sub-Antarctic territories. The Minister for Agriculture, Fisheries and Forestry, Mr Truss commented:

Australian fisheries officers will be able to seize foreign boats, fishing gear or catch which have been automatically forfeited to the Commonwealth as a result of illegal fishing in the Australian fishing zone. The onus will then fall to the illegal foreign fishers to establish their legitimacy for being present in the Australian fishing zone without authorisation.¹⁷²

The Act also provided for the use of force, including the firing of warning shots and firing at or into a ship to stop it.¹⁷³ Beyond that, it enabled implementation of the obligations associated with the Law of the Sea Convention (LOSC)-related *Agreement for the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*.¹⁷⁴

Emphasizing the almost constant need to amend fisheries management legislation, the *Fisheries Legislation Amendment Bill (No. 1) 2000* sought to refine management practices and reflect changing circumstances.¹⁷⁵ The major elements of the Bill included placement of Australian observers on foreign fishing vessels outside the AFZ and

¹⁷⁰ *Commonwealth Parliamentary Debates*, Senate, Vol. 146, 6 June 1991, p. 4571.

¹⁷¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 222, 25 June 1998, pp. 5386-7.

¹⁷² *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 228, 1 September 1999, p. 9565. This Act was introduced as the *Fisheries Legislation Amendment Act (No. 1) 2000*, in December 1999.

¹⁷³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 228, 1 September 1999, p. 9565.

¹⁷⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 228, 1 September 1999, p. 9565.

¹⁷⁵ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 230, 8 December 1999, p. 13021.

controlling access of foreign fishing vessels and their support vessels to Australian ports.¹⁷⁶

Immigration Legislation

A large amount of immigration-related legislation was presented to the Parliament, the most contentious of which coincided with the three controversial incidents around the time of the 2001 Federal election. The first Bill became the *Migration Reform Act 1992*, which aimed to strengthen Australia's ability to control entry to the country.¹⁷⁷ It required detention for anyone entering the country without valid documents, and ultimately their removal from Australia if claims for settlement were not upheld. This was the beginning of mandatory detention for irregular maritime arrivals.¹⁷⁸ The Act also enabled the establishment of a '... specialist refugee review tribunal...' for independent review of refugee status decisions.¹⁷⁹ This Act also introduced regulations relating to the introduction of temporary protection visas, for periods of five years.¹⁸⁰ The move was short-lived as 'temporary' visas were abolished in the *Migration Legislation Amendment Act 1994* because of the uncertainty they created for refugees.¹⁸¹

The *Migration Amendment Act (No. 4) 1992* was introduced earlier, following a High Court challenge to the detention provisions of the main Act.¹⁸² Although the High Court supported the Government position, the *Amendment Act* was introduced as a temporary expedient, to limit claims for compensation (to \$1 per day) and to remove

¹⁷⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 230, 8 December 1999, p. 13021. This Act was introduced as the *Fisheries Legislation Amendment Bill (No. 2) 1999* in December 1999.

¹⁷⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol.186, 4 November 1992, p. 2620.

¹⁷⁸ *Commonwealth Parliamentary Debates*, House of Representatives, Vol.186, 4 November 1992, p. 2620.

¹⁷⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol.186, 4 November 1992, p. 2621.

¹⁸⁰ *Migration Reform Act 1992, No. 184, 1992-Table of Provisions*, <www.comlaw.gov.au/Details/C2004Ao4475> (25 February 2013).

¹⁸¹ Andreas Schloenhardt, 'Australia and the Boat-People: 25 years of Unauthorized Arrivals', *University of New South Wales Law Journal*, Vol. 23, Issue 3, December 2000, p. 46.

¹⁸² *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 187, 16 December 1992, p. 3947.

remaining uncertainty over the legality of detention in certain circumstances.¹⁸³ The introduction of mandatory detention was controversial from the outset and has remained so, as the main political parties disagree over the harshness of the measures needed to deter irregular maritime arrivals. Subsequently, the *Migration Laws Amendment Act 1993* deferred implementation of measures in the 1992 Act that were to come into effect in November 1993. The delay was the result of the substantial changes incorporated in the 1992 Act.¹⁸⁴

Difficulties with immigration legislation continued through the 1990s. They included challenges to sections of the *Migration Reform Act 1992* relating to detention and to the fairness of the compensation on offer (\$1 per day) because it involved the acquisition of property, namely irregular maritime arrival boats, '... otherwise than on just terms'.¹⁸⁵ Further amendments were made through the *Migration Legislation Amendment Act (No. 4) 1994* which sought to prevent asylum seekers with claims rejected in one country moving to another to restate the claim.¹⁸⁶ The legislation was prompted by the case of 17 Vietnamese asylum seekers who arrived on the boat '*Vagabond*', having had asylum claims rejected in Indonesia.

Numerous legal challenges to immigration legislation meant that in 1998 the Government introduced the *Migration Legislation Amendment – Judicial Review Act 2001* to limit severely '... access to Federal and High Court judicial review of administrative decisions made under the *Migration Act 1958*'.¹⁸⁷ This was a Coalition Government response to the regular recourse to litigation by irregular maritime arrivals, with the attendant cost and delay in making determinations. There had been nearly 400

¹⁸³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 187, 16 December 1992, p. 3948.

¹⁸⁴ *Commonwealth Parliamentary Debates*, Senate, Vol. 159, 31 August 1993, p. 675.

¹⁸⁵ *Commonwealth Parliamentary Debates*, Senate, Vol. 165, 8 June 1994, pp. 1445-7.

¹⁸⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 197, 8 November 1994, p. 2830.

¹⁸⁷ Parliament of Australia, *Bills Digest No. 90, Migration Legislation Amendment (Judicial Review) Bill 1998*,

<http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd9899/99bd090> (23 January 2013). This Bill remained in the Senate until it was passed to the House of Representatives for debate on 26 September 2001.

applications to the Federal and High Courts in 1994-95, rising to nearly 800 in 1997-98.¹⁸⁸

Increasing numbers of irregular maritime arrivals generated additional legislative effort. Minister for Immigration and Multicultural Affairs Ruddock introduced the *Border Protection Legislation Amendment Act 1999* in September. It focused specifically on people smugglers who remained outside territorial waters. The Act granted new powers to enable enforcement beyond the territorial sea and ensured, through amendments to the *Migration Act* and *Customs Act*, that officers involved in constabulary operations would have appropriate powers, including '... the detaining, forfeiture, seizure and, as necessary, disposal of ships and aircraft used in people smuggling operations'.¹⁸⁹ This Act also provided for Customs officers to be suitably armed.¹⁹⁰ Furthermore, the Act proposed amendments to the *Fisheries Management Act*, allowing for the detention of illegal fishers, for fisheries violations and subsequently, under the *Migration Act*, for any other offences.¹⁹¹

Separately, the *Migration Amendment Regulations 1999 (No. 12) 1999*, gave the Minister authority to issue temporary protection visas, for a period of up to three years.¹⁹² Also underscoring the need to act decisively against the growing people smuggling problem, the Government introduced the *Crimes at Sea Act 2000*. The main thrust of the Act was to provide an effective offshore legal regime to deal with crimes at sea. Thus, after agreement was reached with the States, State laws were to apply within the territorial sea while Commonwealth law would apply outside the territorial sea to the limit of the EEZ.¹⁹³

¹⁸⁸ *Commonwealth Parliamentary Debates*, Senate, Vol. 193, 2 December 1998, p. 1025.

¹⁸⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 229, 22 September 1999, pp. 10147-48.

¹⁹⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 229, 22 September 1999, p. 10149.

¹⁹¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 229, 22 September 1999, p.10149.

¹⁹² *Migration Amendment Regulations 1999 (No. 12) 1999*, <www.austlii.edu.au/legis/cth/num_reg> (27 February 2013).

¹⁹³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 229, 30 September 1999, p. 11034, and *Crimes at Sea Act 2000*, <www.comlaw.gov.au/Details/C2004A00605> (27 February 2013).

Up to this point there was a generally bipartisan approach to immigration legislation. Labor and the Coalition were both keen to prevent irregular maritime arrivals from landing in Australia and were equally keen to deter them from even considering the attempt. In presenting this Bill, the Minister for Immigration and Multicultural Affairs, Mr Ruddock, noted that he was, '... heartened to read that the shadow minister for employment, training and population had placed a motion before the House indicating the utmost concern about the activities of people smugglers'.¹⁹⁴ Nevertheless, Schloenhardt, writing in 2000 made a point that would deserve consideration frequently in the future, when he said that:

...none of the harsh measures that have been implemented in the past 25 years have reduced the incentives for migration to Australia. They have meant, rather, that potential migrants started to look for other ways to migrate, which they found in clandestine, illegal migration and migrant trafficking. Tightening borders and criminalising irregular migration has so far been unsuccessful in reducing the number of undocumented immigrants and deterring further arrivals.¹⁹⁵

The spirit of bipartisanship began to erode in late 2001 as the controversial irregular maritime arrival events discussed above played out. As the MV *Tampa* affair began to unfold, but probably not because of it, the Government introduced the *Migration Legislation Amendment Act (No. 6) 2001*. This was done to combat the growing tendency among irregular maritime arrivals to dispose of identification documents before arriving in Australia and to address the increasingly broad interpretations of the refugee convention in Australian courts.¹⁹⁶ Countermeasures in the Act included enabling the Minister to make adverse inferences when irregular maritime arrivals either have no documentation or refuse to make an oath or affirmation about the truth of information they provide. The Act also provided for a stricter interpretation of refugee status to prevent people to whom the Refugee Convention was not intended to apply from taking advantage of existing rules.¹⁹⁷

¹⁹⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 229, 22 September 1999, p.10149.

¹⁹⁵ Schloenhardt, 'Australia and the Boat-People: 25 years of Unauthorized Arrivals', p. 54.

¹⁹⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 242, 28 August 2001, p. 30420.

¹⁹⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 242, 28 August 2001, p. 30421.

Much more controversially and as a direct result of the then unfolding MV *Tampa* affair, on 29 August 2001 the Government introduced the *Border Protection Bill 2001*. The aim of the Bill was to permit the removal of a ship and all onboard it from the territorial sea.¹⁹⁸ Furthermore it directed that instructions given under the Bill would not be subject to court challenge and that claims for refugee status would not delay the removal of any ship. The Bill was intended to come into effect from 0900 on 29 August, specifically to apply to the MV *Tampa*.¹⁹⁹ Labor refused to support the Bill, which they claimed was both too broad and unnecessary for what was not a ‘... national catastrophe’.²⁰⁰ Indicating just how contentious it was, the Bill was rejected by the Senate.²⁰¹

Subsequent legislation was even more extreme in its endeavours to stem the flow of irregular maritime arrivals, driven now by organized criminal gangs,²⁰² which was clearly worrying the Government approaching the 2001 Federal election. The first of a package of three Bills presented in September led to the *Migration Amendment (Excision from the Migration Zone) Act 2001*. As the title implied the Act excised certain offshore territories from the migration zone—specifically Ashmore and Cartier Islands, Christmas and Cocos Islands, as well as offshore resource and similar installations.²⁰³ The intent was that unlawful arrival at one of these excised places would not entitle the irregular maritime arrivals to apply for a visa.²⁰⁴

The second of the three Bills became the *Migration Amendment (Excision from the Migration Zone) (Consequential Provisions) Act 2001* which amended the *Migration Act* and *Regulations* to strengthen the capacity to deal with irregular maritime arrivals. Measures introduced included the power to move a person to another country together

¹⁹⁸ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 242, 29 August 2001, p. 30569.

¹⁹⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 242, 29 August 2001, p. 30569-70.

²⁰⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 242, 29 August 2001, p. 30571.

²⁰¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 242, 30 August 2001, p. 30665.

²⁰² *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 243, 18 September 2001, p. 30870.

²⁰³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 243, 18 September 2001, p. 30870.

²⁰⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 243, 18 September 2001, p. 30870.

with the precluding of recourse to legal proceedings in any court apart from the High Court. The Act also introduced temporary protection visas for irregular maritime arrivals and people who choose to leave their country of first asylum.²⁰⁵ Completing the trio was the *Border Protection (Validation and Enforcement Powers) Act 2001* which ensured that the actions taken against the MV *Tampa* would be deemed to have been lawful when they occurred. It also confirmed the power to move vessels carrying irregular maritime arrivals and the people themselves.²⁰⁶ The three Acts represent quick and reactive law-making in the face of a problem that was growing in size and sophistication. The harshness of some of their measures reflects the nature of politics, with an election looming and the opportunity to show Labor as being 'soft' on border protection.

One further related Bill was presented before Parliament rose prior to the election. This became the *Migration Legislation Amendment (Judicial Review) Act 2001* which restricted access to judicial review by all courts, except in exceptional circumstances and had been held in the Senate since 1998.²⁰⁷

Quarantine Legislation

Although there were several quarantine scares from 1989 to 2001, the amount of consequent legislation was limited and not especially significant. The first two potentially significant Bills were introduced by private members because of fears of laxity in AQIS procedures. The *Quarantine Amendment Bill 1996* presented in October 1996 responded to fears of the introduction of disease likely to damage the local fruit growing industry.²⁰⁸ It was followed by the *Quarantine Amendment Bill No.2 1996* which attempted to give the Minister (as opposed to public servants in AQIS) the power to approve or deny the import of foodstuffs on quarantine grounds. The motivation was again fear that local primary industry would be devastated by the

²⁰⁵ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 243, 18 September 2001, pp. 30871-2.

²⁰⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 243, 18 September 2001, pp. 30872-73.

²⁰⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 243, 26 September 2001, p. 31559.

²⁰⁸ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 209, 28 October 1996, p. 5860.

inadvertent introduction of pests or disease.²⁰⁹ That said, there were fears among Government members that the Bill was also being used to protect the local chicken industry from international competition.²¹⁰ Neither Bill passed.²¹¹

The only truly significant piece of quarantine legislation appeared as the *Quarantine Amendment Bill 1998* in December 1998, as part of the Government response to the wide-ranging Nairn review of AQIS. The consequent *Quarantine Amendment Act 1998* was designed to ensure that Australia's regulatory framework provided adequate protection to primary industry while also encouraging export industries.²¹² Included in the framework of the Act were improvements in shipping pre-arrival and pre-departure reporting to allow for proper coverage of all quarantine related matters, more flexibility in the application of prescribed treatments and periods and new powers relating to the import of goods contrary to the *Quarantine Act*.²¹³

Environmental Legislation

By contrast with quarantine-related legislation, there was a very substantial amount of environmental legislation proposed, concentrating on the Great Barrier Reef, marine oil pollution, ballast water and whale protection. Four Acts affected the Great Barrier Reef, beginning with the *Great Barrier Reef Marine Park Amendment Act 1990*. This Act responded to boats bringing uncontrolled numbers of visitors to Green Island and so clarified the activities allowed under the various zoning plans.²¹⁴

Subsequently, and considering the potential for significant damage from oil spills, the *Great Barrier Reef Marine Park Amendment Act 1991* was passed in June 1991. It made pilotage compulsory for ships using the northern inner route of the Great Barrier Reef,

²⁰⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 210, 2 December 1996, p. 7376.

²¹⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 213, 26 May 1997, p. 4001.

²¹¹ Parliament of Australia, *Bills Digest alphabetical index 1996-97*, <http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/BD9697> (25 January 2013).

²¹² *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 223, 3 December 1998, p. 1277.

²¹³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 223, 3 December 1998, p. 1277.

²¹⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 171, 9 May 1990, p. 174.

because some 10 per cent of large ships, or those carrying potentially hazardous cargo on that route, were not using the voluntary pilotage regime then in place.²¹⁵ The Act imposed fines of up to \$50,000 for a range of related offences.

Increasing use of the Great Barrier Reef, for merchant shipping and tourism saw the introduction of charges to commercial users through the *Great Barrier Reef Marine Park Amendment Act 1993*.²¹⁶ The initial levy was set at \$1 per day per person using the Marine Park and reflected the need to spend more for Park upkeep as a result of the 10 per cent per year growth of tourism there.²¹⁷

Planning for the use of the Marine Park became more important and more contentious as tourism and shipping continued to grow. During 2000, for example there was an attempt in the Senate by the One Nation Party, to disallow the *Great Barrier Reef Marine Park Amendment Regulations 1999 (No. 1)*. These contained a revised plan for the Marine Park, restricting some uses, and irritating commercial users, such as game fishers; many claiming a lack of consultation.²¹⁸ The attempt gained little support.²¹⁹

With more shipping in the Great Barrier Reef accidents were almost inevitable. On 2 November 2000, shortly after dropping off the pilot, embarked for the compulsory pilotage stage, the MV *Bunga Teratai Satu* grounded on Sudbury Reef, fortunately without spilling any oil.²²⁰ The *Great Barrier Reef Marine Park Amendment Act 2001* was enacted in response, to increase protection from such incidents. It incorporated strict provisions relating to illegal fishing within the Marine Park, with penalties for oil spillage rising to \$1.1m for corporations.²²¹ There was a strong environmental focus to the *International Maritime Conventions Legislation Amendment Act 2001*, which amended four other Acts, two of which had marine environmental implications. One

²¹⁵ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 177, 15 May 1991, p. 3800.

²¹⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 188, 5 May 1993, pp. 96-7.

²¹⁷ *Commonwealth Parliamentary Debates*, Senate, Vol. 158, 18 May 1993, p. 665.

²¹⁸ *Commonwealth Parliamentary Debates*, Senate, Vol. 202, 13 April 2000, p. 14047.

²¹⁹ *Commonwealth Parliamentary Debates*, Senate, Vol. 202, 13 April 2000, p. 14047.

²²⁰ *Australian Transport Safety Bureau*, 'Marine Safety Investigation Report 162, Bunga Teratai Satu', Canberra, 2001, p. 1.

²²¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 240, 7 June 2001, pp. 27614-5.

amendment covered the *Protection of the Sea (Powers of Intervention) Act 1981*, revising the list of chemicals that could require Australian Maritime Safety Authority intervention at sea to prevent or reduce pollution.²²² The second amendment was to the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*, which strengthened pollution prevention measures by, for example, mandating waste management systems for Australian ships of 400 tonnes or more.²²³

Beginning in 1993 a series of Acts to prevent oil pollution at sea and manage the consequences of any spills was passed by Parliament. The first was a package of four, with the *Protection of the Sea (Oil Pollution Compensation Fund) Act 1993* becoming the primary Act.²²⁴ The Acts intended to give effect to the *International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971*, as well as to protocols adopted in 1976 and 1992 but not internationally in force.²²⁵ The supporting Acts imposed financial contributions from the movement of oil by sea. Two subsequent Acts in 1993 had a similar focus. The *Protection of the Sea (Shipping Levy) Amendment Act 1993* raised the oil pollution levy for ships visiting Australian ports, while the *Environment Protection (Sea Dumping) Amendment Act 1993* enabled Australia to ratify the *Protocol for the Prevention of Pollution of the South Pacific Region by Dumping (SPREP)*.²²⁶

After a period of little legislative activity the Bill for the *Environment and Heritage Legislation Amendment Act 2000* was introduced in May, with two main aims, the first relating to pollution. It sought to amend earlier legislation to implementing the 1996 Protocol to the *Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972* (the *London Dumping Convention*) which covered the dumping and

²²² *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 239, 4 April 2001, pp. 26345-8.

²²³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 239, 4 April 2001, pp. 26345-8.

²²⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 188, 5 May 1993, p. 147. The other three Acts were *The Protection of the Sea (Imposition of Contributions to Oil Pollution Compensation Fund – Customs) Act 1993*, *The Protection of the Sea (Imposition of Contributions to Oil Pollution Compensation Fund – Excise) Act 1993*, and *The Protection of the Sea (Imposition of Contributions to Oil Pollution Compensation Fund – General) Act 1993*.

²²⁵ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 188, 5 May 1993, p. 147.

²²⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 191, 16 December 1993 and 17 December 1993, pp. 4299 and 4368.

incineration of material at sea.²²⁷ This was soon followed by the *Protection of the Sea (Civil Liability) Amendment Act 2000*, requiring all ships above 400 tonnes displacement, entering or leaving Australian ports, to have insurance for oil spills.²²⁸

Emerging problems of pest infestation from the discharge of ships' ballast water and of environmental damage from harmful anti-fouling coatings led to two pieces of legislation during the period. The first, the *Ballast Water Research and Development Funding Levy Act 1998*, imposed a levy on all ships with a length greater than 50m for a period of two years, to support research and development aimed at minimizing the entry risk of pests and disease pathogens.²²⁹

Although there was no whale-specific legislation introduced during the period to 2001, several Acts relating to Antarctica came into force. Firstly, the *Antarctic Mining Prohibition Act 1991* was designed to prohibit mining in the Australian Antarctic Territory and by Australians elsewhere in the Antarctic.²³⁰ The Act included fines up to \$500,000 for corporations. This was followed by the *Antarctic (Environmental Protection) Legislation Amendment Act 1992* giving effect to the *Protocol on Environmental Protection to the Antarctic Treaty*, known as the *Madrid Protocol*.²³¹ This Protocol was an international agreement to ban mining in Antarctica and to acknowledge it as a place of special environmental significance.

Other important environmental legislation included the succession of Bills relating to environmental protection and biodiversity conservation, beginning in 1998. Firstly, the *Environment Protection and Biodiversity Conservation Bill 1998* was introduced in July to overhaul and update the existing Commonwealth environmental legislative framework.²³² It was intended to rectify the reliance on indirect triggers, such as foreign investment approvals, to generate Commonwealth environmental action. It

²²⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 233, 11 May 2000, p. 16290.

²²⁸ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 234, 28 June 2000, p. 18394.

²²⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 216, 24 September 1997, p. 8273.

²³⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 176, 6 March 1991, p. 1417.

²³¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 186, 14 October 1992, p. 2149.

²³² *Commonwealth Parliamentary Debates*, Senate, Vol. 195, 27 April 1999, p. 4333.

also introduced a more efficient assessment and approval process for marine and other important environmental matters.²³³ The Minister claimed that it ' ... represents the only comprehensive attempt in the history of our Federation to define the environmental responsibilities of the Commonwealth.'²³⁴

Following a protracted consultation process and the 1998 Federal election the Bill was finally enacted in July as the *Environmental Protection and Biodiversity Conservation Act 1999*.²³⁵ Marine environmental provisions included protection for endangered and migratory species and protection of Commonwealth marine areas.²³⁶ Further protective legislation followed with the *Environmental Protection and Biodiversity Conservation Amendment (Wildlife Protection) Act 2001* introduced in April 2001. The Act focused on countering the illegal wildlife trade, placing the burden of proof of legal import of endangered species on the importer, as well as simplifying procedures.²³⁷

More specific marine environmental protection legislation was enacted during the period to 2001. In March 1999, the Bill for the *Environment and Heritage Legislation Amendment Act 2000* was introduced. It amended existing legislation relating to dumping of material at sea and to the authorization of sea installations in areas beyond the 3nm limit of State-controlled waters.²³⁸ The Act also enabled Australia to meet its obligations under the *1996 Protocol to the 1972 London Convention on dumping at sea*. The *1996 Protocol* superseded the *Convention*.²³⁹

During the 1990s two Acts relating to wildlife protection progressed through Parliament. The *Wildlife Protection (Regulation of Exports and Imports) Amendment Act 1991* raised penalties for illegal export and import of wildlife, taking account of the

²³³ *Commonwealth Parliamentary Debates*, Senate, Vol. 195, 27 April 1999, p. 4333.

²³⁴ *Commonwealth Parliamentary Debates*, Senate, Vol. 195, 27 April 1999, p. 4333.

²³⁵ *Environmental Protection and Biodiversity Conservation Act 1999*, <<http://www.comlaw.gov.au/Series/C2004A00485>> (11 February 2013).

²³⁶ Parliament of Australia, *Bills Digest No. 135 1998-99, Environment Protection and Biodiversity Conservation Bill 1998*, <http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd9899/99bd135#Main> (11 February 2013).

²³⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 241, 27 June 2001, p. 28751.

²³⁸ *Commonwealth Parliamentary Debates*, Senate, Vol. 195, 31 March 1999, p. 3585.

²³⁹ *Commonwealth Parliamentary Debates*, Senate, Vol. 195, 31 March 1999, p. 3585.

potential damage to native species.²⁴⁰ A maximum custodial sentence of 10 years was introduced. This was followed by the *Wildlife Protection (Regulation of Exports and Imports) Amendment Act 1995*, which strengthened the enforcement and administration provisions of earlier legislation, making it consistent with Australia's obligations under the *Convention on International Trade in Endangered Species*.²⁴¹

Other noteworthy environmental legislation included the *Petroleum (Submerged Lands) Amendment Act 1991* which amended the 1967 Act to ensure oil spill cleanup costs were to be borne in full by those responsible for them.²⁴² It also terminated some long unused drilling permits in the Great Barrier Reef.

Customs Legislation

Increasing community concern over illegal drug imports led to new Customs legislation. The *Customs (Detection and Search) Act 1990* provided new powers of search and detention, including measures to counter internal concealment of drugs.²⁴³ The Act also provided protection for suspects and Commonwealth officers, and permitted non-consensual search as a last resort. The potential for drugs to be imported through sea ports, identified in the National Crime Authority's 1989 report on port security and illicit drugs, resulted in the *Customs Legislation Amendment Act 1992*. It enabled Customs Officers to ask for identification from persons in 'Customs' areas and to stop and search vehicles in those areas.²⁴⁴

Drug smuggling was the focus of the *Customs Legislation Amendment Act (No. 1) 1999*. The Act empowered Customs Officers to search maintenance and other personnel with access to ships and aircraft.²⁴⁵ It also gave frisk search powers and extended boarding and search powers to the contiguous zone, with the right to remove improperly stowed weapons from visiting ships and yachts.

²⁴⁰ *Commonwealth Parliamentary Debates*, Senate, Vol. 147, 13 August 1991, p. 14.

²⁴¹ *Commonwealth Parliamentary Debates*, Senate, Vol. 171, 9 May 1995, p. 43.

²⁴² *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 177, 8 May 1991, p. 3262.

²⁴³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 170, 30 November 1989, p. 3291.

²⁴⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 186, 4 November 1992, pp. 2578-9.

²⁴⁵ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 222, 2 July 1998, p. 5875.

Smuggling, more generally was a focus of the *Customs Legislation Amendment Act 1993*. It tightened control of movement of people and goods between the mainland and Zone A of the Timor Gap, mainly for offshore resource exploration and exploitation.²⁴⁶ The Act also introduced mandatory reporting of all crew possessions by arriving ships, and the forfeiture of non-declared items subsequently discovered. This broader focus was also evident in the *Customs Legislation Amendment (Criminal Sanctions and Other Measures) Act 1999*, which was enacted with the then forthcoming Sydney Olympic Games in mind.²⁴⁷ The Act introduced tougher penalties for import and export civil and criminal offences. The most serious crimes, such as import of child pornography, attracted \$250,000 fines with the option also of up to 10 years imprisonment.²⁴⁸ Significantly, the Act allowed Customs officers to examine incoming mail items covertly.

Other Legislation

One of the most important Acts passed during the period was the *Maritime Legislation Amendment Act 1994*, which brought Australia's maritime zones in line with entitlements under the LOSC, which Australia had not then ratified.²⁴⁹ The major changes wrought by the Act included: the establishment of rights in the EEZ, a revised definition of the continental shelf, assertion of rights in the contiguous zone and adoption of new legal provisions for drawing territorial sea baselines.²⁵⁰ The Act most affected by these changes was the *Seas and Submerged Lands Act 1973*.

Several other Acts with implications for the constabulary function were passed during the period. The first of these was the *Crimes (Ships and Fixed Platforms) Act 1992*, which implemented the 1988 *Convention for the Suppression of Unlawful Acts Against the Safety*

²⁴⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 190, 16 November 1993, p. 2896.

²⁴⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 230, 24 November 1999, p. 12467.

²⁴⁸ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 230, 24 November 1999, p. 12467.

²⁴⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 190, 17 November 1993, p. 3033.

²⁵⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 190, 17 November 1993, p. 3033.

of Maritime Navigation (SUA) and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms located on the Continental Shelf.²⁵¹ The Act and underlying international conventions were inspired by the terrorist attack against the MV *Achille Lauro* in November 1985, and introduced offences such as seizing control, committing acts of violence against or damaging or destroying ships or fixed platforms, and causing death or injury.²⁵² The Act applied to ships on international voyages and to fixed platforms on the continental shelves of protocol states. It was the first of much terrorism-related legislation.

The strong focus on irregular maritime arrivals and the Government's difficulty in dealing with the MV *Tampa* in August 2001, prompted the then Leader of the Opposition to introduce the *Australian Coast Guard Bill 2001*. One of the Bill's primary arguments was that a dedicated coast guard would provide law enforcement at sea much cheaper than the Navy's warships.²⁵³ The Bill did not proceed.

THE IMPLICATIONS FOR THE NAVY: A NEW LEVEL OF COMMITMENT

The implications of the constabulary function for the Navy from 1989 to 2001 were wide-ranging, because they continued to involve elements of the Navy other than the patrol boats and because they involved the Navy politically to an unprecedented extent. Constabulary operations also impacted on the capacity of the patrol boats to engage in other work, and demanded judgments on the suitability of the Fremantles for their primary role. The nature of the constabulary tasking and one of the two geographical foci of the work also determined new patrol boat basing arrangements. Furthermore, the constabulary task became more complex and demanding for those involved, particularly because of increasing workload and a growing need for commanding officers to be familiar with relevant domestic and international law.

²⁵¹ *Commonwealth Parliamentary Debates*, Senate, Vol. 153, 25 June 1992, p. 4703, and *Crimes (Ships and Fixed Platforms) Act 1992*, <www.comlaw.gov.au/Series/C2004A04464> (27 February 2013).

²⁵² *Commonwealth Parliamentary Debates*, Senate, Vol. 153, 25 June 1992, p. 4703, and *Crimes (Ships and Fixed Platforms) Act 1992*.

²⁵³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 243, 24 September 2001, p. 31273.

Patrol Boat Tasking

Table 6-3 below, shows the major employment undertaken by the patrol boat force, other than for the constabulary function, between 1989 and 2002. The table highlights the extensive regional engagement work undertaken by the patrol boats, as well as their commitment to a range of other domestic tasks. The table also identifies how the capacity of the patrol boats to undertake 'other' tasks diminished substantially towards the end of the period.

Throughout the period, the Fremantles deployed frequently to Southeast Asia and to the South West and Central Pacific. The deployments to Southeast Asia lasted up to 12 weeks,²⁵⁴ concentrated on visits to Indonesia,²⁵⁵ Brunei,²⁵⁶ and Malaysia,²⁵⁷ but ranged as far afield as Hong Kong.²⁵⁸ South and Central Pacific deployments were equally expansive throughout the period, with HMAS *Geelong's* patrol in the second half of 1998 demonstrating the range of countries visited. During this deployment, the *Geelong* visited Vanuatu, Fiji, Western Samoa, the Cook Islands, Tonga and New Caledonia.²⁵⁹ The overseas deployments were additional to the 1,800 days per year provided for the constabulary task.²⁶⁰

These deployments gave the Fremantles opportunities to exercise with local navies or local maritime or marine police forces and had two main advantages for the RAN. Firstly, the deployments extended the web of regional engagement beyond the capacity of the major surface combatants and other warships, given their operational demands. Secondly, in the Pacific especially, the deployments enabled the RAN to

²⁵⁴ See for example, 'Shield to *Bendigo*', *Navy News*, Vol. 33, No. 13, 6 July 1990, p. 6.

²⁵⁵ See for example, LSPH Shane Cameron, 'Navy, veterans make Ambon pilgrimage', *Navy News*, Vol. 38, No. 11, 16 June 1995, p. 7.

²⁵⁶ See for example, LEUT Warren Barry, 'Patrol boats' wild trip', *Navy News*, Vol. 38, No. 17, 11 September 1995, p. 8.

²⁵⁷ See for example, Ross Gillett, 'R.A.N. at Malaysian Navy's 55th anniversary', *Navy News*, Vol. 33, No. 11, 8 June 1990, p. 2.

²⁵⁸ See for example, 'Another first for patrol boats', *Navy News*, Vol. 35, No. 1, 31 January 1992, p. 6. This deployment by HMA Ships *Geelong* and *Launceston* was the first by the Fremantles to Hong Kong.

²⁵⁹ See for example, 'Well earned rest for *Geelong*', *Navy News*, Vol. 41, No. 21, 2 November 1998, p. 8.

²⁶⁰ Information provided by RADM James Goldrick RANR, Commanding Officer of HMAS *Cessnock* in 1990-91.

interact with many of the smaller Pacific Island Countries at a more appropriate level and in places difficult to access for the major warships. For example, in March 1994, HMAS *Whyalla* escorted the Republic of Kiribati Ship (RKS) *Teanoai* on its delivery voyage to Kiribati. *Whyalla* then operated in company with the Western Samoan patrol boat MV *Nafanua* and Vanuatu's patrol boat, Republic of Vanuatu Ship (RVS) *Tukoro* while visiting these countries.²⁶¹

Year of Patrol Boat Activity and Number of Boats Involved													
Tasks	'89-90	'90-91	'91-92	'92-93	'93-94	'94-95	'95-96	'96-97	'97-98	'98-99	'99-00	'00-01	'01-02
South Pacific deployment	7	10	8	6	4	2	7	3	10	5	7	6	
Southeast Asia deployment	4	7	4	7	7	6	7	8	8	5	0	2	
Exercises - domestic	3	1	13	7	8	12	19	10	18	2	1	11	7
SAR	2	3	2	1	4	1	0	1	8	7	7	6	2
Public relations	1	2	1	1	1	2	1	1	4	1		1	
Explosive Ordnance Demolition			2										1
Scientific trials				2	1				1				
TOTALS	17	23	30	24	25	23	34	23	49	20	15	26	10

Table 6-3: Fremantle Class Patrol Boat Tasking For Other Than the Constabulary Function, 1989 - 2002²⁶²

The Fremantles participated in many exercises in Australian waters, some involving vessels of other countries. For example HMAS *Gawler* and some major warships joined

²⁶¹ Lieutenant Commander W.E. Eversham, Lieutenant D.J. Byrne, and Sub-Lieutenant B.M. Westcott, 'HMAS *Whyalla*'s South-West Pacific Deployment', in *Australia's Navy 1994-95*, Australian Government Publishing Service, Canberra, 1995, pp. 62-4.

²⁶² The information in this table comes from issues of *Navy News*, the fortnightly RAN internal newspaper, as well as from the annual series of books, *Australia's Navy* for the entire period July 1989-December 2001. The information may not be a complete record of all such employment as, in the case of *Navy News*, it relies on individual patrol boats submitting articles in most cases, and in the case of the *Australia's Navy* annuals, it relies on the author considering events worth noting in the annual publication. In any event it is representative of patrol boat activity and may if anything underreport the other than constabulary function activities.

Indonesian Navy ships in Exercise *New Horizon* off Darwin in August 1993²⁶³ and in August 2000, HMAS *Launceston* took part in the Fleet Concentration Period, also off Darwin.²⁶⁴ Similarly, the patrol boats were involved in many search and rescue (SAR) operations. Some of these rescues involved diversions from normal tasking while others were associated with routine border protection patrols. Notably, towards the end of the period, several rescues involved irregular maritime arrivals from boats in difficulty, as with HMA Ships *Cessnock* and *Townsville* in March 2001, when they provided food, water and first aid to 340 irregular maritime arrivals at Ashmore Reef.²⁶⁵

Major Warship Contributions

Despite the Fremantles meeting the vast majority of their operational tasking, major warships undertook constabulary tasks during the period to December 2001. Sometimes frigates carried out constabulary tasks incidentally to other operational tasking. Examples included HMAS *Torrens* boarding three Indonesian fishing vessels in the AFZ, while sailing between Darwin and Surabaya late in 1991, HMAS *Arunta* directing an Indonesian fishing vessel to leave the AFZ in the vicinity of Wessel Island early in 1999, and HMAS *Newcastle* becoming involved in boarding a vessel carrying irregular maritime arrivals near Newcastle in early 1999.²⁶⁶

There was also more formal involvement by major combatants where the Fremantles were incapable of accomplishing the task. This included fisheries patrols in the Southern Ocean, for which the Fremantles lacked the range, seakeeping ability and underway refuelling capacity.²⁶⁷ In October 1997, HMAS *Anzac* apprehended two foreign fishing vessels in the Heard and Macdonald Islands Fishing Zone. As with

²⁶³ 'Australian Naval Operations 1993-94', *Australia's Navy 1994-95*, Australian Government Publishing Service, Canberra, 1995, p. 9.

²⁶⁴ 'Ships gather', *Navy News*, Vol. 43, No. 16, 21 August 2000, p. 3.

²⁶⁵ 'Minister praises our patrol boats' professionalism', *Navy News*, Vol. 44, No. 6, 2 April 2001, p. 7.

²⁶⁶ See respectively 'City turns on hospitality for visiting patrol boat', *Navy News*, Vol. 35, No. 1, 31 January 1992, p. 7; 'Patrol boats busy with illegal fishermen', *Navy News*, Vol. 42, No. 8, 3 May 1999, p. 3; and Graham Davis, 'Arrested', *Navy News*, Vol. 42, No. 10, 31 May 1999, p. 1.

²⁶⁷ See 'HMAS *Fremantle II*', <www.navy.gov.au/hmas-fremantle-ii> (11 June 2013). The Fremantle class had a range of 2360nm at 12kt, a displacement of 220 tonnes and a length overall of 42m.

other frigate deployments to the Southern ocean, *Anzac* was accompanied by the tanker HMAS *Westralia*, because the distance was too great even for the frigate unrefuelled.²⁶⁸ The Navy's operational limitations in the Southern Ocean were revealed starkly in the operation to apprehend the fishing vessel *South Tomi* which had been fishing illegally in the Heard and Macdonald Islands Fishing Zone. The Navy was unable to send a frigate into the area as no supporting tanker was available and the task fell to the *Southern Supporter*, chartered by AFMA.²⁶⁹

The second formal involvement was assigning major warships to manage the influx of irregular maritime arrivals in 2001. Initially, there was consideration of assigning the newly inducted HMAS *Jervis Bay* (a fast ferry leased from INCAT). Ultimately, in late 2001 HMA Ships *Adelaide*, *Arunta*, *Warramunga*, *Newcastle*, (all frigates) *Manoora*, *Tobruk* (amphibious transports) and *Westralia* (tanker) were all assigned to deal with the problem.²⁷⁰ This was the first significant allocation of major warships to the constabulary task and was repeated.

The assignment of major warships to constabulary duties had several implications for the RAN. Firstly, it was an admission that the task, at least temporarily, had become too great for the patrol boat force. There were insufficient boats and they could not accommodate large numbers of irregular maritime arrivals, taken from unseaworthy vessels.²⁷¹ One long term consequence of this was consideration of more numerous and larger replacements for the Fremantles. The second implication for the RAN was the withdrawal of the major warships from their primary tasks. Over time this would result in an inability to meet some tasking and in a drop in readiness levels of ships and their crews.²⁷² Depending on the nature and extent of other operations, it might

²⁶⁸ LEUT Aaron Matzkows, 'Anzac reins in poachers', *Navy News*, Vol. 40, No. 21, 3 November 1997, p. 3.

²⁶⁹ Graham Davis, 'You're Nicked Mate', *Navy News*, Vol. 44, No. 8, 30 April 2001, p. 2.

²⁷⁰ 'Crash sail for *Arunta*', *Navy News*, Vol. 44, No. 17, 3 September 2001, p. 1; and 'Thick Grey Line: Patrols aim to deter illegals', *Navy News*, Vol. 44, No. 18, 17 September 2001, pp. 1 and 4. See also Marr and Wilkinson, *Dark Victory*, pp. 333, 340, 341, 348 and 349.

²⁷¹ The Fremantles had a crew of 24 and very little additional space in which additional people could be safely accommodated.

²⁷² RAN warships have an operating cycle of; preparation, work-up, operations, and reconstitution. See, *RAN Doctrine 2 – The Navy Contribution to Australian Maritime Operations*, Sea Power Centre-Australia, Canberra, 2005, p. 76. Unless actually employed in the operation for which a work-up has been undertaken, the readiness levels of ships and their crews degrade over time. See *Australian Maritime Operations*, Sea Power Centre-Australia, Canberra,

also result in an inability to meet all commitments. In late 2001, this was not an immediate concern, with only two frigates and a tanker assigned to Operation *Slipper* as part of the American-led Operation *Enduring Freedom*.²⁷³ The third implication for the RAN was the additional cost of complex warships with crews of about 200 men and women undertaking tasks for which the much smaller and simpler Fremantles were generally more suitable.

The Fremantle Class Patrol Boats

In service from 1980 to 2007, the 15 Fremantle class patrol boats were markedly more effective than their Attack class predecessors. Table 6-4 below compares important characteristics of the Attack and Fremantle classes of patrol boats. The most significant improvement of the Fremantle over the Attack class was the doubling of the range, which also translated into greater endurance. The Fremantle class also had better sea-keeping ability than the earlier boats, which it achieved without sacrificing the capacity to operate in shallow water, with both classes having a draught of less than two metres.

Class	Length	Displacement	Range	Speed	Crew	Draught
Attack	32.5m	132 tonnes	1188nm at 13kt	24kt	19	1.9m
Fremantle	42m	220 tonnes	2360nm at 12kt	30kt	24	1.8m

Table 6-4: Comparison of Fremantle and Attack Class Performance²⁷⁴

Yet, despite the performance improvements, the Fremantle class could not undertake all tasks. Foremost among its limitations was sea-keeping which created problems for the boats throughout the period.²⁷⁵ As noted in *RAN Doctrine 2–The Navy Contribution to Australian Maritime Operations*, ‘... patrol boats are normally limited to operations in

forthcoming, Chapter Six, page 5. This is the second edition of *RAN Doctrine 2* for which the writer was lead author.

²⁷³ Vanessa Bendle, David Griffin and Peter Laurence, eds., *Database of Royal Australian Navy Operations, 1990-2005*, Sea Power Centre-Australia, Canberra, 2005, p. 44.

²⁷⁴ The information in the table comes from performance information provided on the RAN website. <<http://www.navy.gov.au/fleet-ships-boats-craft/available-ship-histories>> (12 June 2013).

²⁷⁵ *RAN Doctrine 2–The Navy Contribution to Australian Maritime Operations*, p. 136.

less than sea states 4-5, and experience difficulty in conducting boarding operations in seas exceeding 2.5 metres'.²⁷⁶ *Navy News* stories from 1989 to 2001 record at least 20 references to weather affecting the Fremantles' performance.²⁷⁷ In some cases the weather kept the patrol boats alongside. For example, in August 1996, HMAS *Townsville* reported having to remain in Broome for several days because of bad weather.²⁷⁸ Nevertheless, the main impact of the sea-keeping limitations was the debilitating effect of constant boat movement on the crews.²⁷⁹

Although the Fremantles were almost 10m longer than their predecessors, they were still constrained for space. There was very little free space on the upper deck that could be used to accommodate irregular maritime arrivals needing to be rescued. Similarly there was no accommodation below decks, apart from crew quarters, that could have been used for the same purpose.²⁸⁰ This was to prove a severe limitation in late 2001 as the numbers of irregular maritime arrivals increased dramatically and many had to be transferred from the craft that brought them.

Additionally, the Fremantles could not embark and operate a helicopter. Helicopters, carrying a variety of weapons and sensors, have become essential elements of warship capability, by extending the search and attack ranges of their parent ships.²⁸¹ They also have an 'inherent personnel and cargo transport capability'²⁸² useful in search and rescue and other humanitarian tasks. For the constabulary function, if helicopters could have been embarked in the Fremantles, they would have complemented the fixed wing aerial surveillance and would have provided an additional very responsive means of managing humanitarian tasks. An example of this was provided by having a helicopter from the mainland evacuate sick irregular maritime arrivals from Ashmore

²⁷⁶ RAN Doctrine 2–*The Navy Contribution to Australian Maritime Operations*, p. 141.

²⁷⁷ The references are spread throughout the period, beginning with 'Busy year clinches major shield for HMAS *Geraldton*', *Navy News*, Vol. 33, No. 3, 16 February 1990, p. 2, and ending with 'NZ deployment meets heavy sea states', *Navy News*, Vol. 44, No. 11, 11 June 2001, p. 13.

²⁷⁸ 'Birthday end to one busy patrol', *Navy News*, Vol. 39, No. 16, 26 August 1996, p. 9.

²⁷⁹ Information provided by RADM James Goldrick RANR, Commanding Officer of HMAS *Cessnock* in 1990-91.

²⁸⁰ Information provided by RADM James Goldrick RANR, Commanding Officer of HMAS *Cessnock* in 1990-91.

²⁸¹ RAN Doctrine 2–*The Navy Contribution to Australian Maritime Operations*, p. 157.

²⁸² RAN Doctrine 2–*The Navy Contribution to Australian Maritime Operations*, p. 157.

Island in March 2001.²⁸³ HMAS *Bunbury* was present but could not provide the speedy response needed by the state of health of the irregular maritime arrivals. Notably, too, the Fremantles had no onboard medical facility and only very limited capacity to deal with crew medical problems.

The Fremantle class limitations caused the RAN to consider a more capable more costly vessel as a replacement. As early as 1994 the Coalition Government approved a replacement design which was designated an Offshore Patrol Craft. This 80 metre vessel was to have improved seakeeping, be more combat capable and carry a helicopter.²⁸⁴ This project, proposed as a joint development with the Royal Malaysian Navy, did not proceed when the Australian designer Transfield failed to win the contract in Malaysia.²⁸⁵

The Patrol Boat Crews

Recruiting and retention of personnel have been major problems for the RAN for many years.²⁸⁶ In the late 1980s administrative measures were taken to make Navy life more attractive, but for the service to prosper attention to working conditions was essential. As one writer noted of the period, 'Working hours at sea had always been far in excess of the national average, but the trend towards minimum-manned ships meant that this workload was often equalled or surpassed when alongside'.²⁸⁷ The problem continued to affect the Navy throughout the period to 2001, with shortages in some technical categories reaching critical levels.²⁸⁸

The evolution of the constabulary function to 2001 proved to be demanding for crews in several respects. One key to workplace satisfaction is a measure of predictability in

²⁸³ 'Bunbury calls in chopper for Ashmore Reef rescue', *Navy News*, Vol. 44, No. 6, 2 April 2001, p. 2.

²⁸⁴ Colin Blair, 'Navy Budget: 'Steady as she goes'', *Navy News*, Vol. 37, No. 9, 20 June 1994, p. 1.

²⁸⁵ Kathryn Spurling, '1991-2001 - The Era of Defence Reform', in David Stevens, ed, *The Royal Australian Navy: The Australian Centenary History of Defence Volume III*, Oxford University Press, Melbourne, 2001, pp. 274-5.

²⁸⁶ Peter Jones, '1983-1991-A period of Change and Uncertainty', in David Stevens, ed, *The Royal Australian Navy: The Australian Centenary History of Defence Volume III*, Oxford University Press, Melbourne, 2001, p. 255.

²⁸⁷ Spurling, '1991-2001-The Era of Defence Reform', p. 283.

²⁸⁸ Spurling, '1991-2001-The Era of Defence Reform', p. 284.

working hours. This was constantly under threat for the patrol boat crews, with planned alongside periods often cut short with little or no warning, for boats or for individual sailors and officers. *Navy News* records at least 16 such occasions through the period to 2001; one typical example being HMAS *Launceston* in early 1994, having returned to Darwin after an EEZ patrol and anticipating a weekend alongside, sailed just six hours later, in response to foreign fishing vessel sightings.²⁸⁹ There is a further report of *Launceston* in 1993, responding to a short notice call to deal with foreign fishing vessels and conducting 50 boardings within 96 hours. Crewmembers were working 20 hour days.²⁹⁰

The Navy tried to relieve the pressure on the patrol boat crews by changing the operating cycle which had been six weeks operational, followed by four weeks in assisted maintenance, followed by another six weeks operational. The new cycle involved eight weeks operational, followed by four weeks in assisted maintenance and then four weeks for leave and training, with that cycle repeated three times per year.²⁹¹ Another related measure adopted during 2001 was to mandate that 'operational relief' postings be limited to a maximum of 91 days in any one year.²⁹² This was to prevent personnel losing much of their shore respite time by being posted at short notice to fill vacancies in patrol boats heading to sea.

Other demands challenged crews during the period. There was a growing propensity for foreign fishing vessels to ignore directions to stop and to respond only when shots were fired in front of or occasionally at the vessels themselves.²⁹³ Occasionally, foreign fishing vessel captains would attempt to ram the patrol boats while trying to escape.²⁹⁴ These developments demanded skillful operation of the Fremantles and mature

²⁸⁹ LEUT Aaron Matzkows, 'Always on the look out', *Navy News*, Vol. 39, No. 7, 22 April 1996, p. 12.

²⁹⁰ Sergeant Al Green, 'Adaptability, flexibility requirements of north', *Navy News*, Vol. 37, No. 5, 25 March 1994, p. 8.

²⁹¹ LEUT Mark Wilsmore and LEUT Vanessa Power, 'Course change for patrol boats', *Navy News*, Vol. 43, No. 14, 24 July 2000, p. 3.

²⁹² 'Operational relievers will be told "how long"', *Navy News*, Vol. 44, No. 5, 6 August 2001, p. 2.

²⁹³ See Graham Davis, 'Illegal fishermen hauled in: Shots fired during six hour chase', *Navy News*, Vol.40, No. 19, 6 October 1997, p. 1, for a report of HMAS *Ipswich* firing on an Indonesian FFV with its main armament, the 40/60mm Bofors gun.

²⁹⁴ See Graham Davis, 'Cessnock Rammed', *Navy News*, Vol. 41, No. 4, 27 July 1998, p. 3, for a report on HMAS *Cessnock* being rammed three times by an Indonesian Type 3 'Ice Boat'.

restrained behavior on the part of boarding teams, especially when confronted with armed foreign fishing vessel crews.²⁹⁵ Consequently, training for crews had to adapt to the changing nature of the task and provide realistic preparation for crews which comprised mostly junior officers and sailors. One result was the introduction of Minor War Vessel Concentration Periods, which brought several boats together for intensive periods of training under supervision of the Sea Training Group.²⁹⁶

Yet another significant challenge for the Fremantle crews came from the dramatic increase in irregular maritime arrival numbers late in the period. Often, the patrol boat crews had to deal with large numbers people, many needing immediate access to health services. The Fremantles were poorly equipped to deal with such issues, which at least twice involved delivering babies, with little time to consider cultural sensitivities or expectations.²⁹⁷ In many such instances, the only professional medical advice available was by radio with Fleet Medical Staff on the mainland.²⁹⁸

Patrol Boat Basing

In 1989 the Fremantles were based around Australia, with five boats in each of HMAS *Cairns* and Darwin Naval Base, three in HMAS *Stirling* near Fremantle and one each at HMAS *Waterhen* (Sydney) and HMAS *Cerberus* (Westernport Bay Victoria).²⁹⁹ The basing arrangement reflected the nature of the constabulary task at the time, with much of the fishing activity in northern waters. It also gave some consideration to southern waters and especially the security patrols of the Bass Strait oil platforms.

²⁹⁵ See Graham Davis, 'Naughty, Naughty! Illegal fisherman relieved of machete', *Navy News*, Vol. 40, No. 17, 8 September 1997, p. 1, for a report on HMAS *Wollongong's* boarding party being confronted by armed fishers on an Indonesian FFV.

²⁹⁶ See LEUT Aaron Matzkows, 'A testing time for patrol boats', *Navy News*, Vol. 39, No. 8, 6 May 1996, p. 3 for a report on a Minor War Vessel Concentration Period involving six Fremantles—two of which had to leave the exercise in pursuit of foreign fishing vessels.

²⁹⁷ See 'Bouncing boy for *Gawler*', *Navy News*, Vol. 43, No. 6, 3 April 2000, p. 3, and 'Quite a haul', *Navy News*, Vol. 43, No. 7, 17 April 2000, p. 8, for the first two births recorded in HMAS *Gawler*.

²⁹⁸ See 'Minister praises patrol boats' professionalism', *Navy News*, Vol. 44, No. 6, 2 April 2001, p. 7, for a report on the Fleet Medical Officer providing advice to HMAS *Cessnock* which was trying to manage 340 asylum seekers at Ashmore Island. Two Fremantle crew members were qualified to administer first aid and to make diagnoses of a range of medical conditions.

²⁹⁹ See Mike Lawson, 'Patrol boats lead the way', *Navy News*, Vol. 34, No. 1, 18 January 1991, p. 5.

The basing pattern changed from September 1994, with the move of HMAS *Warrnambool* from HMAS *Cerberus* to HMAS *Waterhen*.³⁰⁰ In mid-1999, the increase in irregular maritime arrival numbers meant several RAN, Australian Customs Service and AFMA patrol vessels were moved north temporarily.³⁰¹ Permanent changes were made towards the end of 2001, resulting in all Fremantles being based in Darwin (10 boats) and Cairns (5 boats).³⁰² This enabled quicker response to foreign fishing vessel activities and irregular maritime arrivals, and allowed the crews more time alongside in their new homeports.³⁰³

Homeporting the additional patrol boats, as well as two heavy landing craft in Darwin necessitated the expansion of Darwin Naval Base. Consequently the Parliamentary Public Works Committee in September 1999 approved a project for \$12.4m which extended an existing wharf, built a new wharf and provided additional cyclone protection.³⁰⁴

Relocation meant dislocation for the crews and their families. The impact is difficult to quantify, but the issues included the financial cost of relocating crews and families, the disruption to schooling for children, possible loss of employment for partners and the need to establish relationships in a new environment. Given a work environment which was not always conducive to a normal lifestyle, the moves were unsettling for some of those involved.

The Navy in the Public Eye

The Navy has long been known as 'the silent service',³⁰⁵ because of its reluctance to engage the media in reporting its activities and because most of its activities were conducted well beyond the daily horizon of the media. Exceptions to this situation, more often than not, were the result of disasters such as the sinking of HMAS *Voyager*

³⁰⁰ 'Warrnambool comes in from the cold', *Navy News*, Vol. 37, No. 4, 11 March 1994, p. 8.

³⁰¹ 'Heat turned up on people smugglers', *Navy News*, Vol. 42, No. 11, 14 June 1999, p. 3.

³⁰² 'Six ships headed north', *Navy News*, Vol. 42, No. 24, 13 December 1999, p. 3.

³⁰³ 'Patrol boats heading north', *Navy News*, Vol. 44, No. 6, 2 April 2001, p. 6.

³⁰⁴ Parliamentary Standing Committee on Public Works, *Report Relating to the Proposed Darwin Naval Base Redevelopment*, Parliament of the Commonwealth of Australia, Canberra, 2 September 1999, p. 2.

³⁰⁵ Spurling, '1991-2001-The Era of Defence Reform' p. 287.

on 10 February 1964 and United States Ship (USS) *Frank E. Evans* on 3 June 1969, both after colliding with HMAS *Melbourne*.³⁰⁶ More recently, the fatal fire onboard HMAS *Westralia* on 5 May 1998 and serious problems with the Collins class submarine project in the late 1990s continued to generate a negative perception of the Navy, by the media and thus by the public.³⁰⁷

The growth of the constabulary function from 1989 to 2001 provided an excellent opportunity for the Navy to be seen favourably. The sight of Fremantle class patrol boats leading apprehended foreign fishing vessels into either Darwin or Broome became commonplace, was uncontroversial and confirmed the Navy's commitment to offshore resources protection.³⁰⁸ The same could be said about the Navy's interception of irregular maritime arrivals, some in poor health, attempting to land in Australia from often unseaworthy boats.

The management of irregular maritime arrivals became controversial for the Navy towards the end of 2001, specifically with the 'children overboard' affair and the implementation of the Government's decision to turn some SIEVs back towards Indonesia. For example, on 6 October 2001, SIEV 4 was directed by the Commanding Officer of HMAS *Adelaide* to return to Indonesian waters, but refused to comply until shots were fired and the boat was boarded. After a stand-off and some confusion, during which several of the irregular maritime arrivals jumped into the water, the 'children overboard' saga began.³⁰⁹

Because of political pressure, the Commanding Officer of the *Adelaide* waited until the vessel began to founder on 7 October, before rescuing its desperate passengers. *Adelaide's* crew rescued the 223 irregular maritime arrivals, most of them directly from the choppy sea.³¹⁰ In the hours leading up to this risky rescue, the Chief of the Defence Force, Admiral Chris Barrie, advised the Minister for Defence that, '... the navy had

³⁰⁶Alastair Cooper, '1955-1972: The Era of Forward Defence', in David Stevens, ed., *The Royal Australian Navy: The Australian Centenary History of Defence Volume III*, Oxford University Press, Melbourne, 2001, pp. 201-3.

³⁰⁷Spurling, '1991-2001-The Era of Defence Reform', pp. 285-6.

³⁰⁸See MIDN Kirsten Farmery, 'Hunting the line on 209', *Navy News*, Vol. 43, No. 10, 29 May 2000, p. 9, and 'Securing the north', *Navy News*, Vol. 43, No. 24, 27 November 2000, p. 3, for details of multi-foreign fishing vessel apprehensions.

³⁰⁹Marr and Wilkinson, *Dark Victory*, pp. 181-8.

³¹⁰Marr and Wilkinson, *Dark Victory*, pp. 190-91.

obligations under Safety of Life at Sea (SOLAS) Convention regulations and would not risk the lives of the passengers regardless of the border protection policy'.³¹¹

Irregular maritime arrivals were also rescued from the foundering SIEV 6 on 27 October 2001, while SIEV 7 was returned to Indonesian waters despite the desperate pleas and actions of the irregular maritime arrivals, some of whom jumped overboard when their fate became clear. Claims subsequently made by the irregular maritime arrivals accused RAN personnel of harsh treatment.³¹²

The Navy was caught between its moral and legal responsibilities for the safety of life at sea and the political demands of an increasingly testy national election campaign. Several commanding officers at sea were placed in most invidious positions, in which the lives of hundreds of irregular maritime arrivals and of their own crews, involved in rescue efforts, were hazarded. Again, the reputation of the Navy was threatened; this time by the imposition of an unprecedentedly harsh approach to border protection. Intriguingly, *Navy News*, which had reported frequently on the constabulary work of the patrol boats, made no mention of any of the contentious 'children overboard' or 'turning back the boats' episodes.

Legal Matters

With the extensive involvement of the Navy's patrol boat force in the constabulary function there was a growing need for commanding officers and others to have a sound working knowledge of the relevant international and Australian law.³¹³ This was complicated by the number of Acts that empowered the ADF at sea and additional powers granted by legislation introduced during the 1990s. These powers included the authority to fire at and into vessels to force them to stop for boarding and '... extensive powers to search the vessel, arrest, detain and question.'³¹⁴

³¹¹ Marr and Wilkinson, *Dark Victory*, p. 188.

³¹² See Marr and Wilkinson, *Dark Victory*, pp. 244-9 for a description of this event.

³¹³ Rear Admiral Peter Briggs, 'The ADF's Role in policing the Offshore Zones', Doug MacKinnon and Dick Sherwood, *Policing Australia's Offshore Zones—Problems and Prospects*, Centre for Maritime Policy, University of Wollongong, Wollongong, 1997, p. 151.

³¹⁴ Moore, *ADF On The Beat: A Legal Analysis Of Offshore Enforcement By The Australian Defence Force*, p. 3.

The Acts that directly empower the ADF include; *Fisheries Management Act 1991*, *Torres Strait Fisheries Act 1984*, *Fish Resources Management Act (WA) 1994*, *Environment Protection and Biodiversity Conservation Act 1999*, *Petroleum (Submerged Lands) Act 1967*, *Customs Act 1901*, including powers for offences under the *Quarantine Act 1908*, *Migration Act 1958*, and *Crimes Act 1914* (for piracy).³¹⁵

Complicating matters further, the legal powers vary from Act to Act with respect to matters such as the use of force, seizure and safety zones.³¹⁶ So, for example, the *Customs Act* permits firing at or into a pursued vessel and the *Fisheries Management Act 1991* allows for the seizure of fish, boats and gear.³¹⁷ Furthermore, there is no uniformity in the conferring of powers by the various Acts. For example, the *Fisheries Management Act 1991* empowers members of the ADF, while the *Fish Resources Management Act (WA) 1994*, grants powers to officers in command of Commonwealth naval vessels.³¹⁸

Finally, patrol boat commanding officers had to be aware that as officers in the ADF they enjoyed no general protection from civil or criminal liability for acts committed in civil law enforcement.³¹⁹ Because of these legal complexities patrol boats regularly carry Customs, Fisheries or Australian Federal Police officers for the application of the relevant laws. Even so commanding officers need a sound understanding of collection of evidence, production of statements and the provision of evidence in court.³²⁰ An additional complication was that patrol boat commanding officers and other crew members found themselves increasingly involved in court proceedings, which had the potential to delay patrol boat operating schedules.

³¹⁵ Moore, *ADF On The Beat: A Legal Analysis Of Offshore Enforcement By The Australian Defence Force*, p. 14.

³¹⁶ Hugh Smith, 'The Use of Armed Forces in Law Enforcement', in Doug MacKinnon and Dick Sherwood, *Policing Australia's Offshore Zones—Problems and Prospects*, Centre for Maritime Policy, University of Wollongong, Wollongong, 1997, p. 88.

³¹⁷ Smith, 'The Use of Armed Forces in Law Enforcement', p. 88.

³¹⁸ Moore, *ADF On The Beat: A Legal Analysis Of Offshore Enforcement By The Australian Defence Force*, p. 5.

³¹⁹ Moore, *ADF On The Beat: A Legal Analysis Of Offshore Enforcement By The Australian Defence Force*, p. 6.

³²⁰ Briggs, 'The ADF's Role in policing the Offshore Zones', p. 153.

CONCLUSIONS

The period from 1989 to 2001 saw a great expansion in the Navy's constabulary function in Australia, with most aspects of it becoming more complex. Illegal fishing operations spread to the Southern Ocean and there was a rapid and substantial increase in the number of irregular maritime arrivals seeking asylum in Australia towards the end of the period. The ever growing illegal drug trade and the potential for disease to evade quarantine barriers made those aspects of border protection an increasingly high profile government responsibility. Marine environmental protection became more demanding, as threats emerged to the Great Barrier Reef and elsewhere.

Government policy responses involved agreements with other nations on fishing activities within the Australian EEZ, dealing with irregular maritime arrivals, for protection of the Antarctic environment and of whales. Organizational change was also a feature of the Government response, with the Customs Service subject to a massive management overhaul, from the top down and with AQIS gaining funding and staff. Coastwatch became a multi-agency organization with a military head and enjoyed a doubling of its budget during the period.

Practically, government responded by providing more resources for offshore surveillance and patrol, primarily through a much expanded ADF involvement of maritime patrol aircraft, patrol boats and intelligence. Initial planning began for a more capable patrol craft to replace the Fremantle class, Coastwatch aircraft were upgraded and other emerging technologies examined for their potential to improve awareness of offshore activities. Port security was enhanced, initially to interrupt the flow of illicit drugs and much later, following the terrorist attacks in the United States of America.

Policy and practical responses were underpinned by significant legislation throughout the period. Most legislation related to IUU fishing and the irregular maritime arrival surge. The more extreme of these legal measures eventually shattered the bipartisan approach to irregular maritime arrivals and politicized the asylum seeker issue, perhaps permanently. Marine environmental legislation was enacted to preserve the Antarctic environment and to provide greater protection to the Great Barrier Reef.

The implications for the Navy of these developments in the constabulary function were profound. Although the Fremantle class patrol boats met most of their tasking demands, the sea-keeping and range limitations of the class were exposed. Furthermore, at times up to seven major warships were assigned to constabulary tasks in addition to the Fremantles and Customs patrol craft. Consequently, by the end of 2001, the Government was planning for replacement of the Fremantles with a much larger, more seaworthy vessel capable of operating a helicopter.

The expanding constabulary function generated its own demands on the patrol boat crews, increasing workload and the unpredictability of the tasking. Increasingly complex legal arrangements required patrol boat commanding officers to become more conversant with the law, while the harsher management of irregular maritime arrivals created ethical dilemmas for ships' commanding officers and their crews.

All of the pressures caused the Navy to improve training, vary patrol cycles, base the patrol boats in the north, reduce time at sea and provide greater certainty for allocated time alongside. By the end of 2001, the constabulary function had evolved into a full-time task for the Navy's patrol boat force, and also involved a large portion of the entire Fleet.

CHAPTER SEVEN

THE EVOLUTION OF THE CONSTABULARY FUNCTION OF NAVIES: THE AUSTRALIAN EXPERIENCE 2002 - 2012

INTRODUCTION

The period from 2002 to 2012 continued the trend noted in Chapter 6. Irregular maritime arrivals, resource management and environmental stewardship placed the greatest demands on constabulary organizations and forces. Politicization of irregular maritime arrivals and still tougher approaches to border protection, were noteworthy features of the constabulary function. By 2012 an effective multi-agency organization, involving several government authorities and formalized chains of command had emerged as yet another development in the organizational change noted in earlier chapters.

The nature of emerging threats meant that Navy surface combatants and other specialized ships sometimes assisted with constabulary operations, generating an unprecedented level of RAN commitment. Civilian ships were contracted, principally for operations in the Southern Ocean and for support in northern waters. The opening of the Southern Ocean to fishing posed major challenges to Australian authorities, which initially lacked any means of monitoring or combating the activities.

FROM 2002 TO 2012: FISH, PEOPLE AND DISEASE

Resources Protection

Concerns about the sustainability of fish stocks in northern waters remained valid. From January 2002 to February 2003, 62 Indonesian fishing vessels were apprehended in the Australian Fishing Zone (AFZ); 27 of them had catch or fishing gear confiscated.¹ Illegal, Unreported and Unregulated (IUU) fishing involved both 'traditional' and commercial Indonesian fishers.²

¹ *Commonwealth Parliamentary Debates, Senate*, Vol. 218, 5 February 2003, pp. 8650-7.

² *Commonwealth Parliamentary Debates, Senate*, Vol. 226, 2 March 2004, p. 20621.

The Northern Territory Assembly on 16 February 2006 condemned the alleged lack of Federal Government action.³ Senator Siewert, (Western Australia) criticized Government failure to target the ‘ ... large operators and organised crime networks which are operating in Australian and Indonesian waters’.⁴ She claimed that targetting smaller and traditional fishers was counter-productive.⁵ IUU fishing in northern waters diminished from about 2006 (See table 7-1 below). This was confirmed during August 2009, when the Minister noted fewer foreign fishing vessels operating in northern waters.⁶

Financial Year	Coastwatch sightings	Air Force sightings	Total sightings
2007-08	631	220	851
2006-07	1216	90	1306
2005-06	2226	Not avail.	2226 at least
2004-05	1772	Not avail.	1772 at least

Table 7-1: Foreign Fishing Vessel Sightings between WA and Indonesian Coasts⁷

Yet, Indonesian IUU fishing was merely one element in a growing problem.⁸ For 2002, 394 foreign fishing vessels were sighted in the AFZ; with 50 apprehended.⁹ Foreign fishing interest in Australia remained high, with most activity in northern waters, as shown in the foreign vessel sighting numbers in Table 7-2 below.

The Member for the north Queensland seat of Kennedy, Bob Katter, expressed his frustration in November 2005:

Current arrangements are that Customs, through Coastwatch, are responsible for policing but they have no apprehension capability, whilst the Navy has the apprehension capability but has no policing power.¹⁰

³ *Commonwealth Parliamentary Debates*, Senate, Vol. 238, 27 February 2006, pp. 62-3.

⁴ Rachel Siewert, Media Release, *Illegal fishing–no quick fixes*, 26 February 2002, <http://rachel_siewert.greensmps.org.au/content/speeches/illegal-fishing-no-quick-fixes> (15 November 2012).

⁵ Siewert, Media Release, *Illegal fishing–no quick fixes*, 26 February 2006.

⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 311, 18 August 2009, p. 8264.

⁷ *Commonwealth Parliamentary Debates*, Senate, Vol. 258, 10 March 2009, p. 1228.

⁸ *Commonwealth Parliamentary Debates*, Senate, Vol. 217, 9 December 2002, p. 7521.

⁹ *Commonwealth Parliamentary Debates*, Senate, Vol. 230, 3 August 2004, p. 25537.

¹⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 276, 9 November 2005, p. 83.

But he was wrong. The Navy has policing power through several Acts of Parliament, which allow boarding and apprehension of vessels under various circumstances.¹¹ Customs officers have similar powers, limited until mid-2004 in that Customs vessels were unarmed.¹²

Financial Year	Total Sightings in AFZ	Sightings in the Northern Waters	Vessels Seized
2002-03	5,829	5,468	29
2003-04	9,348	9,259	83
2004-05 ¹³	4,122	4,102	94
Total	19,299	18,829	206

Table 7-2: Coastwatch Foreign Fishing Vessel Statistics 2002-05¹⁴

Concurrently, the Labor Opposition, through Senator O'Brien (Tasmania) complained of a dramatic increase in foreign fishing in the north and the Government's failure to respond. Labor argued that there was no accurate record of the number of foreign fishing vessels operating in the AFZ.¹⁵ However, the Government's record of destroying 555 seized foreign fishing vessels in the previous five years suggests some success against IUU fishing.¹⁶

Nevertheless, Senator O'Brien, brought on a Motion for a Matter of Public Importance on 5 October 2005, over Government failure to halt foreign IUU fishing. He noted that foreign fishing vessel sightings had risen by 50 per cent over the previous two years and the price of shark fin had risen from \$70 per kg in 1997 to \$600 per kg in 2005.¹⁷ The sharp price rise enhanced its attraction for foreign fishers, even though shark

¹¹ Cameron Moore, *ADF On the Beat: A Legal Analysis of Offshore Enforcement by the Australian Defence Force*, Centre for Maritime Policy, University of Wollongong, Wollongong, 2004, p. 14 and p. 135 et. seq.

¹² 'Armed Australian Ships Patrol for Toothfish Pirates', *Environment News Service*, 8 July 2004, <<http://ens-newswire.com/ens/jul2004/2004-07-08-05.asp>> (5 December 2013).

¹³ The figures for Financial Year 2004-05 were for the first half of the year only. *Commonwealth Parliamentary Debates*, Senate, Vol. 234, 5 September 2005, p. 148.

¹⁴ *Commonwealth Parliamentary Debates*, Senate, Vol. 234, 5 September 2005, p. 148.

¹⁵ *Commonwealth Parliamentary Debates*, Senate, Vol. 235, 5 October 2005, p. 80.

¹⁶ *Commonwealth Parliamentary Debates*, Senate, Vol. 235, 5 October 2005, p. 82.

¹⁷ *Commonwealth Parliamentary Debates*, Senate, Vol. 235, 5 October 2005, pp. 99-103.

finning had been outlawed in the AFZ.¹⁸ IUU fishing in the AFZ continued into 2006, with Senator Ellison, the Minister for Justice and Customs, admitting to 12,489 foreign fishing vessel sightings in the financial year 2004-05.¹⁹

IUU fishing for Patagonian toothfish, in the Heard and MacDonalD Islands region of the AFZ, was a particular concern.²⁰ Foreign fishing vessels moved into Australia's Southern Ocean fishing zone as toothfish stocks declined around the Falkland Islands and Antarctic Peninsula.²¹ IUU fishing also occurred on the high seas, in waters covered by the Commission for the Conservation of Antarctic Marine Living Resources, by fishing vessels from countries not party to the Commission and while that fishery was closed.²²

More recently, bottom trawling has become a problem involving foreign and domestic fishers.²³ Government continued to rely on non-specific measures aimed at IUU fishing in general.²⁴ As the Minister for Fisheries, Forestry and Conservation Senator Ian Macdonald noted in February 2006, 'The Australian Government has a comprehensive strategy of on-the-water and diplomatic action to deter all methods of IUU fishing, both within the Australian EEZ and also on the high seas'.²⁵

Similar problems re-emerged in 2009, with a proposal to open the Western Deepwater Trawl Fishery and the North West Slope Trawl Fishery off the Western Australian coast, to bottom trawling.²⁶ This coincided with Commonwealth and Western

¹⁸ 'Independent Allocation Advisory Panel Factual Brief for the Southern & Western Tuna and Billfish Fishery', *Australian Fisheries Management Authority*, January 2002, <<http://www.afma.gov.au/home/afma-archives/archive-7/independent-allocation-advisory-panel-factual-brief-for-the-southern-western-tuna-and-billfish-fishery-january-2002/>> (23 November 2012).

¹⁹ *Commonwealth Parliamentary Debates*, Senate, Vol. 242, 8 August 2006, p. 188.

²⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 247, 19 August 2002, p. 4775.

²¹ *Commonwealth Parliamentary Debates*, Senate, Vol. 216, 26 September 2002, p. 5046.

²² *Commonwealth Parliamentary Debates*, Senate, Vol. 232, 16 March 2005, p. 67.

²³ *Commonwealth Parliamentary Debates*, Senate, Vol. 236, 7 November 2005, p. 209.

²⁴ *Commonwealth Parliamentary Debates*, Senate, Vol. 238, 8 February 2006, p. 203.

²⁵ *Commonwealth Parliamentary Debates*, Senate, Vol. 238, 8 February 2006, p. 203.

²⁶ Members (of the Western Deepwater Trawl Fishery) noted that the partial area closure in the North West Slope Trawl Fishery notified in October 2007 would lapse on 13 October 2009 and would not be renewed. However, to ensure the sustainability of gold band snapper

Australian Government negotiations, on the boundary demarcating their fishing responsibilities, as determined by the Offshore Constitutional Settlement in 1979.²⁷ In October 2012, Senator Siewert criticized local fishers intending to restart bottom trawling, because of the failure of the Commonwealth and Western Australian Governments to agree on the necessary legislation.²⁸

Earlier problems with Japanese tuna fishers climaxed in 2006, with revelations that Japanese tuna fishers had taken illegally about \$A2bn of southern bluefin tuna in Australian waters in the previous 20 years. The Director of the Australian Fisheries Management Authority (AFMA) alleged that Japan had taken 12,000 to 20,000 tonnes each year, instead of its agreed 6,000 tonnes.²⁹ The state of southern bluefish tuna stocks languished; by late 2009 they were only 3-8 per cent of original unfished levels.³⁰

In mid-2012 the Tasmanian fishing industry complained about the planned operation in the AFZ of the Fishing Vessel (FV) *Margiris*, a large factory ship.³¹ The *Margiris* was to fish the Small Pelagic Fishery, from south east Queensland to south west Western Australia, and take some 18,000 tonnes, about five per cent of the fishery's stock of jack mackerel and redbait.³² There were also fears that existing legislation would not permit the Government to stop the *Margiris*, renamed *Abel Tasman*, from fishing in the AFZ.³³

In March 2012 the government released the *Australian Defence Force Posture Review*, a comprehensive examination of the basing and support of the Defence Force. It found *inter alia* a perception among those in the resource sector and the community more

and red spot emperor, trigger limits would be set for these two species in the area of the Fishery. *Chair's Summary of Western Trawl Fishery Management Advisory Council Meeting*, Fremantle, 10 June 2009, p. 2.

²⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 312, 17 September 2009, p. 10046. Negotiations concerned the position of the 200m isobath, the boundary between Commonwealth and State responsibilities in this case.

²⁸ *Commonwealth Parliamentary Debates*, Senate, 10 October 2012, p. 7859.

²⁹ Andrew Darby, 'Japanese accused of \$2bn tuna fraud', *The Age*, 12 August 2006, <<http://www.theage.com.au/news/national/japanese-accused-of-2bn-tuna-fraud/2006/08/11/1154803098670.html>> (4 March 2013).

³⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 313, 27 October 2009, p. 11090.

³¹ *Commonwealth Parliamentary Debates*, House of Representatives, 25 June 2012, p. 7640. Note that for 2011 and 2012 Hansards had not been bound and given volume numbers.

³² ABC South East NSW, 'Will the super trawler *Abel Tasman* (*Margiris*) destroy our fisheries?' <www.abc.net.au/local/stories/> (4 March 2013).

³³ *Commonwealth Parliamentary Debates*, House of Representatives, 10 September 2012, p. 10048.

broadly, that the Defence Force presence in the northwest was inadequate.³⁴ The Review determined that the perception was inaccurate, failing to appreciate the mostly unseen but significant operational presence countering IUU fishing and people smuggling off the coast. Nevertheless, the Review recommended enhanced facilities at Broome for a forward operating base and increased ship visits to ports in the region.³⁵ The recommendation aimed to satisfy local concerns and to shape international perceptions of Australia's readiness to protect offshore resources and borders.

Border Protection - Immigration

Government attributed the increase in numbers of irregular maritime arrivals at the turn of the century to Australia's attractiveness and the legal system which granted 75 per cent of claimants refugee status,³⁶ a high percentage by international standards.³⁷ Whether because of the harsher response or otherwise, irregular maritime arrival numbers dropped significantly and remained low until after Labor returned power in November 2007. Table 7-3 shows much reduced numbers to 2007, and the sharp upturn in the last two years of the decade.

Year	Number of Boats	Number of people (excludes crew)
2002	1	1
2003	1	53
2004	1	15
2005	4	11
2006	6	60
2007	5	148
2008	7	161
2009	61	2849
2010	134	6879

Table 7-3: Irregular Maritime Arrivals 2002 - 2010³⁸

³⁴ Allan Hawke and Ric Smith, *Australian Defence Force Posture Review*, Australian Government Canberra, March 2012, p. 20.

³⁵ Hawke and Smith, *Australian Defence Force Posture Review*, p. iii.

³⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 242, 27 August 2001, p. 30286.

³⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 242, 27 August 2001, p. 30286.

³⁸ This table is taken from Janet Phillips and Harriet Spinks, 'Boat Arrivals in Australia since 1976', *Parliament of Australia, Department of Parliamentary Services*, Canberra, 11 February 2011, Appendix A. The figures for 2009 and 2010 include 47 people who died at sea and 42 people

The increasing desperation of irregular maritime arrivals, whose boats were turned back to Indonesia, led to sabotage in the hope of enforced rescue.³⁹ This proved fatal when Suspect Illegal Entry Vessel (SIEV) 36 was deliberately set alight in April 2009, causing the death of five irregular maritime arrivals.⁴⁰ Equally troubling was Senator Faulkner's (New South Wales) suggestion that the Australian Federal Police people-smuggling disruption program in Indonesia may have included physical interference with or sabotage of vessels.⁴¹

Soon after Labor formed government in November 2007 irregular maritime arrival numbers began to rise. Table 7-4, below, shows the numbers claimed by the Opposition, from that time to the date specified. The numbers were questioned only once by the Government.⁴² Increasing irregular maritime arrival numbers resulted in many heated debates in Parliament, accompanied by frequent criticisms of Government policy.⁴³ The debates centred on Opposition claims that Government policy changes encouraged more irregular maritime arrivals⁴⁴ and Government claims that 'push' factors in countries of origin were the major cause of the increases.⁴⁵

saved from a sinking boat at Christmas Island. Only the figures for 2009 and 2010 include crew members of the SIEVs.

³⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 244, 19 February 2002, p. 420.

⁴⁰ Lex Hall and Jamie Walker, 'Navy errors blamed for fire on SIEV 36', *The Australian*, 26 January 2010. <<http://www.theaustralian.com.au/news/nation/navy-errors-blamed-for-fire-on-siev-36/story-e6frg6nf-1225823448912>> (30 November 2012).

⁴¹ *Commonwealth Parliamentary Debates*, Senate, Vol. 216, 23 September 2002, p. 4691.

⁴² *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 312, 16 September 2009, p. 9784. The Prime Minister refuted the numbers provided in row two in the above table, claiming that only 1,025 irregulars had entered Australia since Labor came to power.

⁴³ *Commonwealth Parliamentary Debates*, Senate, Vol. 262, 15 September 2009, p. 6581, records one of the first of these debates. *Commonwealth Parliamentary Debates*, House of Representatives, 27 November 2012, p. 13468 records the last of them in 2012.

⁴⁴ *Commonwealth Parliamentary Debates*, Senate, Vol. 262, 14 September 2009, p. 6401.

⁴⁵ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 314, 17 November 2009, p. 11900.

Hansard reference	Vessel Nos	Arrival Nos	Timespan
<i>Senate</i> , Vol. 259, 12 May 2009, p. 3283	20	714	Since end of 2007
<i>H of R</i> , Vol. 312, 16 Sep 2009, p. 9784	32	1,500 +	Since Aug 2008
<i>H of R</i> , Vol. 314, 24 Nov 2009, p. 12609	54	2,400	Since Aug 2008
<i>H of R</i> , Vol. 315, 8 Feb 2010, p. 607	79	3,618	Since Aug 2008
<i>H of R</i> , Vol. 320, 18 Oct 2010, p. 440	106	5,260	Since Jan 2010
<i>H of R</i> , Vol. 322, 23 Nov 2010, p. 3248	104	9,000	Since Feb 2008
<i>H of R</i> , 2 Nov 2011, p. 12511	251	12,942	Since Feb 2008
<i>H of R</i> , 18 Sep 2012, p. 11012	427	25,000	Since end of 2007

Table 7-4: Irregular Maritime Arrival numbers since 2007 election

Labor Home Affairs Minister O'Connor noted the ongoing conflict in Afghanistan and the civil war in Sri Lanka, as prime causes of the increase.⁴⁶ But, the Opposition blamed Labor policy changes which made Australia more attractive for asylum seekers. These included the abandonment of offshore processing and temporary protection visas, removal of the penalty of detention debt, provision of easier access to social security benefits and budget cuts for the Department of Immigration and Citizenship.⁴⁷ While the impact of 'push' and 'pull' factors on the growth is difficult to quantify, Labor's more compassionate policies encouraged Opposition criticism.

⁴⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 314, 17 November 2009, p. 11900.

⁴⁷ *Commonwealth Parliamentary Debates*, Senate, 262, 15 September 2009, pp. 6582.

Border Protection – Customs

The biggest Customs challenge remained illegal drug importation.⁴⁸ By 2009 shipping containers were identified as the primary means of illegal drugs entry,⁴⁹ and only 5 to 7.5 per cent of them were searched for drugs.⁵⁰ Arms smuggling also became prominent. The alleged smuggling of 20 Russian-made rocket-propelled grenade launchers occurred in 2006 and the problem grew perceptibly.⁵¹ By March 2012 all police forces, State and Federal, were cooperating to prevent illegal weapons imports.⁵² The illegal importing of 220 Glock pistols through the Sylvania Waters Post Office, in early 2012, prompted an unsuccessful Opposition demand, through Mr Morrison (Cook) for an independent inquiry.⁵³ The Australian Crime Commission was engaged; the main fear being the often 'bikie'-related violence associated with the illegal weapons trade.⁵⁴

Towards the end of 2012 the Leader of the Opposition, Mr Abbott, claimed that reduced budgets had caused a 75 per cent cut in air cargo inspection rates and a 25 per cent cut in sea cargo inspections by Customs.⁵⁵ The Government response that inspection rates were determined by a risk assessment process did not satisfy the Opposition, which linked the reduced inspection rates with the illegal importation of guns.⁵⁶ The Opposition also focused on the drop in numbers of Customs staff in the financial years 2007-08 to 2011-12. Border protection and enforcement staff reduced by about 7 per cent, while overall Customs staff numbers fell by 9 per cent.⁵⁷

⁴⁸ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 307, 19 March 2009, p. 3285

⁴⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 307, 19 March 2009, p. 3285.

⁵⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 307, 19 March 2009, p. 3285.

⁵¹ *Commonwealth Parliamentary Debates*, Senate, Vol. 244, 9 November 2006, p. 78.

⁵² *Commonwealth Parliamentary Debates*, House of Representatives, 14 March 2012, p. 2866.

⁵³ *Commonwealth Parliamentary Debates*, House of Representatives, 19 March 2012, p. 3226.

⁵⁴ Peter Bodkin, 'Postal gun plot accused "may know where" 150 Glock handguns are', *Daily Telegraph*, 14 March 2012. < <http://www.dailytelegraph.com.au/news/sydney-news> > (20 March 2013).

⁵⁵ *Commonwealth Parliamentary Debates*, House of Representatives, 14 March 2012, p. 2869.

⁵⁶ *Commonwealth Parliamentary Debates*, House of Representatives, 14 March 2012, p. 2869.

⁵⁷ *Commonwealth Parliamentary Debates*, House of Representatives, 14 August 2012, p. 8614.

Border Protection – Quarantine

The most serious quarantine challenges included outbreaks of plant and animal diseases, and a potential human flu epidemic. The nature and extent of quarantine breaches created doubts about the capacity of the Australian Quarantine and Inspection Service (AQIS) and the efficacy of quarantine policy.

In 2005 avian flu in Asia prompted a major AQIS response because of the potential infection of Australian bird populations, and transmission to humans.⁵⁸ The Minister for Fisheries, Forestry and Conservation, Senator Macdonald claimed that an outbreak could cost the local chicken industry some \$6bn and up to 120,000 jobs, and that about \$300m had been spent on preparations.⁵⁹ Fears of a pandemic affecting humans rose with the failure of China and Indonesia to declare the disease outbreaks at the outset.⁶⁰

In 2007 an outbreak of equine flu proved to be ‘... the most serious emergency animal disease Australia has experienced in recent history. At its peak, 47,000 horses were infected in New South Wales on 5,943 properties...’.⁶¹ An exhaustive inquiry could not establish how the disease entered Australia. Nevertheless Commissioner Callinan was scathing of lax quarantine practices at the Eastern Creek Quarantine Station, where horses imported from Japan almost certainly led to the infection of local horses.⁶²

The spread of contagious diseases was demonstrated again in 2009, when swine flu was detected in Australia, having been transmitted from human to human in other countries. Rapidly some 103 cases were reported locally, four of them serious. By June 2009 it had been declared the first global pandemic in 40 years and 30,000 cases had

⁵⁸ *Commonwealth Parliamentary Debates*, Senate, Vol. 232, 10 March 2005, p. 68.

⁵⁹ *Commonwealth Parliamentary Debates*, Senate, Vol. 237, 29 November 2005, pp. 23-4.

⁶⁰ *Commonwealth Parliamentary Debates*, Senate, Vol. 237, 7 December 2005, p. 73.

⁶¹ ‘Summary of the 2007/08 Equine Influenza Outbreak’, *New South Wales Department of Primary Industries and Agriculture*, 1 July 2008.

<<http://www.dpi.nsw.gov.au/agriculture/livestock/horses/health/general/influenza/summary-of-the-200708-ei-outbreak>> (5 December 2012).

⁶² ‘Inquiry slams quarantine over horse flu outbreak’, *ABC News*, 13 June 2008.

<<http://www.abc.net.au/news/2008-06-12/inquiry-slams-quarantine-over-horse-flu-outbreak/2469204>> (5 December 2012).

been notified world-wide; 1,762 in Australia.⁶³ The cruise liner *Pacific Dawn* had to return to Sydney after an outbreak of the swine flu among the crew, further emphasizing the nature of the problem.⁶⁴

AQIS' capacity to protect domestic primary industry received greater scrutiny after the Uruguay Round of trade negotiations in 1994. The emergence of the World Trade Organization saw successive Federal Governments advance the cause of free trade but at the expense of quarantine standards,⁶⁵ which were argued by other countries to be a restriction on free trade.⁶⁶ Outsourcing quarantine functions was considered in 2008, but rejected.⁶⁷

The tension between the two requirements remained, with local primary industry fearful of the inadvertent importation of disease, while the World Trade Organization pressed for greater access to Australian markets. The import of Chinese pears and New Zealand apples continued to cause concern, yet pears had been imported successfully from China for over 10 years⁶⁸ and after much pressure, New Zealand apples were finally imported despite the fears of fireblight.⁶⁹

Funding of quarantine services became controversial when in 2009 the Coalition Opposition refused to pass previously bipartisanly agreed annual quarantine fee increases. According to Mr Burke, the Minister for Agriculture, Fisheries and Forestry, this unprecedented action removed \$103m from biosecurity funding, with implications for quarantine inspection rates.⁷⁰ Ironically, the Opposition later accused the Government of decreasing quarantine funding by \$35.8m in the 2009 budget, also with

⁶³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 310, 15 June 2009, p. 5904.

⁶⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 308, 28 May 2009, p. 4772.

⁶⁵ Colin Teese, 'National Affairs: Quarantine and trade policy - a deadly mix', *News Weekly*, 27 August 2005, p. 2. <<http://newsweekly.com.au/article.php?id=2034>> (7 December 2012).

⁶⁶ Teese, 'National Affairs: Quarantine and trade policy - a deadly mix', *News Weekly*, 27 August 2005, p. 3. .

⁶⁷ 'Quarantine outsourcing - it's back', *Community and Public Sector Union*, 27 April 2008. <<http://www.cpsu.org.au/agency/news/12789.html>> (6 December 2012).

⁶⁸ *Commonwealth Parliamentary Debates*, Senate, 10 February 2011, p. 497.

⁶⁹ *Commonwealth Parliamentary Debates*, House of Representatives, 30 May 2011, pp. 5242-3.

⁷⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 312, 17 September 2009, p. 9962.

implications for inspection rates.⁷¹ Reduced quarantine funding could have been justified by the more relaxed policies, especially for the import of foreign primary produce.

Marine Environmental Protection

Although the Great Barrier Reef retained primacy among marine environmental challenges, whaling in the Southern Ocean and the potential environmental impact of the offshore oil and gas industry also caused concern. Land-sourced pollution became increasingly serious for the Great Barrier Reef as sewage runoff increased with coastal development.⁷² In 2009, the Marine Park Authority identified agricultural pesticides, nutrients and sediments as the major source of the runoff, along with urban sewage.⁷³

More recently, planned construction of a liquified natural gas export terminal at Gladstone, involving the dredging and dumping of 55 million tonnes of spoil material for port deepening, and other port developments for coal and aluminium production on the Queensland coast, drew criticism from Senator Waters (Queensland).⁷⁴ Complaints included the potential for damage to the Great Barrier Reef and government failure to inform the United Nations Educational, Scientific and Cultural Organization (UNESCO) of the planned activities.⁷⁵ A subsequent draft UNESCO report on the state of the Great Barrier Reef recommended no further developments likely to cause further pollution, before conducting a strategic assessment of the Reef and its condition.⁷⁶

Ship-sourced oil pollution incidents in the Great Barrier Reef remain infrequent, but always generated interest in the efficacy of current policy, as when the *Pacific Quest*

⁷¹ *Commonwealth Parliamentary Debates*, House of Representatives, 14 June 2011, p. 5952.

⁷² *Commonwealth Parliamentary Debates*, Senate, Vol. 220, 16 June 2003, p. 11507.

⁷³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 306, 4 February 2009, p. 524.

⁷⁴ *Commonwealth Parliamentary Debates*, Senate, 21 September 2011, p. 6757.

⁷⁵ *Commonwealth Parliamentary Debates*, Senate, 1 March 2012, p. 1416.

⁷⁶ *Commonwealth Parliamentary Debates*, Senate, 26 June 2012, p. 4482.

discharged oily water in the Reef late in 2005.⁷⁷ Most recently, the potential for climate change to affect the Reef led to requests for further investigation.⁷⁸

Concern over whaling grew again in 2005, when Japan sought an expanded whaling program despite Australian opposition. The Government remained reluctant to take the matter to the International Court of Justice,⁷⁹ fearful of jeopardizing the close diplomatic and trade ties with Japan. Furthermore, the Government suspected legal action would fail, primarily because much of the whaling was in Antarctic waters, where Australia's claims were not widely supported.⁸⁰

The oil and gas industry was criticized by environmentalists and Government when the Montara oil field well head blew out on 21 August 2009, leading to a major oil spill in the Timor Sea.⁸¹ This was Australia's first blow out since 1984, despite some 1,500 wells having been drilled.⁸² The leak, estimated at 3-400 barrels per day, was sealed in November 2009.⁸³ Marine life in the area was affected by the spill and while no oil reached the Australian coastline, some reached Indonesian islands.⁸⁴

Other Issues

The terrorist attacks in the United States of America (USA) on 11 September 2001 led to re-consideration of maritime security in Australia, especially for single voyage permit coastal shipping.⁸⁵ A Liberian registered ship carrying 10,000 tonnes of ammonium

⁷⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 275, 13 October 2005, p. 153.

⁷⁸ *Commonwealth Parliamentary Debates*, Senate, Vol. 239, 30 March 2006, p. 103, and Vol. 245, 6 December 2006, p. 136.

⁷⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 270, 24 May 2005, p. 7.

⁸⁰ *Commonwealth Parliamentary Debates*, Senate, Vol. 236, 8 November 2005, pp. 28-9. See also, Ian Campbell, 'It's not research - Japan's whale slaughter is commercial', *On Line Opinion*, 31 May 2005, <<http://www.onlineopinion.com.au/print.asp>> (13 December 2012).

⁸¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 312, 7 September 2009, p. 8667.

⁸² *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 312, 7 September 2009, pp. 8667 and 9292.

⁸³ *Commonwealth Parliamentary Debates*, Senate, Vol. 262, 8 September 2009, p. 5920, and House of Representatives, Vol. 314, 16 November 2009, p. 11863.

⁸⁴ *Commonwealth Parliamentary Debates*, Senate, Vol. 263, 27 October 2009, p. 7251.

⁸⁵ A Single Voyage Permit (SVP) is issued for a single voyage between designated ports for the carriage of a specified cargo or passengers. 'Coasting Trade Licences & Permits', *Department of Infrastructure and Transport*,

nitrate caused most concern.⁸⁶ The high number of ships conducting single permit coastal voyages, compared to those on continuous voyage permits illustrated in Table 7-5 below, enabled many seafarers to gain easy if short-term access to Australia. The potential for deserters as irregular maritime arrivals or terrorists also intensified interest; 103 seamen having deserted in Australian ports between July 2001 and August 2004.⁸⁷

Calendar Year	No of Foreign Ships	
	SVP	CVP ⁸⁸
2000	269	56
2001	283	81
2002	325	68
2003	381	52
2004	346	43
2005	329	57
2006	270 to 29/09/06	47 to 29/09/06

Table 7-5: Coastal shipping voyage permits⁸⁹

In 2005, the Opposition criticized the fragmentary maritime security organization supporting the constabulary function, with eight agencies managing 11 pieces of legislation.⁹⁰ Criticism also included the failure to curb IUU fishing and inaction on

<<https://www.infrastructure.gov.au/maritime/freight/licences/index.aspx>> (13 December 2012).

⁸⁶ Ammonium nitrate is a chemical commonly used in explosives. Ninety nine per cent of all ammonium nitrate used in Queensland is for explosives in the mining industry. 'What is ammonium nitrate and what is it used for?' *Queensland Government*, <<http://www.deir.qld.gov.au/workplace/subjects/hazardousmaterials/ammonium/definition/index.htm>> (13 December 2012). *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 266, 9 August 2004, p. 32496.

⁸⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 266, 9 August 2004, p. 32497.

⁸⁸ CVP is Continuing Voyage Permit issued for periods up to three months. See, Department of Infrastructure and Regional Development, *Coasting Trade Licences and Permits*, <<http://www.infrastructure.gov.au/maritime/freight/licences/>> (2 April 2014).

⁸⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 286, 2 November 2006, p. 166.

⁹⁰ The agencies were: Department of Defence, Australian Customs Service, Coastwatch, Department of Transport and Regional Services, Australian Fisheries Management Authority, Australian Maritime Safety Authority, Australian Quarantine Inspection Service, and Department of Immigration and Indigenous Affairs. *Commonwealth Parliamentary Debates*,

matters relating to maritime terrorism – including the use of ‘flag of convenience’ registered ships on coastal shipping routes.⁹¹

THE GOVERNMENT POLICY RESPONSE: HARD LINES IN THE SAND

Governments’ policy responses reflected the internationalization of threats to resources, environmental and border protection. Coalition and Labor cooperated informally and formally with foreign governments and international organizations, for IUU fishing, marine environmental protection and irregular maritime arrivals. Organizational changes continued to be made until an effective and multi-agency organization was well established.

Resources Management

Protracted negotiations with Indonesia about traditional Indonesian fishing in the AFZ were resolved with the April 2002 formation of a Joint Memorandum of Understanding Box Management Committee.⁹² Australia joined the Indian Ocean Tuna Commission and tried to overcome cost difficulties for Indonesian membership of the Commission for the Conservation of Southern Bluefin Tuna.⁹³ Subsequently in 2005, Australian Customs opened an office in Jakarta to examine IUU fishing and organized crime.⁹⁴

Other IUU fishing also demanded policy responses, with Japan’s excessive southern bluefin tuna take causing the Commission for the Conservation of Southern Bluefin Tuna to halve Japan’s take in 2006.⁹⁵ These activities demonstrated Australia’s confidence in international agreements to manage southern bluefin tuna stocks. Nevertheless, tensions between those depending on fisheries for their living and those

Senate, Vol. 233, 16 June 2005, p. 136. See also Derek Woolner, *Policing our ocean domain: Establishing an Australian coast guard*, Australian Strategic Policy Institute, June 2008, pp. 6-7.

⁹¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 276, 7 November 2005, pp. 70-2.

⁹² *Commonwealth Parliamentary Debates*, Senate, Vol. 218, 4 February 2003, p. 8434.

⁹³ *Commonwealth Parliamentary Debates*, Senate, Vol. 217, 9 December 2002, pp. 7528-9.

⁹⁴ *Commonwealth Parliamentary Debates*, Senate, Vol. 235, 5 October 2005, p. 71.

⁹⁵ *Commonwealth Parliamentary Debates*, Senate, Vol. 244, 16 October 2006, p. 29.

most concerned with stocks survivability, meant that agreements alone would not ensure the recovery of southern bluefin tuna and other fish stocks.⁹⁶

Local action included the 2005 Government 'buy out' of commercial fishing licenses on the NSW south coast. Ulladulla commercial fishers, for example, received \$43m as compensation, and total allowable catches for those remaining were reduced to 619 tonnes.⁹⁷ The total compensation package of \$220m was well received within the industry.⁹⁸ Similar schemes were implemented in other fisheries, like Torres Strait, where tensions between local and commercial fishers resulted in locals being granted a 50 per cent interest in rock lobster and fin fishing.⁹⁹

The Government released its 'Commonwealth Fisheries Harvest Strategy Policy and Guidelines' in September 2007, to manage the main commercial fish species and ensure long term sustainability and economic viability.¹⁰⁰ The policy provided a framework for a science-based approach to total allowable catch levels in all Commonwealth fisheries individually.¹⁰¹

Southern Ocean fisheries received funding for surveillance, patrolling and the development of international cooperation.¹⁰² This culminated in the activation on 1 February 2005 of the *Australia-France Surveillance Treaty for Cooperative Enforcement in the Southern Ocean*.¹⁰³ Experience justified the arrangement, with cooperative patrols ensuring that no IUU fishing was detected in the Southern Ocean between then and late 2009.¹⁰⁴

⁹⁶ *Commonwealth Parliamentary Debates*, Senate, Vol. 233, 14 June 2005, pp. 93-6.

⁹⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 276, 1 December 2005, p. 122.

⁹⁸ *Commonwealth Parliamentary Debates*, Senate, Vol. 237, 30 November 2005, p. 66.

⁹⁹ *Commonwealth Parliamentary Debates*, Senate, Vol. 237, 30 November 2005, p. 67.

¹⁰⁰ What is the Harvest Strategy Policy? *Department of Agriculture, Fisheries and Forestry*. <http://www.daff.gov.au/fisheries/domestic/harvest_strategy_policy> (1 January 2013).

¹⁰¹ What is the Harvest Strategy Policy? *Department of Agriculture, Fisheries and Forestry*.

¹⁰² *Commonwealth Parliamentary Debates*, Senate, Vol. 215, 17 September 2002, pp. 4316-9.

¹⁰³ *Commonwealth Parliamentary Debates*, Senate, Vol. 243, 12 October 2006, p. 113.

¹⁰⁴ *Commonwealth Parliamentary Debates*, Senate, Vol. 263, 28 October 2009, p. 7451.

The strong public reaction against large foreign fishing vessels like the *Abel Tasman* (*Margiris*) to impact on the local fishing industry¹⁰⁵ caused the Government to introduce legislation specifically to prohibit the *Margiris* from fishing in the AFZ.¹⁰⁶

Border Protection - Immigration

Most irregular maritime arrivals in this period originated in Southwest or South Asia. Most depart from an Indonesian port on the final leg, aiming for the north or north-west coast or Christmas, Cocos or Ashmore Islands. Consequently, Australian governments have involved regional countries in developing policies to deter this traffic.

After the *Tampa* incident, a Bali Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime took place in February 2002, involving 38 source, transit and receiving countries. The resulting Bali Process involves ongoing workshops to build capacity and regional cooperation.¹⁰⁷ The Australian Government also worked with the United Nations High Commission for Refugees to persuade countries of first asylum to support refugees, and to discourage them from onward travel.¹⁰⁸

Australia appointed an Ambassador for People Smuggling Issues in February 2002, further emphasizing the Government's commitment to a regional approach.¹⁰⁹ Cooperative efforts continued with several countries, including a Memorandum of Understanding (MOU) with Indonesia in June 2002.¹¹⁰ Similar MOUs were concluded

¹⁰⁵ Monique Ross, 'Super trawler: destructive or sustainable'? ABC News On Line, 13 September 2012, <<http://www.abc.net.au/news/2012-08-15/super-trawler-debate/4200114>> (25 March 2013).

¹⁰⁶ For further detail see the *Environmental Protection and Biodiversity Conservation Amendment (Declared Commercial Fishing Activities) Act 2012* at page 322 below.

¹⁰⁷ *The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime*, <<http://www.baliprocess.net/about-the-bali-process>> (2 January 2013).

¹⁰⁸ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 242, 30 August 2001, p. 30666.

¹⁰⁹ Hon. Alexander Downer, M.P., *Joint Media Release Ambassador for People Smuggling Issues*, 28 February 2002, <http://www.foreignminister.gov.au/releases/2002/fa027_02.html> (2 January 2013).

¹¹⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 246, 19 June 2002, p. 3829. This MOU was signed by the Australian Federal Police and the Indonesian National Police on 14 June 2002. *AFP: Annual Report 2001-02*, p. 50,

with several other countries.¹¹¹ That with Iran, signed in March 2003, proved controversial, with the Government refusing to table it in Parliament, declaring the matter not in the public interest.¹¹²

As the MOU provided for the return to Iran of Iranian nationals from Australia, it may have contained provisions preventing Australia from assuring the wellbeing of repatriated Iranians. This was alluded to by Immigration Minister Ruddock, when he noted that ‘... The Australian government takes seriously its obligation not to refole refugees, but also respects the principles of state sovereignty and does not monitor non-Australian citizens in foreign countries’.¹¹³

The decision to excise Australian territory from ‘the migration zone’ so that non-citizens landing there without authority could be removed from Australia was controversial.¹¹⁴ The first excisions were Christmas, Cocos, Ashmore and Cartier Islands in the Indian Ocean and all Australian sea and resource installations.¹¹⁵ From 22 July 2005, all islands forming part of Queensland, the Northern Territory and Western Australia, north of latitudes 21°S, 16°S and 23°S respectively, were also excised.¹¹⁶

By 2006, the Government argued that temporary protection visas effectively deterred irregular maritime arrivals; noting the absence of arrivals from November 2001 to June 2003, and the subsequent mere trickle.¹¹⁷ Penalties for ‘people smuggling’ were toughened, including gaol terms of up to 20 years.¹¹⁸ Before the 2007 election, the

<<http://www.afp.gov.au/~media/afp/pdf/a/afp-annual-report-2001-2002.ashx>> (2 January 2013).

¹¹¹ *DIMIA Annual Report 2002-03: Key Highlights*,

<<http://www.immi.gov.au/about/reports/annual/2002-03/report26html>> (2 January 2013). Countries involved included, Afghanistan, Laos, Fiji, Sri Lanka, Iran, Federal Republic of Yugoslavia and South Africa.

¹¹² *Commonwealth Parliamentary Debates*, Senate, Vol. 219, 25 March 2003, p. 10088, and 26 March 2003, p. 10243.

¹¹³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 256, 11 August 2003, p. 18155.

¹¹⁴ *Fact Sheet 81–Australia’s Excised Offshore Places*, Department of Immigration and Citizenship, <<http://www.immi.gov.au/media/fact-sheets/81excised-offshore.htm>> (2 January 2013).

¹¹⁵ *Fact Sheet 81–Australia’s Excised Offshore Places*, Department of Immigration and Citizenship.

¹¹⁶ *Fact Sheet 81–Australia’s Excised Offshore Places*, Department of Immigration and Citizenship.

¹¹⁷ *Commonwealth Parliamentary Debates*, Senate, Vol. 244, 17 October 2006, pp. 22-3.

¹¹⁸ *Commonwealth Parliamentary Debates*, Senate, Vol. 215, 27 August 2002, p. 3766.

Government accused Labor of having a 'soft' policy approach to irregular maritime arrivals and of encouraging people smugglers.¹¹⁹ After regaining power in November 2007, Labor relaxed some deterrent policies because of community and Party disquiet; closing offshore detention centres and abolishing temporary protection visas. In response the Opposition claimed that a new surge in irregular maritime arrivals was inevitable.¹²⁰

Although Labor was criticized for revoking some of the harsher deterrent measures, a response by Coalition Immigration Minister Ruddock, in 2002, to questions about the efficacy of the excision of islands from the migration zone, suggested that irregular maritime arrivals would continue to test any regulations or practical measures.¹²¹ Subsequently, the International Organization for Migration suggested that Labor's relaxation of border protection policies had resulted in a dramatic surge in people smuggling.¹²²

The Coalition increased pressure on the Labor Government, arguing that burgeoning irregular maritime arrival numbers resulted from Labor's milder policies. Consequently, Labor stiffened its policy response; reconsidering offshore processing and mandatory detention of irregular maritime arrivals, and re-opening the processing centre on Manus Island.¹²³ The centrepiece was an agreement with Malaysia for Australia to take 4,000 refugees from Malaysia over a four year period, in return for Malaysia accepting 800 irregular maritime arrivals from Australia.¹²⁴ However, on 31 August 2011, the High Court ruled against the Government, stating that Malaysia did

¹¹⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 290, 28 March 2007, p. 81.

¹²⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 304, 2 December 2008, p. 12212.

¹²¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 250, 10 December 2002, p. 9983.

¹²² *Commonwealth Parliamentary Debates*, Senate, Vol. 256, 1 December 2008, p. 7677.

¹²³ 'Manus Island as inhumane as Nauru: Amnesty', *Sydney Morning Herald*, 20 August 2011, <<http://www.smh.com.au/national/manus-island-as-inhumane-as-nauru-amnesty-20110820-1j3cf.html>> (25 March 2013).

¹²⁴ *Commonwealth Parliamentary Debates*, House of Representatives, 22 June 2011, p. 6896.

not meet the necessary human rights criteria.¹²⁵ Subsequent legislative attempts to overcome this failed in the Senate.¹²⁶

Prime Minister Gillard announced a review of asylum seeker and refugee issues, seeking to reconcile Opposition and Government positions on these increasingly divisive matters. In August 2012 the Government responded to the review, which was conducted by Air Chief Marshal Angus Houston, Mr Paris Aristotle and Mr Michael L'Estrange. All 22 recommendations were accepted and included; increasing the number of humanitarian refugee places to 20,000 per year, establishing processing centres in Nauru and Papua New Guinea and continuing to develop the agreement with Malaysia.¹²⁷ On 28 February 2013, the Government introduced a Bill for the reinstatement of temporary protection visas.¹²⁸ The dual realities of continuing growth in irregular maritime arrival numbers and unrelenting pressure from the Coalition, led to a reinstatement of much of the legislation which Labor had objected to in opposition and had repealed on assuming government.

Border Protection - Quarantine

Tensions emerged between the demands of preventative quarantine work and the imperatives of free trade. They highlighted Australian quarantine risk management processes, which were based on, ' ... a conservative, but not a zero-risk, approach to the management of biosecurity risks. This approach is consistent with the World Trade Organization's *Agreement on the Application of Sanitary and Phytosanitary Measures ...*'.¹²⁹ The acceptance of biosecurity risk led to consideration of the dangers to Australian primary industry, as when Philippines bananas underwent an 18-24 month risk assessment in 2000.¹³⁰ In 2002 the Government responded with funding and staffing

¹²⁵ *Plaintiff M70/2011 v Minister for Immigration and Citizenship*, High Court of Australia, 31 August 2011, <www.hcourt.gov.au> (25 March 2013).

¹²⁶ *Commonwealth Parliamentary Debates*, House of Representatives, 28 June 2012, p. 8434.

¹²⁷ *Expert Panel on Asylum Seekers: Summary of Recommendations*, <expertpanelon.asylumseekers.dpmc.gov.au> (25 March 2013).

¹²⁸ *Migration Amendment (Reinstatement of Temporary Protection Visas) Bill 2013 [No. 2]* <www.comlaw.gov.au> (25 March 2013).

¹²⁹ *Risk Assessment Handbook 2011*, Department of Agriculture, Fisheries and Forests – Biosecurity Australia, Canberra, 2011, p. 6.

¹³⁰ *Commonwealth Parliamentary Debates*, Senate, Vol. 206, 10 October 2000, p. 18,243.

increases for AQIS.¹³¹ Concerns also emerged in 2007 when Biosecurity Australia¹³² was unilaterally proposing to lower the acceptable risk from 95 per cent to 50 per cent.¹³³

The Government responded thoroughly to flu outbreaks. During the avian flu outbreak, it worked closely with Asia Pacific Economic Cooperation (APEC) by funding and leading a pandemic response exercise.¹³⁴ From 2003 to 2009 Australian governments spent \$805m on planning for a pandemic.¹³⁵ The judicial inquiry into the equine flu outbreak determined that Japan was the probable source of the virus, and that poor practice by private veterinarians at the Eastern Creek quarantine facility was responsible for infected horses being released.¹³⁶ The inquiry led to new procedures and a full review of quarantine and biosecurity systems.¹³⁷

The Beale Review, *'One Biosecurity – A Working Partnership'*, completed in 2008, acknowledged the fine work done by quarantine authorities but recommended a broader approach to biosecurity, than relying on quarantine isolation and disinfection. It also recommended a National Biosecurity Authority, along with additional funding.¹³⁸ The 2012-13 budget allocated \$500m for biosecurity improvements and committed a further \$400m over seven years for additional quarantine facilities.¹³⁹

Border Protection - Customs

The Customs organization was subject to further examination, beginning in 2004 with an Auditor General report on the National Maritime Unit, which recommended

¹³¹ *Commonwealth Parliamentary Debates*, Senate, Vol. 215, 28 August 2002, p. 3900.

¹³² The need to manage the whole biosecurity continuum – onshore, at the border and offshore – rather than focusing primarily on interventions at the border has led to organizational change within the Department of Agriculture, Fisheries and Forests. Thus AQIS no longer exists as a discrete organization.

¹³³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 290, 27 March 2007, p. 17.

¹³⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 281, 31 May 2006, p. 73.

¹³⁵ *Commonwealth Parliamentary Debates*, Senate, Vol. 259, 14 May 2009, p. 2999.

¹³⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 299, 26 June 2008, pp. 6132-33.

¹³⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 299, 26 June 2008, p. 6133.

¹³⁸ Roger Beale, et. al., *One Biosecurity – A Working Partnership*, Attorney General's Department, Canberra, September 2008, pp. x – xix.

¹³⁹ *Commonwealth Parliamentary Debates*, Senate, 20 August 2012, p. 5767.

improvements to tasking, intelligence dissemination, and staff training.¹⁴⁰ A follow-up audit in 2008 noted progress in enacting the earlier recommendations, especially in personnel matters.¹⁴¹ A further audit in 2011 examined the Customs and Border Protection Service's risk management process, which had reduced inspections by 76 per cent for air cargoes and 24 per cent for sea cargoes since 2009.¹⁴² The audit report sought more data to determine whether the reduced inspection rates matched the existing risks.¹⁴³

Marine Environmental Protection

The Coalition Government continued to oppose Japanese scientific whaling in the Southern Ocean, but refused to take legal action in the International Court of Justice;¹⁴⁴ the relationship with Japan and continuing success in the International Whaling Commission to prevent the re-introduction of commercial whaling were overriding factors.¹⁴⁵ The new Labor Government experienced sustained pressure from the Coalition before agreeing to take legal action against Japan, eventually applying at the International Court for legal action against Japan's scientific whaling program.¹⁴⁶

Government action in Queensland centred on the Great Barrier Reef Marine Park. During 2003, commercial coral collection was banned and fish no-take zones increased to 33.3 per cent of the area.¹⁴⁷ This was controversial because of the impact on smaller commercial fishers and recreational fishers,¹⁴⁸ and led to \$90m compensation for the

¹⁴⁰ The Auditor General, *Audit Report No. 8 2008-09, Performance Audit, National Maritime Unit Australian Customs Service*, Australian National Audit Office, Canberra, 2008, p. 15.

¹⁴¹ The Auditor General, *Audit Report No. 8 2008-09, Performance Audit, National Maritime Unit Australian Customs Service*, p. 15.

¹⁴² The Auditor General, *Audit Report No. 15 2011-12, Performance Audit, Risk Management in the Processing of Sea and Air Cargo Imports*, Australian National Audit Office, Canberra, 2011, p. 14.

¹⁴³ The Auditor General, *Audit Report No. 15 2011-12, Performance Audit, Risk Management in the Processing of Sea and Air Cargo Imports*, pp. 17-18.

¹⁴⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 270, 24 May 2005, p. 9.

¹⁴⁵ *Commonwealth Parliamentary Debates*, Senate, Vol. 241, 22 June 2006, p. 89.

¹⁴⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 318, 2 June 2010, pp. 4981-2.

¹⁴⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 259, 3 December 2003, p. 23629.

¹⁴⁸ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 258, 15 October 2003, p. 21557.

commercial fishers.¹⁴⁹ Such was the animus against the rezoning that rumours spread about the Queensland Government assuming control of the Great Barrier Reef Marine Park Authority.¹⁵⁰

Further policy action included declaration of the South-east Marine Protected Areas in May 2006, one of six marine parks declared since 1996.¹⁵¹ Labor continued the protective policies with extensive zoning proposals. These included the Coral Sea Conservation Zone, an interim measure pending detailed marine assessments, and with no impact on fishing.¹⁵² Furthermore, in November 2012 the Government announced the establishment of a huge network of marine parks, covering 2.3m sq km, including part of the Coral Sea. It acknowledged impacts on commercial and recreational fishing and announced an assistance package worth \$100m.¹⁵³

Minister for Resources and Energy Ferguson responded to the August 2009 Montara platform oil spill inquiry, in November 2010, accepting over 90 of the Report's 105 recommendations.¹⁵⁴ The Report criticized the operating company, PTTEP Australasia (Ashmore Cartier) Pty Ltd for poor practices¹⁵⁵ and criticized the Northern Territory's Department of Resources for ineffective regulation. The Government also investigated potential breaches of occupational health and safety and other related legislation and planned to introduce a single national offshore petroleum regulator.¹⁵⁶

¹⁴⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 279, 27 February 2006, pp. 70-1.

¹⁵⁰ *Commonwealth Parliamentary Debates*, Senate, Vol. 242, 5 September 2006, p. 35.

¹⁵¹ *Commonwealth Parliamentary Debates*, Senate, Vol. 240, 9 May 2006, p. 29, and 13 June 2006, p. 219.

¹⁵² *Commonwealth Parliamentary Debates*, Senate, Vol. 263, 18 November 2009, pp. 8281-82.

¹⁵³ The Honourable Tony Burke, MP, Minister for Sustainability, Environment, Water, Population and Communities, Media Release: *Gillard Government proclaims the final network of Commonwealth marine reserves*, 16 November 2012.

<<http://www.environment.gov.au/minister/archive/burke/2012/mr20121116.html>> (2 April 2014).

¹⁵⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 321, 24 November 2010, p. 3595.

¹⁵⁵ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 321, 24 November 2010, p. 3595.

¹⁵⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 321, 24 November 2010, p. 3595.

Other Issues

In 2001 the Joint Committee of Public Accounts and Audit found that Coastwatch was the most effective model for border protection and thus for law enforcement at sea.¹⁵⁷ Nevertheless, dissenting Labor members of the Committee argued for a coast guard,¹⁵⁸ noting that less prominent client agencies of Coastwatch criticized the level of service.¹⁵⁹ The Labor members argued that the Coastwatch organization was at its functional limits.¹⁶⁰ Subsequent changes to the Coastwatch organization supported this view.

The Prime Minister's 2004 Task Force on Offshore Maritime Security concentrated on the north-west shelf and potential terrorist activity against the important offshore oil, and gas industry. The incorporation of Coastwatch into the newly established Joint Offshore Protection Command in March 2005 resulted from this review.¹⁶¹ The Joint Offshore Protection Command was an '... interagency partnership, with officers from Customs and Defence working together ... to deliver whole-of-Government outcomes ...'.¹⁶² Other Review outcomes included two additional Armidale class patrol boats for northern waters.¹⁶³

In December 2004 an Australian Maritime Identification Zone extending up to 1000nm from the Australian coast was established. As noted by the Prime Minister, 'On entering this zone vessels proposing to enter Australian ports will be required to provide comprehensive information'.¹⁶⁴ It was to include position, crew and cargo

¹⁵⁷ The Parliament of the Commonwealth of Australia, Joint Committee of Public Accounts and Audit, *Review of Coastwatch: Report 384*, Commonwealth of Australia, Canberra, August 2001, p. 146.

¹⁵⁸ Joint Committee of Public Accounts and Audit, *Review of Coastwatch: Report 384*, p. 179.

¹⁵⁹ Joint Committee of Public Accounts and Audit, *Review of Coastwatch: Report 384*, p. 179.

¹⁶⁰ Joint Committee of Public Accounts and Audit, *Review of Coastwatch: Report 384*, p. 179.

¹⁶¹ Joint Standing Committee on Foreign Affairs and Defence, *Review of the Defence Report 2004-05*, Parliament of Australia, Canberra, October 2006, p. 31.

¹⁶² *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 283, 9 August 2006, p. 247.

¹⁶³ *Upgrade Patrol Boat Facilities Darwin Naval Base Northern Territory*, Statement of Evidence to the Parliamentary Standing Committee on Public Works, Department of Defence, Canberra, May 2005, p. 1, <http://www.aph.gov.au/business/house_of_representatives> (28 August 2013).

¹⁶⁴ Matthew Moore, 'Indonesia rejects plan for security zone as breach of maritime boundaries', *Sydney Morning Herald*, 18 December 2004, p. 4.

details.¹⁶⁵ Indonesia protested that the Maritime Identification Zone breached that country's sovereignty,¹⁶⁶ and regional diplomatic sensitivity, over geographic reach and mandatory reporting, led to the Zone being re-designated the Australian Maritime Identification System, with a voluntary reporting regime.¹⁶⁷

Joint Offshore Protection Command aligned Coastwatch to the Australian Defence Force (ADF) command structure, because of the blurring of defence and unconventional security threats, and greater involvement of Defence in non-traditional roles.¹⁶⁸ The new organization was expected to halt Labor calls for a coast guard, which without Navy patrol boats (the then Labor option) would be too small, and with the Navy patrol boats, would deprive the Navy of vital training capacity.¹⁶⁹

The new Joint Offshore Protection Command comprised the Coastwatch division of Customs, the ADF's Northern Command, located in Darwin and a small headquarters.¹⁷⁰ The Department of Agriculture, Fisheries and Forests, AFMA, AQIS and Customs Enforcement Operations Coordination Unit provided staff for the headquarters.¹⁷¹ In October 2006, Joint Offshore Protection Command was renamed Border Protection Command, consistent with the maritime surveillance and response role.¹⁷² Subsequently in December 2008 Labor renamed the Australian Customs Service the Australian Customs and Border Protection Service, with overall responsibility for the Government's response to irregular maritime arrivals.¹⁷³

¹⁶⁵ Cameron Moore, 'Turning King Canute Into Lord Neptune: Australia's New Offshore Protection Measures', *University of New England Law Journal*, No. 3, 2006, p. 61.

¹⁶⁶ Moore, 'Indonesia rejects plan for security zone as breach of maritime boundaries', *Sydney Morning Herald*, p. 4.

¹⁶⁷ Natalie Klein, 'Legal Limitations On Ensuring Australia's Maritime Security', *Melbourne International Law Journal*, Vol. 7, 2006, p. 3. (There are no page numbers shown on the on-line document, but the footnote refers to material on the third page of the document.)

¹⁶⁸ Peter Jennings, 'In defence of offshore protection', *The Australian*, 17 December 2004, p. 13.

¹⁶⁹ Jennings, 'In defence of offshore protection', *The Australian*, p. 13.

¹⁷⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 283, 9 August 2006, p. 248.

¹⁷¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 283, 9 August 2006, p. 248.

¹⁷² *Border Protection Command – History Overview*, <<http://bpc.gov.au/site/page5792.asp>> (11 January 2013).

¹⁷³ *Border Protection Command – History Overview*, <<http://bpc.gov.au/site/page5792.asp>> (11 January 2013).

The Smith *Review of Homeland and Border Security*, presented to government in December 2008, recommended the adoption of a whole-of-government strategic planning framework for homeland and border security, rather than establishing a single 'border agency'. He also noted that 'customer' agencies were satisfied with the increasingly effective role of Border Protection Command.¹⁷⁴ By contrast, Derek Woolner writing in June 2008 and again in 2011, argued strongly for the creation of a single authority for maritime border security.¹⁷⁵

Border Protection Command adopted '... intelligence-led risk management ...' as its approach to surveillance and response.¹⁷⁶ The Command's policy guidance emanated from the National Security Committee of Cabinet, with further direction from the Secretaries Committee on National Security and subordinate operational level advisory groups.¹⁷⁷

Labor's Australian Offshore Oil and Gas Resources Sector Security Inquiry, led by Mick Palmer, a former Federal Police Commissioner was possibly the first comprehensive review of the offshore resource sector against the threats of terrorism and piracy. Its report, tabled in Parliament on 25 June 2012, recommended onsite security audits and inspections, security access, exercise and exclusion zones, incident response and cybersecurity.¹⁷⁸

The Labor Opposition took its coastguard policies to elections in 2001, 2004 and 2007 before declining to establish a coastguard when in power from November 2007. Before the 2001 election Leader of the Opposition Kim Beazley, introduced a private member's Bill for a coast guard, but without specifying how it would be equipped.¹⁷⁹ The organization would conduct surveillance and response operations, deterring and not

¹⁷⁴ Ric Smith, *Report of the Review of Homeland and Border Security: Summary and Conclusions*, 4 December 2008, p. 4 although pages not numbered.

www.royalcommission.vic.gov.au/getdoc/.../TEN.004.002.0431.pdf.

¹⁷⁵ Woolner, *Policing our ocean domain: establishing an Australian coast guard*, pp. 17-21. See also, Derek Woolner, 'The Governance of Security in Australia's Maritime Domain', *Security Challenges*, Vol. 7, No. 2, (Winter 2011), pp. 76-80.

¹⁷⁶ Helmoed Römer Heitman, 'Joining to Protect: Australia's Border Protection Command', *Naval Forces*, No. vi, 2009, p. 9.

¹⁷⁷ Heitman, 'Joining to Protect: Australia's Border Protection Command', *Naval Forces*, p. 10.

¹⁷⁸ *Commonwealth Parliamentary Debates*, House of Representatives, 25 June 2011, p. 7640.

¹⁷⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 243, 24 September 2001, pp. 31273-76.

merely reacting to threats.¹⁸⁰ The coast guard would be responsible for all offshore law enforcement matters and for search and rescue.¹⁸¹ Labor coast guard proposals included one of up to 15 purpose-designed vessels,¹⁸² and one of 12 high speed twin hull vessels of 45-60m for northern waters and three 80m vessels for the Southern Ocean.¹⁸³ The cost of the new vessels was expected to be \$895m.¹⁸⁴

In December 2002 Labor criticized the Government's inadequate border protection policies and proposed a coast guard instead. This version of Labor's coast guard would comprise three 80m helicopter-equipped patrol ships and would permit the RAN to resume its proper Defence tasks.¹⁸⁵ Labor appeared concerned at the financial cost of having RAN ships and patrol craft involved in the constabulary function, at the expense of their military function.¹⁸⁶

Prior to the 2004 election, Labor's new leader, Mark Latham, again committed the party to a coast guard, this time including three 80m helicopter-equipped vessels to be based in Cairns, Darwin and Broome.¹⁸⁷ By July, however, Labor had changed its approach again; moving away from the three large vessels to three 55m and five 35m patrol vessels, which would save \$100m.¹⁸⁸ Intriguingly, Labor also declared that its coast guard would be operated by the Australian Federal Police, ignoring its previous unsuccessful experiment with that approach in 1984.¹⁸⁹

¹⁸⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 243, 19 September 2001, p. 30956.

¹⁸¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 243, 19 September 2001, p. 30956.

¹⁸² The Hon. Peter Reith, MP, Media Release, 'The Great Coast Guard Con', 2 November 2001, <<http://www.defence.gov.au/minister/6tpl.cfm?CurrentId=762>> (11 December 2013).

¹⁸³ Reith, Media Release, 'The Great Coast Guard Con', 2 November 2001.

¹⁸⁴ Steve Lewis, 'ALP coastguard "to cost \$895m"', *Financial Review*, 17 October 2001, <[http://www.nationalsecurity.gov.au/agd/WWW/rwpattach.nsf/personal/65D7486FA53D68A3CA256EC30022D2DE/\\$FILE/articles.pdf](http://www.nationalsecurity.gov.au/agd/WWW/rwpattach.nsf/personal/65D7486FA53D68A3CA256EC30022D2DE/$FILE/articles.pdf)> (11 December 2013).

¹⁸⁵ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 250, 10 December 2002, p. 9990.

¹⁸⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 243, 19 September 2001, p. 30956.

¹⁸⁷ Andrew Stevenson, 'Latham vows tougher border security', *The Age*, 19 January 2004, p. 4.

¹⁸⁸ Brendan Nicholson, 'ALP opts for faster coast fleet', *The Age*, 1 July 2004, p. 4.

¹⁸⁹ Australian Broadcasting Corporation, *AM*, 30 June 1984.

<<http://web.ebscohost.com.rp.nla.gov.au/ehost/detail?vid>> (10 December 2013). See Chapter Five above for the previous decision to involve the Federal Police.

There was little coherence in the various Labor iterations of its coastguard proposals, allowing the Government to claim that, ' ... Labor has released not one, not two, not three, but four coastwatch policies since 2001 - each one different and each one erroneously costed'.¹⁹⁰ Whether Labor believed a coast guard was the best option, or merely provided a means of differentiating it from the Government, it failed to formulate a convincing model while in opposition. Worse, however, the lack of credible detail in its coastguard proposals allowed the Government to deride Labor's ideas.¹⁹¹

Meanwhile, the Coalition Government continued to increase funding for law enforcement at sea. The 2002-03 budget allocated an additional \$280m to Customs, \$28m of which was to boost Coastwatch surveillance flying hours and double Customs fleet sea days for the year.¹⁹² That was part of a much larger commitment of \$1.24bn over the five years 2001-02 to 2005-06 for border protection.¹⁹³ Extra funding in 2006-07 reflected the expanding nature and unpredictability of the task, providing an additional \$389m over four years for border protection measures. These included more helicopters, intelligence systems and a commercial ship to relieve patrol vessels of the onerous task of processing apprehended vessels and their crews and passengers. Another \$96m brought two Huon class mine countermeasures vessels up to operational status for border protection.¹⁹⁴

Changes to border protection policies by the Labor Government during 2008 arguably contributed to the noticeable rise in irregular maritime arrivals from that time. Consequently, during 2009, Labor flagged the need for additional resources to cope with the rising numbers, while arguing that increasing numbers of people seeking asylum worldwide, was contributing to the greater irregular maritime arrival numbers.¹⁹⁵

¹⁹⁰ *Commonwealth Parliamentary Debates*, Senate, Vol. 236, 10 November 2005, p. 185.

¹⁹¹ *Commonwealth Parliamentary Debates*, Senate, Vol. 225, 26 November 2003, p. 18056.

¹⁹² *Commonwealth Parliamentary Debates*, Senate, Vol. 214, 16 May 2002, p. 1749.

¹⁹³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 247, 19 August 2002, p. 4964.

¹⁹⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 280, 23 May 2006, p. 15.

¹⁹⁵ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 310, 16 June 2009, p. 6082.

THE GOVERNMENT RESPONSE IN PRACTICE: NEW EQUIPMENT AND NEW CHALLENGES

Surveillance and Response

By late 2012 the Coastwatch surveillance aircraft force had been further improved with 10 Dash 8-200 maritime patrol aircraft and four longer range Dash 8-300s, all with updated surveillance sensors and communications equipment, including the capacity to transmit data in near real time.¹⁹⁶ Helicopters were retained for Torres Strait and Great Barrier Reef operations, with the potential for smuggling of people and goods across Torres Strait at times demanding two helicopters, two fixed wing aircraft and a Customs vessel.¹⁹⁷

From the late 1990s, the Customs Bay class boats provided over 1,350 sea days annually for constabulary work.¹⁹⁸ The first of eight larger replacement Cape class patrol vessels was expected to enter service in March 2013; to provide a genuine ocean going capability.¹⁹⁹ Yet, because of the unique demands of the Southern Ocean, neither the Armidale nor Cape class are suited for operations there, and commercial vessels, starting with the *Southern Supporter*, have been chartered since 2000.

In 2003, some 25 per cent of all Royal Australian Air Force (RAAF) P-3 flying hours were devoted to Operation *Relax*.²⁰⁰ RAAF C-130 and Caribou transport aircraft were also tasked for aerial surveillance; the C-130s in the Southern Ocean, and the shorter-range Caribou in northern waters.²⁰¹ IUU fishing and irregular maritime arrivals also stretched existing Navy and Customs patrol boat forces, so that other RAN ships were diverted to Operation *Relax*. The involvement of RAN amphibious ships,

¹⁹⁶ 'Australia's Coastwatch: A Public-Private Model for Coast Guards and CBP', *Defense Industry Daily*, 31 October 2012. <<http://www.defenseindustrydaily.com/cobham-catches-a-1b-australian-coastwatch-contract-01695/>> (14 January 2013).

¹⁹⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 270, 10 May 2005, p. 320.

¹⁹⁸ *Commonwealth Parliamentary Debates*, Senate, Vol. 217, 2 December 2002, p. 6946.

¹⁹⁹ 'Australia: Austal Launches First Cape Class Patrol Boat', *World Maritime News*, 15 January 2013, <<http://worldmaritimeneeds.com/archives/73242>> (16 January 2013).

²⁰⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 266, 9 August 2004, p. 23775. See also *Department of Defence Annual Report 2003-2004*, Output 4.4: Capability for Maritime patrol Aircraft, <<http://www.defence.gov.au/budget/03-04>> (28 August 2013).

²⁰¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 270, 10 May 2005, p. 210.

replenishment ships, major surface combatants, hydrographic ships and mine warfare vessels reflects the extent of the problem.²⁰²

Resources Protection

From January 2003 to March 2004 1,558 foreign fishing vessels, suspected to be operating illegally, were sighted in the AFZ. Of these, 253 were later confirmed to be IUU fishers, 168 were apprehended, while the remaining 85 had their catch confiscated.²⁰³ Efforts to apprehend fishing boats continued, with the introduction of the Armidale class patrol boats and four additional Customs response vessels. These additional vessels were to escort apprehended fishing boats into port, thereby enabling RAN and Customs patrol craft to remain on station.²⁰⁴

There were 281 apprehensions in 2005 and by October 2006 there had been a record number of 308 IUU fishing boat apprehensions.²⁰⁵ Three hundred and sixty five foreign fishing vessels were seized in northern waters and destroyed in 2006. By March 2007 progress was evident with sightings of foreign fishing vessels down 40 per cent for the year to that time.²⁰⁶ Improved Indonesian cooperation and more surveillance flights contributed to this result.²⁰⁷

IUU fishing in Australia's Southern Ocean AFZ demanded a different response, because of the distances involved, difficulty in determining the nature and level of fishing and the prevalent poor weather and rough seas. In February 2002, Her Majesty's Australian Ship (HMAS) *Canberra* apprehended the Russian-flagged *Lena* and *Volga* operating illegally inside the Heard and McDonald Islands zone of the AFZ. Both fishing vessels were brought to port, and senior crew members were charged with

²⁰² See, Lieutenant Natalie Boulton, RAN, et. al., eds., *Australia' Navy 2002-03*, Defence Publishing Service, Canberra, 2003, pp. 25 and 26; Commander Richard Donnelly, RAN, et. al., eds., *Australia's Navy 2005*, Defence Publishing Service, Canberra, 2005, pp. 44 and 47; and Commander Carmel Barnes, RAN, et. al., eds., *Australia's Navy 2006*, Defence Publishing Service, Canberra, 2006, pp. 43 and 46.

²⁰³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 266, 3 August 2004, p. 32010.

²⁰⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 280, 9 May 2006, p. 85.

²⁰⁵ *Commonwealth Parliamentary Debates*, Senate, Vol. 244, 17 October 2006, p. 30.

²⁰⁶ *Commonwealth Parliamentary Debates*, Senate, Vol. 247, 26 March 2007, pp. 29-30.

²⁰⁷ *Commonwealth Parliamentary Debates*, Senate, Vol. 247, 26 March 2007, pp. 29-30.

a range of offences. Fines of \$100,000 were imposed, the fishing gear was forfeited and the catch worth \$A1.127m was sold.²⁰⁸

Subsequently, in August 2003, the *Southern Supporter* assisted by a British fisheries patrol vessel and a South African tug, pursued the *Viarsa* from near Heard Island to a point some 2,000nm south-west of Cape Town, a total distance of some 3,400nm.^{209 210} Despite the failure to gain a conviction in court, the Government believed that its determined pursuit would deter others.

Border Protection - Immigration

The spike in irregular maritime arrivals and associated high political profile demanded a comprehensive response. Australian officials were stationed in Indonesia; some conducting 'disruption' activities to prevent boats leaving Indonesian ports. Concern was expressed over the extent of these activities, with Senator Faulkner commenting that, 'It is not clear whether disruption extends to physical interference with vessels. It is not clear what, if any, consideration is given in the planning and implementation of disruption to questions of maritime safety, to the safety of lives at sea'.²¹¹ Although the Government provided no clarification, the Senator articulated fears held by people unhappy with the strict irregular maritime arrivals policy.

The decision to escort the *Minasa Bone*, carrying 14 irregular maritime arrivals, from Melville Island back to Indonesian waters in November 2003, even with Indonesian Government agreement was also controversial.²¹² 'Turning the boats back' was

²⁰⁸ *Commonwealth Parliamentary Debates*, Senate, Vol. 217, 9 December 2002, p. 7522.

²⁰⁹ Rachel Baird, 'Coastal State Fisheries Management: A Review of Australian Enforcement Action in the Heard and McDonald Islands Australian Fishing Zone', *Deakin Law Review*, Vol. 9, No. 1, 2004, pp. 100-101.

²¹⁰ In this case the prosecution was unsuccessful. Senator The Hon. Ian Macdonald, Minister for Fisheries, Forestry and Conservation, *Media Release DAFF05/218M* dated 5 November 2005. <www.mffc.gov.au/releases/2005/05218m.html> (9 January 2013).

²¹¹ *Commonwealth Parliamentary Debates*, Senate, Vol. 216, 23 September 2002, pp. 4690-2.

²¹² Joint Media Release, *Minasa Bone Returns to Indonesia*, Minister for Foreign Affairs and Minister for Immigration, Multicultural and Indigenous Affairs, 9 November 2003. <http://www.foreignminister.gov.au/releases/2003/joint_Minasa_Bone.html> (9 January 2013).

opposed then, and at the time of writing in early 2013, by Labor,²¹³ but, remains a policy of the Coalition, when safe to do so.²¹⁴ The policy invites irregular maritime arrivals to either jump overboard or to sabotage their boats on sighting any RAN or Customs vessel, and is fraught with risk to the irregular maritime arrivals themselves and those sent to deal with them.

Border Protection - Customs

Customs continued counter- drug smuggling operations and in 2002 made the biggest haul of the drug ecstasy to that time, worth \$10.8m, from a container in the port of Melbourne.²¹⁵ The best known operation was mounted against the MV *Pong Su* in April 2003.²¹⁶ The ship offloaded 125kg of heroin by dinghy near Lorne on the south-west coast of Victoria. Subsequently, a special operations boarding party was lowered onto the ship from HMAS *Stuart's* helicopter south-east of Newcastle, NSW,²¹⁷ and the *Pong Su* was diverted to Sydney where crew members were charged.

The potential terrorist threat resulted in more shipping containers being inspected and by the end of 2003, 80,000 of the 2.1m incoming containers were examined. This still small proportion was determined by intelligence and associated risk assessment.²¹⁸ Importantly, the measures taken satisfied the US Container Security Initiative requirements.²¹⁹ Australia was one of the 11 original members of a related measure to counter the proliferation of weapons of mass destruction, the Proliferation Security Initiative, who first met in Paris in September 2003.

All cargo entering Australia is screened and risk-assessed by Customs and Table 7-6 shows the number of containers physically inspected at the major ports for the

²¹³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 259, 25 November 2003, p. 22710.

²¹⁴ Emma Griffiths, 'Coalitions asylum seeker policy: Abbott dismisses Turnbull's doubts on turning back boats', *ABC News*, 11 June 2013, < <http://www.abc.net.au/news/2013-06-11/abbott-brushes-aside-turnbulls-comments-on-boats/4746116>> (26 June 2013).

²¹⁵ *Commonwealth Parliamentary Debates*, Senate, Vol. 215, 20 August 2002, p. 3302.

²¹⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 266, 3 August 2004, p. 31902.

²¹⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 266, 3 August 2004, p. 31902.

²¹⁸ *Commonwealth Parliamentary Debates*, Senate, Vol. 225, 2 December 2003, p. 18639.

²¹⁹ *Commonwealth Parliamentary Debates*, Senate, Vol. 222, 20 August 2003, p. 14126.

financial year 2003-04. The introduction of x-ray inspection for containers at Container Examination Facilities allowed Customs to raise inspection numbers from 4-5,000 twenty foot equivalent (TEU) containers up to 133,000 containers per year by 2004.²²⁰

Port	Loaded TEU	Empty TEU	Total TEU	TEU Inspected
Melbourne	774,752	105,560	880,312	31,473
Sydney	643,112	11,725	654,837	29,396
Brisbane	261,884	63,309	325,193	18,901
Fremantle	203,760	34,731	238,491	6,759
Newcastle	990	2,412	3,402	57
Hay Point	0	0	0	N/A
Port Adelaide	41,531	29,968	71,499	205
Gladstone	86	243	329	0
Townsville	3,913	4,464	8,377	23
Port Hedland	8	0	8	0
Bunbury	0	0	0	N/A
Port Kembla	57	56	113	0
Geelong	0	0	0	N/A
Portland	24	0	24	0
Launceston	7,281	12,376	19,657	175
TOTALS			2,202,252	86,869

Table 7-6: Container Inspection Figures for Major Australian Ports FY 2003-04²²¹

Complementary security measures included the installation of closed circuit television cameras in 56 ports by mid-2004.²²² By the end of 2005, Maritime Security Identification Cards and security checks, were introduced for all persons entering Australian seaports and ports were preparing security assessments and plans.²²³

²²⁰ The Auditor General, *Audit Report No. 4 2007-08: Container Examination Facilities Follow Up*, Australian Customs Service, Australian National Audit Office, Canberra, 2007, p. 11.

²²¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 273, 16 August 2005, p. 210. Inspection figures had not changed significantly by 2011 when 101,500 TEU were x-rayed and 14,000 physically examined of some 2.2m TEU moved through Australian ports. *Container Examination Facilities*, Australian Customs and Border Protection Service, June 2011, <<http://www.customs.gov.au/webdata/resources>> (28 August 2013).

²²² *Commonwealth Parliamentary Debates*, Senate, Vol. 228, 11 May 2004, p. 22920.

²²³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 276, 10 November 2005, p. 102.

Border Protection – Quarantine

The potential for human threats to quarantine saw staffing increased to permit improved passenger screening at points of entry. In the 12 months to October 2003 92 per cent of all arrivals, were screened.²²⁴ By exercising heightened vigilance at points of entry, Quarantine officers contributed to preparations associated with the possible outbreak of avian flu in 2005.²²⁵ Quarantine officers also dealt with the implications of foreign fishing vessels landing unauthorized on the coast or offshore islands. Consequently, pest profiling and biosecurity risk assessments were routinely conducted and a variety of animals seized and destroyed.²²⁶

Marine Environmental Protection

Oil-sourced marine pollution remained a major focus of environmental protection. In 2002, all 345 reported spills were investigated and 95 per cent of all ships considered to be high risk were inspected.²²⁷ In 2006 the Government based the *Pacific Responder* in Cairns as an emergency towing vessel within the Reef as well as to service navigation aids.²²⁸

Responses to whaling in the Southern Ocean included prosecution of ships, such as the *South Seas 1* in 2004, which was found with whale meat on board.²²⁹ Growing public and political pressure eventually resulted in the Government beginning to monitor Japanese whaling in the Southern Ocean, from February 2008.²³⁰

²²⁴ *Commonwealth Parliamentary Debates*, Senate, Vol. 224, 15 October 2003, p. 16505.

²²⁵ *Commonwealth Parliamentary Debates*, Senate, Vol. 232, 10 March 2005, p. 68.

²²⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 283, 10 August 2006, p. 154.

²²⁷ *Commonwealth Parliamentary Debates*, Senate, Vol. 227, 24 March 2004, p. 21888.

²²⁸ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 284, 5 September 2006, p. 16.

²²⁹ *Commonwealth Parliamentary Debates*, Senate, Vol. 228, 13 May 2004, p. 23469.

²³⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 296, 13 February 2008, p. 232.

THE LEGISLATIVE RESPONSE: THE FULL WEIGHT OF THE LAW

From 2002-2012 a lot of legislation was passed, much of it concerning asylum seekers and the desire of the Labor Government to remove the harsher deterrence measures imposed by its Coalition predecessor. It also encompassed the subsequent re-imposition of the harsh measures as the asylum seeker numbers climbed again. Legislation was also introduced to counter the threat of global terrorism to maritime industries and to improve marine resources management. Overall, the approach to the legislation appeared to be rushed, reactive and incremental and reflected quite frequent policy changes on issues such as irregular maritime arrivals and marine resources.

Resources Legislation

The first important fisheries legislation was the *Border Protection Legislation Amendment (Deterrence of Illegal Foreign Fishing) Act 2005*, which had three primary objectives.²³¹ Firstly it made the *Torres Strait Fisheries Act* consistent with the *Fisheries Management Act*, so that consistent detention policies could be enacted throughout northern waters. The Act also created a detention regime for illegal fishers that was consistent with immigration detention policies, and increased protection for officials, in response to increasing hostility by illegal foreign fishers.²³²

The *Fisheries Legislation Amendment (International Obligations and Other Matters) Act 2005* enabled implementation of Australia's obligations under the *Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (the Convention)*.²³³ By extending surveillance and enforcement provisions within the *Fisheries Management Act* the *International Obligations and Other Matters Act 2005* aimed to ensure Australian flagged fishing boats and nationals complied with the Convention.²³⁴ Furthermore, the *Fisheries Legislation Amendment (Cooperative Fisheries Arrangements and Other Matters) Act 2005* made a more substantive adjustment to the

²³¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 268, 17 February 2005, p. 4.

²³² *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 268, 17 February 2005, pp. 5-7.

²³³ *Commonwealth Parliamentary Debates*, Senate, Vol. 232, 17 March 2005, p. 9.

²³⁴ *Commonwealth Parliamentary Debates*, Senate, Vol. 232, 17 March 2005, p. 9.

Fisheries Management and Administration Acts.²³⁵ The adjustment ensured that the Offshore Constitutional Settlement fisheries jurisdictions remained aligned with changing natural fisheries boundaries, to facilitate rational fisheries management by the Northern Territory, States and Commonwealth Governments.²³⁶

Because neither surveillance and patrol operations nor earlier legislation stopped foreign IUU fishing within the AFZ the *Fisheries Legislation Amendment (Foreign Fishing Offences) Act 2006* was enacted. It provided custodial sentences of up to three years for foreign fishers operating illegally in Australian waters between 3nm and 12nm.²³⁷ The distance limitations conformed to the State responsibility to 3nm and the Law of the Sea Convention (LOSC) prohibition of custodial sentences for fishing offences beyond the territorial sea.²³⁸

The *Fisheries Legislation Amendment Act 2007* aimed to improve fisheries management, especially for the Torres Strait, and enable the local population to continue sustainable fishing.²³⁹ The Act also provided for more effective monitoring of fishing, to deter IUU fishing in the AFZ, because hitherto the demand for fish had trumped the penalties for apprehension.

Acts became more complex, and even their titles were beginning to strain comprehension. Thus in March 2008 a Bill for the *Fisheries Legislation Amendment (New Governance Arrangements for the Australian Fisheries Management Authority and Other Matters) Act 2008* was introduced. The Act established a Board and Chief Executive Officer for AFMA, and limited the capacity of fishing industry representatives to be commissioners.²⁴⁰ Provisions were also made for Australians to be prosecuted for breaching international fisheries agreements to which Australia is a party, and to be

²³⁵ *Commonwealth Parliamentary Debates*, Senate, Vol. 237, 7 December 2005, p. 4.

²³⁶ *Commonwealth Parliamentary Debates*, Senate, Vol. 237, 7 December 2005, p. 5.

²³⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 280, 25 May 2006, p. 8.

²³⁸ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 280, 25 May 2006, p. 8.

²³⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 291, 23 May 2007, p. 6.

²⁴⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 297, 20 March 2008, p. 2397.

prosecuted for IUU fishing activities on board foreign fishing vessels outside the AFZ.²⁴¹

The *Fisheries Legislation Amendment Act 2010* introduced electronic licensing and clarified the nature of defensive equipment carried by fisheries officers when investigating foreign fishing vessels.²⁴² The *Fisheries Legislation Amendment Act (No. 2) 2010* further simplified regulatory demands, enabled AFMA to charge other government agencies for services and introduced co-management arrangements with other governments and industry, for more sustainable fish stocks management.²⁴³ The *Fisheries Legislation Amendment Act (No. 1) 2012* introduced electronic monitoring of Australian fishing vessels and provided for the notification in writing to fishers of the closure of any fishery.²⁴⁴ It was another example of an incremental and seemingly haphazard legislative approach to fisheries management.

In 2012 the Government introduced the *Environmental Protection and Biodiversity Conservation (Declared Commercial Fishing Activities) Act 2012* because of the furore caused by the planned activities of the FV *Abel Tasman (Margiris)*. The Act allowed the Minister to prohibit a declared fishing activity for up to two years, while awaiting an environmental impact study.²⁴⁵ Opposition counter-argument centered on the *Abel Tasman (Margiris)* having been 'invited' into Australian waters by the Government and on the apparently untrammelled power which the Act gave the Minister.²⁴⁶

Towards the end of the period, resources legislation was drafted to improve the management of offshore oil and gas exploration and exploitation. The first significant Act was the *Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Act 2011*.²⁴⁷ It responded to recommendations of the Productivity Commission, the Inquiry into the Montara oil spill and implications of the Varanus

²⁴¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 297, 20 March 2008, pp. 2398-99.

²⁴² *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 314, 25 November 2009, p. 12792.

²⁴³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 317, 26 May 2010, p. 4119.

²⁴⁴ *Commonwealth Parliamentary Debates*, House of Representatives, 27 June 2012, p. 8157.

²⁴⁵ *Commonwealth Parliamentary Debates*, House of Representatives, 11 September 2012, p. 10214.

²⁴⁶ *Commonwealth Parliamentary Debates*, House of Representatives, 12 September 2012, p. 10312.

²⁴⁷ *Commonwealth Parliamentary Debates*, House of Representatives, 25 May 2011, p. 4492.

Island gas explosion in June 2008.²⁴⁸ The Act established the ‘ ... national offshore regulator of safety, integrity and environmental management of petroleum and greenhouse gas storage activities in Commonwealth waters’.²⁴⁹ This involved incorporation of the National Offshore Petroleum Safety Authority into the new National Offshore Petroleum Safety and Environmental Management Authority.

This Act was supported by the *Offshore Petroleum and Greenhouse Gas Storage Amendment (Significant Incident Directions) Act 2011* introduced on 21 September 2011. A direct outcome of the Inquiry into the Montara oil spill, this Act enabled the National Offshore Petroleum Safety and Environmental Management Authority to improve regulation by directing petroleum titleholders in the event of serious incidents with safety or environmental implications.²⁵⁰

Immigration Legislation

From 2002 immigration legislation concentrated initially on the latest wave of asylum seekers. Legislative efforts began with the *Migration Legislation Amendment (Further Border Protection Measures) Bill 2002* in June 2002. This Bill proposed extension of the area of excised offshore places to include those islands off the north-west of Western Australia, islands off the Northern Territory, islands off Far North Queensland, and the Coral Sea Islands Territory.²⁵¹ The Bill was introduced because regulations with the same effect had been rejected by the Senate.²⁵² This Bill suffered a similar fate in the Senate and was reintroduced, unsuccessfully, in the House of Representatives as the *Migration Legislation Amendment (Further Border Protection Measures) Bill 2002 (No. 2)* on 26 March 2003.²⁵³ The need for these regulations suggests that people smugglers remained alert for inadequacies in legislation and were capable of taking advantage of them.

²⁴⁸ Government of Western Australia Department of Mines and Petroleum, *Varanus Island Incident*, <www.dmp.wa.gov.au> (4 April 2013).

²⁴⁹ *Commonwealth Parliamentary Debates*, House of Representatives, 25 May 2011, p. 4492.

²⁵⁰ *Commonwealth Parliamentary Debates*, House of Representatives, 21 September 2011, p. 5593.

²⁵¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 246, 20 June 2002, pp. 4016 – 17.

²⁵² *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 246, 20 June 2002, p. 4017.

²⁵³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 252, 26 March 2003, p. 13586.

In December 2002 the *Crimes Legislation Amendment (People Smuggling, Firearms Trafficking and Other Measures) Act 2002*.²⁵⁴ Primarily, the Act covered activities not proscribed by the *Migration Act 1958*, including smuggling people from Australia, or from somewhere other than Australia to a third country, with or without transit through Australia. Other 'aggravated' people smuggling offences including endangering the lives of irregular maritime arrivals and smuggling more than five people at one time were included. The Act also prohibited producing, providing or using false travel documentation to enable a person to gain unlawful entry into a foreign country.²⁵⁵

The *Migration Amendment Regulations 2005 (No.6)* passed in August 2005, related to the excision of islands proposed by earlier Acts but rejected in the Senate.²⁵⁶ This time, government control of the Senate, achieved in the 2004 Federal election, guaranteed success, despite Labor and Democrat opposition.²⁵⁷

Legislation and regulations excising offshore islands and structures determined that irregular maritime arrivals landing there would be subject to offshore processing and more limited recourse to the legal system. To this point no such limitation applied to irregular maritime arrivals landing on the mainland, although there was an unsuccessful attempt to legislate for it.²⁵⁸ The continual amending of immigration legislation demonstrated a failure to anticipate the reaction of people smuggling syndicates and perhaps the desperation of asylum seekers.

Legislation was also introduced for more effective management of people entering Australia legally. In October 2006, the *Migration Amendment (Border Integrity) Act 2007* foreshadowed the use of automated systems, including biometric recognition, for

²⁵⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 250, 4 December 2002, p. 9535.

²⁵⁵ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 250, 4 December 2002, p. 9535.

²⁵⁶ *Commonwealth Parliamentary Debates*, Senate, Vol. 234, 18 August 2005, p. 27.

²⁵⁷ *Commonwealth Parliamentary Debates*, Senate, Vol. 234, 18 August 2005, p. 27.

²⁵⁸ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 280, 11 May 2006, p. 8.

immigration clearance at the nation's airports.²⁵⁹ Similarly, the *Migration Amendment (Maritime Crew) Act 2007* created a new temporary 'maritime crew visa', for the first time allowing crews of non-naval ships to be security cleared before arrival in Australia. These visas could only be used for entry by sea.²⁶⁰

From early 2010 more and ever harsher immigration legislation was introduced, following the upsurge in irregular maritime arrivals and political pressure to contain it. This began with the *Anti-People Smuggling and Other Measures Act 2010*, expanding the range of criminal acts associated with people smuggling, to include providing material support to the smugglers and making such activities aggravated offences when death or injury was involved.²⁶¹ The Act also allowed for interception of telecommunications to improve intelligence and introduced a mandatory minimum sentence of eight years for repeat offences.²⁶²

Closely related was the *Combating the Financing of People Smuggling and Other Measures Act 2011*, which sought to stop money from Australia flowing through remittance dealers to irregular maritime arrival countries of origin.²⁶³ The Act raised registration standards for remittance dealers and imposed tough penalties for providing material support to people smugglers, including fines of up to \$110,000 and 10 year gaol sentences.²⁶⁴ Reinforcement was provided by the *Deterring People Smuggling Act 2011*, which clarified how persons could lawfully enter Australia,²⁶⁵ while retaining the right of individuals to seek protection or asylum in Australia. The clarification was applied retrospectively to 1999, when the *Migration Act* first incorporated the words '... lawful right to come to Australia', to ensure that legal action already taken would remain lawful.²⁶⁶

²⁵⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 285, 11 October 2006, p. 3.

²⁶⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 288, 15 February 2007, pp. 5-6.

²⁶¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 316, 24 February 2010, p. 1645.

²⁶² *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 316, 24 February 2010, p. 1645.

²⁶³ *Commonwealth Parliamentary Debates*, House of Representatives, 9 February 2011, p. 135.

²⁶⁴ *Commonwealth Parliamentary Debates*, House of Representatives, 9 February 2011, p. 136.

²⁶⁵ *Commonwealth Parliamentary Debates*, House of Representatives, 1 November 2011, p. 12349.

²⁶⁶ *Commonwealth Parliamentary Debates*, House of Representatives, 1 November 2011, p. 12350.

After an earlier failed attempt in 2011, the *Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012* passed in August 2012, without the Opposition's amendments relating to temporary protection visas and turning back of boats, but supported by the recommendations of the Expert Panel on Asylum Seekers, led by Air Chief Marshal Angus Houston.²⁶⁷ The Act responded to the High Court decision limiting the countries to which asylum seekers could be transferred. It aimed to '... restore to the executive the power to set Australia's border protection policies, specifically the power to transfer asylum seekers arriving at excised offshore places to a range of designated third countries within the region, while ensuring protection from refoulement, for the processing of their claims'.²⁶⁸ Several other immigration Bills introduced during 2012, by private members and the Government, either failed to pass or remained under consideration at the time of writing.

Quarantine Legislation

The disastrous foot and mouth disease outbreak in the United Kingdom in 2001 led to the *Quarantine Amendment Act 2002*, early in 2002. It sought, '... to enhance Australia's national emergency powers to ensure the Commonwealth, states and territories have adequate legislative powers to enable them to prevent, or to act rapidly to control and eradicate, a major national animal disease outbreak, such as foot-and-mouth disease...'.²⁶⁹ The Act included substantial financial and custodial penalties.²⁷⁰ Problems continued and in September 2007 the *Quarantine Amendment (Commission of Inquiry) Act 2007* was introduced after the first ever outbreak of equine flu. The Act established a comprehensive independent inquiry with the powers of a Royal Commission.²⁷¹

Severe Acute Respiratory Syndrome which appeared in Asia during 2003, led to the *Quarantine Amendment (Health) Act 2003* and some minor adjustments to quarantine

²⁶⁷ *Commonwealth Parliamentary Debates*, Senate, 16 August 2012, p. 5690.

²⁶⁸ *Commonwealth Parliamentary Debates*, House of Representatives, 1 November 2011, p. 10946.

²⁶⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 244, 14 March 2002, p. 1298.

²⁷⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 244, 19 March 2002, p. 1467.

²⁷¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 295, 12 September 2007, p. 1.

border protection measures.²⁷² Later, the *Quarantine Amendment (National Health Security) Act 2008* responded to growing fears of global infectious disease pandemics. Provisions included mandatory vaccinations for travellers subject to quarantine and waiver of charges for vaccinations for most travellers.²⁷³

The *Fisheries and Forestry Legislation Amendment Act (No. 1) 2003* amended the *Quarantine Act 1908*, to bring Christmas Island regulations into line with those throughout Australia, including the Cocos Islands.²⁷⁴ It also permitted the exercise of quarantine powers by contractors, a provision which Labor opposed strongly.²⁷⁵ Following the equine flu outbreak, the *Horse Disease Response Levy Act 2011* introduced a levy to support fast response from Federal and State Governments and industry, in any future outbreaks.²⁷⁶ Legislative interest in plant biosecurity and the potential impact on local primary industry of the introduction of exotic disease with fruit imports led to two private members' Bills which had not passed at the time of writing.

The Beale Review and new threats led the Government to introduce a new biosecurity regime, primarily to support and protect local primary industry exports. With some \$39.3bn in annual food and fibre exports as well as 300,000 jobs involved, a new risk management framework was essential. Consequently, the *Biosecurity Bill 2012* and the *Inspector-General of Biosecurity Bill 2012* were introduced in late November 2012,²⁷⁷ to reflect the nature and extent of contemporary trade and travel, while providing an independent review and audit mechanism for the new processes.²⁷⁸

²⁷² *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 257, 15 September 2003, p. 20070.

²⁷³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 297, 19 March 2008, pp. 2203-04.

²⁷⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 245, 29 May 2002, p. 2559.

²⁷⁵ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 259, 27 November 2003, p. 23376.

²⁷⁶ *Commonwealth Parliamentary Debates*, House of Representatives, 6 July 2011, p. 7720.

²⁷⁷ *Commonwealth Parliamentary Debates*, Senate, 28 November 2012, pp. 10082 and 10086.

Neither Bill had passed at the time of writing.

²⁷⁸ *Commonwealth Parliamentary Debates*, Senate, 28 November 2012, pp. 10084 and 10087-88.

Environmental Legislation

From 2002, further legislative protection was sought for the Great Barrier Reef Marine Park (GBRMP), against ship-sourced oil spills and from oil exploration on the Reef. Several unsuccessful Opposition Bills reflected the fears that oil exploration would be allowed on the Reef.

The new Labor Government in 2008, introduced the *Great Barrier Reef Marine Park and Other Legislation Amendment Act 2008*. Following a 2006 review of the Marine Park Act, the 2008 Act produced a new legislative framework for the Park, establishing '... a robust, comprehensive, regulatory framework for the Great Barrier Reef fit for meeting the challenges of the future.'²⁷⁹ The new Act also better integrated the requirements of the *Environmental Protection and Biodiversity Conservation Act* and other relevant legislation.²⁸⁰

Environmentally sensitive Antarctica benefited from legislation, with the *Antarctic Treaty (Environmental Protection) Amendment Act 2010* designed to meet obligations under the *Madrid Protocol to the Antarctic Treaty*²⁸¹. This Act produced more stringent provisions for species protection and the control of entry of organisms to the Antarctic territory.²⁸² Subsequently, the *Antarctic Treaty (Environmental Protection) Amendment Act 2011* enabled *Madrid Protocol* obligations for seal protection, insurance and contingency planning for Antarctic tourism and managing the landing of passengers from ships.²⁸³

Legislation designed to extend liability for marine oil spills appeared in 2002 through the *Protection of the Sea (Prevention of Pollution from Ships) Amendment Act 2002*.²⁸⁴ It provided for prosecution of any person whose reckless conduct contributed to an oil spill, and rectified an existing anomaly by ensuring it covered offences committed in

²⁷⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 299, 18 June 2008, p. 5130.

²⁸⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 299, 18 June 2008, p. 5130.

²⁸¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 315, 10 February 2010, p. 923.

²⁸² *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 315, 10 February 2010, p. 924.

²⁸³ *Commonwealth Parliamentary Debates*, House of Representatives, 23 November 2011, p. 13557.

²⁸⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 244, 20 February 2002, p. 510.

Australia's EEZ.²⁸⁵ Having polluters, or potential polluters, pay for prevention and damage control measures was a feature of much of the legislation and was extended with the *Protection of the Sea (Shipping Levy) Amendment Act 2005*.²⁸⁶ This Act imposed a levy on shipping to enable the Australian Maritime Safety Authority to control and combat oil spills.

More regulation followed with the *Protection of the Sea (Powers of Intervention) Amendment Act 2006*.²⁸⁷ It ensured clarity of rights and responsibilities for industry, the States and Commonwealth throughout the EEZ.²⁸⁸ Later in 2006, the *Maritime Legislation Amendment (Prevention of Pollution from Ships) Act 2006* implemented revised Annexes I and II of (MARPOL).²⁸⁹ Annex I covered the introduction of double-hulled tankers, while Annex II related to carriage requirements for chemicals and more stringent limits for the discharge of some noxious liquids.²⁹⁰ Additionally, the *Protection of the Sea (Civil Liability For Bunker Oil Pollution Damage) Act 2008* provided for compensation to anyone affected by leaking bunker oil from ships other than tankers, which were covered separately.²⁹¹ This Act required ships carrying bunker oil to be insured adequately and required damages to be paid even after accidental spills.²⁹²

That was still insufficient, and the *Protection of the Sea Legislation Amendment Act 2008* implemented the 2003 protocol of the *International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992*.²⁹³ It was precipitated

²⁸⁵ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 244, 20 February 2002, p. 510.

²⁸⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 274, 8 September 2005, p. 141.

²⁸⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 280, 10 May 2006, p. 162.

²⁸⁸ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 280, 10 May 2006, p. 162.

²⁸⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 285, 11 October 2006, p. 1. MARPOL is the *International Convention for the Prevention of Pollution from Ships, 1973*, as modified by the 1978 Protocol.

²⁹⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 285, 11 October 2006, p. 1

²⁹¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 297, 20 March 2008, p. 2391.

²⁹² *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 297, 20 March 2008, pp. 2391-2.

²⁹³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 299, 18 June 2008, p. 5125.

by fears of inadequate compensation arrangements; especially for the GBRMP,²⁹⁴ and provided for obtaining compensation from offending ships not calling at Australian ports.²⁹⁵ Air pollution by ships was dealt with in the *Protection of the Sea Legislation Amendment Act 2010*, reflecting Schedule VI of MARPOL, to reduce the level of sulphur content in fuel oil.²⁹⁶

To counter oil pollution at sea the *Protection of the Sea (Prevention of Pollution from Ships) Amendment (Oil Transfers) Act 2011* reflected amendments to MARPOL Annex I and applied to all tankers of more than 150 tonnes transferring oil at sea.²⁹⁷ The April 2010 grounding of the MV *Shen Neng I* in the Great Barrier Reef resulted in more change, through the *Maritime Legislation Amendment Act 2011*, which made it an offence negligently to operate a vessel in Australian waters and cause pollution or damage to the marine environment.²⁹⁸ The *Maritime Legislation Amendment Bill 2012* was introduced to strengthen marine pollution prevention. It imposed stricter processes on the management of ship-sourced sewage and garbage and promoted energy efficient ship design and ship energy management plans.²⁹⁹ At the time of writing, the Bill was still before the House.

Anti-fouling was addressed by the *Protection of the Sea (Harmful Anti-Fouling Systems) Act 2006*, which implemented the *International Convention on the Control of harmful Anti-Fouling Systems on Ships, 2001*.³⁰⁰ It banned the use of organotins on all Australian ships, because of effects on shellfish.³⁰¹ Further protective measures were enacted through the *Environment and Heritage Legislation Amendment Act (No. 1) 2006*, which streamlined administrative processes and strengthened compliance and enforcement.³⁰²

²⁹⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 299, 18 June 2008, p. 5126.

²⁹⁵ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 299, 18 June 2008, p. 5127.

²⁹⁶ *Protection of the Sea Legislation Amendment Act 2010*, Parliament of Australia, <http://www.aph.gov.au/Parliamentary_Business/Bills> (2 July 2013).

²⁹⁷ *Commonwealth Parliamentary Debates*, House of Representatives, 25 May 2011, p. 4490.

²⁹⁸ *Commonwealth Parliamentary Debates*, House of Representatives, 22 September 2011, p. 11162.

²⁹⁹ *Commonwealth Parliamentary Debates*, House of Representatives, 27 June 2012, p. 8143.

³⁰⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 282, 22 June 2006, pp. 3-4.

³⁰¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 282, 22 June 2006, p. 4.

³⁰² *Commonwealth Parliamentary Debates*, Senate, Vol. 244, 6 November 2006, p. 137.

Environmental legislation was used to manage fishing and whaling. The *Environmental Protection and Biodiversity Conservation Amendment (Recreational Fishing for Mako and Porbeagle Sharks) Act 2010* lifted restrictions on recreational fishers imposed by the *Environmental Protection and Biodiversity Conservation Act 1999*, which discriminated insufficiently between endangered and other fish species.³⁰³ The Greens Party presented two Bills related to Japanese whaling in the Southern Ocean, neither of which had been passed at the time of writing.³⁰⁴

Customs Legislation

With drug smuggling a serious problem, the *Customs Amendment Act 2004* expanded the list of drugs for which a commercial quantity could be defined, allowing sentences up to life imprisonment for some offences.³⁰⁵ In a related measure, the *Customs Legislation Amendment Act (No. 1) 2002* allowed Customs Officers to seize, without a warrant, illegal goods on vessels travelling between Papua New Guinea and Australia in the Torres Strait Protected Zone, thereby relieving safety and operational problems.³⁰⁶ Additionally, the *Border Security Legislation Amendment Act 2002* amended customs, migration and fisheries legislation and the *Evidence Act 1995* and gave Customs officers more powers to control the movement of people and goods into and out of Australia.³⁰⁷ Maritime provisions included giving ship crew and passenger lists to Customs and Immigration before arrival, mandatory reporting of in-transit goods, access for Customs Officers to vessel monitoring systems data collected by the Australian Maritime Safety Authority, and simplifying application of Customs Officers power to carry firearms.³⁰⁸

³⁰³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 316, 25 February 2010, pp. 1841-4.

³⁰⁴ *Bill Search Results*, Parliament of Australia, <www.aph.gov.au> (16 April 2013). See also *Commonwealth Parliamentary Debates*, Senate, 9 February 2012, p. 533, and *Commonwealth Parliamentary Debates*, Senate, 9 February 2012, p. 534.

³⁰⁵ *Commonwealth Parliamentary Debates*, Senate, Vol. 231, 8 December 2004, p. 1.

³⁰⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 246, 19 June 2002, p. 3777.

³⁰⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 244, 12 March 2002, p. 1046.

³⁰⁸ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 244, 12 March 2002, p. 1046.

Subsequently, the *Customs Legislation Amendment (Airport, Port and Cargo Security) Act 2004* strengthened Customs Officers' powers to detain offenders entering or leaving Australia.³⁰⁹ It also gave Customs Officers powers to control people and goods movements in Customs areas and it enabled consideration of port security plans in determining whether a sea port should be appointed as such under the *Customs Act*.³¹⁰

In 2006, the *Customs Legislation Amendment (Border Compliance and Other Measures) Act 2006* generated several amendments to the *Customs Act 1901*, the most important granting power to Customs Officers to restrict the entry of security identification card holders to ships and wharves.³¹¹ This Act was another response to the heightened awareness of the potential for maritime terrorism. The *Customs Amendment (Strengthening Border Controls) Act 2008*, added to the powers of Customs Officers, especially in dealing with illegal imports.³¹² For the first time, the Act enabled Customs Officers to search persons immediately on boarding a vessel or aircraft for weapons, or evidence of the commission of a crime.

Further amending legislation appeared late in 2008, illustrating the evolution of threats to Customs powers. Thus, the *Customs Amendment (Enhanced Border Control and Other Measures) Act 2008* clarified boarding powers for vessels in offshore platform safety zones, denoted the power to use reasonable force in boarding a pursued ship and aligned Customs boarding powers with those of other Commonwealth legislation and with the LOSC.³¹³

The *Customs Legislation Amendment (Name Change) Act 2009* changed the name of the organization to the Australian Customs and Border Protection Service,³¹⁴ while the

³⁰⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 263, 27 May 2004, p. 29312.

³¹⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 263, 27 May 2004, p. 29312.

³¹¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 279, 29 March 2006, p. 11.

³¹² *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 297, 20 March 2008, p. 2401.

³¹³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 304, 3 December 2008, pp. 12306-7, and *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 304, 3 December 2008, p. 12307.

³¹⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 306, 12 March 2009, p. 2498

Customs Amendment (Serious Drugs Detection) Act 2011 introduced the trial of x-ray scanning equipment to search people suspected of carrying illegal drugs.³¹⁵ The latter highlighted that despite earlier efforts, drug smuggling continued to be a border protection problem.

Other Legislation

Terrorism was the catalyst for a range of new maritime security legislation. The *Maritime Transport Security Act 2003*, responded to terrorist attacks against the US on 9 September 2001 and the bombing of the MV *Limburg* off the Yemen coast on 6 October 2002.³¹⁶ The Act incorporated the International Maritime Organization (IMO) revisions to the *Safety Of Life At Sea (SOLAS) Convention* and enabled Australia to implement the International Ship and Port Facility Security Code.³¹⁷ It provided the legislative basis for comprehensive ship and port security, based on individual security plans for Australian regulated ships, ports and port facilities. It also permitted punitive action against non-compliant foreign ships.³¹⁸

Amending legislation was produced in 2005 through the *Maritime Transport Security Amendment Act 2005*, following the Prime Minister's 2004 Task Force review of maritime security for offshore oil and gas facilities.³¹⁹ The Act introduced regulations for the security of offshore resource platforms and ships and aircraft servicing them, especially because of the potential threat of terrorism, and introduced amendments supporting the introduction of Maritime Security Identification Cards.³²⁰

Other amending Acts acknowledged the failure to include all the necessary security measures in the original Acts and to understand the full implications of the legislation.

³¹⁵ *Commonwealth Parliamentary Debates*, House of Representatives, 23 February 2011, p. 1093.

³¹⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 257, 18 September 2003, p. 20443.

³¹⁷ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 257, 18 September 2003, p. 20443

³¹⁸ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 257, 18 September 2003, p. 20443

³¹⁹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 270, 25 May 2005, p. 6, and *Maritime Transport Security Amendment Act 2005*, <www.comlaw.gov.au/Series/C2005A00067> (28 February 2013).

³²⁰ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 270, 25 May 2005, p. 6.

The *Maritime Transport and Offshore Facilities Security Amendment (Maritime Security Guards and Other Measures) Act 2005* enhanced security provisions for ports, including the power to request identification and to remove unauthorized people from specified port areas. This complemented the existing power to detain.³²¹ The *Maritime Transport and Offshore Facilities Security Amendment (Security Plans and Other Measures) Act 2006* later simplified the administrative demands of preparation, submission and maintenance of security plans.³²² The Opposition criticized the Government's use of foreign ships to carry ammonium nitrate around the coast, given the chemical's connection with explosives.³²³ The criticism focused on the security implications of the 'careless' use of single voyage permits for foreign ships, without crew security checks.³²⁴

To further strengthen security, the Government introduced the *Inspector of Transport Security Act 2006*, which nominated an independent inspector to investigate security incidents throughout the transport industry in Australia.³²⁵ A 'consequential provisions' Act also passed in 2006, exempted information obtained in any such investigation from freedom of information requests. This is an example of legislation having to be amended because of apparently inadequate or rushed drafting.³²⁶

The growth in constabulary function legislation and its increasing complexity were reflected in the *Maritime Powers Bill 2012*, the result of a Government review of relevant legislation.³²⁷ The Bill³²⁸ sought to replace 35 separate Commonwealth Acts with a

³²¹ *Commonwealth Parliamentary Debates*, Senate, Vol. 233, 23 June 2005, p. 7.

³²² *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 279, 29 March 2006, p. 14, and *Maritime Transport and Offshore Facilities Security Amendment (Security Plans and Other Measures) Act 2006*, <www.comlaw.gov.au/Series/C2005A00067>, (28 February 2013).

³²³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 284, 4 September 2006, p. 119.

³²⁴ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 284, 13 September 2006, p. 167.

³²⁵ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 285, 18 October 2006, p. 6, and *Inspector of Transport Security Act 2006*, <www.comlaw.gov.au/Series/C2006A00149> (28 February 2013).

³²⁶ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 285, 18 October 2006, p. 8, and *Inspector of Transport Security Act 2006*, <www.austlii.edu.au/au/legis/cth/num_act/iotspa2006682> (28 February 2013).

³²⁷ *Commonwealth Parliamentary Debates*, House of Representatives, 30 May 2012, p. 6224.

³²⁸ The Bill gained assent on 27 March 2013. *Maritime Powers Bill 2012*, Parliament of Australia, <www.aph.gov.au> (16 April 2013).

single maritime enforcement law covering boarding, search, seizure and retention of property or people. It included safeguards for appropriate use.³²⁹

THE IMPLICATIONS FOR THE NAVY: NOT ALL PUBLICITY IS GOOD PUBLICITY

From 2002 to 2012 the implications for the Navy of its constabulary responsibilities became more significant. The patrol boats became more committed to constabulary work, to the detriment of regional deployments. Most significantly for the Navy, however the constabulary function overwhelmed the patrol boat force and at times involved several warships. This occurred despite the introduction of the Armidale class boats, which overcame many shortcomings of their predecessors. The often demanding workload for the patrol boat crews became a major challenge for the Navy and led to a new crewing structure for the Armidales. Finally, the reputation of the Navy, and the ADF more broadly, was questioned with respect to the treatment of irregular maritime arrivals.

Patrol Boat Tasking

Following the MV *Tampa* incident in August 2001, irregular maritime arrival numbers reduced dramatically. The patrol boat force then shifted to countering IUU fishing, with 111 foreign fishing vessels apprehended in 2002 and 135 by early October 2005.³³⁰ Even as IUU fishing remained a major task in 2009, irregular maritime arrival numbers also began to grow.³³¹ Tables 7-3 and 7-4 confirm the timing and scope of the new wave of arrivals.

³²⁹ *Commonwealth Parliamentary Debates*, House of Representatives, 30 May 2012, p. 6224.

³³⁰ See, Graham Davis, 'Blitz on Southern Ocean Poachers', *Navy News*, Vol. 46, No. 2, 27 February 2003, p. 2, and Michael Brooke, 'Big fish freeze', *Navy News*, Vol. 48, No. 18, 6 October 2005. (No page number provided in on line version).

³³¹ Stacy Ward, 'Border Protection catches illegal fishermen up north', *Navy News*, Vol. 52, No. 15, 20 August 2009, p. 3, and 'HMAS *Glenelg* intercepts vessel near Christmas Island', *Navy News*, Vol. 52, No. 18, 1 October 2009, p. 5.

Tasks	'02-03	'03-04	'04-05	'05-06	'06-07	'07-08	'08-09	'09-10	'10-11	'11-12	'12-13
South Pacific deployment	8	13	7	7		2	4	1		4	
Southeast Asia deployment	4		2	2	1	1	5	2	5	1	
Exercises - domestic	9	10	11	5	2	2	5	4	7	2	2
SAR	6	11	3	6	1	5	13	16	17	9	13
Public relations	2	5	1	6	2	8	13	16	13	2	1
Scientific trials			2		1	1	2	2		1	
TOTALS	29	39	26	26	7	19	42	41	42	19	16

Table 7-7: Number of Fremantle and Armidale Class Patrol Boat Tasked For other than the Constabulary Function, 2002-13.³³²

The most evident implication of patrol boat constabulary tasking was the reduced commitment to other tasks, especially deployments to the South Pacific and Asia and exercises in local waters, especially from 2005-2006 onwards. This is illustrated in Table 7-7 which identifies the major employment undertaken by the patrol boat force, other than for the constabulary function, between 2002 and 2013. The reduced deployment program was of greater consequence for the South Pacific, where security and stability was rated the ADF's second tasking priority in the 2009 Defence White Paper.³³³ Between 1989-90 and 2001-02 the patrol boats undertook 140 regional deployments, while from 2002-03 to 2012-13 the number of deployments dropped to 69. (See Table 6-3 in Chapter 6).

The patrol boats were especially suited for engagement with the limited maritime agencies of Pacific Island Countries, because they could berth in the region's smaller ports and were engaged in similar work. The paucity of South Pacific patrol boat

³³² The information in this table comes from issues of *Navy News*, the fortnightly RAN internal newspaper, for the period January 2002 to December 2012, as well as from the annual series of books, *Australia's Navy*, which finished in 2008. It also includes information from *Patrolling the Line 2002* and *Patrolling the Line 2003*, annual summaries of patrol boat activity, regrettably published only in those two years. For the years 2008-2012 information is also taken from the monthly reports rendered by each patrol boat commanding officer. These reports are the most complete records available of patrol boat activity.

³³³ *Defending Australia in the Asia Pacific Century: FORCE 2030*, Commonwealth of Australia, 2009, p. 54.

deployments, especially from 2005-06, led to a significant reduction in the ADF's presence there as the patrol boats were not replaced by warships.³³⁴

Patrol boat deployments to Southeast Asia also reduced substantially, although with less impact on Defence engagement. Major surface combatants and other warships continued to visit Southeast Asia and other parts of Asia-Pacific, sometimes combining these deployments with constabulary tasking. For example, HMAS *Adelaide* was on Operation *Relax* patrol before deploying to Timor Leste in mid-2006.³³⁵

Table 7-8 illustrates constabulary activity for the Fremantle class patrol boats during 2002 and 2003, noting that the days at sea column represents the total days at sea for all activities. Days at sea for individual patrol boats varied from 75 to 155, with major maintenance demands the main reason for low figures. The achieved rate of effort is commendable as the Fremantles were beyond their designed 20 year lifespan, and most of the boats had operated consistently in challenging weather conditions. The rate of effort is commendable also because of the impact on patrol boat crews, who were responsible for ship husbandry and immediate maintenance when alongside.

Year of Activity	FCPB³³⁶ Days at Sea	Boardings	Apprehensions
2002	1815	441	92
2003	1923	294	100
Ave. per patrol boat	124	25	7

*Table 7-8: Fremantle class patrol boat rates of effort for 2002 and 2003.*³³⁷

The intensity of the patrol boat tasking, especially against IUU fishing, led to cooperation with the Indonesian Navy to limit incursions by Indonesian fishers in Australia's EEZ. The most tangible outcome was annual coordinated patrols in

³³⁴ See Table 7-7 for the quite dramatic fall off in South Pacific deployments in the later years of the decade.

³³⁵ LCDR Brian Chase, 'Adelaide provides "visible presence"', *Navy News*, Vol. 49, No. 12, 13 July 2006. Note that the operations involving constabulary tasks included; *Relax I*, and *II*, *Cranberry* and *Resolute*.

³³⁶ FCPB is Fremantle Class Patrol Boat.

³³⁷ These figures have been compiled from individual patrol boat activity reports in *Patrolling the Line 2002* and *Patrolling the Line 2003*.

northern waters involving RAN and Indonesian Navy patrol boats, beginning in April 2010. These deployments jointly enforce maritime boundaries and share relevant information.³³⁸

The Fleet and the Constabulary Function

Other warships were also assigned to constabulary tasks. At different times, all six guided missile frigates, all eight Anzac class frigates, five of the six mine warfare vessels, all six heavy landing craft, all three major amphibious ships, two of the six hydrographic survey vessels, both replenishment ships, one support vessel, and a Sea King helicopter deployed to Christmas Island, conducted constabulary tasks.³³⁹ Table 7-9 indicates the number of times individual warships, other than patrol boats, undertook constabulary tasks from 2002 to 2012.

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Fleet units	38	20	16	20	27	26	10	7	4	8	8

Table 7-9: Fleet unit involvement in constabulary tasking³⁴⁰

Other operational demands reduced the Fleet’s capacity for constabulary operations. Table 7-10 below, provides a synopsis of the other major operations between 2002 and 2005.

³³⁸ ‘Neighbours join for first time patrol exercise’, *Navy News*, Vol. 53, No. 8, 13 May 2010, p. 2.

³³⁹ These figures were provided by the Sea Power Centre – Australia and were taken from a project which is assessing the RAN personnel commitment to the various constabulary operations conducted since 1997.

³⁴⁰ This information is taken from statistics gathered by the Sea Power Centre-Australia in support of the case developed for individual officer and sailor entitlement to the Operational Service Medal – Border Protection. Some of the individual ship attachments were for periods as short as 24 hours.

Operation	Duration	Fleet Commitment
<i>Boomerang</i>	2002	Surface combatant global deployment – cancelled because of other commitments
<i>Slipper</i>	Nov 2001 – June 2003	Support for operations against terrorism – surface combatants and amphibious ships
<i>Bastille</i>	January – March 2003	Build up to Iraq War – surface combatants and amphibious ship
<i>Falconer</i>	March – July 2003	Iraq War operations – surface combatants and amphibious ship
<i>Anode</i>	July 2003 – November 2004	Support for Solomon Islands peace mission – mine warfare and amphibious ships and patrol boats,
<i>Niue Assist</i>	Early 2004	Post cyclone help by several Fleet units
<i>Catalyst</i>	March 2004 – June 2005	Post-Iraq War operations - surface combatants
<i>Sumatra Assist</i>	December 2004 – April 2005	Assistance after the 2004 tsunami – amphibious ship

Table 7-10: RAN Contribution to ADF Operations 2002 - 2005³⁴¹

As an example, in October 2002 the Government sought an additional ship for Operation *Relax*. At the time, apart from the patrol boats, HMA Ships *Arunta*, *Newcastle*, *Warramunga*, *Manoora* and *Westralia* were already patrolling. The Government asked for HMAS *Kanimbla*, which was preparing to proceed to the Solomon Islands in response to political unrest.³⁴² The period August 2001 to June 2002 saw 25 RAN ships

³⁴¹ Vanessa Bendle, David Griffin and Peter Laurence, eds., *Database of Royal Australian Navy Operations, 1990-2005*, Sea Power Centre-Australia Working Paper No. 18, Canberra, 2005, pp. 44-61.

³⁴² Marian Wilkinson, 'Secret file: Operation Relax', *Sydney Morning Herald*, 27 October 2002, <www.smh.com.au/articles/2002/10/27> (13 July 2013).

allocated to Operation *Relex*.³⁴³ This combination of the constabulary function and the demands of other emerging tasks severely strained the Fleet. One commentator noted that, ' ... the extent of the operational area almost totally consumed the naval assets available; the shortage of amphibious ships, in particular, was at times a significant constraint on the ability to move people'.³⁴⁴

The Navy had reservations about using surface combatants because of the ' ... perceived inefficiency in using highly trained individuals and expensive equipment for what were ostensibly policing tasks'.³⁴⁵ These concerns were exacerbated by the decision, after the 2003 Iraq War, to continue surface combatant deployments to the Arabian Sea and Persian Gulf.³⁴⁶ Such was the pressure on the Fleet that, to apprehend the suspected drug running ship MV *Pong Su*, HMAS *Stuart* was withdrawn from maintenance in Garden Island Dockyard and made ready for sea within six hours.³⁴⁷

Unfortunately for the Navy, as the Senate Inquiry report into 'a certain maritime incident' noted, larger and more capable surface combatants were needed for the Christmas Island to Ashmore Island barrier against boats carrying irregular maritime arrivals.³⁴⁸ Reasons for this included the capacity of surface combatants to carry helicopters for reconnaissance, boardings and casualty transfer, and their greater endurance and larger crews. Therefore, the Navy had to employ surface combatants in the constabulary function, especially while the threats exceeded the capacity of the patrol boat force.

The demands of the constabulary function resulted in the allocation of the Navy's two hydrographic survey ships to Operations *Relex* and *Resolute*. The application to constabulary tasks of Australia's only two oceangoing survey ships immediately and

³⁴³ David Stevens, "To disrupt, deter and deny", in Bruce Elleman and S.C.M Paine, eds., *Naval Blockades and Seapower: Strategies and counter-strategies, 1805–2005*, Routledge, Abingdon, UK, 2006, p. 229.

³⁴⁴ Stevens, 'To disrupt, deter and deny', p. 231.

³⁴⁵ Stevens, 'To disrupt, deter and deny', p. 231.

³⁴⁶ LCDR Simon Bateman and Graham Davis, 'Ridin' shotgun in the Gulf', *Navy News*, Vol. 46, No. 17, 25 September 2003, p. 2.

³⁴⁷ 'Horse Trader Seized: Drug smuggler gripped by Terror', *Navy News*, Vol. 46, No. 7, 8 May 2003, pp. 1-2.

³⁴⁸ *Senate Select Committee for an inquiry into a certain maritime incident*, Parliament of Australia, Canberra, 2002, p. 19.

directly affected their primary national role; contributing to the generation, publication and distribution of nautical charts for Australian waters.³⁴⁹ Allocating the survey ships to Operation *Relex* in 2002 and 2003 led to a 42 per cent reduction in hydrographic data collected in 2002 and a shortfall of 35 per cent in 2003.³⁵⁰ This had the potential for a significant degradation in survey activity and chart production.

The hydrographic ships had to be armed, their crews supplemented and trained for constabulary work; including the provision of boarding and steaming parties. The two ships embarked Squirrel helicopters and two rigid hull inflatable boats, the latter in place of survey motor launches. The ships' helicopters flew many hours during their constabulary tasking, illustrating the value of embarked helicopters for this work and highlighting the inability of the *Armidales* to operate them.³⁵¹

The Huon class minewarfare vessels were allocated to Operation *Relex* as replacements for the *Armidale* class, which were experiencing significant mechanical problems, achieving only 60 per cent of their allocated available days in 2006-07.³⁵² Preparing and using the mine warfare vessels for constabulary operations cost an additional \$95.6m over four years.³⁵³ Two of the six Huon class were being placed in care and maintenance and had to be reactivated for operational service.³⁵⁴ Much work,³⁵⁵ additional equipment and crew training were needed, although some of the Huon class crews had served previously in patrol boats.³⁵⁶

Using the Huon class for constabulary work was not as problematic as for other warships. Patrolling was a priority role for them and they were generally well suited to

³⁴⁹ 'About Us', *Australian Hydrographic Service*,

<<http://www.hydro.gov.au/aboutus/aboutus.htm>> 30 July 2013.

³⁵⁰ Bendle, Griffin and Laurence, eds., *Database of Royal Australian Navy Operations, 1990 – 2005*, pp. 45 and 47.

³⁵¹ LEUT Damian Casey, 'Hydro ship goes grey for patrol duty', *Navy News*, Vol. 45, No. 4, 4 March 2002, p. 3; and LEUT Damian Casey, 'Colourful year for White crew', Vol. 46, No. 4, 27 March 2003, p. 7.

³⁵² *Defence Annual Report 2006-07*, p. 62, <<http://www.defence.gov.au/budget/06-07/>> (1 August 2013).

³⁵³ Michael Brooke, 'Huons reactivated', *Navy News*, Vol. 49, No. 9, 1 June 2006.

³⁵⁴ *Defence Annual Report 2004-05*, Commonwealth of Australia, Canberra, 2005, p. 176.

³⁵⁵ SBLT Tony Gleeson, 'Joining the hunt', *Navy News*, Vol. 49, No. 9, 1 June 2006.

³⁵⁶ Michael Brooke, 'Yarra joins Resolute', *Navy News*, Vol. 50, No. 6, 19 April 2006.

it.³⁵⁷ Yet, in 2003, the year in which the last of the six ships was delivered, the Defence Capability Review recommended two of the six be placed in extended readiness, effectively taking them out of service.³⁵⁸ This suggests that mine warfare was not a high priority within either the RAN or the ADF. There is a mild irony as the RAN's first dedicated class of patrol boats, the Attack class, emerged from the Navy's experience in using the previous generation of minewarfare vessels, the Ton class, for patrol duties during Confrontation with Indonesia in the 1960s.

Allocation of the amphibious ships *Tobruk*, *Kanimbla* and *Manoora* to the constabulary role was merely an extension of their primary function, as they were used to transport irregular maritime arrivals to detention centres on Manus Island and Nauru. The main issue for the Navy in using the amphibious ships was the increasing difficulty in meeting all tasking demands. They were also involved in Operations *Slipper*, *Bastille*, *Falconer*, *Anode* and *Sumatra Assist*. (See Table 7-10 above.) The demands on these ships were so great that essential maintenance work was not conducted, leading to unavailability for relief work in the wake of Cyclone *Yasi* and severe embarrassment for the Navy.³⁵⁹ The heavy landing craft were not in as great demand for constabulary tasking because of their slowness and limited oceangoing capability.

The Armidale Class Patrol Boats

By 2003 replacement of the Fremantles had become urgent, as they were increasingly difficult to maintain.³⁶⁰ Replacements needed to have a range of 3,000nm, be capable of conducting two boardings simultaneously, have better seaworthiness and be able to carry 20 additional personnel in austere accommodation.³⁶¹ The force of 12 larger Armidale class patrol boats was planned to be available for 3,000 days per year, significantly more than the Fremantles.³⁶²

³⁵⁷ Graham Davis, 'Huons ready for any task', *Navy News*, Vol. 47, No. 14, 12 August 2004, p. 3.

³⁵⁸ *Defence Annual Report 2004-05*, Commonwealth of Australia, Canberra, 2005, p. 176.

³⁵⁹ Cameron Stewart, 'More defects found in crippled HMAS Tobruk', *The Australian*, 16 June 2011, <<http://www.theaustralian.com.au/national-affairs>> (2 August 2013).

³⁶⁰ Leon Sykes and Commander Ken Burleigh, eds., *Patrolling the Line 2003*, Coleman's Printing, Darwin, 2004, p. 8.

³⁶¹ CMDR Craig Kelly, 'Minister announces patrol boat shortlist', *Navy News*, Vol. 45, No. 15, 5 August 2002, p. 12.

³⁶² Capt Frank Kresse, 'RPB multi-crewing an advantage', *Navy News*, Vol. 45, No. 23, 21 November 2002, p. 1.

Table 7-11 illustrates the growth in patrol boat size and capability from the Attack class to the current Armidales, which brought a new level of capability to the RAN from mid-2005. Apart from the extended range and more effective stabilized 25mm gun, the Armidales were more seaworthy, giving a smooth ride in even rough conditions, and provided much improved comfort for their crews.³⁶³

Class	Length	Displacement	Range	Top Speed	Crew	Draught
Attack	32.5m	132 tonnes	1188nm at 13kts	24kts	19	1.9m
Fremantle	42.0m	220 tonnes	2360nm at 12kts	30kts	24	1.8m
Armidale	56.8m	300 tonnes	3000nm at 12kts	25kts	21	2.7m

Table 7-11: Comparison of Attack, Fremantle and Armidale classes characteristics³⁶⁴

Two additional Armidales were purchased, bringing the force to 14 boats, because of a perceived need for greater security for oil and gas platforms on the north west shelf. This was announced before the 2004 federal election, with a commitment to introduce unmanned aerial vehicles for long endurance surveillance.³⁶⁵ Regrettably, the Armidales would also suffer serious maintenance problems.

Their reliability problems included hull, machinery and fitted equipment. In October 2006 three of the seven boats then in service suffered water- contaminated fuel, causing all seven to be withdrawn from service.³⁶⁶ In late 2007, incorrect operation of the sewage treatment plant in HMAS *Maitland* caused a toxic hazard and limits were imposed on the use of the austere accommodation.³⁶⁷ Amidst doubts about their reliability, in November 2011 the Chief of the Navy publicly defended the boats and

³⁶³ Michael Brooke, 'Road Test', *Navy News*, Vol. 49, No. 18, 5 October 2006.

³⁶⁴ The information in the table comes from performance information provided on the RAN website. <<http://www.navy.gov.au/fleet-ships-boats-craft/available-ship-histories>> (5 August 2013).

³⁶⁵ David Sibley, 'Two more boats confirmed', *Navy News*, Vol. 48, No. 8, 19 May 2005. This commitment remains unfulfilled at the time of writing in 2013.

³⁶⁶ Hugh McKenzie, 'Mission ready: Boats back in action', *Navy News*, Vol. 49, No. 19, 19 October 2006.

³⁶⁷ DGNCC, 'Navy stands by Armidale boats, crews', *Navy News*, Vol. 50, No. 21, 15 November 2007. Those limits still apply almost six years later.

their crews from criticism in *The Australian*.³⁶⁸ Problems continued and another report in *The Australian* in July 2013 noted ongoing maintenance problems with the boats, and the need for more intensive maintenance schedules. The report also indicated that the Armidales had to be supplemented by a minehunter and Anzac class frigate in 'recent months'.³⁶⁹

Like their predecessors, the Armidales cannot embark and operate helicopters and rely for aerial surveillance on Coastwatch and RAAF maritime patrol aircraft. The value of supplementary surveillance by unmanned aerial vehicles has been acknowledged. Yet a trial conducted with HMAS *Pirie* in late 2006, with a Mariner unmanned aerial vehicle, has not yet led to acquisition.³⁷⁰

Embarked helicopters are a major asset, which can extend the surveillance capability of the patrol boat and transfer personnel, especially in emergencies. Possibly the best recent example came in the aftermath of the explosion on board SIEV 36, in which five people died and several others were injured. Without helicopters of their own, the two Armidales involved had to sail to the nearest gas platform and transfer the injured, to await evacuation ashore by helicopters sent from Darwin.³⁷¹

Experience with the Armidale class led to consideration of their replacements being much larger vessels, also capable of replacing current hydrographic survey and mine warfare ships. The 2009 Defence White Paper, *Defending Australia in the Asia Pacific Century: FORCE 2030*, proposed development of a common hull vessel of about 2,000 tonnes, possibly able to operate helicopters or unmanned aerial vehicles.³⁷² Earlier consideration of a similarly sized vessel for constabulary work did not proceed and it

³⁶⁸ 'Chief of Navy corrects the record on patrol boat capability', *Navy News*, Vol. 54, No. 21, 10 November 2011, p. 22.

³⁶⁹ Cameron Stewart, 'Sailors forces to spend too much time at sea', *The Australian*, 31 July 2013, p. 4.

³⁷⁰ 'Eye in the sky a big bonus', *Navy News*, Vol. 49, No. 22, 30 November 2006. The Defence Capability Plan 2012 (Public version) indicates that Project Air 7000, Phase 1B for a multi-mission unmanned aerial vehicle is expected to produce an operational capability between 2019 and 2022. *Defence Capability Plan: Public Version 2012*, Department of Defence, Canberra, 2012, p. 62. <<http://www.defence.gov.au/public/capabilityplan/>> (6 August 2013).

³⁷¹ 'Above and Beyond', *Navy News*, Vol. 53, No. 6, 15 April 2010, p. 7.

³⁷² *Defending Australia in the Asia Pacific Century: FORCE 2030*, Commonwealth of Australia, Canberra, 2009, p. 73.

remains to be seen whether such a significant step will be made with the next iteration of patrol vessels.³⁷³

The Patrol Boat Crews

Crewing the patrol boats has been a major challenge, as the Navy experienced substantial personnel shortages throughout the period. A Department of Defence answer to a Parliamentary question on notice, in June 2003, admitted that critical shortages then included patrol boat navigators and executive officers, as well as sailors in the technical trades and communication and information systems operators; all categories vital to patrol boat operations.³⁷⁴ Personnel shortages affected the patrol boat force more than other Navy elements because of the small number of people in each crew; 24 for the Fremantles and 21 for the Armidales. As reported by the Patrol Boat Force's monograph *Patrolling the Line 2003*, '... the critical nature of many FCPB billets means that the loss of just one sailor can mean the patrol boat is unable to sail'.³⁷⁵

There were other problems, including crew structure instability in the Fremantles during 2002 and 2003. (See table 7-12 below.) The year columns show the number of people who served in each Fremantle for those two years, and what that represented as a percentage of the nominal crew of 24. For both years the boats averaged crew turnover greater than 50 per cent.

³⁷³ Dibb, *Review of Australia's defence capabilities*, p. 129.

³⁷⁴ *Senate Budget Estimates Hearing, Question on Notice, Parliament of Australia*, 4-5 June 2003. <<http://www.defence.gov.au/ips/parliament/qons/>> (7 August 2013).

³⁷⁵ Leon Sykes and Commander Ken Burleigh, eds., *Patrolling the Line 2003*, Coleman's Printing, Darwin, 2004, p. 10.

Patrol Boat - Nominal Crew 24	Crew Turnover			
	2002		2003	
Fremantle	51	112%	41	71%
Warrnambool	37	54%	41	71%
Townsville	44	83%	49	104%
Wollongong	33	37%	37	54%
Launceston	36	50%	57	133%
Whyalla	43	79%	65	171%
Ipswich	32	25%	39	62%
Cessnock	40	67%	43	79%
Bendigo	44	83%	42	75%
Gawler	36	50%	45	87%
Geraldton	28	16%	44	83%
Dubbo	55	127%	47	96%
Geelong	39	62%	43	79%
Gladstone	34	41%	32	25%
Bunbury	36	50%	58	142%
Averages	37	55%	41	69%

Table 7-12: Fremantle class Crew Turnover for 2002-2003³⁷⁶

Causes included the need to release personnel for leave and for training courses, illness and other compassionate matters, as well as the overall personnel shortage. Nevertheless, turnover rates of the magnitude illustrated reflect the need to move personnel among patrol boats to fill short notice vacancies. This can lead to personnel losing their shore 'respite', dissatisfaction and higher separation rates, exacerbating the original problem.

Two major problems are evident in these figures. Firstly, they complicate the commanding officers' task of developing effective crews. Secondly, they create an extra training load within the boats and for external training organizations.³⁷⁷ HMAS *Fremantle* provides a stark illustration. About 75 per cent of the officers and sailors on board in January 2003 were not members of the crew in December 2002.³⁷⁸ Before

³⁷⁶ See LEUT Elise Burnside and CMDR Ken Burleigh, eds, *Patrolling the Line 2002*, Coleman's Printing, Darwin, 2003, and Sykes and Burleigh, eds., *Patrolling the Line 2003*. The activities of each patrol boat are chronicled in each edition, with crew members identified for each boat.

³⁷⁷ Examination of the monthly patrol boat commanding officers' activity reports for the years 2008 to 2012 exposes an almost continuous focus on individual and collective crew training. This reflected crew turnover and crewmembers joining without all required qualifications.

³⁷⁸ 'HMAS Fremantle', *Australia's Navy 2002-2003*, Goanna Print, Fyshwick, ACT, 2003, p. 41.

Fremantle could be ready for operations the new crew needed several days of training alongside in Darwin, and then at sea.

Navy remedial measures included the use of Reserves in the *Armidale* class boats. The Darwin Reserve pool provided 2,000 days of effort to the middle of 2008, with the expectation of 4,000 for the full year.³⁷⁹ At least one *Armidale* had a Reserve commanding officer in 2010.³⁸⁰ An effort was also made to improve conditions of service for the crews. Most noteworthy multi-crewing was introduced for the *Armidales*, involving three crews rotating between two boats and thus 21 crews for the 14 boats.

Multi-crewing took advantage of the *Armidales'* greater availability and provided more certainty and shore respite for the crews. The 14 *Armidales* were scheduled for 250 days availability each year; a total of 3,500 days for the force - 900 more than provided by the 15 *Fremantles*.³⁸¹ Crew duty was allocated in four 13 week cycles, during which crew members were assigned to a boat for nine weeks and were unassigned for four weeks. This arrangement provided more stable and predictable work patterns for the crews.³⁸² The principle was sound and initially the scheme worked, with the Commander of the Patrol Boat Group commenting that, 'Leave balances have been reducing steadily, individual readiness compliance levels are increasing and training proficiency shortfalls are reducing'.³⁸³

Over time however, the practice proved less satisfactory. Ongoing personnel shortages meant that short-notice assignments to operational patrol boats continued to reduce crew respite time. Also, the loss of 'ownership' associated with the traditional 'one crew to a ship' arrangement common in most navies, together with out-sourcing

³⁷⁹ LCDR Mick Gallagher, '2000 days... and counting...', *Navy News*, Vol. 51, No. 12, 10 July 2008. No breakdown was supplied to identify how many of the Reserve days were allocated to patrol boats - some at least would have been taken up by shore support organizations in Darwin.

³⁸⁰ 'People Power-meet some of the crew of *Assail 6 (Ararat)*', *Navy News*, Vol. 53, No. 6, 15 April 2010, p. 16.

³⁸¹ CAPT Aaron Ingram and Bernard O'Connor, 'Greater respite', *Navy News*, 18 October 2007, p. 4.

³⁸² Ingram and O'Connor, 'Greater respite', *Navy News*, p. 4.

³⁸³ Ingram and O'Connor, 'Greater respite', *Navy News*, p. 4.

maintenance to contractors, lessened the crews' sense of ownership.³⁸⁴ The Navy also formalized the system of 'operational relief', the means by which 'off-duty' personnel are used, at short notice, to complete crews for boats proceeding on operations. Operational relief had become a reality for many classes of Navy ships because of chronic shortages.³⁸⁵ Rules were introduced to prevent individuals being unduly disadvantaged.

The ongoing pressures of Operations *Relex*, *Cranberry* and *Resolute* resulted in other tangible measures to improve conditions for crews. In 2003 the Government introduced 'boarding allowance' of \$40 per day for crew assigned to boarding parties, steaming parties and holding parties. This acknowledged the increasing aggressiveness of some foreign fishing vessel masters and the unpredictability associated with irregular maritime arrival vessel boardings. The allowance would be hard earned by many in the future.³⁸⁶ Later in 2012 the Government announced the introduction of a new medal, the Operational Service Medal Border Protection, for personnel who spent 30 days in *Relex*, *Cranberry*, *Resolute* and similar operations.³⁸⁷

Because the RAN is primarily a war-fighting force, periods of peace allow training for wartime roles and other tasks. The patrol boat force has been an especially useful means of developing junior officers and sailors, primarily because of the additional responsibilities exercised at relatively junior levels.³⁸⁸ One patrol boat commanding officer indicated that, '... patrol boats had long been considered the ideal platforms for developing all in the future Navy - for teaching skills such as command, seamanship, watchkeeping and engineering to officers and sailors at all levels in a small crew'.³⁸⁹ Yet, despite the emphasis on training, the inquest into the explosion and loss of lives on SIEV 36 in 2010, criticized some elements of Navy training. The criticism was

³⁸⁴ Evidence of these issues comes from discussions with officers who have served in the Armidale class in the last five years. It is also evident in the monthly reports from the patrol boats. See also, Kresse, 'RPB multi-crewing an advantage', *Navy News*, p. 5 for comment on the maintenance arrangement.

³⁸⁵ 'Operational relief rules tested', *Navy News*, Vol. 49, No. 13, 27 July 2006.

³⁸⁶ Sykes and Burleigh, eds., *Patrolling the Line 2003*, p. 10.

³⁸⁷ 'Australian Operational Service Medal', <<http://www.navy.gov.au/Australian-operational-service/>> (10 August 2013).

³⁸⁸ 'Operational tempo and lifestyle', *Navy News*, Vol. 53, No. 5, 1 April 2010, p. 14.

³⁸⁹ LCDR Anthony Underwood, 'Armidale weighs into a new era', *Navy News*, Vol. 48, No. 11, 30 June 2005.

acknowledged by one witness, who indicated that until that time, training had not included the possibility of a vessel exploding.³⁹⁰ The Navy responded quickly with a new boarding officers' course.³⁹¹

Another training task emerged with the introduction of transit security elements, initially comprising small groups of Army and RAAF personnel, often supplemented by a medical officer and interpreter.³⁹² These teams helped the boarding and steaming parties, by keeping order and caring for irregular maritime arrivals. Informal reports indicate that these personnel integrated well, but needed specific training for their own safety and to enable them to contribute to the daily sea routines. Testimony provided by RAAF Corporal Sharon Jager, at the inquest into the explosion on SIEV 36, demonstrated clearly the danger facing untrained and inexperienced transit security element members in emergencies.³⁹³ Nevertheless, once plucked from the water, Corporal Jager and a RAAF Medical Officer provided exceptional medical care for the surviving irregular maritime arrivals, both receiving Chief of the Defence Force Commendations.³⁹⁴ From early 2012, the transit security elements comprised only Navy personnel.

The crews were sometimes subjected to severe stress which could impact on morale and wellbeing. They appeared to cope well with routine constabulary operations, with reports of stress appearing in public only in relation to disastrous incidents involving vessels and the loss of lives. Some members of the boarding party caught in the explosion and loss of five lives on SIEV 36, continue to suffer post-traumatic stress disorder.³⁹⁵

³⁹⁰ Laurie Statham, 'Navy admits asylum boat training not up to task', *NT News*, 3 February 2010, <<http://www.ntnews.com.au>> (11 August 2013).

³⁹¹ Michael Brooke, 'Patrol boats spearhead Op Resolute', *Navy News*, Vol. 53, No. 5, 1 April 2010, p. 12.

³⁹² *Senate Select Committee for an inquiry into a certain maritime incident*, p. 19.

³⁹³ Lex Hall, 'Rescuer "kicked boat people in head", Corporal Sharon Jager', *The Australian*, 28 January 2010, <<http://www.theaustralian.com.au>> (14 August 2013). Corporal Jager admitted to having not completed even the theoretical parts of her training before the SIEV 36 incident, which was her first boarding. She was later diagnosed with post-traumatic stress disorder.

³⁹⁴ *SIEV 36*, 'Corporal Sharon Louise Jager RAAF', <<http://www.defence.gov.au>> (14 August 2013).

³⁹⁵ CPL Nick Wiseman, 'SIEV 36 explosion triggers more than just memories', *Navy News*, Vol. 55, No. 7, 26 April 2012, p. 9.

Following the loss of SIEV 221 and over 50 lives at Christmas Island in December 2010, the Chief of the Navy pointed out that ' It has left deep scars on all those involved'.³⁹⁶ In July 2013 he also noted that: 'They are weary when they come off rotation and I do care deeply about the potential impact of these activities on them'. Admitting to the existence of stress and other mental problems, he went on to say that, ' ... he believed the navy (*sic*) had developed a good program of mental health support to look after traumatised sailors'.³⁹⁷

The Navy in the Public Eye

The Navy had become used to favourable media coverage for its constabulary work, especially with IUU fishing and until late 2001, dealing with irregular maritime arrivals. This expectation was exemplified by Channel 9's decision in 2006 to produce a 13 episode TV series called '*Sea Patrol*', based on the activities of the Armidales and filmed in several of the boats 'acting' as HMAS *Hammersley*.³⁹⁸

Nevertheless, as government policy for dealing with irregular maritime arrivals became more contentious, the Navy experienced more scrutiny and criticism of its actions. This began with the 'children overboard' affair in 2001. The Chief of the Defence Force, Admiral Barrie, in evidence to the Senate Committee enquiring into the incident, denied that the Defence Force had become politicized by the operation and the associated controversy. Yet he also explained to Senators that Defence had to improve its management of media issues associated with operations.³⁹⁹

Although that criticism was aimed at the higher command levels in the ADF, patrol boat crews were targeted later, during a surge in irregular maritime arrivals and

³⁹⁶ Justin O'Brien, 'Hero crew home', *NTNews*, 25 December 2012, <http://www.ntnews.com.au> (13 August 2013).

³⁹⁷ Cameron Stewart, 'Sailors forced to spend too much time at sea', *The Australian*, 31 July 2013, p. 4. Furthermore, discussion with some former Armidale class officers suggests that the constant focus on irregular maritime arrivals and the frequent safety of life situations that attend their boats have combined to make patrol boat duty much less attractive than it has been in the past.

³⁹⁸ Barry Rollings, 'Navy's starring role', *Navy News*, Vol. 49, No. 18, 5 October 2006. Similar series of *Patrol Boat* had been made in the 1970s.

³⁹⁹ Jim Cannon and Tina Turner, 'Barrie rejects claims of politicisation', *Navy News*, 29 April 2002, p. 2.

several major safety of life at sea incidents; some involving loss of life. At the inquest following the explosion of SIEV 36, Corporal Sharon Jager, a transit security element member, claimed that a sailor had kicked irregular maritime arrivals in the head while trying to save her.⁴⁰⁰ Patrol boat crew members were also criticized for saving crew members before attending to the irregular maritime arrivals. While crew members undoubtedly acted bravely,⁴⁰¹ at least some of the criticism appeared justified.

In the case of SIEV 221, which foundered off Christmas Island in December 2009 leading to 30 irregular maritime arrival deaths, the Coroner rejected criticism by their families of the Navy's response.⁴⁰² Nevertheless, Tony Kevin and David Marr criticized the Navy and the Coroner's findings relating to the Navy's performance.⁴⁰³ Such criticisms, warranted or not, generate introspection and reviews of performance by those concerned. They also exacerbate the stress felt by crews continually engaged in *Operation Resolute*.

CONCLUSIONS

From 2002 to 2012 law enforcement at sea in Australia was dominated by IUU fishing initially, and by the arrival of irregular maritime arrivals over the last five years. New threats to fish stocks emerged in the form of bottom trawling and the appearance in Australian waters of a large capacity fishing vessel capable of seriously disadvantaging local commercial fishers. An old problem emerged in the discovery of substantial under-reporting by Japanese tuna fishers over a period of years. This highlighted the need for constant monitoring of foreign fishing within the AFZ and the earlier failure to provide it.

⁴⁰⁰ Lex Hall, 'Rescuer "kicked boat people in head"', Corporal Sharon Jager', *The Australian*, 28 January 2010, <<http://www.theaustralian.com.au>> (14 August 2013).

⁴⁰¹ Laurie Latham, 'Sailor ignored orders to save refugees, inquest hears', *NTNews*, 2 February 2010, <<http://www.ntnews.com.au>> (14 August 2013). In this case, Petty Officer Heatherington ignored his orders and placed his boat alongside the burning SIEV to evacuate 12 asylum seekers.

⁴⁰² A. N. Hope, *Western Australia—Record of investigation into 30 deaths...*, W.A. Coroner's Court, 23 February 2012, p. 70.

⁴⁰³ Tony Kevin, 'Little SOLAS found in the wreck of SIEV 221', *The Age*, 2 March 2012, <<http://www.theage.com.au>> (14 August 2013).

Although irregular maritime arrival activity was reduced after 2001, with stricter controls and legislation, a change of government in November 2007 was followed by a new wave of arrivals. While the Labor Government denied that the upsurge resulted from repealing some existing harsh measures, it had to re-introduce many of the earlier harsh measures it had strongly opposed when in opposition, leaving the impression that only harsh measures would stem the flow.

Customs, quarantine and environmental issues did not claim government or public attention to the extent that IUU fishing and irregular maritime arrivals did. They emerged episodically and mostly lacked the immediate impact of issues such as loss of lives at sea. Nevertheless, the biosecurity fears associated with potential pandemics of avian, swine and equine flu caused great concern. Furthermore, the importation of illegal drugs was overshadowed late in the decade by rising importation of illegal weapons, apparently associated with a rise in gun-related crime. Consequently, serious quarantine and customs threats did emerge but were managed primarily at air and sea ports rather than at sea.

Although much interest in the marine environment continued to centre on the Great Barrier Reef, accidents such as the Montara gas blowout on the North West shelf highlighted the inadequacy of environmental regulation. Land-sourced run off and increasing industrial activity on the Queensland coast raised fears as to the future health of the Reef and will demand close attention by governments in the future, noting UNESCO's increasing interest.

Following the widespread terrorist attacks, especially in the early years of the decade, fears grew that shipping and port infrastructure could become terrorist targets. While the USA led with the introduction of countermeasures, countries like Australia were forced to consider the risks and appropriate responses. These included increased container inspection rates, exercises in support of the Proliferation Security Initiative and the introduction of Maritime Security Identification Cards.

Australia's approach to law enforcement at sea was marked by a broad-based resort to international cooperation, reflecting the increasingly complex interactions involved in protection of maritime resources, boundaries and environment. The Federal

Government developed MOUs with Indonesia for fishing rights and with Indonesia and Iran relating to asylum seekers. Similarly, it cooperated closely with APEC to manage flu outbreaks. The Government also acted unilaterally when necessary, with, for example, fishing license buyouts in NSW, harsh measures to deter asylum seekers, and the establishment of large marine parks around the coast. After much equivocation, the Government eventually agreed to launch international court action against Japan's whaling in the Southern Ocean.

Until it won the 2007 federal election, Labor criticized the Coalition Government for not establishing a coast guard for more effective management of Australia's maritime interests and boundaries. Labor's inability to formulate a credible coast guard policy in opposition, the reality that existing arrangements worked well and the potential for massive disruption in the establishment of a coast guard, meant no real change to the organizational arrangements once Labor regained power.

An important element of government response to law enforcement at sea challenges was the introduction of new and more capable maritime patrol aircraft and patrol boats. Additionally, at times, almost all the Navy's other warships conducted constabulary tasks, especially managing irregular maritime arrivals and countering IUU fishing in the Southern Ocean. The use of surface combatants for this latter task, accompanied by a replenishment ship on each occasion, highlighted the Navy's very limited capacity for Southern Ocean operations. It also emphasized the Navy's limited replenishment at sea capacity, with one planned operation cancelled because of tanker unavailability.

Much of the legislative effort reflected responses to new threats to maritime borders or sovereign rights. In immigration, customs and resources protection, new or amending legislation appeared frequently, as the Government reacted to the circumventing of existing laws. This included laws excising parts of Australian territory from the 'migration zone' with customs legislation to provide for more control over the movement of people in sensitive areas such as sea ports. Some customs-related legislation including the *Maritime Transport Security Act 2003* related to fears of maritime terrorism and the US reaction to the September 2001 terrorist attacks.

Other laws reflected the growing internationalization of maritime affairs, such as legislation to comply with the *International Convention for the Protection of Highly Migratory Fish Species in the Western and Central Pacific*. Similarly, quarantine legislation was enacted to counter the possibility of pandemics, spread more easily by international air and sea travel. By contrast, laws were enacted to penalize more heavily breaches of existing resources protection, environmental and customs legislation.

A common thread in the mass of legislation was the frequent need for amendment. There were many possible reasons for this, including political imperatives in immigration laws, where both major political parties sought to expose flaws in each other's approach. The political imperative also caused legislation to be prepared quickly, with the potential for errors or omissions. Possibly the best example of the impact of hasty legislation to solve problems was the *Maritime Powers Bill 2012*, introduced (but not passed at the time of writing) to replace 35 existing laws.

For the Navy, the constabulary function dominated operations during the decade. The patrol boat force was able to undertake few tasks beyond domestic patrolling, for almost the entire decade. This impacted most on Australia's engagement in the South Pacific, for which the Armidales were ideal. Conversely, law enforcement at sea problems provided new opportunities to cooperate with the Indonesian Navy in the Arafura and Timor Seas.

Essentially, the RAN became a constabulary navy during the decade, with many warships engaged in domestic patrolling of the EEZ and adjacent waters. Additionally, major surface combatants continued deploying to the Persian Gulf and Arabian Sea to counter piracy and smuggling. Implications from this use of 'non-patrol' forces varied, from a lowering of war-fighting skills in the combatants to a significant degradation in the national hydrographic charting output with the involvement of hydrographic ships.

The Armidale class patrol boats brought additional capability to the constabulary task with their greater range, endurance and sea-keeping ability. Despite their manifest advantages the boats have proved much less reliable than expected and appear

insufficiently robust for their task. This affects morale among crews, whose operating cycles, supposed to bring regularity, are often disturbed. This failing must be overcome with the next generation of patrol vessels, needed from about 2020. The second disadvantage has been the lack of a helicopter operating capability. Almost every other class of RAN surface ship operates helicopters. For the patrol boats, the omission results in an inability to transfer personnel quickly and the lack of the additional search and surveillance coverage. Cost will determine if this shortcoming will be rectified in the next generation of patrol vessels.

The patrol boat crews have been driven hard in often stressful work, especially since 2008. Notwithstanding the introduction of multi-crewing and fixed crew operating cycles, the ongoing shortage of trained people and the unreliability of the boats have prevented crews from enjoying their expected respite. Additionally, the high political and media profile of the irregular maritime arrivals, together with the frequent mass safety of life at sea situations, have put patrol boat crews under great pressure. They have not been spared the criticism aimed at the Government and its law enforcement at sea policies.

CHAPTER EIGHT

PROTECTING AUSTRALIA'S OFFSHORE ESTATE - THE STORY SO FAR

The Evolution of Law Enforcement at Sea and the Constabulary Function

Since Federation, the major law enforcement at sea issues have been resources protection and management of illegal immigration, although they have manifested themselves differently over the years. While the early focus on resource protection concerned pearl fishing in northern waters, more recently attention has been on the protection of fish stocks throughout Australia's extensive exclusive economic zone (EEZ), and protection of oil and gas facilities against the prospect of terrorist attack. The economic importance of both industries ensures their high priority for law enforcement activity.

The racist overtones in early immigration policy are no longer evident in Australia's immigration laws but the fact that many of the current wave of irregular maritime arrivals comprise Muslims from Central or Southwest Asia has made easier the imposition of tough measures to deter them from trying to reach Australia. Cultural and religious differences still evoke fears of lack of integration.

The enforcement of Customs legislation has also been important since Federation, initially because of the need to generate revenue from duties and excise associated with traded goods. More recently, the smuggling of illicit drugs and weapons has become a serious problem with alleged links to organized crime and continue to generate community concern.

Although neither quarantine nor marine environmental protection received much attention in the early years after Federation, the situation has changed dramatically. Australia's island status offers considerable protection from the introduction of plant, animal and human diseases. The growth of primary industry exports has demanded quarantine measures to ensure protection of the status of primary industry products, not least the prevention of illegal landings on the coast with the potential to introduce exotic diseases. Similarly, the huge growth in personal international travel has

facilitated the rapid transfer of human diseases and while most of the quarantine enforcement occurs at air and sea ports the potential for irregular maritime arrivals or foreign fishers landing on Australian territory to introduce disease means that Navy and Customs patrol forces remain on the quarantine front line.

Marine environmental protection has emerged as a major law enforcement issue in Australia for two main reasons. Firstly, a growing appreciation of the economic and natural importance of the Great Barrier Reef brought with it demands for its protection, especially from the increasing amount of shipping passing through the Reef area. Secondly, there was a growing global acceptance of the need to protect the natural environment, and the marine environment gained from that. Accidents like the grounding of the *Torrey Canyon* with the subsequent huge oil spill emphasized the potential dangers and need for environmental legislation and protection.

The Response

Protecting Australia's offshore estate through law enforcement at sea has become a permanent and full-time task for Border Protection Command with its assigned Navy, Air Force, Coastwatch and Customs aircraft and ships. It has not always been so and progression to this situation has been slow, fragmented and often reluctant, with governments slow to provide the resources necessary for the task.

Although the early demands of law enforcement at sea were not great, they were added to by the feeling among the isolated communities that the north of the country was wide open to foreign incursions of any kind. The initial responses were inadequate, with no serious attempt to provide surface patrols in the north until the 1930s and no real aerial surveillance until after the Second World War.

Foremost among the reasons for the initial inadequate response was a lack of resources of all kinds. The Federal government bureaucracy was limited in size and capacity and there were many competing demands for the available government funding. Additionally, the northern coast line, the source of most maritime law enforcement demand, was itself sparsely populated and lacking the kind of infrastructure needed to

support law enforcement activities at sea. Over the years this competition for resources was matched by a view that the cost of law enforcement activities had to be minimized.

Another significant limiting factor on Federal government law enforcement activity was the legal system in which the States had jurisdiction over their territorial waters - three miles until 1994.¹ Because the Federal government exercised sovereignty only over Northern Territory and Australian Capital Territory waters and because it tended to avoid conflict with the States over offshore sovereignty its capacity to intervene was limited. This remained the case until the Offshore Constitutional Settlement was agreed in 1979.

Complicating further the approach to law enforcement at sea for many decades was the lack of an official national organization with responsibility for the function. As will be discussed below, the Navy was poorly placed to play any significant part in its constabulary function, because of an ongoing lack of suitable ships. At times it had difficulty managing its military function, simply because of a lack of ships of any kind. Customs and the Department of the Interior operated watercraft consistent with their own responsibilities; in port ship inspections in the former case and liaison with remote coastal communities in the latter.

Two other factors compounded the inadequacy of the early response. Firstly, there was no widespread agreement on how best to enforce the law at sea and the dispute as to whether it should be a civil or military responsibility is still alive, to the extent that the Labor Party continues to champion the coast guard concept. Secondly, despite the concerns expressed from time to time that the north was unpatrolled and that Japanese pearling activity posed a security threat, notably in the 1930s, no government before the late 1970s felt compelled to act seriously in support of law enforcement at sea: the threats were not assessed as being serious enough and resources were applied elsewhere.

Even with the appearance of large scale illegal, unreported and unregulated (IUU) fishing and irregular maritime arrival activity the earlier hesitation and uncertainty

¹ R.R. Churchill and A.V. Lowe, *The Law of the Sea*, 3rd. ed., Manchester University Press, Manchester, 1999, p. 474.

continued to affect policy development. The Inter-Departmental Committees, from 1969 began the process that led eventually, over 30 years later, to the current Border Protection Command.² Funding and costing remained a substantial bar to progress for some time, until a central funding model was agreed.³

That the arrangements, current at the end of 2012, remained satisfactory can be presumed from the decision of the Labor Government, in power from 2007 to retain them instead of their own preferred coast guard model. IUU fishing appears to have been contained, at least for the time being and the flow of irregular maritime arrivals has been managed – even if at the cost of involving much of the Navy’s Fleet at times.

Although the organization appears to be robust it may yet be subject to change in future. Thus, if IUU fishing remained at low levels and the flow of irregular maritime arrivals ceased or reduced to a trickle, there could be pressure to reduce surveillance and patrol efforts, both for economy and to allow the forces involved to undertake other tasks. On the other hand, were illegal activities at sea to increase, the current organization would probably be capable of managing the response, possibly with the assistance of additional aerial surveillance and surface response forces.

The Coast Guard Argument

Almost since Federation in 1901 there have been arguments as to whether law enforcement at sea should be conducted by the Navy or by civilian law enforcement agencies. The lack of resources and of government action for many years rendered the argument moot until the 1970s. Additionally, the creation of the Royal Australian Navy (RAN) lent weight to the argument for it to be responsible for law enforcement, given the lack of any other capable organization. As noted in Chapter Four, however, the RAN had very little capacity to carry out the constabulary function before 1967 and the introduction of the Attack class patrol boats. Experience with the patrol boat *Larrakia* in

² The Parliament of the Commonwealth of Australia, *Australia’s Peacetime Coastal Surveillance and Protection Arrangements – A Review*, The Commonwealth Government Printer, Canberra, 1984, pp. 1-2.

³ Hugh Hudson, *Northern Approaches: A report on the Administration and Management of Civil coastal Surveillance in Northern Australia*, Australian Government Publishing Service for the Department of Transport and Communications, Canberra, 1988, p. 24.

Darwin and the use of private watercraft in Cairns in the 1930s, also noted in Chapter Four, showed that a more comprehensive approach to law enforcement at sea would be necessary.

The discussion in Chapter Three demonstrated that countries have established authorities to conduct law enforcement at sea on the basis of their own specific needs. Accordingly, the United States of America has a very large coast guard, supported at times by the United States Navy for law enforcement duties, while the United Kingdom has a mix of civilian organizations backed by a more substantial input from the Royal Navy and Ireland has a Navy which has no operational capability beyond those needed for its constabulary function.

In determining its approach Australia had to consider its own unique circumstances; including a very long and in places sparsely populated coast line, distant island territories, populous island neighbours and with ratification of the Law Of the Sea Convention, extensive offshore resource zones.⁴ These characteristics demanded surveillance aircraft and surface response vessels with long range and endurance for effective law enforcement at sea, characteristics that also matched those needed by Australia's military aircraft and warships.

Even as the need for a formal approach to law enforcement at sea grew and the debate between a naval or civilian solution continued sporadically, little serious consideration was given to establishment of a coast guard. Members of Parliament called for a coast guard occasionally⁵ and in 1973 the Labor Government did examine the matter, but without proceeding with the option.⁶ This remained the case during the spate of coastal surveillance reviews conducted by governments between 1972 and 2004 and even included rejection of a coast guard several times by both Labor and Coalition governments, as recounted in Chapter Six.

⁴ Australian Customs and Border Protection Service, *Annual Report 2012-13*, p. 4, <<http://www.customs.gov.au/webdata/resources/files/ACBPSAnnualReport2012-13.pdf>> (24 March 2014).

⁵ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 59, 16 May 1968, p. 1549.

⁶ *Commonwealth Parliamentary Debates*, Senate, Vol. 56, 30 May 1973, p. 2044.

Consequently, Labor's decision to embrace the coast guard concept at the beginning of the 21st century was surprising. It may have been proposed as a means of differentiating the Party from the Coalition on an important national security matter, but for it to gain acceptance the proposition needed to provide the equivalent of the existing capability if not a potentially better solution. It also needed to be relatively cheap, to avoid criticism. As has been pointed out in Chapter Seven, Labor's proposed coast guard forces were effectively ridiculed by the Government. There was little consistency in the force structure options and only the barest of costing information was provided.⁷

Undoubtedly the most puzzling aspect of Labor's attraction to the coast guard concept is the party's failure to establish a coast guard during its six years in power from November 2007. Reasons for its failure to do so are probably founded on the advice it received on becoming the Government, which also resulted in Labor deciding against establishing a Department of Homeland Security.⁸ Whatever the advice provided, the only notable change made by Labor was to rename the Australian Customs Service the Australian Customs and Border Protection Service.

Labor may well have found that the organization it inherited on coming to power functions well and had many of the characteristics of a coast guard. It is a multi-agency organization in which Customs, Defence, Federal Police, Quarantine and Immigration officers are embedded and which has the capacity to integrate officers from other authorities, such as the Australian Maritime Safety Authority.⁹ Similarly, while it owns no aircraft or patrol vessels it has ready access to Coastwatch surveillance aircraft, the Customs patrol craft and assigned Navy patrol boats, with the capacity to call on other Defence aircraft and ships as necessary.¹⁰

⁷ See Chapter Seven.

⁸ Tom Allard, 'Labor flirts with first broken promise', *Sydney Morning Herald*, 28 November 2007, p. 5.

⁹ Australian Government Directory, *Australian Customs and Border Protection Service*, <http://www.directory.gov.au/directory?ea0_lf99_120.&organizationalUnit&d655dc2d-2ae8-48a7-b479-5bb3f09a29b7> (24 March 2014). See also Australian Government, 'the Australian maritime security operations centre', <<http://www.bpc.gov.au/site/page5786.asp>> (24 March 2014).

¹⁰ Australian Customs and Border Protection Service, *Annual Report 2012-13*, pp. 41-2, <<http://www.customs.gov.au/webdata/resources/files/ACBPSAnnualReport2012-13.pdf>> (24 March 2014).

Establishment of a coast guard, possibly within a Department of Homeland Security, would be an organizationally complex exercise, requiring decisions as to which law enforcement at sea functions would be included, what legislative and other responsibilities would be removed from existing law enforcement authorities (Customs and Biosecurity, for example) and what equipment would be removed from existing law enforcement authorities for the new coast guard. Additionally, while the reorganization took place, the law enforcement functions would still need to be carried on effectively. Inevitably, too, there would be bureaucratic loose ends, in that for example, the new coast guard would remain dependent on Defence for some intelligence and would almost certainly still rely on Navy ships and Air Force surveillance aircraft at times of high activity.

Organizational Development

For many years after Federation there was no formal organization for law enforcement at sea. This was the result mainly of limited resources, especially at the Federal level, together with the absence of threat levels that would have demanded more action. As a result, there was little coherence to responses to illegal activities at sea. RAN ships responded to calls from time to time and the Department of the Interior operated patrol craft in the north during the 1930s. Only with the substantial increase in foreign fishing off the Australian coast together with the establishment of the Australian Fishing Zone and the first wave of irregular maritime arrivals was a more coherent organizational response sought, with Air Force maritime patrol aircraft forming the first dedicated aerial surveillance effort from early 1974.¹¹

The response capacity began to become more formalized from April 1972, with the establishment of the Marine Operations Centre within the then Department of Shipping and Transport.¹² This followed a meeting of relevant authorities, which included the Departments of Shipping and Transport, Customs and Excise, Navy, Interior, Health and Primary Industry. Initially at least the Marine Operations Centre

¹¹ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 60, 15 August 1968, pp. 227-32. This debate focused on the growing need to counter foreign fishing, to establish realistic boundaries and included a call for more patrol boats.

¹² *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 78, 18 May 1972, p. 2751.

appeared to focus on search and rescue, and had no surveillance aircraft or surface response vessels assigned to it.

Clearly the growing concern over foreign fishing vessels off the Australian coast was a primary motivation for a more coherent and comprehensive organizational approach to law enforcement at sea. By mid-1974 the Labor Government had established two Inter-Departmental Committees to examine coastal surveillance.¹³ The first one included several departments along with representatives of the Northern Territory Government and made recommendations on several matters including possible organizational models.¹⁴ The second Inter-Departmental Committee examined how to gain the best results from the Marine Operations Centre.

Nevertheless, the composition of the first of these two Inter-departmental Committees in particular, indicated the growing complexity of the law enforcement at sea task. Many government authorities had an interest in the matter and several of those involved in the Committee would be users of whatever organization evolved to enforce laws at sea. Later, as the organization did evolve, some of the difficulties that emerged included assigning of priority for the employment of surveillance aircraft and payment for the provision of surveillance effort. Cost attribution became especially difficult when aircraft conducted surveillance for more than one authority in any flight.¹⁵ Another concern that emerged was the sense that no one department had overall responsibility for the coastal surveillance task.¹⁶

As a result of the 1978 Coastal Surveillance Review the organization was tweaked once again, with the Marine Operations Centre being strengthened and renamed the

¹³ *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 89, 2 August 1974, p. 2713.

¹⁴ The authorities involved were the Departments of Prime Minister and Cabinet, Attorney-General, Customs and Excise, Defence, Foreign Affairs, health, Labour and Immigration, Agriculture, Transport, Treasury, as well as the Special Minister of State, the Public Service Board and the Northern Territory Government. *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 89, 2 August 1974, p. 1103.

¹⁵ Hudson, *Northern Approaches: A report on the Administration and Management of Civil coastal Surveillance in Northern Australia*, p. 18.

¹⁶ *Commonwealth Parliamentary Debates*, Senate, Vol. 92, 12 November 1981, p. 1103.

Australian Coastal Surveillance Centre.¹⁷ Simultaneously, the now Standing Inter-Departmental Committee was tasked to further examine the needs of coastal surveillance. These early organizational moves reflected a growing demand for law enforcement at sea as well as a dawning realization that ever more comprehensive and coordinated efforts would be needed to meet the demand, even if it was not yet clear how best to achieve this.¹⁸

Significantly, it took almost another three decades before the present organizational arrangements were in place. In that time civilian surveillance aircraft and patrol craft (Customs) came to dominate the surveillance and patrol effort, along with Navy patrol boats and some Air Force maritime patrol aircraft. Nevertheless, during the organizational evolution, there were some noteworthy actions, including the renaming of the Australian Coastal Surveillance Centre as Coastwatch in 1982¹⁹ and the assumption of responsibility for coastal surveillance by the Australian Federal Police after the 1983 Beazley Review. Given the prior lack of any maritime expertise within the Federal Police, that arrangement was difficult to understand and did not last long.²⁰

Even as the surveillance organization became more civilian-focused it continued to rely on the Defence Force, for surveillance, patrol and intelligence which was becoming more important in planning surveillance activity.²¹ With the increasing demands for aerial surveillance and surface response effort from a variety of authorities management and coordination of the effort became more important. Thus it was not hugely surprising to find that in 1999 the head of Coastwatch became a Rear Admiral,

¹⁷ The Parliament of the Commonwealth of Australia, *Australia's Peacetime Coastal Surveillance and Protection Arrangements – A Review*, The Commonwealth Government Printer, Canberra, 1984, p. 1-5.

¹⁸ The need for better coordination was noted in previous reviews in 1978 and 1981. The Parliament of the Commonwealth of Australia, *Australia's Peacetime Coastal Surveillance and Protection Arrangements – A Review*, The Commonwealth Government Printer, Canberra, 1984, pp. 1-5 and 6.

¹⁹ Hudson, *Northern Approaches: A report on the Administration and Management of Civil coastal Surveillance in Northern Australia*, p. 3.

²⁰ Although the move was recommended in the 1986 *Footprints in the Sand* Report it was not made until after tabling of the 1988 *Northern Approaches* Report. Hudson, *Northern Approaches: A report on the Administration and Management of Civil coastal Surveillance in Northern Australia*, p. 24.

²¹ The Parliament of Australia, Joint Committee of Public Accounts and Audit, *Review of Coastwatch – Report No. 384*, Commonwealth of Australia, Canberra, August 2001, pp. 43, 49 and 63.

whose position has evolved into the Commander Border Protection Command at the time of writing. The unusual situation of having a naval officer leading a primarily civilian organization (outside the Defence Department) has facilitated coordination with and cooperation from Defence in the allocation of aircraft, warships and patrol boats, while also bringing to the organization a great deal of maritime operations experience.²²

Much of the organizational change and development over the years from the mid-1970s has reflected the growing complexity of and demand for law enforcement at sea.²³ That there should have been some consideration of a coast guard as part of this is not surprising because of the attraction of a single organization with overall responsibility for all aspects of law enforcement at sea.²⁴ That a coast guard did not emerge from the organizational evolution that occurred over three decades or so reflects the difficulty involved in creating such an organization from several existing bodies, each with some degree of responsibility for the law enforcement at sea function, as part of their overall responsibilities.²⁵

Undoubtedly, the benefits of the single organization were appreciated by those responsible for developing Australia's approach to law enforcement at sea. Consequently, the current multi-agency Border Protection Command is staffed by people from several law enforcement and security organizations, while also having access to other organizations when circumstances require it. The compromise arrangement has proven to be effective and able to deal with a range of threats of varying intensity.

²² Cooperation and coordination are facilitated primarily by the fact that the Commander responds to a directive signed jointly by the Chief of the Defence Force and by the Chief Executive Officer of Customs. Wing Commander Kevin Downs, 'Border Protection Command', *United Service*, Vol. 60, No. 4, December 2009, p. 13.

²³ The Parliament of Australia, Joint Committee of Public Accounts and Audit, *Review of Coastwatch – Report No. 384*, Commonwealth of Australia, Canberra, August 2001, pp. 133 and 137.

²⁴ One example of this consideration was provided in evidence to the Committee by the Centre for Maritime Policy and the Australia Defence Association. The Parliament of Australia, Joint Committee of Public Accounts and Audit, *Review of Coastwatch – Report No. 384*, Commonwealth of Australia, Canberra, August 2001, p. 137.

²⁵ The Parliament of Australia, Joint Committee of Public Accounts and Audit, *Review of Coastwatch – Report No. 384*, Commonwealth of Australia, Canberra, August 2001, p. 135. For example, consideration by the Committee of Customs passing its patrol craft to Coastwatch acknowledged that Customs would still need craft to meet its own operational needs.

The Development of Legislation

The most noteworthy aspect of Australian legislative development associated with law enforcement at sea is that the vast majority of it has occurred since 1976. As Table 8-1 below illustrates, four times as many Acts have been passed since 1976 as in the entire 75 years to that point.²⁶ For law enforcement at sea the paucity of legislation in the early years can be explained by the relatively slow pace of Commonwealth involvement in the issue before the 1970s. Similarly, the rash of legislation beginning in 1976 reflects both the growing Commonwealth involvement and the growing complexity of law enforcement at sea.

Legislative Category	Time Periods						Totals
	1901-18	1919-45	1946-75	1976-88	1989-2001	2002-12	
General	-	-	-	7	3	5	15
Resources	-	1	9	12	6	12	40
Customs	2	1	3	13	5	9	33
Immigration	6	6	3	4	16	7	42
Quarantine	3	2	2	5	1	7	20
Environment	-	1	4	21	23	16	65
TOTALS	11	11	21	62	54	56	215

Table 8-1: Legislative Activity 1901-2012²⁷

The growing legal complexity was sometimes the result of laws having overlapping responsibilities, as noted in Chapter Five in the case of the *Off-shore Installations (Miscellaneous Amendments) Act 1982*, which made installations attached to the seabed, within the EEZ, part of Australia. The Act had implications for customs, quarantine and immigration and required amendments to the Customs, Quarantine and Immigration Acts. A certain amount of complexity also came from the agreement to accede to international agreements, especially with respect to environmental law. This was illustrated also in Chapter Five with respect to the legislation to comply with the *Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matter 1972*, *The London Dumping Convention*, and the *International Convention for the Prevention*

²⁶ The total number of Acts shown in the table is taken from Chapters 4 - 7 and represents the significant Acts related to law enforcement at sea during the nominated periods.

²⁷ The numbers in Table 8-1 refer to the Acts identified in Chapters 4-7 above.

of *Pollution from Ships of 1973-78 (MARPOL)*. One of the complicating factors was the need for complementary State legislation in each case and delays in getting it passed. This was more of an impediment before the Offshore Constitutional Settlement but was still noted as a matter of concern in the 1984 coastal surveillance review.²⁸

The table also illustrates another feature of the development of legislation since Federation, that in specific areas, such as immigration and customs it has occurred in bursts in response to significant events. Thus there was a rash of legislation in the early 1990s in response to the wave of irregular maritime arrivals explained in Chapter Six. Environmental legislation provided another interesting view of legislative development. After no environmental legislation at all being introduced before the 1930s, marine environmental protection became the most legislated aspect of law enforcement at sea. The significant and consistent amount of environmental legislation passed in the periods, 1976-88, 1989-2001 and 2002-2012 relates to the constant interest in the health of the Great Barrier Reef and in preventing pollution of the sea.

Law Enforcement at Sea and the Navy

For many years after Federation the constabulary function was an insignificant aspect of RAN operations. In fact, for much of its peacetime existence the Navy struggled to develop a credible force to meet its military function responsibilities, and with the exception of the Second World War years, the RAN had no dedicated patrol craft force before 1967.²⁹ This meant that the organization which was often called on in Parliament to provide law enforcement in northern waters was unable to do so. Nevertheless, only the lack of Commonwealth government focus on law enforcement at sea for many years enabled the RAN to avoid greater involvement in the constabulary function before 1967. The lack of suitable ships would not have prevented those in service from being used if the need had been great enough.³⁰

²⁸ The Parliament of Australia, Joint Committee of Public Accounts and Audit, *Review of Coastwatch – Report No. 384*, Commonwealth of Australia, Canberra, August 2001, pp. 6-1 and 2.

²⁹ Ross Gillett, *Warships of Australia*, Rigby, Adelaide, 1977, pp. 217-27. The 'Patrol Craft' section highlights the use of patrol boats during the World wars and their removal from service at wars' end.

³⁰ Examples of this point include the sloop *Geranium* which was used for survey and patrolling in the 1920s, a suggestion that the old 'S' class destroyers should be retained for northern fishing patrols in 1936 and listing of *Banks* as a fisheries surveillance vessel in 1960. See,

The assumption of constabulary function responsibilities by the Navy, from the late 1960s, brought many changes to the Service. One of the more significant changes has been the permanent addition to the force structure of a patrol boat force which has evolved from the manifestly inadequate Attack class to the far more capable, yet still trouble-prone Armidale class. In the almost 50 years since the Navy introduced the Attack class it has still not developed an entirely satisfactory patrol vessel. The next iteration, due sooner than anticipated because of the Armidale problems, should be of comparable size, but with greater durability and should have some integral aerial surveillance capability, even if in the form of an unmanned aerial vehicle. This would provide a significant addition to the patrol craft's own very limited search capability as well as a welcome supplement to the formal Coastwatch aerial surveillance effort.³¹

Acceptance by the Navy that the constabulary function was to become a permanent and highly visible element of its operational profile has led to the development of a cadre of officers and sailors with a wealth of experience of and expertise in constabulary operations.³² This involves the application of domestic and international law, sometimes in difficult circumstances, and often in the face of foreign fishers or asylum seekers desperate to achieve their own objectives. Constabulary operations also involve boarding suspect vessels, whose crews can become aggressive, which demands that boarding parties exercise sound judgment along with great tact and discretion.³³ The constabulary skills and experience gained by the relatively junior patrol boat crews, have also become commonplace among the crews of major warships heading to

Commonwealth Parliamentary Debates, House of Representatives, Vol. XCIII, 7 October 1920, p. 5428; *Commonwealth Parliamentary Debates*, Senate, Vol. 152, 25 November 1936, p. 2225; and *Commonwealth Parliamentary Debates*, House of Representatives, Vol. 28, 20 September 1960, p. 1125, respectively.

³¹ The RAN was to conduct trials with the Scan Eagle UAV in 2012. See 'Insitu pacific to provide ScanEagle services to Royal Australian Navy', *sUAS News*, 12 July 2012, <<http://www.suasnews.com/2012/07/17522/insitu-pacific-to-provide-scaneagle-services-to-royal-australian-navy/>> (28 March 2014).

³² Recently retired RADM James Goldrick is a good example of this, having commanded the patrol boat HMAS *Cessnock* in the early 1990s and Border Protection Command from 2006-08. 'Rear Admiral James Vincent Purcell Goldrick', *Navy*, <<https://www.navy.gov.au/biography/rear-admiral-james-vincent-purcell-goldrick>> (28 March 2014).

³³ The Hon Dr Brendan Nelson, Minister for Defence, *Media Statement, Announcement on Illegal fishing in Australian Waters*, 5 April 2006, <<http://www.defence.gov.au/minister/52tpl.cfm?CurrentId=5521>> (28 March 2014).

the Persian Gulf and Arabian Sea for interception and counter-piracy operations or deployed for constabulary work in Operation *Relex*.³⁴

The nature of the law enforcement tasks has meant that the patrol boat force has devoted much of its effort to northern waters. In turn this has demanded the establishment of dedicated bases in Cairns and Darwin, along with the associated logistics infrastructure. While these new bases brought undoubted employment and other benefits to local communities they extended the Navy's logistics chain and with it the operating cost to the Navy. Consequently, despite considerable pressure over many years, the Navy has resisted establishing a separate patrol boat on the north-west coast; preferring to rely on berthing at the region's commercial ports.³⁵

While the majority of the Navy's constabulary operations took place in northern waters, the opening up of fishing grounds in the Southern Ocean EEZ during the 1990s created new challenges for the Navy and demonstrated certain limitations in the Navy's operational capability. Heard and McDonald Islands EEZs are over 2,000nm from the nearest RAN base, HMAS *Stirling* in Western Australia, and the weather conditions in the Southern Ocean can be extreme. Consequently, no RAN patrol craft has had the range or sea-keeping capacity to operate in or near the Heard and McDonald Island EEZs. Equally important, even though RAN major warships can cope with the weather conditions, the distances involved require them to be accompanied by a replenishment ship. With only two replenishment ships in the Fleet, the Navy is limited in its capacity to provide warships for constabulary operations in the Southern Ocean. This limitation has meant that civilian ships are operating under charter to the Customs and Border Protection Service in the Southern Ocean and in turn playing an

³⁴ Lieutenant Commander Ron Diekmann, 'HMAS *Newcastle*: On Watch, in Commander Richard Donnelly, et. al, eds., *Australia's Navy 2005*, pp. 22-3 and Lieutenant Commander Philip Ma and Lieutenant Patrick Pilbeam, 'The Fighting 304 - 18,000 Tonnes of Law and Order Across the Northern Border', in Commander Carmel Barnes et. al, eds, *Australia's Navy 2006*, Defence Publishing Service, Canberra, 2006, pp. 32-3. .

³⁵ Air Marshal M. D. Binskin, 'CDF and Secretary Department of Defence Senate Estimates Brief, *Whole of Defence 6: Defence of Australia's Northwest and Pilbara regions*', 24 May 2013, <http://www.defence.gov.au/foi/docs/disclosures/071_1314_Documents.pdf> (28 March 2014).

increasingly important part in law enforcement at sea.³⁶ Whether the RAN will need warships capable of operating in the Southern Ocean remains to be seen.

Navy warships having been dispatched to the Southern Ocean on constabulary operations points to another important aspect of the RAN's contribution to law enforcement at sea. Especially in the last 15 years in the face of growing numbers of irregular maritime arrivals, the whole range of RAN ships has been pressed into constabulary service at times. As a result the constabulary function has become at times the major Navy operational activity, as illustrated in Table 2-2 above, with some interesting implications.

In the short term, there is an impact on Fleet readiness as other operational skills degrade while constabulary work is conducted, and depending on priorities the warships may not be available for other tasks.³⁷ Additionally, complex warships with crews of about 200 highly trained people have high operating costs and represent an 'overkill' for constabulary operations. Furthermore, if the diversion of warships to constabulary work becomes a long term commitment then the force structure of the Navy may need to be balanced with more capability for the constabulary function. Such a shift, from to a primary maritime combat capability focus to a constabulary operations focus, might cause the RAN to reconsider its commitment to the constabulary function. The Royal Malaysian Navy's decision to withdraw from constabulary work some years ago offers a precedent.³⁸ In any event, the RAN has accepted that a peacetime function, carried out for the most part by patrol craft without any maritime combat capability, is 'core business'.

Yet, even as the Navy took on the constabulary function its contribution to law enforcement at sea has been limited to specific aspects of the overall task. The Navy's

³⁶ Australian Customs and Border Protection Service, *Southern Ocean Patrol Vessel - ACV Ocean Protector*, <<http://www.customs.gov.au/webdata/resources/files/SouthernOceanPatrolVesselACVOceanProtectorFactSheet.pdf>> (28 March 2014).

³⁷ The need for continuation training for warship crews is noted at: Commodore T. N. Jones, RAN, *Warfare Officers Career Handbook*, September 2006, pp. 36-7.

³⁸ The Malaysian Maritime Enforcement Agency was formed in 2005 partly because the Royal Malaysian Navy had difficulty in meeting its constabulary responsibilities while maintaining readiness for its combat roles. James Goldrick and Jack McCaffrie, *Navies of South-East Asia: A comparative study*, Routledge, Abingdon, Oxon, 2013, pp. 112-13.

primary constabulary function tasks have been border protection, especially relating to asylum seekers and resources protection in respect to IUU fishing and safety and security of offshore oil and gas platforms. Periodically, the Navy conducts border protection operations in support of Customs and Quarantine authorities and undertakes occasional marine environmental protection tasks.

The main reason for this operational focus is that most of the challenges to law enforcement at sea have involved IUU fishing and the interception of irregular maritime arrivals. Customs and quarantine breaches for the most part occur at the major air and seaports of entry and Navy involvement has been limited to assisting with Customs operations at sea and with quarantine operations incidental to IUU and irregular maritime arrival operations. Consequently, Navy effort has been applied where it has been most needed and where it can have greatest effect.

While law enforcement at sea has become an important security matter for Australia it has also become a central security issue for the Pacific Island Countries, many of which rely on revenue from foreign fishing in their EEZs for income.³⁹ Australia continues to assist these countries in law enforcement at sea through the allocation and support of 22 Pacific Patrol Boats to 12 of the Island Countries. The ongoing support includes the allocation of Maritime Surveillance Advisors whose experience in Australian constabulary operations provides the foundation for planning and conducting their host country operations.⁴⁰

Additionally, the provisions of the Niue Treaty which permit third party assistance in the conduct of law enforcement at sea in the host country EEZ, provide another opportunity for RAN ships and patrol craft to assist Pacific Island Countries, many of which have extensive EEZs and very little capacity to monitor them.⁴¹ The RAN's

³⁹ AusAID, *Pacific 2020: Challenges and Opportunities for Growth*, Commonwealth of Australia, Canberra, 2006, Annex B, pp. 137-40.

⁴⁰ Navy, Semaphore: February 2005, *The Pacific Patrol Boat Project*, <<http://www.navy.gov.au/media-room/publications/semaphore-february-2005>> (28 March 2014).

⁴¹ For example, Tuvalu with a land area of 26sqkm has an EEZ of 700,000sqkm and one Pacific Patrol Boat to patrol it. See AusAID, *Pacific 2020: Challenges and Opportunities for Growth*, Commonwealth of Australia, Canberra, 2006, Annex B, p. 140 and Pacific Institute of Public Policy, *Tuvalu*, 7 February 2011, <<http://pacificpolicy.org/blog/2011/02/07/tuvalu/>> (28 March 2014).

patrol craft are especially suitable for this work, having adequate range yet being small enough to operate comfortably with the limited forces of the Pacific Island Countries. Regrettably, as illustrated in Table 7-7 above, patrol boat deployments to the South Pacific have reduced dramatically in the last decade or so because of the intensity of law enforcement operations around Australia. Consequently, the demands of constabulary operations in Australia are reducing significantly the assistance that can be provided to Pacific Island Countries whose own resources are so limited. The potential for this kind of assistance to be needed into the future, and the possibility that other countries may offer it if Australia does not, may be another factor in the allocation of resources to the RAN's constabulary function in the future.⁴²

Its commitment to the constabulary function has given the RAN an unprecedented peacetime public profile, which for the most part has been positive. Only since 2001 and the application of tougher policies to deal with irregular maritime arrivals has the RAN's constabulary role become at all controversial, and even then there has been much positive coverage of Navy activities. As well as providing the Navy with a positive public profile the constabulary operations have also made patrol boats popular posting choices for officers and sailors. Many have been attracted to 'patrol boat life' in any case because of the opportunity to become part of a small close-knit crew and a more informal approach to work. Nevertheless, having their day-to-day work portrayed in popular TV programs and featured regularly in news bulletins all added to the attraction.

Over the last decade or more, however, some of the lustre associated with patrol boat life has worn off. As recounted in Chapter Six, the intensity of operations, coupled with people shortages led to much more sea time for the patrol boat crews. Additionally, as noted also in Chapter Six foreign fishers became less cooperative and sometime aggressive in their response to boardings for inspection of their fishing activities. The events that have most tarnished service in patrol boats, however, have been those associated with the harsher irregular maritime arrivals policies and some of the

⁴² China, Japan and the USA, among other countries, are active participants in maritime and other security activities with Pacific Island Countries. See, Sam Bateman and Anthony Bergin, *Staying the course: Australia and maritime security in the South Pacific*, Australian Strategic Policy Institute, Canberra, May 2011, pp. 7-10.

tragedies involving loss of life from the SIEVs. Some patrol boat crew members have suffered from trauma as a result of these experiences.⁴³

Most naval operations, especially combat operations, are impersonal to the extent that adversaries rarely have personal contact with each other and engagements can take place over long distances.⁴⁴ Constabulary operations differ greatly in that they involve close interaction with people, often in fraught circumstances in which language differences can complicate matters. For the patrol boat boarding parties, comprising mainly junior personnel, judgment and common sense can be vital. Consequently, the Navy's experience of the constabulary function has led to the development of a set of skills which have wider utility, as in peacekeeping, and which are more usually associated with law enforcement officials.

Over the last 30 years in particular the constabulary function has become a major component of the RAN's operations, and at times has been its most significant operational activity. This has had implications for the Navy as a whole with many warships assisting the patrol boat force in periods of high demand and some operational tasks foregone. However the threats to Australia's offshore estate manifest themselves in the future, the Navy is likely to remain heavily committed to the constabulary function, in a deterrent if not an enforcement capacity.

⁴³ Cameron Stewart and Paige Taylor, 'Border patrols at breaking point over asylum boats', *The Australian*, 18 July 2013, <<http://sievx.com/articles/AUSSAR2013-4816/20130718StewartTaylor.html>> (31 March 2014).

⁴⁴ See quote by Naval Airman Frank Eyck in David Stevens, 'The Warrior and His Foe', in John Reeve and David Stevens, eds, *The Face of Naval Battle*, Allen and Unwin, Crows Nest, NSW., 2003, p. 270.

CHAPTER NINE - CONCLUSIONS

This thesis has examined Australia's approach to law enforcement at sea from Federation to the end of 2012. It has considered the development of illegal activities, the policy-making and practical responses to them and has tracked the emergence of the consequent legislative framework. With this foundation, the thesis has also analysed the evolution of the Royal Australian Navy's (RAN) involvement in law enforcement at sea - its constabulary function - and its implications for the Navy. The examination followed an assessment of law enforcement at sea and its validity as a function of navies.

The thesis has concluded that law enforcement at sea has been a function of navies since ancient times with a strong focus on counter-piracy and resources protection work. More recently, border protection (including customs and immigration) and environmental protection have also emerged as elements of the constabulary function. The thesis has also shown that navies have adopted different approaches to the law enforcement task, with some, like the Irish Naval Service, being fully committed to it and others assisting dedicated law enforcement agencies, including coast guards. These different approaches have emerged from the way in which States have approached maritime security, with some, like the United States of America, establishing a Revenue Cutter Service before building a Navy.

The Nature of the Task

Fundamentally, the task of protecting Australia's offshore estate has changed little since Federation. In the first decades the main issues were immigration and resources protection and while the form of the threat has changed in the intervening century, the main focus today remains immigration and resources protection. The early focus was on limiting non-white immigration and on regulating the pearl shell industry; in the latter case, both for revenue generation and to guard against illegal Asian immigration. Today, the focus is on predominantly Southwest and Central Asian asylum seekers arriving irregularly by boat, and while the policy is no longer racist, the fear of uncontrolled immigration remains potent in parts of Australian society. With respect to resources protection, most attention is paid to foreign fishing in the Australian Fishing

Zone (AFZ), to ensure sustainable yields from diminishing fish stocks. There is also a growing sense that offshore oil and gas platforms need to be kept secure against terrorism.

One major change in the task has been the growing emphasis on protection of the marine environment. This is an outcome of the increasing global appreciation of the need to protect the natural environment, manifested most notably in Australia with the attention given to the Great Barrier Reef. The global awakening has translated into public and thus Parliamentary pressure for action in Australia, as recounted throughout Chapters Four to Seven.

Federal Government Responses

In examining Australia's approach to law enforcement at sea since Federation the thesis has shown that for almost the first seven decades, Federal Governments lacked urgency, were very hesitant to become involved and were driven by a desire to minimize the cost of operations. For example, there were no regular air or sea patrols before the 1960s. Of the several reasons for these shortcomings, funding limitations were foremost, especially in the early years. There were many competing demands for government funds, as the new Commonwealth worked to provide infrastructure across the vast and sparsely populated continent. The two world wars and intervening great depression added to the financial stresses.

Until the Offshore Constitutional Settlement in 1979 there was also uncertainty and dispute over the limits of State and Federal offshore jurisdiction which made Federal governments wary of intruding on potential State matters. The Settlement confirmed States' jurisdiction to three nautical miles, and Federal government jurisdiction beyond to the limit of the maritime zones. This complication was probably a convenient excuse for Federal government inactivity over the years.

The magnitude of the task was yet another reason for Federal government tardiness in addressing law enforcement at sea Australia's extensive coast line and sparsely settled northern coast made establishing and sustaining patrol forces difficult. Although coastal development over the years eased aspects of this problem, the addition of the

AFZ out to 200nm from 1979 and subsequent continental shelf extension to 350nm in 2008 added greatly to potential surveillance and patrol areas. Especially before the Second World War, reported sightings of illegal activity at sea or illegal aircraft movements could rarely be confirmed. Partly the result of sparse and widely separated population centres, this failure perversely tended to reduce confidence in such sightings and any impetus towards action.

New Approaches to Law Enforcement at Sea

Two main factors motivated change in the Government's approach: asylum seekers coming to Australia by boat and the extended responsibility for resources protection granted by the assertion of an AFZ and Exclusive economic Zone (EEZ) out to 200nm. The first wave of so-called 'boat people' from Southeast Asia beginning in 1976 reignited old fears of Asian immigration and raised concerns over the potential for serious quarantine breaches with implications for local primary industry. Both of these fears remained with subsequent waves of irregular maritime arrivals, especially as some involved significant numbers of people. With the extension of the resource zones, many foreign fishers, previously operating in the high seas, became subject to Australian laws as Australia assumed responsibility for ensuring sustainable fishing in the AFZ.

Although Australia responded with the establishment of aerial surveillance and surface response patrols, many years passed before the current organizational and operational arrangements materialized. Several organizational models, recommended in a succession of reviews through the 1970s and 1980s, were attempted under different law enforcement authorities before the present Border Protection Service came into being. Additionally, different mixes of military and civil contract surveillance aircraft were tried before the current fleet of sophisticated contracted civil surveillance aircraft, supported by Air Force maritime patrol aircraft was settled on. Similarly, although the primary surface response patrol force continues to be provided by the Navy, each of the three patrol boat classes introduced since 1967 has been more capable than the last, but, as recounted in Chapter Seven, even the current Armidale class remains dogged by unreliability.

There are several explanations for Australia's response to the demands of law enforcement at sea. As identified especially in Chapter Five, prior to the establishment of the Maritime Operations Centre there was no Federal Government organization responsible for law enforcement at sea, which meant that responses to illegal, unreported and unregulated (IUU) fishing or any other illegal activity remained *ad hoc*. The establishment of a functional organization had to contend with the differing needs of several government departments and authorities, some as providers of surveillance and response, and others as users of the capabilities.

Throughout Chapters Four to Seven there is evidence of the uncertainty in approaching organizational development for law enforcement at sea in Australia, with recurring consideration as to whether it was a task for the Navy or for a coast guard. The Navy's role continues to be debated, but especially since the replacement of the Attack class patrol boats with the Fremantle class in the early 1980s, the constabulary function has become a permanent operational task for the Navy.

Organizational Challenges

The establishment of a coast guard has been considered several times over the years, but as illustrated in Chapters Six and Seven it has been proposed as a serious option only by the Labor Party, especially since 2001. Despite having proposed some force structure options and funding details prior to recent Federal elections, Labor decided against introducing a coast guard after returning to power in November 2007. This decision lends credence to the view that its coast guard proposals were little more than a means of differentiating the Party from the Coalition on an important national security issue. Nevertheless, Labor may also have been dissuaded by the implications of establishing a coast guard, which would include transfers of bureaucratic and legislative responsibilities as well as physical equipment. The dislocation associated with such reorganization would impact on operational performance.

The lack of prior experience of the overall task led to several 'false starts' such as the assignment of operational responsibility to the Australian Federal Police in 1984, an organization with no prior exposure to aerial surveillance and oceangoing patrol. As noted in Chapter Five, inexperience also plagued early efforts to establish civil aerial

surveillance contracts, with significant shortcomings in selected contractors and aircraft.

The cost of protecting Australia's offshore estate has always been a major factor in determining the approach taken and as late as the 1980s there was a view that the cost of providing the law enforcement should not exceed the potential economic loss that was being guarded. Only at the turn of the century, when the scale of the IUU fishing and irregular maritime arrival problem demanded deterrence and not just reactive surveillance and patrol, was the focus on cost relaxed in favour of performance. Additionally, there was difficulty in establishing how best to fund law enforcement activities, with both 'user pays' and having the Quarantine Service, a customer, also exercising funding responsibility proving unworkable. Ultimately, total funding was provided within the then Department of Transport and Communications as the surveillance provider. Although the provider has since changed, the centralized funding model remains in place.

Legislative Developments

This thesis has also identified the developments in Commonwealth legislation to support law enforcement at sea policy and operations. Legislative development reflected other aspects of law enforcement at sea, so that initially there was little relevant law, with the exception in 1901 of laws designed to prevent non-white immigration and to generate revenue through Customs duties and tariffs. Chapter Eight demonstrated that the major legislative effort has taken place since 1976. This has occurred first in response to developments such as rising global interest in environmental protection, the introduction of offshore oil and gas exploitation, the extension of maritime resource zones enabled by the Law of the Sea Convention and issues such as the expansion of drug smuggling.

The rapid expansion of marine environmental legislation, especially since 1976, is noteworthy, given that the first marine environmental law was not passed until 1932. Acknowledgement of the global status of the Great Barrier Reef and the growing appreciation of the measures needed to protect it for its environmental – and economic – value have contributed significantly to this. The general impact of pollution, ship and

land-sourced, and the desire to penalize polluters has also led to legislative action, much of it reflecting international conventions and agreements.

Legislation in support of Australian quarantine policies has been enacted through the years and although it may not have had the political profile of immigration law it has proven to be effective in keeping Australia free of exotic disease. This has been especially important for primary industry and the competitive advantage associated with guaranteed disease-free foodstuffs. Efforts to maintain the strict controls have come under international pressure, through accusations that strict quarantine laws are merely restrictions on free trade. Consequently, Biosecurity Australia continues to tread a fine line between legislative strictness and openness to international trade.

Most recently, legislative action in support of law enforcement at sea has been generated by the growth of IUU fishing and its extension into the Southern Ocean as well as the successive waves of irregular maritime arrivals. The latter issue in particular has generated much legislation and has proved politically divisive as ever tougher measures were legislated for to discourage asylum seekers.

Chapter Seven also highlights another aspect of Australian law making in this field. In recent years especially, many laws have been subject to later amending legislation. While there were probably cases of hasty drafting of the original legislation, as the irregular maritime arrivals problem became highly divisive, legislation had to respond to quickly changing political demands. It also had to adapt to the constant efforts of people smugglers to circumvent measures intended to frustrate their activities.

RAN Force Structure Challenges

The RAN's tardiness in taking on the constabulary function in support of law enforcement at sea reflected the reluctance of the Federal Government to address the issue. It also reflected the manner of the Navy's development. In its first 50 years it was, in peacetime, a small operationally limited force, impacted by budgetary restrictions. It also fought in the two World Wars and the Korean War, and its focus was understandably on its military function. In peacetime the Navy was substantially reduced in size and capacity, and concentrated primarily on maintaining its combat

skills. Furthermore, with the ongoing differences of view as to whether law enforcement at sea should be a Navy responsibility, there was no compelling reason for the Navy to become involved. It is therefore hardly surprising then that the evolution of law enforcement at sea to becoming a permanent Navy constabulary task was serendipitous; primarily the result of the Attack class patrol craft, purchased for other purposes, being available as marine resources protection demands began to grow.

The force structure implications for the Navy have been substantial. The way in which the demands of the constabulary function have extended beyond the patrol boat force over the decade or so to 2012 are explained in Chapters Six and Seven. At various times, ships from all elements of the Fleet have been allocated to constabulary operations, to the detriment of their primary tasking and at significant cost. Indeed for the decade beginning in 2001 the RAN has engaged more in constabulary operations – at home and internationally – than in any other kind. Although the ships and their crews are flexible enough to manage these changes, inevitably there is a loss of proficiency in primary skills as ships are retained in constabulary operations. Furthermore, the extent to which the patrol boats have been committed to the constabulary function has greatly lessened their availability for deployments, especially into the South Pacific, an area of very high strategic priority for Australia.

The need for constabulary operations in the Southern Ocean has also exposed other limitations in the Navy force structure, with the patrol boats unable to operate in those waters and major warships needing to be accompanied by replenishment ships because of the extended distances. Although civil contract vessels are now used for Southern Ocean patrols, the Navy must consider whether its future warships should be capable of extended Southern Ocean operations – constabulary or otherwise.

Other Implications for the RAN

Commitment to law enforcement at sea has also had major implications for the Navy's force disposition, with new bases to support patrol boat operations established in Darwin and Cairns during the 1970s. This has led to the development of local industry support in those cities and resulted in the relocation of hundreds of Navy families.

Despite the drawbacks associated with operating from commercial ports along the northwest coast of Western Australia the Navy has so far resisted building a dedicated patrol boat base in the Northwest. Much of the resistance indicates a desire not to extend already stretched logistics and personnel support functions.

Acceptance of the constabulary function as a permanent task has had other implications for the Navy, including the need to develop a cadre of people with a range of skills appropriate to their law enforcement duties, including a sound working knowledge of the relevant national and international law.

Above all, however, involvement in constabulary operations has, for the first time, given the Navy a peacetime public profile. News coverage of interceptions of illegal fishing boats and irregular maritime arrival vessels has built a positive reputation for the Navy within government and the public. For an organization traditionally neither seen nor heard the media coverage has also become a useful recruiting tool.

As argued in Chapter Seven, however, not all publicity is good publicity and the nature of the constabulary task in recent years has subjected the Navy to strong criticism. This has been associated with some of the harsher measures put in place to deal with irregular maritime arrivals and with the Navy response to safety of life at sea incidents, some of which have led to loss of life. As a result, patrol boat crews find themselves treading a narrow path, enacting tough government policies while also continuing to meet their moral and legal obligations as seafarers.

These traumatic events and the criticism that follows them, together with the often high intensity of operations, a shortage of crews and the need to deal with sometimes aggressive fishers and uncooperative asylum seekers, has generated great stress and trauma among some of the patrol boat crews. This must be managed both to ensure the wellbeing of the crews and that they continue to conduct their operations effectively and humanely.

Options for Further Research

A significant issue in preparation of this thesis has been the lack of information in the public domain on RAN constabulary operations, especially those involving the patrol boat force. Annual Defence Reports provide only highly aggregated data relating to warship availability and activity, from which little useful information can be gleaned. The Navy has been more forthcoming in the past, but has ceased production of its most informative sources. Although there were only two editions, *Patrolling the Line 2002* and *2003*, produced by the Patrol Boat Force, provided the most detailed account of individual patrol boat operations available, including day to day operations and names of personnel serving in each of the boats. The series of *Navy Annuals* that ended in 2008 provided insight into all RAN operations and usually listed international deployments of all warships. Both publications were apparently victims of funding limitations. The fortnightly RAN newspaper *Navy News* remains a valuable information source but it is by no means comprehensive in its coverage, and as noted in Chapter Six, it sometimes avoids controversy.

Furthermore, there is no formal history of RAN constabulary operations and coverage of them in *The Royal Australian Navy*, the official history produced in 2001 is cursory. In this sense, Customs is somewhat better served with David Day's two volume history of Customs, covering the period from 1788 to 1996. This thesis has provided a comprehensive examination of law enforcement at sea from Federation to the end of 2012 and the way in which successive Federal Governments have responded to its needs. Consequently, it has filled a significant gap in the literature, especially in relation to the Navy's role in law enforcement.

The future of law enforcement at sea and the constabulary function will depend on several matters which have featured strongly in this thesis. The current focus on irregular maritime arrivals will continue into the future if those factors causing people to flee their home countries remain relevant and if Australia remains a favoured destination, despite whatever deterrence measures are deployed. Similarly resources protection is likely to remain important if fish stocks remain under threat and the demand for fish remains strong, as it is at present. The already significant offshore oil and gas industry is likely to add to the importance of resources protection, especially if

terrorism continues to be a regionally credible threat. Finally, the extended maritime zones made possible by the Law of the Sea Convention have greatly extended the reach and responsibilities of law enforcement authorities at sea. Even without further extension of any of the zones the responsibilities of navies and other constabulary forces may well expand if marine resources and the marine environment remain under sustained or even increasing pressure. Likewise the potential for ongoing uncontrolled migration by sea could also continue to engage constabulary and other naval forces. These developments would change the quality if not the quantity of Australia's constabulary forces and possibly the operational focus of much of the Navy.

Since Federation, Australia has slowly and hesitantly embraced its responsibilities for law enforcement at sea. This meant establishing organizational structures and operational forces capable of maintaining the law in the nation's extensive offshore zones and at the ports of entry. It has also led to the development of a substantial body of legislation which now reflects Australia's unique needs and commitment to international conventions. Equally slowly, Australia's Navy came to play a very major part in law enforcement at sea, a part which at times demands the entire patrol boat force as well as other ships. While it is not possible to predict the future demand for law enforcement at sea, recent trends suggest that the RAN will need to develop larger and more capable constabulary forces, and accept that the constabulary function could remain central to the operations of the entire Fleet.

BIBLIOGRAPHY

Australian Official Publications

- 'About Us', *Australian Hydrographic Service*,
<<http://www.hydro.gov.au/aboutus/aboutus.htm>> (30 July 2013).
- AFP: *Annual Report 2001-02*, <<http://www.afp.gov.au/~media/afp/pdf/a/afp-annual-report-2001-2002.ashx>> (2 January 2013).
- 'Annual Report of the Auditor General upon the Treasurer's Receipts and Expenditure during the year ended 30th June 1934', *The Parliament of the Commonwealth of Australia, Papers Presented to Parliament 1934-5-6-7, Vol. II*, Government Printer, Canberra. No publication date listed.
- Appropriation Act 1902, The Acts of the Parliament of the Commonwealth of Australia passed in the session of 1902*, Government Printer, Victoria, 1903.
- Attorney General, *Explanatory Statement, Seas and Submerged Lands (Continental Shelf) Proclamation 2012*, 24 May 2012, <www.comlaw.gov.au/Details/...76...> (24 October 2013).
- Attorney General's Department, '*Offshore constitutional settlement: A milestone in co-operative federalism*', Australian Government Publishing Service, Canberra, 1980.
- AusAID, '*Pacific 2020: Challenges and Opportunities for Growth*', Commonwealth of Australia, Canberra, 2006.
- '*Australia: Defence Forces and Defences*', Colonial Office, London, 3 April 1901.
- Australian Customs and Border Protection Service, *Annual Report 2011-2012*, Commonwealth of Australia, 2012.
-
- Annual Report 2012-13,*
- <<http://www.customs.gov.au/webdata/resources/files/ACBPSAnnualReport2012-13.pdf>> (24 March 2014).
-
- Container Examination Facilities,*
- June 2011, <<http://www.customs.gov.au/webdata/resources>> (28 August 2013).
-
- Customs And Border Protection Bay*
- Class Vessels,*
- <<http://www.customs.gov.au/webdata/resources/files/BayClassVesselsFactSheet.pdf>> (16 January 2013).
-
- Customs and Border Protection Marine*
- Unit-Marine Operations Support Branch,*
- <<http://www.customs.gov.au/page5508.asp>> (26 June 2013).

Australian Defence, Australian Government Publishing Service, Canberra, November 1976.

'Australian Fisheries Management Burns Illegal Fishing Boats', *NT News*, 23 October 2013, in LCDR Graham Norman, RANR, ed., *RAN MTO Newsletter*, 28 October 2013.

Australian Government, Australian Customs and Border Protection Service, *About Customs and Border Protection*,
<<http://www.customs.gov.au/site/page4222.asp>> (29 October 2013).

Customs and Border Protection Marine Unit: Maritime Operations Support Branch,
<<http://www.customs.gov.au/site/page5503.asp>> (28 October 2013).

Protecting our borders, <<http://www.customs.gov.au/site/page5799.asp>> (24 October 2013).

Australian Government, Department of Agriculture, Fisheries and Forests, *Australian Fisheries Statistics 2011*, December 2012,
<<http://data.daff.gov.au/bus/data/warehouse/9aam.../>> (24 October 2013).

Department of the Prime Minister and Cabinet, *PM Transcripts: Strengthening Offshore Maritime Security*, PM Howard, John, 15 December 2004,
<<http://pmtranscripts.dpmc.gov.au/browse.php?did=21554>> (28 October 2013).

'the Australian maritime security operations centre',
<<http://www.bpc.gov.au/site/page5786.asp>> (24 March 2014).

Australian Government Directory, *Australian Customs and Border Protection Service*,
<http://www.directory.gov.au/directory?ea0_1f99_120.&organizationalUnit&d655dc2d-2ae8-48a7-b479-5bb3f09a29b7> (24 March 2014).

Australian Labor Party, *National Platform and Constitution 2007*,
<<http://parlinfo.aph.gov.au/parlInfo/download/library/partypol/1024541/>>
(29 October 2013).

Australian Maritime Operations, Sea Power Centre-Australia, Canberra, forthcoming.

Australian Maritime Quarantine and the Evolution of International Agreements concerning Quarantine, Government Printer, Melbourne, 1919.

Australian Maritime Safety Authority, *Major Oil Spills in Australia-Kirki, Western Australia*, 21 July 1991,
<http://www.amsa.gov.au/marine_environment_protection/major_oil_spills_in_australia/Kirki/index.asp> (12 December 2012).

Australian National Audit Office, 'Auditor General, Audit Report No. 8 2008-09, Performance Audit, National Maritime Unit Australian Customs Service', Canberra, 2008.

'Audit Report No. 15 2011-12, Performance Audit, Risk Management in the Processing of Sea and Air Cargo Imports', Canberra, 2011.

Australian Fisheries Management Authority:
Commonwealth Fisheries Management Performance Audit Report Summaries, Audit Report No. 32 1995-96, Canberra, 25 June 1996,
<<http://www.anao.gov.au/Publications/Audit-Reports?year=1995-1996&portfolio=2>> (24 November 2012).

Coastwatch: Australian Customs Service, Audit Report No. 38 of 1999-2000, Commonwealth of Australia, Canberra, 2000

'Australian Naval Operations 1993-94', *Australia's Navy 1994-95*, Australian Government Publishing Service, Canberra, 1995.

'Australian Operational Service Medal', <<http://www.navy.gov.au/Australian-operational-service/>> (10 August 2013).

Australian Royal Commission of Inquiry into Drugs Report, Book B, Australian Government Publishing Service, Canberra, 1980.

Australian Transport Safety Bureau, 'Marine Safety Investigation Report 162, Bunga Teratai Satu', Canberra, 2001.

Barnes, Commander Carmel, RAN, et. al., eds., *Australia's Navy 2006*, Defence Publishing Service, Canberra, 2006.

Barrett, P.J. *Coastwatch, Australian Customs Service: A Performance Audit*, Australian National Audit Office, Commonwealth of Australia, Canberra, 2000.

Beale, Roger, et. al., *One Biosecurity-A Working Partnership*, Attorney General's Department, Canberra, September 2008.

Bendle, Vanessa, David Griffin and Peter Laurence, eds., *Database of Royal Australian Navy Operations, 1990-2005*, Sea Power Centre-Australia, Canberra, 2005.

Binskin, Air Marshal M. D., 'CDF and Secretary Department of Defence Senate Estimates Brief, Whole of Defence 6: Defence of Australia's Northwest and Pilbara regions', 24 May 2013,
<http://www.defence.gov.au/foi/docs/disclosures/071_1314_Documents.pdf
> (28 March 2014).

Border Protection Command, <<http://www.bpc.gov.gov.au>> (23 May 2012).

Border Protection Command-History Overview, <<http://bpc.gov.au/site/page5792.asp>> (11 January 2013).

Boulton, Lieutenant Natalie, RAN, et. al., eds., *Australia's Navy 2002-2003*, Defence Publishing Service, Canberra, 2003.

Burke, The Honourable Tony, MP, Minister for Sustainability, Environment, Water, Population and Communities, Media Release: *Gillard Government proclaims the final network of Commonwealth marine reserves*, 16 November 2012.

Burnside, LEUT Elise and CAPT Ken Burleigh, eds., *Patrolling the Line 2002*, Coleman's Printing, Darwin, 2003.

Colonial Defence Committee, *Defence Scheme for the Commonwealth of Australia 1904*, Melbourne, July 1904.

Commonwealth of Australia, *Parliamentary Debates*, Senate and House of Representatives, Volumes I - 221, May 1901-March 1953.

_____ *Parliamentary Debates*, Senate, Volumes S1-270, September 1953-November 2010.

_____ *Parliamentary Debates*, Senate, Nos. 1-4, February 2011-March 2012.

_____ *Parliamentary Debates*, Senate, March 2012-December 2012.

_____ *Parliamentary Debates*, House of Representatives, Volumes 1-322, September 1953-November 2010.

_____ *Parliamentary Debates*, House of Representatives, Nos. 1-4, February 2011-March 2012.

_____ *Parliamentary Debates*, House of Representatives, March-December 2012.

Cooper, Alastair, '1955-1972: The Era of Forward Defence', in David Stevens, ed., *The Royal Australian Navy: The Australian Centenary History of Defence, Vol. III*, Oxford University Press, Melbourne, 2001.

Crimes at Sea Act 2000, <www.comlaw.gov.au/Details/C2004A00605> (27 February 2013).

Crimes (Ships and Fixed Platforms) Act 1992, <<http://www.comlaw.gov.au/Details/C2004A04464>> (30 December 2013).

Customs Act 1901, *The Acts of the Parliament of the Commonwealth of Australia passed in the Session 1901-02*, Government Printer, Melbourne, 1902.

Customs Act 1901-1923, *The Acts of the Parliament of the Commonwealth of Australia passed during the year 1923*, Vol. XXI, Government Printer, Melbourne, 1923.

Customs Act 1910, The Acts of the Parliament of the Commonwealth of Australia, 1901-1911, Vol. 1, Government Printer, Melbourne, 1913.

Customs Act 1914, Sub-section 1A, The Acts of the Parliament of the Commonwealth of Australia passed in the Session of 1914-15, Government Printer, Melbourne, 1916.

Customs Act 1923, The Acts of the Parliament of the Commonwealth of Australia passed during the year 1923, Vol. XXI, Government Printer, Melbourne, 1923.

Customs Act 1930, The Acts of the Parliament of the Commonwealth of Australia passed during the year 1930, Vol. XXVIII, Government Printer, Canberra, 1930.

Customs Act 1934, The Acts of the Parliament of the Commonwealth of Australia passed during the year 1934, Vol. XXXII, Government Printer, Canberra, 1934.

Customs Act 1936, The Acts of the Parliament of the Commonwealth of Australia passed during the year 1936, Vol. XXXIV, Government Printer, Canberra, 1936.

Defence 2000: Our Future Defence Force, Department of Defence, Canberra, 2000.

Defence Act 1903, Section 34, The Acts of the Parliament of the Commonwealth of Australia passed in the session of 1903, Government Printer, Victoria, 1904.

Defence Act 1903–Sect 51A, <<http://www.austlii.edu.au>> (2 October 2012).

Defence Annual Report 2004-05, Commonwealth of Australia, Canberra, 2005.

Defence Annual Report 2006-07, <<http://www.defence.gov.au/budget/06-07/>> (1 August 2013).

Defence Capability Plan: Public Version 2012, Department of Defence, Canberra, 2012, <<http://www.defence.gov.au/public/capabilityplan/>> (6 August 2013).

Defending Australia: Defence White Paper 1994, Australian Government Publishing Service, Canberra, 1994.

Defending Australia in the Asia Pacific Century: FORCE 2030, Commonwealth of Australia, 2009.

Department of Defence, Annual Report 1988-89, Australian Government Publishing Service, Canberra, 1988.

Annual Report 2003-2004, <<http://www.defence.gov.au/budget/03-04>> (28 August 2013).

Australia's National Security: A Defence Update 2005, Canberra, 2005.

- Department of Infrastructure and Transport, *Coasting Trade Licences & Permits*, <<https://www.infrastructure.gov.au/maritime/freight/licences/index.aspx>> (13 December 2012).
- Department of Primary Industry and Energy, *Australian Quarantine Requirements for the Future: Report of the Quarantine Review Committee*, Australian Government Publishing Service, Canberra, May 1988.
- Dibb, Paul, *Review of Australia's defence capabilities*, Australian Government Publishing Service, March 1986.
- Diekmann, Lieutenant Commander Ron, 'HMAS Newcastle: On Watch', in Commander Richard Donnelly, et. al, eds., *Australia's Navy 2005*, Defence Publishing Service, Canberra, 2006.
- DIMIA Annual Report 2002-03: Key Highlights, <<http://www.immi.gov.au/about/reports/annual/2002-03/report26html>> (2 January 2013).
- Donnelly, Commander Richard, RAN, et. al., eds., *Australia's Navy 2005*, Defence Publishing Service, Canberra, 2006.
- Donohue, Hector, *From Empire Defence to the Long Haul: Post-war defence policy and its impact on naval force structure planning 1945-1955*, RAN Maritime Studies Program, Canberra, 1996.
- Downer, Hon. Alexander, M.P., *Joint Media Release, Ambassador for People Smuggling Issues*, 28 February 2002, <http://www.foreignminister.gov.au/releases/2002/fa027_02.html> (2 January 2013).
- Eccles, Paul, *Civil Coastal Surveillance*, a paper presented by the Department of Transport and Construction in Port Hedland, October 1982.
- '*Enforcement Operations in the Southern Ocean*', Australian Customs Service, and Australian Fisheries Management Authority, Canberra, August 2005.
- Environmental Protection and Biodiversity Conservation Act 1999*, <<http://www.comlaw.gov.au/Series/C2004A00485>> (11 February 2013).
- Eversham, Lieutenant Commander W.E., Lieutenant D.J. Byrne, and Sub-Lieutenant B.M. Westcott, 'HMAS Whyalla's South-West Pacific Deployment', in *Australia's Navy 1994-95*, Australian Government Publishing Service, Canberra, 1995.
- Expert Panel on Asylum Seekers: Summary of Recommendations*, <expertpanelon.asylumseekers.dpmc.gov.au> (25 March 2013).

- Fact Sheet 81–Australia’s Excised Offshore Places*, Department of Immigration and Citizenship, <<http://www.immi.gov.au/media/fact-sheets/81excised-offshore.htm>> (2 January 2013).
- ‘Fire blight: Exotic threat to Western Australia’, *Agriculture Western Australia Fact Sheet*, No. 47/2000, October 2000, <http://www.agric.wa.gov.au/objtwr/imported_assets/content/pw/ph/dis/fn/fs04700.pdf> (5 December 2012).
- Fisheries Administration Act 1991*, <<http://www.comlaw.gov.au/Details/C2005C00182>> (17 June 2013).
- Forbes, Andrew, ed., *The Strategic Importance of Seaborne Trade and Shipping: Papers in Australian Maritime Affairs No. 10*, Commonwealth of Australia, Canberra, 2003.
- ‘Function VF 63 Defence’, Public Record Office Victoria, <<http://www.access.prov.vic.gov.au/public/component>> (3 October 2007).
- General Scheme for the Defence of Australia–Coastal Defence etc.*, Committee of Imperial Defence, Government Printer, Melbourne, 1906.
- Geosciences Australia, *Oceans and Seas*, <<http://www.ga.gov.au/education/geoscience-basics/dimensions/oceans-and-seas.html>> (24 October 2013).
- Government of Western Australia, Department of Mines and Petroleum, *Varanus Island Incident*, <www.dmp.wa.gov.au> (4 April 2013).
- Government Resident’s Report on the Northern Territory, 1908*, Palmerston, NT, 1908.
- Hawke, Allan and Ric Smith, *Australian Defence Force Posture Review*, Australian Government, Canberra, 30 March 2012.
- Heggen, Alan E., *An Independent Enquiry into the Circumstances Surrounding the arrival of Suspect Illegal Entrant Vessels near Cairns, North Queensland and Nambucca Heads, NSW*, Department of Prime Minister and Cabinet, Barton, ACT., 1999.
- High Court of Australia, *NSW v Commonwealth* [1975] HCA 58; (1975) 135 CLR 337 (17 December 1975), <www.austlii.edu.au/au/cases/cth/HCA/1975/58.html> (23 September 2011).
- Hill, Senator the Hon. Robert, Minister for Defence and Senator the Hon Chris Ellison, Minister for Justice and Customs, joint news release, ‘Boost for maritime counter-terrorism protection’, 30 March 2005, <www.ag.gov.au/agd/WWW/justiceministerHome.nsf> (22 May 2006).
- ‘HMAS Fremantle’, *Australia’s Navy 2002-2003*, Goanna Print, Fyshwick, ACT, 2003.

'HMAS *Fremantle II*', <www.navy.gov.au/hmas-fremantle-ii> (11 June 2013).

Hope, A. N., *Western Australia—Record of investigation into 30 deaths...*, W.A. Coroner's Court, 23 February 2012.

House of Representatives Standing Committee on Expenditure, *Footprints in the sand: inquiry into coastal surveillance coordination*, Australian Government Publishing Service, Canberra, 1986.

<<http://www.navy.gov.au/fleet-ships-boats-craft/available-ship-histories>> (12 June 2013).

Hudson, Hugh. *Northern Approaches: A report on the Administration and Management of Civil Coastal Surveillance in Northern Australia*, Australian Government Publishing Service for the Department of Transport and Communications, Canberra, 1988.

Immigration Act 1920, The Acts of the Parliament of the Commonwealth of Australia passed during the year 1920, Government Printer Victoria, Melbourne, 1920.

Immigration Restriction Act 1901, The Acts of Parliament of the Commonwealth of Australia passed in the Session 1901-02. Government Printer, Melbourne, 1902.

Immigration Restriction Act 1908, The Acts of the Parliament of the Commonwealth of Australia passed in the Session of 1908, Government Printer, Melbourne, 1909.

Immigration Restriction Act 1910, The Acts of the Parliament of the Commonwealth of Australia passed in the Session of 1910, Government Printer, Melbourne, 1911.

'Independent Allocation Advisory Panel Factual Brief for the Southern & Western Tuna and Billfish Fishery', *Australian Fisheries Management Authority*, January 2002, <<http://www.afma.gov.au/home/afma-archives/archive-7/independent-allocation-advisory-panel-factual-brief-for-the-southern-western-tuna-and-billfish-fishery-january-2002/>> (23 November 2012).

Inspector of Transport Security Act 2006, <www.comlaw.gov.au/Series/C2006A00149> (28 February 2013).

Jellicoe of Scapa, Admiral of the Fleet Viscount, *Naval Defence Report on Naval Mission to the Commonwealth of Australia*, Government Printer, Melbourne, 1919.

Joint Standing Committee on Foreign Affairs and Defence, *Review of the Defence Report 2004-05*, Parliament of Australia, Canberra, October 2006.

Jones, Peter, '1972-1983: Towards Self-Reliance', in David Stevens ed., *The Royal Australian Navy: The Australian Centenary History of Defence Volume III*.

_____, '1983-1991: A period of Change and Uncertainty', in David Stevens, ed, *The Royal Australian Navy: The Australian Centenary History of Defence Volume III*.

Jones, Commodore T. N., RAN, *Warfare Officers Career Handbook*, September 2006.

- Ma, Lieutenant Commander Philip and Lieutenant Patrick Pilbeam, 'The Fighting 304 – 18,000 Tonnes of Law and Order Across the Northern Border', in Commander Carmel Barnes et. al, eds., *Australia's Navy 2006*, Defence Publishing Service, Canberra, 2006.
- Macdonald, Senator The Hon. Ian, Minister for Fisheries, Forestry and Conservation, *Media Release DAFF05/218M*, 5 November 2005, <www.mffc.gov.au/releases/2005/05218m.html> (9 January 2013).
- Major Oil Spills in Australia: Anro Asia, Bribie Island, Queensland, 29 October 1981*, <http://www.amsa.gov.au/marine_environment_protection> (6 June 2012).
- Maritime Transport and Offshore Facilities Security Amendment (Security Plans and Other Measures) Act 2006*, <www.comlaw.gov.au/Series/C2005A00067>, (28 February 2013).
- Maritime Transport Security Amendment Act 2005*, <www.comlaw.gov.au/Series/C2005A00067> (28 February 2013).
- Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Bill 2012*, Parliament of Australia, <http://www.aph.gov.au/Parliamentary_Business/Bills> (2 July 2013).
- Migration Amendment Regulations 1999 (No. 12) 1999*, <www.austlii.edu.au/legis/cth/num_reg> (27 February 2013).
- Migration Amendment (Reinstatement of Temporary Protection Visas) Bill 2013 [No. 2]*, <www.comlaw.gov.au> (25 March 2013).
- Migration Reform Act 1992, No. 184, 1992–Table of Provisions*, <www.comlaw.gov.au/Details/C2004Ao4475> (25 February 2013).
- Millbank, Adrienne, 'Boat People, Illegal Migration and Asylum Seekers: in Perspective', *Current Issues Brief, 13 1999-2000*, Parliament of Australia, 14 December 1999.
- Minister for Foreign Affairs and Minister for Immigration, Multicultural and Indigenous Affairs, Joint Media Release, *Minasa Bone Returns to Indonesia*, , 9 November 2003, <http://www.foreignminister.gov.au/releases/2003/joint_Minasa_Bone.html> (9 January 2013).
- Minister Media Release: New Coastwatch fleet takes to the skies*, Thursday 28 March 2008, <<http://www.customs.gov.au/site/content10172.asp>> (25 October 2013).
- Moore–Wilton, M.W., *Report of the Prime Minister's Coastal Surveillance Task Force*, Department of Prime Minister and Cabinet, Canberra, June 1999.

Naval Agreement Act 1903, Schedule, Article 8, The Acts of the Parliament of the Commonwealth of Australia, 1901-1911, Vol. 1, Government Printer, Melbourne, Vic., 1913.

'Naval Defence Statement by the Minister for the Navy, Explanatory of the Estimates 1920-21', *The Parliament of the Commonwealth of Australia, Parliamentary Papers 1920-21, Vol. V, Government Printer, Melbourne, 1921.*

Naval Defence Act 1910, The Acts of Parliament of the Commonwealth of Australia passed in the session of 1910, Government Printer, Victoria, 1911.

Navy, *HMAS Kanimbla II*, <<http://www.navy.gov.au/hmas-kanimbla-ii>> (28 October 2013).

Navy, *Resolute*, <<http://www.navy.gov.au/operations-and-exercises/resolute>> (28 October 2013).

Navy, *Semaphore: February 2005, The Pacific Patrol Boat Project*, <<http://www.navy.gov.au/media-room/publications/semaphore-february-2005>> (28 March 2014).

Nelson, The Hon Dr Brendan Minister for Defence, Media Statement, *Announcement on Illegal fishing in Australian Waters*, 5 April 2006, <<http://www.defence.gov.au/minister/52tpl.cfm?CurrentId=5521>> (28 March 2014).

Official Year Book of the Commonwealth of Australia 1901-1908, No. 2-1909, McCarron, Bird and Co., Melbourne, 1909.

Official Year Book of the Commonwealth of Australia 1901-1909, No. 3-1910, McCarron, Bird and Co., Melbourne, 1910.

Official Year Book of the Commonwealth of Australia 1901-1911, No. 5-1912, McCarron, Bird and Co., Melbourne, 1911.

Official Year Book of the Commonwealth of Australia 1901-1912, No. 6-1913, McCarron, Bird and Co., Melbourne, 1913.

Official Year Book of the Commonwealth of Australia 1901- 1913, No. 7-1914, McCarron, Bird and Co., Melbourne, 1914.

Official Year Book of the Commonwealth of Australia 1901-1916, No. 10-1917, McCarron, Bird and Co., Melbourne, 1917.

Official Year Book of the Commonwealth of Australia 1901-1917, No. 11-1918, McCarron, Bird and Co., Melbourne, 1918.

Official Year Book of the Commonwealth of Australia 1901-1918, No. 12-1919, McCarron, Bird and Co., Melbourne, 1919.

- Official Year Book of the Commonwealth of Australia 1901-1919*, No. 13 -1920, McCarron, Bird and Co., Melbourne, 1920.
- Official Year Book of the Commonwealth of Australia 1901-1920*, No. 14-1921, Government Printer, Melbourne, 1921.
- Official Year Book of the Commonwealth of Australia* No. 15-1922, McCarron, Bird and Co., Melbourne, 1922.
- Official Year Book of the Commonwealth of Australia*, No. 17-1924, McCarron, Bird and Co., Melbourne, 1924.
- Official Year Book of the Commonwealth of Australia*, No. 18-1925, Government Printer, Melbourne, 1925.
- Official Year Book of the Commonwealth of Australia*, No. 21-1928, Government Printer, Melbourne, 1928.
- Parliamentary Standing Committee on Public Works, *Report Relating to the Proposed Darwin Naval Base Redevelopment*, Parliament of the Commonwealth of Australia, Canberra, 2 September 1999.
- Parliament of Australia, *Bills Digest alphabetical index 1996-97*,
<http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/BD9697> (25 January 2013).
-
- Bills Digest No. 90, Migration Legislation Amendment (Judicial Review) Bill 1998*,
<http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd9899/99bd090> (23 January 2013).
-
- Bills Digest No. 135 1998-99 Environment Protection and Biodiversity Conservation Bill 1998*,
<http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd9899/99bd135#Main> (11 February 2013).
-
- Bill Search Results*, <www.aph.gov.au> (16 April 2013).
-
- Maritime Powers Bill 2012*, <www.aph.gov.au> (16 April 2013).
-
- Protection of the Sea Legislation Amendment Act 2010*,
<http://www.aph.gov.au/Parliamentary_Business/Bills> (2 July 2013). (3 July 2013).
-
- Royal Commissions and Commissions of Inquiry*,
<http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Browse_by_Topic/law/royalcommissions#1977> (30 October 2013).

- Phillips, Janet, *Background Note: Asylum Seekers and refugees: What are the facts?* Parliament of Australia, Parliamentary Library, 11 February 2013, <<http://parlinfo.aph.gov.au/parlInfo/download/library/prspub/HGNW6/pdf>> (25 October 2013).
- _____ and Harriet Spinks, *Boat Arrivals in Australia since 1976*, Department of Parliamentary Services, Canberra, 5 January 2011, <<http://parlinfo.aph.gov.au/parlInfo/download/library/prspub/HGNW6/pdf>> (24 October 2013).
- Plaintiff M70/2011 v Minister for Immigration and Citizenship*, High Court of Australia, 31 August 2011, <www.hcourt.gov.au> (25 March 2013).
- 'Post Incident Review of the Arrival of the Chinese Vessel "Min Ping Yu No. 8", at Coburg Peninsula', *Australian Customs Service*, Canberra, 1998.
- Prime Minister of Australia, Media Release, *Strengthening Offshore Maritime Security*, 15 December 2004, <http://pandora.nla.gov.au/pan10052/20050221-0000/www.pm.gov.au/news/media_rele...> (6 September 2009).
- Profile of the electoral division of Kennedy*, <<http://aec.gov.au/profiles/qld/kennedy.htm>> (3 January 2013).
- Quarantine Act 1908, The Acts of the Parliament of the Commonwealth of Australia passed in the Session of 1907-08*, Government Printer, Victoria, 1908.
- Quarantine Act 1912, The Acts of the Parliament of the Commonwealth of Australia passed in the Session of 1912*, Government Printer, Melbourne, 1913.
- Quarantine Act 1915, The Acts of the Parliament of the Commonwealth of Australia passed in the Session of 1914-15*, Government Printer, Melbourne, 1916.
- Rago, Lieutenant Lauren, 'Triton Centenary draws to a close', *Navy Daily*, 18 October 2013, <<http://news.navy.gov.au/en/Oct2013/Fleet/537/Triton-Centenary-draws-to-a-close.htm#.Um24LZq4bmQ>> (28 October 2013).
- Ramm, David C. *Australia's Northern Trawl Fishery: Fisheries Report No. 32*, Department of Primary Industry and Fisheries, Darwin, May 1994.
- RAN Doctrine 2 - The Navy Contribution to Australian Maritime Operations*, Sea Power Centre-Australia, Canberra, 2005.
- 'Rear Admiral James Vincent Purcell Goldrick', *Navy*, <<https://www.navy.gov.au/biography/rear-admiral-james-vincent-purcell-goldrick>> (28 March 2014).
- Reith, The Hon. Peter MP, Media Release, *The Great Coast Guard Con*, 2 November 2001, <<http://www.defence.gov.au/minister/6tpl.cfm?CurrentId=762>> (11 December 2013).

- 'Report on the Administration of the Northern Territory 1948-49', *The Parliament of the Commonwealth of Australia, Papers Presented to Parliament 1950-51, Vol. II*, Government Printer, Canberra, 1951.
- 'Report on Investigations into the Arrival of a Suspect Illegal Entrant Vessel (SIEV) into Montagu Sound', *Australian Customs Service*, Canberra, 1992.
- Risk Assessment Handbook 2011*, Department of Agriculture, Fisheries and Forests-Biosecurity Australia, Canberra, 2011.
- Sea Power Centre-Australia, *Australian Maritime Doctrine: RAN Doctrine 1*, Defence Publishing Service, Canberra, 2000.
-
- Australian Maritime Doctrine: RAN Doctrine 1*, Sea Power Centre-Australia, Canberra 2010.
-
- Semaphore: A First Analysis of RAN Operations, 1990-2005, Issue 2 January 2006*, Department of Defence, Canberra, 2006.
- Securing Australia's Energy Future*, Department of Prime Minister and Cabinet, Canberra, 2004.
- Semaphore, *The Pacific Patrol Boat Program*, Sea Power Centre-Australia, Issue 2, February 2005, <<http://www.navy.gov.au>> (17 October 2013).
-
- Welcome to the Armidale Class*, February 2006, <http://www.navy.gov.au/media-room/publications/semaphore-february-2006-0> (28 October 2013).
- Senate Budget Estimates Hearing, Question on Notice*, Parliament of Australia, 4-5 June 2003. <<http://www.defence.gov.au/ips/parliament/qons/>> (7 August 2013).
- Senate Select Committee for an inquiry into a certain maritime incident'*, Parliament of Australia, Canberra, 2002.
- SIEV 36, 'Corporal Sharon Louise Jager RAAF', <<http://www.defence.gov.au>> (14 August 2013).
- Smith, Ric, *Report of the Review of Homeland and Border Security: Summary and Conclusions*, 4 December 2008, www.royalcommission.vic.gov.au/getdoc/.../TEN.004.002.0431.pdf
- South Australian Maritime Museum, *Ville De Bordeaux*, <www.history.sa.gov.au/maritime/edu/docs...> (9 January 2010).
- Southern Ocean Patrol Vessel - ACV Ocean Protector*, Australian Customs and Border Protection Service, <<http://www.customs.gov.au/webdata/resources/files/SouthernOceanPatrolVesselACVOceanProtectorFactSheet.pdf>> (28 March 2014).

Summary of the 2007/08 Equine Influenza Outbreak, New South Wales Department of Primary Industries and Agriculture, 1 July 2008,
<<http://www.dpi.nsw.gov.au/agriculture/livestock/horses/health/general/influenza/summary-of-the-200708-ei-outbreak>> (5 December 2012).

The Auditor General, *Audit Report No. 4 2007-08: Container Examination Facilities Follow Up*, Australian Customs Service, Australian National Audit Office, Canberra, 2007.

_____ *Audit Report No. 8 2008-09, Performance Audit, National Maritime Unit* Australian Customs Service, Australian National Audit Office, Canberra, 2008.

----- *Audit Report No. 15 2011-12, Performance Audit, Risk Management in the Processing of Sea and Air Cargo Imports*, Australian National Audit Office, Canberra, 2011.

The Australian Constitution, Australian Government Publishing Service, Canberra, 1975.

The Pacific Island Labourers Act 1901, The Acts of the Parliament of the Commonwealth 1901-02, Government Printer, Melbourne, 1902.

The Parliament of the Commonwealth of Australia, *Australia's Peacetime Coastal Surveillance and Protection Arrangements—A Review*, The Commonwealth Government Printer, Canberra, 1984.

_____ Joint Committee of Public Accounts and Audit, *Review of Coastwatch—Report No. 384*. Commonwealth of Australia, Canberra, August 2001.

Upgrade Patrol Boat Facilities Darwin Naval Base Northern Territory, Statement of Evidence to the Parliamentary Standing Committee on Public Works, Department of Defence, Canberra, May 2005, p. 1, <http://www.aph.gov.au/business/house_of_representatives> (28 August 2013).

War Precautions Act 1914, The Acts of the Parliament of the Commonwealth of Australia passed in the Session of 1914-15, Government Printer, Melbourne, 1916.

Western and Central Pacific Fisheries Commission, Department of Agriculture, Fisheries and Forests, <<http://www.daff.gov.au/fisheries/international/wcpfc>> (17 October 2013).

Whaling Act 1935, The Acts of the Parliament of the Commonwealth of Australia passed during the year 1935, Commonwealth Government Printer, Canberra, 1935.

What is ammonium nitrate and what is it used for? Queensland Government, <<http://www.deir.qld.gov.au/workplace/subjects/hazardousmaterials/ammunium/definition/index.htm>> (13 December 2012).

What is the Harvest Strategy Policy? Department of Agriculture, Fisheries and Forestry, <http://www.daff.gov.au/fisheries/domestic/harvest_strategy_policy> (1 January 2013).

Woolner, Derek. *Australian Coastal Surveillance: A History and Commentary*, Legislative Research Service, Department of the Parliamentary Library, Canberra, 1984.

_____ *The Developing Policy Pressures in Australian Coastal Surveillance: Research Paper No. 20 2000-01*, Information and Research Services, Department of the Parliamentary Library, Canberra, 2001.

Books and Book Chapters

Albion, Robert Greenhalgh, ed., Rowena Reed, *Makers of Naval Policy 1798-1947*, Naval Institute Press, Annapolis, MD., 1989.

Alexander, Fred, *Australia Since Federation—A Narrative and Critical Analysis*, Nelson, West Melbourne, 1967, rev. ed., 1980.

Allen, Admiral Thad W, *The U.S. Coast Guard Strategy for Maritime Safety, Security and Stewardship*, U.S. Department of Homeland Security, Washington, DC., 2007.

Anand, R.P., *Origin and Development of the Law of the Sea*, Martinus Nijhoff Publishers, The Hague, 1982.

Aplin, Graeme, ed., *Sydney Before Macquarie: A Difficult Infant*, NSW University Press, Kensington, NSW, 1988.

Bach, John, *The Australia Station: A History of the Royal Navy in the South West Pacific, 1821-1913*, New South Wales University Press, Kensington, NSW, 1986.

_____ *A Maritime History of Australia*, Pan Books, Sydney, 1982.

Bannon, M.J., *The Evolution of the Role of Australian Customs in Maritime Surveillance and Border Protection*, Master of Maritime Studies Thesis, University of Wollongong, 2007.

Ballinger, Rhoda C., 'A Sea Change at the Coast', in Jonathan Potts and Hance D. Smith, *Managing Britain's Marine and Coastal Environment: Towards a Sustainable Future*, Routledge, Abingdon, 2005.

Bateman, Sam, 'regional navies and coastguards: striking a balance between "lawships" and warships', in Geoffrey Till and Jane Chan, eds., *Naval Modernisation in South-east Asia: Nature, causes and consequences*, Routledge, Abingdon, Oxon, 2013.

_____ and Anthony Bergin, *Staying the course: Australia and maritime security in the South Pacific*, Australian Strategic Policy Institute, Canberra, May 2011.

- Bergin, Anthony, *The Pacific Patrol Boat Project: A Case Study in Australian Defence Cooperation*, Department of International Relations, Research School of Pacific Studies, Australian National University, Canberra, 1994.
- _____ and Mohd Sidik Shaik Osman, eds., *National Coordination of Maritime Surveillance and Enforcement*, Australian Defence Studies Centre, University College, Australian Defence Force Academy, Canberra, 1996.
- Bigge, J.T., *Report of the Commission of Inquiry on the State of Agriculture and Trade in the Colony of New South Wales*, House of Commons, London, 4 July 1823.
- _____ *Report of the Commission of Inquiry into the State of the Colony of New South Wales*, House of Commons, London, 19 June 1822.
- _____ *Report of the Commission of Inquiry on the Judicial Establishments of New South Wales and Van Diemen's Land*, House of Commons, 1823, rpt. 1966.
- Bird, James, *Seaport Gateways to Australia*, Oxford University Press, London, 1968.
- Bolton, Geoffrey, *Spoils and Spoilers: Australians make their environment 1788-1980*, George Allen and Unwin, Sydney, 1981.
- Booth, K., *Navies and Foreign Policy*, Croom Helm, London, 1977.
- _____ *Law, Force and Diplomacy at Sea*, George, Allen and Unwin, London, 1985.
- BR 1806, *British Maritime Doctrine*, 3rd ed., The Stationery Office, London, 2004.
- Braudel, Fernand, *The Mediterranean and the Mediterranean World in the Age of Phillip II*, Vol. II, Collins, London, 1973.
- Brennan, Frank, *Tampering with Asylum: A Universal Humanitarian Problem*, University of Queensland Press, St. Lucia, Qld, 2003.
- Briggs, Rear Admiral Peter, 'The ADF's Role in policing the Offshore Zones', in Doug MacKinnon and Dick Sherwood, eds., *Policing Australia's Offshore Zones—Problems and Prospects*, Centre for Maritime Policy, University of Wollongong, Wollongong, 1997.
- Brinkley, Alan, *The Unfinished Nation: A Concise History of the American People, Vol, One*, 2nd ed., McGraw-Hill, New York, NY, 1997.
- Buchholz, Hanns J., *Law of the Sea Zones in the Pacific Ocean*, Institute of Southeast Asian Studies, Singapore, 1987.
- Burrell, Vice Admiral Sir Henry, RAN, *Mermaids Do Exist: The Autobiography of Vice Admiral Sir Henry Burrell*, Macmillan, Melbourne, 1986.
- Cable, James. *Diplomacy at Sea*, Macmillan, London, 1985.

- _____ *Gunboat Diplomacy 1919-1979*, St.Martin's Press, New York, 1981.
- Chair's Summary of Western Trawl Fishery Management Advisory Council Meeting*, Fremantle, 10 June 2009.
- Chalk, Peter, *The Maritime Dimension of International Security: Terrorism, Piracy, and Challenges for the United States*, The RAND Corporation, Santa Monica, CA., 2008.
- Churchill, R.R., and A.V. Lowe, *The Law of the Sea*, 3rd. ed. Manchester University Press: Manchester, 1999.
- Clark, C.M.H., *A History of Australia, Volume V, The People Make Laws 1888-1915*, Melbourne University Press, Carlton, Vic., 1981.
- Clark, Rear Admiral George R, U.S. Navy (Retired), et. al., revised and continued by Carroll S. Alden, *A Short History of the United States Navy*, J.B. Lippincott and Co., Philadelphia, PA., 1939.
- Clowes, William Laird, et.al, *The Royal Navy: A History from the Earliest Times to the Present*, Sampson, Low and Marsdon and Co., London, 1901.
- _____ *The Royal Navy: A History from the Earliest Times to the death of Queen Victoria*, Sampson, Low and Marsdon and Co., London, 1903.
- Coast Guard Publication 1-U.S. Coast Guard: America's Maritime Guardian*, Washington DC., 1 January 2002.
- Coletta, Paolo E, *American Naval History: A Guide*, 2nd. ed., The Scarecrow Press, Lanham, MD., 2000.
- Colombos, C. John, *The International Law of the Sea*. 6th ed. (1967) rpt., Longmans Green and Co., London, 1968.
- Committee on Marine Area Governance and Management, National Research Council, *Striking a Balance: Improving Stewardship of Marine Areas*, National Academy Press, Washington, D.C., 1997.
- Cooper, H.M., *A Naval History of South Australia and Other Historical Notes*, The Hassell Press, Adelaide, 1950.
- Corbett, Julian, *England in the Seven Years War: A Study in Combined Strategy*, Longmans, Green and Co., London, 1907.
- Coulthard-Clark, Chris, *Without Peer: Sir William Clarkson KBE, CMG (1859 - 1934) Engineer Vice-Admiral, Royal Australian Navy*, The Warren Centre for Advanced Engineering, Sydney University, Sydney, 2002.
- Cramp, K.R., *State and Federal Constitutions of Australia*, Angus and Robertson, Sydney, 1914.

- Cronin, Patrick M., *Flashpoints: The Way Forward in the East and South China Seas*, Centre for New American Security, Washington, D.C., 28 March 2013.
- Crowley, F.K., *Colonial Australia 1788-1840: A Documentary History of Australia*, Vol. 1, Nelson, West Melbourne, 1980.
- _____. *Modern Australia in Documents, Volume 1: 1901-1939*, Wren Publishing, Melbourne, 1973.
- Cunliffe, Barry, *Facing the Ocean-The Atlantic and its Peoples 8000 BC to AD 1500*, Oxford University Press, Oxford, 2001.
- Dalton, the Hon John H, Admiral J.M. Boorda, USN, and General Carl E. Mundy, USMC, *Forward from the Sea*, The Department of the Navy: Washington, DC., 1994.
- David, Fiona, *Human Smuggling and Trafficking: An Overview of the Response at the Federal Level*, Australian Institute of Criminology Research and Public Policy Series, No. 24, Australian Institute of Criminology, Canberra, 2000.
- Davies, J.D., 'A Permanent National Maritime Force, 1642-1689', in J. R. Hill, ed., *The Oxford Illustrated History of the Royal Navy*, Oxford University Press, Oxford, 1995.
- Davis, W. Jackson, 'The Need for a New Oceans Governance System', in Jon M Van Dyke, Durwood Zaelke and Grant Hewison, eds., *Freedom for the Seas in the 21st Century: Oceans Governance and Environmental Harmony*, Island Press, Washington D.C., 1993.
- Day, David, *Smugglers and Sailors: The Customs History of Australia 1788-1901*, Australian Government Publishing Service, Canberra, 1988.
- _____. *Contraband and Controversy: The Customs History of Australia From 1901*, Australian Government Publishing Service, Canberra, 1996.
- _____. *Building Momentum: The Role of the Naval Officer in Securing the Dominance of Sydney, 1788-1850*, Australian Customs Service, Canberra, 1992.
- Docker, Edward Wybergh, *The Blackbirders: The Recruiting of South Seas Labour for Queensland, 1863-1907*, Angus and Robertson, Sydney, 1970.
- Ehrman, John, *The Navy in the War of William III 1689-1697*, Cambridge University Press, Cambridge, 1953.
- Elleman, Bruce and S.C.M. Paine, *Naval Blockades and Seapower-Strategies and counter-strategies, 1805-2005*, Routledge, Abingdon, UK., 2006.

- Ellinghaus, Katherine, *Historicising Whiteness: Transnational Perspectives on the Construction of an Identity*, The School of Historical Studies, University of Melbourne, Melbourne, 2007.
- Evans, Alun, *A Navy For Australia*, Australian Broadcasting Corporation, Sydney, NSW, 1986.
- Evans, Raymond, et. al., *Documenting Australia's Federation: 1901–Our Future's Past*, Macmillan, Sydney, 1997.
- Feakes, Henry James, *White Ensign–Southern Cross: A Story of the King's Ships of Australia's Navy*, Ure Smith, Sydney, 1951.
- Flying Stations: A Story of Australian Naval Aviation*, Allen and Unwin, St. Leonards, NSW, 1998.
- Frame, Tom. *No Pleasure Cruise: The Story of the Royal Australian Navy*, Allen and Unwin, Crows Nest, NSW., 2004.
- _____. *Where Fate Calls: The HMAS Voyager Tragedy*, Hodder and Stoughton, Sydney, 1992.
- Friedman, Norman, *Terrorism, Afghanistan and America's New Way of War*, Naval Institute Press, Annapolis, MD., 2003.
- Frolov, Konstantin V, and Gregory B. Baecher, *Protection of Civilian Infrastructure from Acts of Terrorism*, Springer, with NATO Public Diplomacy Division, Dordrecht, the Netherlands, 2006.
- Fulton, T.W. *The Sovereignty of the Sea*, William Blackwood and Son: Edinburgh, 1911.
- Fuss, Charles M. Jr., *Sea of Grass: The Maritime Drug War 1970-1990*, Naval Institute Press, Annapolis, MD., 1996.
- Gatacre, Rear Admiral G.G.O., RAN, *Reports of Proceedings: A Naval Career 1921-1964*, Nautical Press, Manly, NSW, 1982.
- Gately, Warwick, and Cameron Moore, 'Protecting Australia's Maritime Borders: The Operational Aspects', in Martin Tsamenyi and Chris Rahman, eds., *Protecting Australia's Maritime Borders, The MV Tampa and Beyond*, Wollongong Papers on Maritime Policy No. 13, Centre for Maritime Policy, University of Wollongong, Wollongong, NSW., 2003.
- Giles, Graham, 'Role of Coastwatch', in Anthony Bergin and Mohd Sidik Shaik Osman, eds., *National Coordination of Maritime Surveillance and Enforcement*, Australian Defence Studies Centre, University College, Australian Defence Force Academy, Canberra, 1996.
- Gillett, Ross, *Australia's Colonial Navies*, Naval Historical Society of Australia, Garden island, NSW., 1982.

- _____ *Warships of Australia*, Rigby, Adelaide, 1977.
- George, James, E. *The U.S. Navy in the 1990s*, Naval Institute Press, Annapolis, MD., 1992.
- Goldrick, James, *No Easy Answers: The Development of the Navies of India, Pakistan, Bangladesh and Sri Lanka, 1945-1996*, Lancer Publishers and Distributors, New Delhi, 1997.
- _____ 'Maritime Sanctions Enforcement against Iraq, 1990-2003', in Bruce Elleman, and S.C.M. Paine, *Naval Blockades and Seapower—Strategies and counter-strategies, 1805-2005*.
- _____ and Jack McCaffrie, *Navies of South-East Asia: A comparative study*, Routledge, Abingdon, Oxon., 2013.
- Gosse, Philip, *The History of Piracy*, Cassell and Co. Ltd., London, 1932, rev.ed., 1954.
- Groom, L. E., *Nation Building in Australia: The Life and Works of Sir Littleton Ernest Groom*, Angus and Robertson Ltd., Sydney, 1941.
- Grove, Eric, *The Future of Seapower*, Naval Institute Press, Annapolis, MD., 1990.
- _____ *Vanguard to Trident: British Naval Policy Since World War Two*, Naval Institute Press, Annapolis, MD., 1987.
- Gullett, H.S., *Unguarded Australia: A Plea for Immigration*, Rosebery Press, London, 1919.
- Gullett, Warwick, *Fisheries Law in Australia*, LexisNexis, Butterworths, Chatswood, NSW., 2008.
- Hackett, James, ed., *The Military Balance 2013*, Routledge, Abingdon, Oxon., 2013.
- Hagan, Kenneth J, *This People's Navy—The making of American Sea Power*, The Free Press (Macmillan) New York, NY., 1991.
- Hassan, Riaz, and Adam Jamrozik, *An Open Door or Fortress Australia: Policy Choices in the 21st Century*, Discussion Paper No. 352, Centre for Economic Policy Research, Australian National University, Canberra, November 1996.
- Hattendorf, John B., et. al, eds., *British Naval Documents 1204-1960*, Scholar Press for the Naval Records Society, Aldershot, Hants., 1993.
- Haultain, C.T.G., *Watch off Arnhem Land*, Roebuck Society Publication No. 4, Canberra, 1971.
- Haywood, John, *Dark Age Naval Power: A Reassessment of Frankish and Anglo-Saxon Activity*, Routledge, London, 1991.

- Herman, Arthur, *To Rule the Waves: How the British Navy Shaped the Modern World*, Harper Collins, New York, NY., 2004.
- Hiis, Kjellrun, Belinda Cleelend and Douglas Clyde Wilson, *Fisheries Depletion and Collapse*, International Risk Governance Council, Geneva, 2009.
- Hill, J.R., ed. *The Oxford Illustrated History of the Royal Navy*, Oxford University Press, Oxford, 1995.
- _____ *Maritime Strategy for Medium Powers*, Naval Institute Press, Annapolis, MD., 1986.
- _____ 'The Realities of Medium Maritime Power, 1946 to the Present', in J.R. Hill, ed., *The Oxford Illustrated History of the Royal Navy*.
- Howell, Raymond C., *The Royal Navy and the Slave Trade*, Croom Helm, Beckenham, Kent, 1987.
- Hyslop, Robert, *Australian Naval Administration 1901-1939*, The Hawthorn Press, Melbourne, 1973.
- _____ *Aye Aye, Minister: Australian Naval Administration 1939-59*, Australian Government Publishing Service, Canberra, 1990.
- ICC International Maritime Bureau, *Piracy and Armed Robbery Against Ships: Annual Report 1 January-31 December 2006*, International Maritime Bureau, Barking Essex, 2007.
- _____ *Piracy and Armed Robbery Against Ships: Annual Report 1 January-31 December 2007*, ICC International Maritime Bureau, London, January 2008.
- Johnson, Robert Erwin, *Guardians of the Sea, History of the United States Coast Guard 1915 to the Present*, Naval Institute Press, Annapolis, Maryland, 1987.
- Joint Doctrine Publication 0-10, *British Maritime Doctrine*, Ministry of Defence, August 2011.
- Jones, Colin, *Australian Colonial Navies*, Australian War Memorial, Canberra, ACT., 1986.
- _____ 'Early years of the coastal patrol', in David Stevens, ed., *Maritime Power in the 20th Century*, Allen and Unwin, St. Leonards, NSW., 1998.
- Karskens, Grace, *The Colony: A History of Early Sydney*, Allen and Unwin, Crows Nest, NSW., 2009.
- Kemp, Peter, *The Oxford Companion to Ships and the Sea*, Oxford University Press, Oxford, 1976.

- Kennedy, Paul, *The Rise and Fall of British Naval Mastery*, MacMillan Press, London, 1976, rev.ed., 1983.
- King, Irving H., *George Washington's Coast Guard, Origins of the U.S. Revenue Service 1789-1801*, Naval Institute Press, Annapolis, MD., 1978.
- _____ *The Coast Guard under Sail: The U.S. Revenue Service 1789-1865*, Naval Institute Press, Annapolis, MD., 1989.
- _____ *The Coast Guard Expands 1865-1915: New Roles, New Frontiers*, Naval Institute Press, Annapolis, Maryland, 1996.
- Kjøk, Åshild, and Brynjar Lia, *Terrorism and Oil—An Explosive Mixture? A Survey of Terrorist and Rebel Attacks on Petroleum Infrastructure 1968-1999*, Norwegian Defence Research Establishment, Kjeller, Norway, 2001.
- Klare, Michael T, *Resource Wars: The New Landscape of Global Conflict*, Metropolitan Books Henry Holt and Co., New York, NY., 2001.
- Krongold, Jeanette, 'Breaking the Rules? Judicial Discourse on Asylum Seekers, 1992-2002', in Katherine Ellinghaus, *Historicising Whiteness: Transnational Perspectives on the Construction of an Identity*.
- Kwa Chong Guan, 'Strategy: A View from Southeast Asia', in Jack McCaffrie, ed., *Positioning Navies for the Future: Challenge and Response*, Halstead Press for The Seapower Centre-Australia, Sydney, 2006.
- Lambert, Nicholas, *Australia's Naval Inheritance: Imperial Maritime Strategy and the Australia Station 1880-1909*, RAN Maritime Studies Program, Canberra, ACT., 1998.
- _____ *Sir John Fisher's Naval Revolution*, University of South Carolina Press, Columbia, SC., 1999.
- Lawrence, Susan, *Whalers and Free Men: Life on Tasmania's Colonial Whaling Stations*, Australian Scholarly Publishers, Melbourne, 2006.
- Lehr, Peter, ed. *Violence at Sea: Piracy in the Age of Global Terrorism*, Routledge, Taylor & Francis Group, New York, NY., 2007.
- _____ and Hendrick Lehman, 'Somalia-Pirates' New Paradise', in Lehr, ed., *Violence at Sea: Piracy in the Age of Global Terrorism*.
- Lewis, Napthali and Meyer Reinhold eds., *Roman Civilization: Selected Readings –The Republic and the Augustan Age*, Vol. 1, 3rd ed., Columbia University Press, New York, 1990.
- Loades, David, *England's Maritime Empire Seapower, Commerce and Policy 1490-1690*, Longman, Harlow, England, 2000.

- _____'From the King's Ships to the Royal Navy,' in J. R. Hill, ed. *The Oxford Illustrated History of the Royal Navy*.
- Love, Robert W. Jr., *History of the U.S. Navy Volume One, 1775-1941*, Stackpole Books, Harrisburg, PA., 1992.
- _____*History of the U.S. Navy Volume Two, 1942-1991*, Stackpole Books, Harrisburg, PA., 1992.
- Luttwak, Edward N., *The Political Uses of Sea Power*, Johns Hopkins University Press, Baltimore MD., 1974.
- Macandie, G.L., *The Genesis of the Royal Australian Navy*, Government Printer, Sydney, 1949.
- MacKinnon Doug and Dick Sherwood, eds., *Policing Australia's Offshore Zones: Problems and Prospects*, Wollongong Papers on Maritime Policy No. 9, Centre for Maritime Policy, University of Wollongong, Wollongong, NSW, 1997.
- Mahan, A.T. *The Influence of Seapower Upon History 1660-1783*, Hill and Wang, New York, 1985.
- Marolda, Edward J. and Robert J. Schneller, *Shield and Sword: The United States Navy and the Persian Gulf War*, Naval Historical Center, Washington DC., 1998.
- Marr, David and Marian Wilkinson, *Dark Victory*, Allen and Unwin, Sydney, 2003.
- Martin, L.W., *The Sea in Modern Strategy*, Praeger for the Institute for Strategic Studies, New York, 1967.
- McCaffrie, Jack, ed., *Positioning Navies for the Future: Challenge and Response*, Halstead Press for The Seapower Centre-Australia, Sydney 2006.
- McGuire, Paul and Frances Margaret McGuire, *The Price of Admiralty*, Oxford University Press, Melbourne, 1944.
- McGuire, Frances Margaret, *The Royal Australian Navy: Its Origins, Development and Organization*, Oxford University Press, Melbourne, 1948.
- Meijer, Fik, *A History of Seafaring in the Classical World*, St. Martin's Press, New York, 1986.
- Moore, Cameron, *ADF On the Beat: A Legal Analysis of Offshore Enforcement by the Australian Defence Force*, Centre for Maritime Policy, University of Wollongong, Wollongong, 2004.
- Morris, Roger, 'Endeavour, Discovery and Idealism 1760-1895', in J. R. Hill, ed., *The Oxford Illustrated History of the Royal Navy*.

- Murphy, Martin, N., *Small Boats, Weak States, Dirty Money: Piracy & Maritime Terrorism in the Modern World*, Hurst & Company, London, 2009.
- _____ 'Piracy and UNCLOS: Does International Law Help Regional States Combat Piracy?' in Lehr, ed., *Violence at Sea: Piracy in the Age of Global Terrorism*.
- Murray, Williamson and Major General Robert H. Scales, Jr., *The Iraq War: A Military History*, Belknap Press of Harvard University Press, Cambridge, MA., 2003.
- Newbolt, Henry, *Naval Operations: History of the Great War Vol. IV*, Longmans Green and Co., London, 1928.
- Nicoll, Alexander, ed., *Strategic Survey 2013: The Annual Review of World Affairs*, Routledge, Abingdon, Oxon, 2013.
- Nicholls, Bob, *The Colonial Volunteers: The defence forces of the Australian colonies 1836 – 1901*, Allen and Unwin, Sydney, 1988.
- _____ *Statesmen and Sailors: A History of Australian Maritime Defence 1870-1920*, Bob Nicholls, Balmain, NSW., 1995.
- _____ 'Colonial naval forces before federation', in David Stevens and John Reeve, eds., *Southern Trident: Strategy, history and the rise of Australian Naval Power*, Allen and Unwin, Crows Nest, NSW., 2001.
- O'Keefe, the Hon Sean, Admiral Frank Kelso II, USN, and General C. E. Mundy, USMC, ... *From the Sea: Preparing the Naval Service for the 21st Century*, Department of the Navy, Washington, DC., 1992.
- Ong-Webb, Graham Gerard, 'Piracy in Maritime Asia: Current Trends', in Lehr, ed., *Violence at Sea: Piracy in the Age of Global Terrorism*.
- Oppenheim, L., *International Law: A Treatise*, Vol. 1, Longmans, Green and Co., New York, NY., 1912.
- Parsons, Ronald, *The Navy in South Australia*, R.H. Parsons, Magill, S.A., 1974, rpt. 1978.
- Payne, Alan, *H.M.A.S. Canberra*, Naval Historical Society of Australia, Garden Island, NSW., 1973.
- Potter, E.B., ed., *Sea Power—A Naval History*, Naval Institute Press, Annapolis MD., 1981.
- Powell, J.M., *Environmental Management in Australia, 1788–1914, Guardians, Improvers and Profit: an Introductory Survey*, Oxford University Press, Melbourne, 1976.
- Preston, Anthony, *Send a Gunboat: A study of the Gunboat and its role in British policy 1854-1904*, Longmans Green and Co., London, 1967.

- Reid, Senator George, *My Reminiscences*, Cassell, London, 1917.
- Reuter, Peter, Gordon Crawford and Jonathan Cave et. al., *Sealing the Borders: The Effects of Increased Military Participation in Drug Interdiction*, The RAND Corporation, Santa Monica, CA., 1988.
- Ritchie, Vice Admiral Chris, 'Positioning Our Navy for the Future', in McCaffrie, ed., *Positioning Navies for the Future*.
- Rodger, N.A.M., *The Safeguard of the Sea: A Naval History of Britain, Volume One 660-1649*, Harper Collins, London, 1997.
- _____ *The Command of the Ocean: A Naval History of Britain, 1649-1815*, Penguin, Allen Lane, London, 2004.
- Rodgers, W.L., *Greek and Roman Naval Warfare: A Study of Strategy, Tactics and Ship Design from Salamis (480 B.C.) to Actium (31 B.C.)* Naval Institute Press: Annapolis, MD., 1964.
- _____ *Naval Warfare Under Oars, 4th to 16th Centuries – A Study of Strategy, Tactics and Ship Design*, Naval Institute Press, Annapolis, MD., 1947.
- Rose, Susan, *Medieval Naval Warfare 1000-1500*, Routledge, London, 2002.
- Roskill, Stephen, *Naval Policy Between the Wars: Volume 1—the Period of Anglo-American Antagonism 1919-1929*, Collins, London, 1968.
- _____ *The War at Sea 1939-1945, Volume 1: The Defensive*, HMSO, London, 1954.
- Rubin, Alfred P., *The Law of Piracy*, 2nd ed., Transnational Publishers, Inc., Irvington-on-Hudson, NY., 1998.
- Saeter, Martin and Ian Smart, eds., *The Political Implications of North Sea Oil and Gas*, IPC Science and Technology Press, Ltd., Guildford, 1975.
- Saunders, Commodore Stephen RN, ed., *Jane's Fighting Ships 2005-2006*, Jane's Information Group, Coulsdon, Surrey, 2005.
- Sawer, Geoffrey, *Australian Federal Politics and Law 1901-1929*, Melbourne University Press, Melbourne, 1956.
- _____ *Australian Federal Politics and Law 1929-1949*, Melbourne University Press, Parkville VIC., 1963.
- Schroeder, John H., *Shaping a Maritime Empire: The Commercial and Diplomatic Role of the American Navy, 1829-1861*, Greenwood Press, Westport, CT., 1985.
- Sharpe, Captain Richard, RN, ed., *Jane's Fighting Ships 1989-1990*, Jane's Information Group, Coulsdon, Surrey, 1989.

- _____*Jane's Fighting Ships 2000-2001*, Jane's Information Group, Coulsdon, Surrey, 2000.
- Sherington, Geoffrey, *Australia's Immigrants 1788-1978*, George Allen and Unwin, Sydney, 1980.
- Sidebottom, Harry, *Ancient Warfare: A Very Short Introduction*, Oxford University Press, Oxford, 2004.
- Smith, Graham, *King's Cutters: The Revenue Service and the War Against Smuggling*, Conway Maritime Press, London, 1983.
- Smith, Hugh, 'The Use of Armed Forces in Law Enforcement', in MacKinnon and Sherwood, eds., *Policing Australia's Offshore Zones-Problems and Prospects*.
- Snoddon, Robert, 'Piracy and Maritime Terrorism: Naval Responses to Existing and Emerging Threats to the Global Seaborne Economy', in Lehr, ed., *Violence at Sea: Piracy in the Age of Global Terrorism*.
- Soares, Mario, (Chair), *The Ocean Our Future: The Report of the Independent World Commission on the Oceans*, Cambridge University Press, Cambridge, 1998.
- Souter, Gavin, *Acts of Parliament: A Narrative History of the Senate and House of Representatives*, Melbourne University Press, Melbourne, 1988.
- Spurling, Kathryn, '1991-2001: The Era of Defence Reform', in Stevens, ed, *The Royal Australian Navy: The Australian Centenary History of Defence Volume III*.
- Starr, Chester G., *The Influence of Sea Power on Ancient History*, Oxford University Press, New York, 1989.
- _____*The Roman Imperial Navy 31 B.C.-A.D. 324*, Greenwood Press: Westport, CT., 1941, rpt., 1975.
- Steven, Margaret, *Merchant Campbell 1769-1846: A Study of Colonial Trade*, Oxford University Press, Melbourne, 1965.
- Stevens, David, 'The Combined Naval Role in East Timor', in Gary E. Weir and Sandra J. Doyle, eds., *You Cannot Surge Trust: Combined Naval Operations of the Royal Australian Navy, Canadian Navy, and United States Navy, 1991-2003*, Department of the Navy, Washington, D.C., 2013.
- _____'The Warrior and His Foe', in John Reeve and David Stevens, eds, *The Face of Naval Battle*, Allen and Unwin, Crows Nest, NSW., 2003.
- _____*ed., The Royal Australian Navy: The Australian Centenary History of Defence Volume III*, Oxford University Press, South Melbourne, 2001.

- _____ 'To disrupt, deter and deny: sealing Australia's maritime borders', in Elleman and Paine, eds., *Naval Blockades and Seapower: Strategies and counter-strategies, 1805-2005*.
- _____ and John Reeve, eds., *Southern Trident-Strategy, history and the rise of Australian Naval Power*, Allen and Unwin, Crows Nest, NSW., 2001.
- Strauss, Barry, *The Greatest Naval Battle of the Ancient World-Salamis*, Arrow Books: London, 2005.
- Straczek, J.H., *Royal Australian Navy A-Z: Ships, Aircraft and Shore Establishments*, Navy Public Affairs, Sydney, 1996.
- Stubbs, Captain Bruce, USCG, and Scott C. Truver, PhD., *America's Coast Guard: Safeguarding U.S. Maritime Safety and Security in the 21st Century*, Anteon Corporation, Arlington, VA., Undated.
- Sykes, Leon and Commander Ken Burleigh, eds., *Patrolling the Line 2003*, Coleman's Printing, Darwin, 2004.
- Thompson, Paul, ed., *Close to the Wind: The early memoirs (1866 - 1879) of Admiral Sir William Creswell*, Heinemann, London, 1965.
- Thomson, Janice E., *Mercenaries, Pirates and Sovereigns*, Princeton University Press, Princeton NJ., 1994.
- Till, Geoffrey, *Seapower: A Guide for the Twenty-First Century*, Frank Cass, London, 2004.
- _____ 'A Changing Focus for the Protection of Shipping', in Andrew Forbes, ed., *The Strategic Importance of Seaborne Trade and Shipping: Papers in Australian Maritime Affairs No. 10*, Commonwealth of Australia, Canberra, 2003.
- _____ with Craig Symonds, Bryan Ranft et. al., *Maritime Strategy in the Nuclear Age*, 2nd. ed., St. Martin's Press, New York, 1984.
- Tsamenyi, Martin and Chris Rahman, eds., *Protecting Australia's Maritime Borders: The MV Tampa and Beyond*, Wollongong Papers on Maritime Policy No. 13, Centre for Maritime Policy, University of Wollongong, Wollongong, NSW., 2003.
- _____ and Max Herriman, eds., *Rights and Responsibilities in the Maritime Environment*, Centre for Maritime Policy, University of Wollongong, Wollongong, NSW., 1996.
- Turner, Henry Giles, *The First Decade of the Australian Commonwealth*, Mason, Firth and M'Cutcheon, Melbourne, 1911.
- United Nations, *The Law of the Sea: United Nations Convention on the Law of the Sea*, United Nations, New York, 1983.

- U.S. Coast Guard, *Maritime Strategy for Homeland Security*, U.S. Coast Guard Headquarters, Washington, D.C., 2002.
- Van Dyke, Jon M., Durwood Zaelke and Grant Hewison, eds., *Freedom for the Seas in the 21st Century: Oceans Governance and Environmental Harmony*, Island Press, Washington, D.C., 1993.
- Victoria: A History of HMCSS Victoria*. This privately published and undated work has no author listed but is based substantially on official documents in the Public Record Office of Victoria. Located in Sea Power Centre-Australia library.
- Warner, Robin, 'Environmental Concerns: Their Impact on Activities at Sea', in Tsamenyi and Herriman, eds., *Rights and Responsibilities in the Maritime Environment*.
- _____ 'Jurisdictional issues for navies involved in multilateral regimes beyond national jurisdiction', in David Wilson and Dick Sherwood, eds., *Oceans Governance and Maritime Strategy*, Allen and Unwin, Sydney, 2000.
- Weaver, Trevor, *Q Class Destroyers and Frigates of the Royal Australian Navy*, The Naval Historical Society of Australia, Garden Island NSW., 1994.
- Weir, Gary E. and Sandra J. Doyle, eds., *You Cannot Surge Trust: Combined Naval Operations of the Royal Australian Navy, Canadian Navy, and United States Navy, 1991-2003*, Department of the Navy, Washington, D.C., 2013.
- Wilkins, Commander John M., ed. *Autobiographical Recollections of a Naval Reserve Officer: Commander R.S. Veale, CMG, VRD, RANR*, Published privately in Melbourne, 1997.
- _____ ed., *Australian Naval Reserves: A Brief History 1859-2002*, published privately in Melbourne, 2003.
- Willard, Myra, *History of the White Australia Policy to 1920*, Melbourne University Press, Melbourne, 1923.
- Willoughby, Malcolm F. *Rum War at Sea*, United States Government Printing Office, Washington, D.C., 1964.
- Wilson, David and Dick Sherwood, *Oceans Governance and Maritime Strategy*, Allen and Unwin, Sydney, 2000.
- Wilson, R.G., *Australian Coastal Surveillance: Images and Information*, thesis submitted for degree of Doctor of Philosophy, University of New South Wales, 1985.
- Woolner, Derek, *Policing our ocean domain: Establishing an Australian coast guard*, Australian Strategic Policy Institute, June 2008.
- Yergin, Daniel, *The Prize: The Epic Quest for Oil, Money and Power*, Simon and Schuster, New York, NY, 1991.

Young, Ann, R. M., *Environmental Change in Australia Since 1788*, Oxford University Press, Melbourne, 1996.

Journal Articles

Baird, Rachel, 'Australia's Response to Illegal Foreign Fishing: A Case of winning the Battle but losing the Law?' *The International Journal of Marine and Coastal Law*, Vol. 23, No. 1, March 2008, pp. 95-124.

_____ 'Coastal State Fisheries Management: A Review of Australian Enforcement Action in the Heard and McDonald Islands Australian Fishing Zone', *Deakin Law Review*, Vol. 9, No. 1, 2004, pp. 91-118.

Bateman, Sam, 'Securing Australian Maritime Approaches', *Security Challenges*, Vol. 3, Number 3, August 2007, pp. 109-29.

'By Invitation Only: Australian Asylum Policy', *Human Rights Watch* Vol. 14, No. 10 c, Human Rights Watch, New York, NY., December 2002, pp. 1-95.

Chessum, Lieutenant Commander D.J., RNZN, 'The Impact of International Conventions on Efforts to Address People Smuggling into Australia', *Journal of the Australian Naval Institute*, Vol. 28, No. 1, Autumn 2002.

Downs, Wing Commander Kevin, 'Border Protection Command', in *United Service*, Vol. 60, No. 4, December 2009.

Elder, Catriona, 'Invaders, Illegals and Aliens: Imagining Exclusion in a White Australia', in *Law Text Culture*, Vol. 7, 2003, pp. 221-250.

Gibson, John, 'The shameful history of border protection', *Australian Rationalist*, January 2008, pp. 25-32.

Gordon, Donald C., 'The Admiralty and Dominion Navies, 1902-1914', *The Journal of Modern History*, Vol. 33, No. 4, December 1961, pp. 407-22.

Hale, Lieutenant Graeme, RAN, 'Does the ISPS Code address post-9/11 security threats?' *Journal of the Australian Naval Institute*, No. 116, Autumn 2005, pp. 13-18.

Heathcote, Captain Dr Peter, 'An Explanation of the New Measures for Maritime Security Aboard ships and in Port Facilities', in *Maritime Studies*, No. 137, July/August 2004, pp. 13-21.

Heiser, Anthony, 'Border Protection; UNCLOS and the M.V. Tampa Incident 2001', *Australia and New Zealand Maritime Law Journal*, Vol. 16, 2002, pp. 84-121.

Heitman, Helmoed Römer, 'Joining to Protect: Australia's Border Protection Command', *Naval Forces*, No. vi, 2009, pp. 8-16.

- Klein, Natalie, 'Legal Limitations On Ensuring Australia's Maritime Security', *Melbourne International Law Journal*, Vol. 7, 2006. No page numbers listed.
- Martin, Professor Stephen, 'The evolution of Labor's policy on an Australian Coast Guard', *Journal of the Australian Naval Institute*, No. 114, Spring 2004, pp. 7-9.
- Moore, Lieutenant Commander Cameron, 'Legal Issues Surrounding an Australian Coastguard', *Journal of the Australian Naval Institute*, Vol. 28, No. 2, Winter 2002, pp. 6-11.
-
- 'Turning King Canute Into Lord Neptune: Australia's New Offshore Protection Measures', *University of New England Law Journal*, No. 3, 2006, pp. 57-82.
- Moritaka Hayashi, 'Military and intelligence gathering activities in the EEZ: definition of key terms', *Marine Policy*, No. 29, Issue 2, 2005, pp. 123-37.
- Palmer, Victoria and Julie Matthews, 'Excising Democracy: Ethical Irresponsibility, Refugees and Migration Zones', *Social Alternatives*, Vol. 25, No. 3, Third Quarter 2006, pp. 26-31.
- Pedrozo, Captain Raoul USN, 'Close Encounters at Sea: The USNS *Impeccable* Incident', *US Naval War College Review*, Summer 2009, Vol. 62, No. 3, pp. 101-11.
- Pugh, Michael, 'Is Mahan Still Alive? State Naval Power in the International System', *The Journal of Conflict Studies*, Vol. XVI No. 2, Fall 1997, <www.lib.unb.ca/Texts/JCS/bin/get> (12 May 2005).
- Rigby, Dr Geoff, 'Ballast Water Treatment Technology: Choosing the Best Options', *Maritime Studies*, No. 135, March/April 2004, pp. 22-29.
- Schloenhardt, Andreas, 'Australia and the Boat-People: 25 years of Unauthorized Arrivals', *University of New South Wales Law Journal*, Vol. 23, Issue 3, December 2000, pp. 33-55.
- Semple, Ellen Churchill, 'Pirate Coasts of the Mediterranean Sea', *Geographical Review*, Vol. 2, No. 2, August 1916, pp. 142-43.
- Smith, Hugh, 'Border Protection and the Limits of Obedience', *Maritime Studies*, No. 134, January/February 2004, pp. 21-24.
- Turner, Stansfield, Vice Admiral USN. 'Missions of the U.S. Navy', *Naval War College Review*, Volume XXVI, Number 5/Sequence Number 248. March-April 1974, pp. 2-17.
- White, Michael, 'Australia's Offshore Legal Jurisdiction: Part 1-History & Development', *Australia and New Zealand Maritime Law Journal*, Vol. 25, No. 1, 2011, pp. 3-18.

Woolner, Derek, 'The Governance of Security in Australia's Maritime Domain', *Security Challenges*, Vol. 7, No. 2, (Winter 2011), pp. 55-80.

Worm, Boris, Ray Hilborn, Julia K. Baum, et. al, 'Rebuilding Global Fisheries', *Science*, Vol. 325, 31 July 2009, pp. 578-84.

Young, Richard, 'Offshore Claims and Problems in the North Sea', *The American Journal of International Law*, Vol. 59, No., 3 (Jul., 1965) pp. 505-522.

Zhiguo Gao and Bing Bing Jia, 'The Nine-Dash Line in the South China Sea: History, Status, Implications', *American Journal of International Law*, Vol. 107, No. 1, January 2013, pp. 98-123.

Internet Sources

About Defence: The Royal Navy,
<www.mod.uk/DefenceInternet/Organization/KeyFactsAboutDefence> (15 May 2007).

About the National Ocean Council,
<<http://www.whitehouse.gov/administration/eop/oceans/policy/>> (22 October 2013).

A Center for Naval Analyses powerpoint presentation covering the Coast Guard's relationship with the U.S. Navy, 1970-2009,
<http://www.uscg.mil/history/h_militaryindex.asp> (26 October 2013).

'ALP Coastguard policy relaunched', *SBS News*,
<<http://www.sbs.com.au/news/article/2004/06/30/alp-coastguard-policy-relaunched>> (1 November 2013).

'Ambassador visits U.S. Navy Ship docked at Ream Naval Base', *Embassy of the United States Phnom Penh, Cambodia*, 21 July 2009,
<Cambodia.usembassy.gov/visit_to_us_navy-ship.html> (17 July 2011).

'Armed Australian Ships Patrol for Toothfish Pirates', *Environment News Service*, 8 July 2004, <<http://ens-newswire.com/ens/jul2004/2004-07-08-05.asp>> (5 December 2013).

Arnold, David, 'Shippers Raise Alarm Over Oil Piracy in Gulf of Guinea', *Voice of America News*, 14 October 2013, <<http://m.voanews.com/a/1769278.html>> (16 October 2013).

'Asia Pacific, In Brief-Thailand, Vietnam to Launch Patrols', *Jane's Defence Weekly*, Vol., 029, Issue 023, 10 June 1998,
<<http://intranet.defence.gov.au/jrl/janes/jdw98/jdw98/jdw01950.htm>> (21 September 2005).

'Australia: Austal Launches First Cape Class Patrol Boat', *World Maritime News*, 15 January 2013, <<http://worldmaritimeneeds.com/archives/73242>> (16 January 2013).

- Australian Broadcasting Corporation, *AM*, 30 June 1984,
 <<http://web.ebscohost.com.rp.nla.gov.au/ehost/detail?vid>> (10 December 2013).
-
- Insiders*, 11 November 2001,
 <<http://www.abc.net.au/insiders/content/2001/s413703.htm>> (28 October 2013).
- 'Australian Customs 38m', *AUSTAL Defence Products*,
 <<http://www.austal.com/en/products-and-services/defence-products/patrol-boats/australian-customs-38m.aspx>> (16 January 2013).
- 'Australia's Coastwatch: A Public-Private Model for Coast Guards and CBP', *Defense Industry Daily*, 31 October 2012,
 <<http://www.defenseindustrydaily.com/cobham-catches-a-1b-australian-coastwatch-contract-01695/>> (14 January 2013).
- 'Australia to replace all Pacific patrol boats with a new model', *Radio Australia*, 20 August 2012, <<http://www.radioaustralia.net.au>> (17 October 2013).
- Bateman, Sam, 'Piracy and Maritime Security in East Asia', *East Asia Forum*, 10 February 2011, <<http://www.eastasiaforum.org/2011/02/10/piracy>> (16 October 2013).
- Campbell, Ian, 'It's not research—Japan's whale slaughter is commercial', *ON LINE opinion*, 31 May 2005, <<http://www.onlineopinion.com.au/print.asp>> (13 December 2012).
- Chand, Satish, *Multilateral Governance of Fisheries: Management and Cooperation in the Western and Central Pacific Tuna Fisheries*, School of Pacific and Asian Studies, Australian National University, Canberra, 2003,
 <https://crawford.anu.edu/pdf/staff/satish_chand> (17 October 2013).
- Clark, ADML Vern, USN, *Vision...Presence...Power: 2005 Guide to U.S. Navy Programs*, Department of the Navy, Washington, DC, 2005, p. 37,
 <<http://www.navy.mil/navydata/policy/vision/VIS05>> (12 April 2008).
- Combined Maritime Forces—CTF 151: Counter-piracy*,
 <www.combinedmaritimeforces.com/ctf-151-counter-piracy> (2 March 2013).
- Cyprus Squadron: The Royal Navy Cyprus Squadron*, <www.royal-navy.mod.uk> (15 May 2007).
- Dandu Pughiuc, 'Invasive species: ballast water battles', *Seaways*, March 2010,
 <<http://www.imo.org/KnowledgeCentre>> (22 October 2013).
- Deepwater News January 2004*, <www.uscg.mil/deepwater> (13 June 2006).

'Declaration respecting maritime law, Paris, 16 April 1896', *ICRC Treaties and States Parties to Such Treaties*, <<http://www.icrc.org/applic/ihl.nsf/Treaty>> (18 October 2013).

Eggleston, Senator Alan, 'Old game of wait and see for increased North West military presence', *Media Release*, 1 February 2012, <<http://www.senatoralaneggleston.com/Newsroom/News/tabid/94>> (27 August 2012).

'Senate Estimates reveal North West defence presence neglected', *Media Release*, 15 February 2012, <<http://www.senatoralaneggleston.com/Newsroom/MediaReleases/tabid/91>> (27 August 2012).

'Exxon Valdez oil spill', *The Encyclopedia of Earth*, <http://www.eoearth.org/article/Exxon_Valdez_oil_spill?topic=58075> (3 January 2013).

Fishery Protection: The RN Looking After a Whole Industry, <<http://www.royalnavy.mod.uk/News-and-Events>> (22 October 2013).

Geneva Convention on the High Seas 1958, Articles 14 and 15, <<http://www.intfish.net/treaties/genevahs.htm>> (22 June 2008).

Gibraltar Squadron <www.royal-navy.mod.uk> (15 May 2007).

Goff, Hon Phil, Minister of Foreign Affairs and Trade, *Australia's maritime information zone*, <www.scoop.co.nz/stories/PA0412/S00430.htm> (10 December 2013).

Griffiths, Emma, 'Coalitions asylum seeker policy: Abbott dismisses Turnbull's doubts on turning back boats', *ABC News*, 11 June 2013, <<http://www.abc.net.au/news/2013-06-11/abbott-brushes-aside-turnbulls-comments-on-boats/4746116>> (26 June 2013).

Heavey, YN 1 Thomas, USCGR, 'A report from Iraq', in *Coast Guard Reservist Magazine*, Vol., L, No. 3, May-June 2003, <www.uscg.mil/history/OIF_USCGR_Article.html> (6 February 2008).

<http://en.wikipedia.org/wiki/Aero_Commander_500_family> (24 August 2012).

'Inquiry slams quarantine over horse flu outbreak', *ABC News*, 13 June 2008, <<http://www.abc.net.au/news/2008-06-12/inquiry-slams-quarantine-over-horse-flu-outbreak/2469204>> (5 December 2012).

'Insitu pacific to provide ScanEagle services to Royal Australian Navy', *sUAS News*, 12 July 2012, <<http://www.suasnews.com/2012/07/17522/insitu-pacific-to-provide-scaneagle-services-to-royal-australian-navy/>> (28 March 2014).

- International Environmental Agreements (IEA) Database Project, *IEA-Designated lineages: Australia Japan Tuna Long Line*, <<http://iea.uoregon.edu/page.php>> (26 September 2012).
- 'International Seaborne Trade and Exports of Goods, 1955-2001', <<http://people.hofstra.edu/geotrans/eng/ch3en/conc3en/seabornetrade.html>> (12 May 2005).
- International Whaling Commission, *Scientific Permit Whaling*, <<http://www.iwcoffice.org/conservation/permits.htm>> (13 January 2011).
- 'Irish Australia on the Web,' <<http://www.irishaustralia.com/Australian/Patriots/catalpa.htm>> (4 April 2008).
- Jane's Fighting Ships 2005-2006*. <<http://intranet.defence.gov.au>> (25 May) 2006.
- 'Japan denies stoking China feud', *BBC News World Edition*, 14 April 2005, <<http://news.bbc.co.uk/2/hi/asia-pacific/>> (3 May 2005).
- Konye Obaji Ori, 'Immigration: Italy seeks asylum overhaul', *The Africa Report*, <<http://www.theafricareport.com/International/immigration-italy-seeks-asylum-overhaul.html>> (24 October 2013).
- 'Lethal Sounds: The use of military sonar poses a deadly threat to whales and other marine mammals', *Natural Resources Defense Council*, revised 20 June 2008, <<http://www.nrdc.org/wildlife/marine/sonar.asp>> (13 December 2012).
- Maritime and Coastguard Agency*, <<http://www.scottish.parliament.uk/business/committees/enquiries/marine/documents/MCAsubmission.pdf>> (1 April 2008).
- Maritime and Coastguard Agency, *National Contingency Plan for Marine Pollution from Shipping and Offshore Installations-Appendix A*, <http://www.mcga.gov.uk/c4mca/mcga-environmental/mcga-dops_cp_environmental-co...> (1 April 2008).
- 'Naval Warfare, Theorists of', from Houghton Mifflin College Division. <<http://college.hmco.com/history/readerscomp/mil/html/mh>> (7 January 2006).
- Oxman, Bernard H., *The Rights of States to Establish Maritime Zones Under the United Nations Convention on the Law of the Sea*, 8 June 2010, <http://www.un.org/Depts/los/reference_files/oceansday10_oxman.pdf> (7 November 2013).
- Palestine Facts: British Mandate-Mandate Ends*, <http://www.palestinefacts.org/pf_mandate_mandate_end.php> (17 June 2007).

- 'Quarantine outsourcing-it's back', *Community and Public Sector Union*, 27 April 2008, <<http://www.cpsu.org.au/agency/news/12789.html>> (6 December 2012).
- Roney, J. Matthew, *Eco-Economy Indicators: Fish Catch*, Earth Policy Institute, 19 November 2012, <http://www.earth-policy.org/indicators/C55/fish_catch_2012> (7 November 2013).
- Rosenberg, David, '*The South China Sea*', <<http://cat.middlebury.edu/southchinasea/why.html>> (2nd May 2005).
- Ross, Monique, 'Super trawler: destructive or sustainable?' *ABC News On Line*, 13 September 2012, <<http://www.abc.net.au/news/2012-08-15/super-trawler-debate/4200114>> (25 March 2013).
- Siewert, Rachel, Media Release, *Illegal fishing—no quick fixes*, 26 February 2002, <http://rachel_siewert.greensmps.org.au/content/speeches/illegal-fishing-no-quick-fixes> (15 November 2012).
- Southern Bluefin Tuna Case—Australia and New Zealand v. Japan*, Award on Jurisdiction and Admissibility August 4, 2000, rendered by the Arbitral Tribunal constituted under Annex VII of the United Nations Convention on the Law of the Sea, <https://icsid.worldbank.org/ICSID/FrontServlet?requestType=ICSIDPublicationsRH&actionVal=ViewAnnouncePDF&AnnouncementType=archive&AnnounceNo=7_10.pdf> (22 November 2012).
- States Parties*, International Tribunal for the Law of the Sea, <<http://www.itlos.org/index.php?id=137>> (7 November 2013).
- Symonds, RDML James A., USN, 'We are not alone', *Currents*, Winter 2007, <http://www.enviro-navair.navy.mil/currents/winter2007/Win07_N45_Outlook.pdf> (12 April 2008).
- 'Table 7.5: Number of vessels boarded by the Royal Navy Fishery Protection Squadron within British fishing limits...', *UK Defence Statistics 2006*, <www.dasa.mod.uk/natstats/ukds/2006.c7/table75.html> (15 May 2007).
- Takahashi, Kosuke, 'Gas and Oil Rivalry in the East China Sea', *Energy Bulletin*, <www.energybulletin.net> (2 May 2005).
- Teese, Colin, 'National Affairs: Quarantine and trade policy—a deadly mix', *News Weekly*, 27 August 2005, <<http://newsweekly.com.au/article.php?id=2034>> (7 December 2012).
- The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime*, <<http://www.baliprocess.net/about-the-bali-process>> (2 January 2013).
- 'The Coast Guard at War', *Coast Guard History*, U.S. Coast Guard Historian's Office, Washington, DC., 2007, <<http://www.uscg.mil/history/>> (7 February 2008).

- 'The Most Disagreeable Service: Royal Navy and the Slave Trade', <<http://royal-navy.mod.uk/server/show/nav.5932>> (5 October 2007).
- The Royal Navy: Providing Cross-Government Approach to Security*, <<http://www.royalnavy.mod.uk>> (18 October 2013).
- 'UN issues world fish stock warning', *ABC News Online*, 8 March 2005, <www.abc.net.au/news> (8 March 2005).
- US Annual Defense Report 1995, Appendix 1: Freedom of Navigation.*, <www.defenselink.mil/execsec/adr95/toc.html> (17 March 2006).
- U.S. Coast Guard: A Historical Overview*, <www.uscg.mil/hq/g-cp/history> (28 October 2013).
- US Department of Defense*, <www.dtic.mil/doctrine/jel/doddict/data> (26 June 2004).
- U.S. Coast Guard Partnering in Oceania*, <<https://community.apan.org>> (22 October 2013).
- 'US Navy captures Somali 'pirates'', *BBC News: One-Minute World News*, 26 January 2006, <<http://news.bbc.co.uk/2/hi/africa/4636588.stm>> (12 December 2007).
- 'USS *Rentz* Arrives in 4th Fleet to Conduct Counter Drug Operations and UNITAS', *America's Navy*, 7 August 2013, <http://www.navy.mil/submit/display.asp?story_id=75826> (13 December 2013).
- 'Will the super trawler *Abel Tasman (Margiris)* destroy our fisheries?' *ABC South East NSW*, <www.abc.net.au/local/stories/> (4 March 2013).
- 'Worldwide Threat to Shipping, Mariner Warning Information', *Office of Naval Intelligence, Civil Maritime Analysis Department*, 24 May 2006, <www.nga.mil/MSISiteContent/StaticFiles/MISC/wwtts/wwtts> (2 June 2006).

Newspapers

- '\$30m suit as fishers acquitted', *The Australian*, 7 November 2005, <www.theaustralian.news.com.au> (7 November 2005).
- 'Above and Beyond', *Navy News*, Vol. 53, No. 6, 15 April 2010.
- 'Air Patrol Need Stressed--'Plane Cleared Coast of Sampan--Flocked Back', *The Courier-Mail*, 17 June 1937, <<http://trove.nla.gov.au/ndp/del/page/1973016>> (30 December 2013).
- Allard, Tom, 'Labor flirts with first broken promise', *Sydney Morning Herald*, 28 November 2007.

- 'Another first for patrol boats', *Navy News*, Vol. 35, No. 1, 31 January 1992.
- Banham, Cynthia, 'Snipers and choppers to bolster ALP coastguard', *Sydney Morning Herald*, 10 March 2004,
 <[http://www.nationalsecurity.gov.au/agd/WWW/rwpattach.nsf/personal/65D7486FA53D68A3CA256EC30022D2DE/\\$FILE/articles.pdf](http://www.nationalsecurity.gov.au/agd/WWW/rwpattach.nsf/personal/65D7486FA53D68A3CA256EC30022D2DE/$FILE/articles.pdf)> (11 December 2013).
- Barry, LEUT Warren, 'Patrol boats' wild trip', *Navy News*, Vol. 38, No. 17, 11 September 1995.
- Bateman, LCDR Simon and Graham Davis, 'Ridin' shotgun in the Gulf', *Navy News*, Vol. 46, No. 17, 25 September 2003.
- Bateman, Sam and Anthony Bergin, 'Dedicated body will anchor command', *The Australian*, 20 December 2012,
 <<http://www.theaustralian.com.au/opinion/dedicated-body-will-anchor-command/story-e6frg6zo-1111115155920>> (28 October 2013).
- 'Birthday end to one busy patrol', *Navy News*, Vol. 39, No. 16, 26 August 1996.
- Blair, Colin, 'Navy Budget: 'Steady as she goes'', *Navy News*, Vol. 37, No. 9, 20 June 1994.
- Bodkin, Peter, 'Postal gun plot accused "may know where" 150 Glock handguns are', *Daily Telegraph*, 14 March 2012,
 <<http://www.dailytelegraph.com.au/news/sydney-news>> (20 March 2013).
- 'Border dispute to be settled amicably: President', *The Jakarta Post*, 8 March 2005,
 <www.thejakartapost.com> (8 March 2005).
- 'Bouncing boy for Gawler', *Navy News*, Vol. 43, No. 6, 3 April 2000.
- Brooke, Michael, 'Big fish freeze', *Navy News*, Vol. 48, No. 18, 6 October 2005.
- _____ 'Huons reactivated', *Navy News*, Vol. 49, No. 9, 1 June 2006.
- _____ 'Minehunter fleet on patrol', *Navy News*, Vol. 50, No. 2, 22 February 2007.
- _____ 'Patrol boats spearhead Op Resolute', *Navy News*, Vol. 53, No. 5, 1 April 2010.
- _____ 'Road Test', *Navy News*, Vol. 49, No. 18, 5 October 2006.
- _____ 'Yarra joins Resolute', *Navy News*, Vol. 50, No. 6, 19 April 2006.
- 'Bunbury calls in chopper for Ashmore Reef rescue', *Navy News*, Vol. 44, No. 6, 2 April 2001.

- 'Busy year clinches major shield for HMAS *Geraldton*', *Navy News*, Vol. 33, No. 3, 16 February 1990.
- 'Cairns Launch's Cruise', *Cairns Post*, 22 June 1936, <<http://trove.nla.gov.au/ndp/del/page/2982416?>> (30 December 2013).
- Cameron, LSPH Shane, 'Navy, veterans make Ambon pilgrimage', *Navy News*, Vol. 38, No. 11, 16 June 1995.
- Cannon, Jim and Tina Turner, 'Barrie rejects claims of politicisation', *Navy News*, Vol. 45, No. 8, 29 April 2002.
- Casey, LEUT Damian, 'Colourful year for White crew', *Navy News*, Vol. 46, No. 4, 27 March 2003.
- _____ 'Hydro ship goes grey for patrol duty', *Navy News*, Vol. 45, No. 4, 4 March 2002.
- Chase, LCDR Brian, 'Adelaide provides "visible presence"', *Navy News*, Vol. 49, No. 12, 13 July 2006.
- 'Chief of Navy corrects the record on patrol boat capability', *Navy News*, Vol. 54, No. 21, 10 November 2011.
- 'City turns on hospitality for visiting patrol boat', *Navy News*, Vol. 35, No. 1, 31 January 1992.
- 'Confiscated Lugger-Release Refused-Appeal to the High Court Likely', *The West Australian*, 7 July 1937, <<http://trove.nla.gov.au/ndp/del/page/3712145>> (30 December 2013).
- Copping, Jasper, 'Fish stocks at risk from protection patrol cuts', *London Telegraph*, 17 February 2008, <<http://www.telegraph.co.uk/earth/main.jhtml?xml=/earth/2008/02/17/earthfish117.xml>> (12 June 2008).
- 'Crash sail for *Arunta*', *Navy News*, Vol. 44, No. 17, 3 September 2001.
- 'Customs operation targets illegal fishing', *Sunday Canberra Times*, 9 April 2006.
- 'Dangerous territory', *Adelaide Advertiser*, 12 April 2006.
- Darby, Andrew, 'Japanese accused of \$2bn tuna fraud', *The Age*, 12 August 2006.
- Davis, Graham, 'Arrested', *Navy News*, Vol. 42, No. 10, 31 May 1999.
- _____ 'Blitz on Southern Ocean Poachers', *Navy News*, Vol. 46, No. 2, 27 February 2003.

- _____ 'Cessnock Rammed', *Navy News*, Vol. 41, No. 4, 27 July 1998.
- _____ 'Close call for Gladstone', *Navy News*, Vol. 47, No. 22, 2 December 2004.
- _____ 'Huons ready for any task', *Navy News*, Vol. 47, No. 14, 12 August 2004.
- _____ 'Illegal fishermen hauled in: Shots fired during six hour chase', *Navy News*, Vol.40, No. 19, 6 October 1997.
- _____ 'Naughty, Naughty!' Illegal fisherman relieved of machete', *Navy News*, Vol. 40, No. 17, 8 September 1997.
- _____ 'You're Nicked Mate', *Navy News*, Vol. 44, No. 8, 30 April 2001.
- DGNCC, 'Navy stands by Armidale boats, crews', *Navy News*, Vol. 50, No. 21, 15 November 2007.
- 'Eye in the sky a big bonus', *Navy News*, Vol. 49, No. 22, 30 November 2006.
- Farmery, MIDN Kirsten, 'Hunting the line on 209', *Navy News*, Vol. 43, No. 10, 29 May 2000.
- 'Foreign Craft in Northern Waters', *The Courier Mail*, 21 September 1934, <<http://trove.nla.gov.au/ndp/del/page/1952566>> (30 December 2013).
- Gallagher, LCDR Mick, '2000 days... and counting... ', *Navy News*, Vol. 51, No. 12, 10 July 2008.
- Gillett, Ross, 'R.A.N. at Malaysian Navy's 55th anniversary', *Navy News*, Vol. 33, No. 11, 8 June 1990.
- Gleeson, SBLT Tony, 'Joining the hunt', *Navy News*, Vol. 49, No. 9, 1 June 2006.
- Green, Sergeant Al, 'Adaptability, flexibility requirements of north', *Navy News*, Vol. 37, No. 5, 25 March 1994.
- Hall, Lex, 'Rescuer "kicked boat people in head", Corporal Sharon Jager', *The Australian*, 28 January 2010, <<http://www.theaustralian.com.au>> (14 August 2013).
- _____ and Jamie Walker, 'Navy errors blamed for fire on SIEV 36', *The Australian*, 26 January 2010, <<http://www.theaustralian.com.au/news/nation/navy-errors-blamed-for-fire-on-siev-36/story-e6frg6nf-1225823448912>> (30 November 2012).
- 'Heat turned up on people smugglers', *Navy News*, Vol. 42, No. 11, 14 June 1999.
- 'HMAS *Glenelg* intercepts vessel near Christmas Island', *Navy News*, Vol. 52, No. 18, 1 October 2009.

- Hobart Town Courier*, 1835, < <http://www.newspapers.nla.gov.au>> (30 December 2013).
- 'Horse Trader Seized: Drug smuggler gripped by Terror', *Navy News*, Vol. 46, No. 7, 8 May 2003.
- Hyland, Tom, 'Morale overboard', *Sunday Age*, 22 July 2007.
- Ingram, CAPT Aaron and Bernard O'Connor, 'Greater respite', *Navy News*, 18 October 2007.
- Jennings, Peter, 'In defence of offshore protection', *The Australian*, 17 December 2004.
- Kelly, CMDR Craig, 'Minister announces patrol boat shortlist', *Navy News*, Vol. 45, No. 15, 5 August 2002.
- Kevin, Tony, 'Little SOLAS found in the wreck of SIEV 221', *The Age*, 2 March 2012, <<http://www.theage.com.au>> (14 August 2013).
- Kresse, Capt Frank, 'RPB multi-crewing an advantage', *Navy News*, Vol. 45, No. 23, 21 November 2002.
- Latham, Laurie, 'Sailor ignored orders to save refugees, inquest hears', *NTNews*, 2 February 2010, <<http://www.ntnews.com.au>> (14 August 2013).
- Lawson, Mike, 'Patrol boats lead the way', *Navy News*, Vol. 34, No. 1, 18 January 1991.
- Lewis, Steve, 'ALP coastguard "to cost \$895m"', *Financial Review*, 17 October 2001.
- Ludlow, Mark, 'Guards to protect airports, coastline-ALP plan to combat terrorism', *Sunday Telegraph*, 7 October 2001.
- 'Manus Island as inhumane as Nauru: Amnesty', *Sydney Morning Herald*, 20 August 2011, <<http://www.smh.com.au/national/manus-island-as-inhumane-as-nauru-amnesty-20110820-1j3cf.html>> (25 March 2013).
- Matzkows, LEUT Aaron, 'Always on the look out', *Navy News*, Vol. 39, No. 7, 22 April 1996.
- _____ 'ANZAC reins in poachers', *Navy News*, Vol. 40, No. 21, 3 November 1997.
- _____ 'A testing time for patrol boats', *Navy News*, Vol. 39, No. 8, 6 May 1996.
- McKenzie, Hugh, 'Mission ready: Boats back in action', *Navy News*, Vol. 49, No. 19, 19 October 2006.
- McLean, Greg, 'Chinese mafia funding illegal fishermen', *Northern Territory News*, 14 June 2005.

'Minister praises our patrol boats' professionalism', *Navy News*, Vol. 44, No. 6, 2 April 2001.

Moore, Matthew, 'Indonesia rejects plan for security zone as breach of maritime boundaries', *Sydney Morning Herald*, 18 December 2004.

'More Writs from Japanese—Detention of Pearling Luggers Resented...', *The Advertiser*, 31 May 1938, <<http://trove.nla.gov.au/ndp/del/page/2641210?>> (30 December 2013).

'Navy's star sapphire', *Navy News*, Vol. 49, No. 12, 13 July 2006.

'Neighbours join for first time patrol exercise', *Navy News*, Vol. 53, No. 8, 13 May 2010.

Nicholson, Brendan, 'ALP opts for faster coast fleet', *The Age*, 1 July 2004.

'Northern Patrol—Air and Sea Measures', *Western Mail*, 18 March 1937, <<http://trove.nla.gov.au/ndp/del/page/3584019?>> (30 December 2013).

Northern Territory Times and Gazette, 4 January 1901, <<http://trove.nla.gov.au/ndp/del/page/827510?>> (30 December 2013).

'NZ deployment meets heavy sea states', *Navy News*, Vol. 44, No. 11, 11 June 2001.

O'Brien, Justin, 'Hero crew home', *NTNews*, 25 December 2012, <http://www.ntnews.com.au> (13 August 2013).

O'Brien, Natalie, 'Border radar fiasco', *The Age*, 3 July 2011, <<http://www.theage.com.au>> (17 June 2013).

'Operational relief rules tested', *Navy News*, Vol. 49, No. 13, 27 July 2006.

'Operational relievers will be told "how long"', *Navy News*, Vol. 44, No. 5, 6 August 2001.

'Operational tempo and lifestyle', *Navy News*, Vol. 53, No. 5, 1 April 2010.

'Operation Breakwater', *Western Cape Bulletin*, 13 April 2006.

'Patrol boats busy with illegal fishermen', *Navy News*, Vol. 42, No. 8, 3 May 1999.

'Patrol boats heading north', *Navy News*, Vol. 44, No. 6, 2 April 2001.

'Patrolling the North', *The Sydney Morning Herald*, 21 May 1937, <<http://trove.nla.gov.au/ndp/del/page/1135020?>> (30 December 2013).

'People Power—meet some of the crew of Assail 6 (*Ararat*)', *Navy News*, Vol. 53, No. 6, 15 April 2010.

- 'Powers of Patrol Officers', *The West Australian*, 6 April 1937, <<http://trove.nla.gov.au/ndp/del/page/3710200?>> (30 December 2013).
- 'Quite a haul', *Navy News*, Vol. 43, No. 7, 17 April 2000.
- Rollings, Barry, 'Navy's starring role', *Navy News*, Vol. 49, No. 18, 5 October 2006.
- 'Securing the north', *Navy News*, Vol. 43, No. 24, 27 November 2000.
- 'Shield to Bendigo', *Navy News*, Vol. 33, No. 13, 6 July 1990.
- 'Ships gather', *Navy News*, Vol. 43, No. 16, 21 August 2000.
- Sibley, David, 'Two more boats confirmed', *Navy News*, Vol. 48, No. 8, 19 May 2005.
- 'Six ships headed north', *Navy News*, Vol. 42, No. 24, 13 December 1999.
- 'Southcom copes with fewer people, resources', *Air Force Times*, 15 October 2013, <<http://airforcetimes.com/article/21031015>> (18 October 2013).
- Statham, Laurie, 'Navy admits asylum boat training not up to task', *NT News*, 3 February 2010, <<http://www.ntnews.com.au>> (11 August 2013).
- Stevenson, Andrew, 'Latham vows tougher border security', *The Age*, 19 January 2004.
- Stewart, Cameron, 'More defects found in crippled HMAS *Tobruk*', *The Australian*, 16 June 2011, <<http://www.theaustralian.com.au/national-affairs>> (2 August 2013).
- _____ 'Sailors forces to spend too much time at sea', *The Australian*, 31 July 2013.
- _____ and Paige Taylor, 'Border patrols at breaking point over asylum boats', *The Australian*, 18 July 2013, <<http://sievx.com/articles/AUSSAR2013-4816/20130718StewartTaylor.html>> (31 March 2014).
- Taylor, Savitri, 'Wicked problems and good intentions', *Inside Story*, 20 August 2012, <<http://inside.org.au/>> (5 April 2013).
- 'The Larrakia - Forced to Release Arrested Ship-Patrol Comedy', *The Canberra Times*, 17 June 1937, <<http://trove.nla.gov.au/ndp/del/page/657814?>> (30 December 2013).
- The Melbourne Argus*, 1858, <<http://newspapers.nla.gov.au>> (30 December 2013).
- The Sydney Gazette and New South Wales Advertiser*, 1804, 1805, 1818, 1827, 1831, <<http://newspapers.nla.gov.au>> (30 December 2013).
- 'Thick Grey Line: Patrols aim to deter illegals', *Navy News*, Vol. 44, No. 18, 17 September 2001.

- 'Three Patrols Soon in Northern Waters', *The Advertiser*, 29 April 1937,
<<http://trove.nla.gov.au/ndp/del/page/2648314?>> (30 December 2013).
- 'Timor Patrol Boat', *Sydney Morning Herald*, 20 May 1936,
<<http://trove.nla.gov.au/ndp/del/page/1108816?>> (30 December 2013).
- 'Training centre delivers on operational support', *Navy News*, Vol. 45, No. 6, 1 April 2002.
- Underwood, LCDR Anthony, 'Armidale weighs into a new era', *Navy News*, Vol. 48, No. 11, 30 June 2005.
- Ward, Stacy, 'Border Protection catches illegal fishermen up north', *Navy News*, Vol. 52, No. 15, 20 August 2009.
- 'Warrnambool comes in from the cold', *Navy News*, Vol. 37, No. 4, 11 March 1994.
- 'Well earned rest for Geelong', *Navy News*, Vol. 41, No. 21, 2 November 1998.
- '"White Australia Flouted": The Yellow Menace - An Open Door', *The Daily Standard*, 2 April 1914.
- Wilkinson, Marian, 'Secret file: Operation Relex', *Sydney Morning Herald*, 27 October 2002, <www.smh.com.au/articles/2002/10/27> (13 July 2013).
- Wilsmore, LEUT Mark and LEUT Vanessa Power, 'Course change for patrol boats', *Navy News*, Vol. 43, No. 14, 24 July 2000.
- Wiseman, CPL Nick, 'SIEV 36 explosion triggers more than just memories', *Navy News*, Vol. 55, No. 7, 26 April 2012.