

## **Department for Culture, Media and Sport**

### **Draft Heritage Protection Bill**

#### **Response by**

#### **The Joint Nautical Archaeology Policy Committee**

**June 2008**

1. The Joint Nautical Archaeology Policy Committee (JNAPC) welcomes the opportunity to respond to the Department for Culture, Media and Sport in respect of the Draft Heritage Protection Bill.
2. The JNAPC was formed in 1988 from individuals and representatives of institutions who wished to raise awareness of the United Kingdom's underwater cultural heritage and to persuade government that underwater sites of historic importance should receive no less protection than those on land. Some information on the JNAPC and its membership is attached in Appendices 1 & 2.
3. The JNAPC would like to make the following comments on the marine heritage content. References to paragraph numbers in the draft Bill are shown in brackets.
4. We welcome the inclusion of marine assets and marine heritage assets in the draft Bill, and that registered marine heritage assets will be included in the same heritage register as their terrestrial counterparts. We hope that this will ensure a more seamless approach to the protection of our underwater cultural heritage in relation to heritage structures on land.
5. We seek confirmation that the definition of marine assets (46) and heritage structures (2(2)) will include important palaeo-environmental sites such as Bouldnor Cliff in the Solent. We also seek clarification that marine heritage sites may include wider areas of archaeological interest (similar to heritage open spaces (3) on land), rather than just point locations. Two examples of such areas would be (i) part of the Goodwin Sands where there are known to be a large number of historic wrecks and (ii) important areas of submerged prehistoric land surfaces in the Solent.
6. There is an inconsistency in the draft Bill whereby the heritage authority responsible for registering a site on land in England is English Heritage but for marine heritage assets it is the Secretary of State (49(3)). We see no reason why the marine registration authority should not also be English Heritage for underwater sites, in line with the proposed seamless approach. This inconsistency continues into the proposals for the granting of licences (188(2), 192, 194(1)). These inconsistencies need to be explained and justified.

7. We welcome the proposals for provisional registration.
8. In the section on the ‘grant or refusal of licence’, the use of the word “salvage” in 196(5) is inappropriate for a marine heritage asset and should be replaced. We suggest “archaeological excavation in accordance with the Annex of the UNESCO Convention for the Protection of the Underwater Cultural Heritage”. Clause 197(1) should also include a requirement for conservation and publication.
9. In the section on ‘designation of site as suitable for unintrusive diving activities’ reference to “salvor in possession” in 198(5) reveals the major weakness of the draft Bill in that it has not addressed the reform of Salvage Law in relation to marine assets (see paragraph 13 below). We believe that the reference to “salvor in possession” should be removed as it is inconsistent with the proper treatment of marine assets under the Annex to the UNESCO Convention.
10. We welcome the proposed duty on local planning authorities to create, and keep up to date, a historic environment record for registered marine heritage sites (210(3)(c)). Not only should this extend to the limit of territorial waters, but it should also go to the limit of the UK’s jurisdiction. We have concerns as to who will provide the resources and expertise for this activity and how it will relate to the Maritime Record in the National Monuments Record.
11. Whilst we welcome the proposal that the Receiver of Wreck should inform heritage agencies of marine assets reported to her under the Merchant Shipping Act 1995, we have a major concern about the wording of paragraph 280 which states that “the Receiver of Wreck will be under a duty to pass on any information *she considers relevant* in relation to the protection of marine assets and possible registration of marine historic assets to the relevant heritage agencies”. JNAPC recommends that there should be an unambiguous statutory requirement for the Receiver of Wreck to report all finds of marine assets to heritage agencies. This would overcome the recognised problem of information on important finds being withheld by the Receiver on the basis of “commercial in confidence”. This happened recently in the case of the Dutch East Indiaman *Rooswijk* whose cargo of silver coins and ingots was salvaged and sold before it could be protected by designation under the existing legislation, the Protection of Wrecks Act 1973. The site has subsequently been designated indicating that it should have been a candidate for protection as soon as it was discovered.
12. It would be appropriate to include Heritage Partnership Agreements in the marine environment, further adding to the seamlessness of the legislation.
13. The most serious omission from the draft Bill is that no attempt has been made to address the reform of salvage law in relation to marine assets. Marine assets will continue to be regulated by commercial salvage law which encourages the sale and dispersal of artefacts, completely in contravention to the Annex of the UNESCO Convention for the Protection of the Underwater Cultural Heritage, which the

Government has endorsed. Also there will be no statutory requirement to report the recovery of artefacts from submerged prehistoric land surfaces, the new category of marine assets included in the draft Bill. The JNAPC took part in the DCMS working group on 'salvage' as part of the consultation process and the group made three important recommendations to DCMS ministers but these recommendations have not been included in the draft legislation. They were:

- (i) marine assets should be removed from the salvage regime governed by the Merchant Shipping Act 1995 (MSA 95).
- (ii) the concept of 'salvor in possession' should be abolished for marine assets as this can still prevent the protection and proper management of registered marine heritage assets.
- (iii) Both the discovery and the disturbance of all marine assets should be reported to heritage agencies in line with the Valletta Convention, which DCMS has ratified. Under MSA 95 only the recovery of 'wreck' must be reported to the Receiver but this does not include finds such as artefacts from submerged prehistoric land surfaces because they are not technically 'wreck'.

This is a major missed opportunity by Government which could make the new legislation unworkable. We recommend that DCMS should re-open discussions with the Department for Transport and the Receiver of Wreck and include suitable legal measures to exclude marine assets from the salvage regime.

14. The future role of the Advisory Committee on Historic Wreck Sites needs to be considered in the light of the assumed repeal of the Protection of Wrecks Act 1973 and the independent heritage legislation proceeding in Scotland.
15. There needs to be an organisation which can advise on marine assets beyond territorial waters and out to the limit of the UK's jurisdiction. There is a strong case that this role should be given to English Heritage for England's waters.
16. At the initial consultation stage there was considerable interaction between DCMS and Defra so that the marine historic environment and the natural marine environment might share certain features such as Marine Protected Areas, Policing, Enforcement and a Marine Management Organisation. With shared stakeholders and joined-up government this was an obvious objective. However there is little sign of this laudable objective being achieved in either the draft Heritage Protection Bill or the draft Marine Bill. We suggest that DCMS should revisit these proposals.

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June 2008

## Appendix 1

# JOINT NAUTICAL ARCHAEOLOGY POLICY COMMITTEE

## THE JNAPC - PAST, PRESENT AND FUTURE

The JNAPC was formed in 1988 from individuals and representatives of institutions who wished to raise awareness of Britain's underwater cultural heritage and to persuade government that underwater sites of historic importance should receive no less protection than those on land.

The JNAPC launched *Heritage at Sea* in May 1989, which put forward proposals for the better protection of archaeological sites underwater. Recommendations covered improved legislation and better reporting of finds, a proposed inventory of underwater sites, the waiving of fees by the Receiver of Wreck, the encouragement of seabed operators to undertake pre-disturbance surveys, greater responsibility by the Ministry of Defence and the Foreign and Commonwealth Office for their historic wrecks, proper management by government agencies of underwater sites, and the education and the training of sports divers to respect and conserve the underwater historic environment.

Government responded to *Heritage at Sea* in its White Paper *This Common Inheritance* in December 1990 in which it was announced that the Receiver's fees would be waived, the Royal Commission on the Historical Monuments of England would be funded to prepare a Maritime Record of sites, and funding would be made available for the Nautical Archaeology Society to employ a full time training officer to develop its training programmes. Most importantly the responsibility for the administration of the 1973 Protection of Wrecks Act was also transferred from the Department of Transport, where it sat rather uncomfortably, to the then heritage ministry, the Department of the Environment. Subsequently responsibility passed to the Department of National Heritage, which has since become the Department for Culture Media and Sport.

The aim of the JNAPC has been to raise the profile of nautical archaeology in both government and diving circles and to present a consensus upon which government and other organisations can act. *Heritage at Sea* was followed up by *Still at Sea* in May 1993 which drew attention to outstanding issues, the *Code of Practice for Seabed Developers* was launched in January 1995, and an archaeological leaflet for divers, *Underwater Finds - What to Do*, was published in January 1998 in collaboration with the Sports Diving Associations BSAC, PADI and SAA. The more detailed explanatory brochure, *Underwater Finds - Guidance for Divers*, followed in May 2000 and *Wreck Diving - Don't Get Scuttled*, an educational brochure for divers, was published in October 2000.

The JNAPC continues its campaign for the education of all sea users about the importance of our nautical heritage. The JNAPC will be seeking better funding for nautical archaeology and improved legislation, a subject on which it has published initial proposals for change in *Heritage Law at Sea* in June 2000 and *An Interim Report on The*

*Valletta Convention & Heritage Law at Sea* in 2003. The latter made detailed recommendations for legal and administrative changes to improve protection of the UK's underwater cultural heritage.

The JNAPC has played a major role in English Heritage's review of marine archaeological legislation and in DCMS's consultation exercise *Protecting our Marine Historic Environment: Making the System Work Better*, and was represented on the DCMS Salvage Working Group reviewing potential requirements for new legislation. The JNAPC has also been working towards the ratification of the UNESCO Convention with the preparation of the *Burlington House Declaration*, which was presented to Government in 2006.

## Appendix 2 Joint Nautical Archaeology Policy Committee

### Members

#### Chairman

Robert Yorke

#### Organisations

Association of Local Government Archaeological Officers  
British Sub Aqua Club  
Council for British Archaeology  
Hampshire & Wight Trust for Maritime Archaeology  
Institute of Conservation  
Institute of Field Archaeologists, Maritime Affairs Group  
ICOMOS  
National Maritime Museum  
National Museums & Galleries of Wales  
National Trust  
Nautical Archaeology Society  
Professional Association of Diving Instructors  
Shipwreck Heritage Centre  
Society for Nautical Research  
Sub Aqua Association  
United Kingdom Maritime Collections Strategy  
Wessex Archaeology  
Wildlife and Countryside Link

Paul Gilman  
Jane Maddocks  
Gill Chitty  
Garry Momber  
  
Julie Satchell  
Chris Dobbs  
Gillian Hutchinson  
Mark Redknap  
David Thackray  
George Lambrick  
Suzanne Pleydell  
Peter Marsden  
Ray Sutcliffe  
Stuart Bryan  
Chris Dobbs  
Antony Firth  
Joanna Butler

#### Individual representation

Sarah Dromgoole  
Michael Williams

#### Affiliation

University of Nottingham  
Wolverhampton University

#### Observers

Advisory Committee on Historic Wreck Sites  
Cadw  
Department for Culture, Media and Sport  
The Crown Estate  
English Heritage  
Environment Service, Northern Ireland  
Foreign and Commonwealth Office  
Historic Scotland  
Maritime and Coastguard Agency, Receiver of Wreck  
Ministry of Defence  
Ministry of Defence  
Royal Commission on the Ancient  
and Historical Monuments of Scotland

Tom Hassall  
Sian Rees  
Annabel Houghton  
Carolyn Heeps  
Ian Oxley  
Rhonda Robinson  
Andrew Tate  
Philip Robertson  
Alison Kentuck  
Peter MacDonald  
Bob Stewart  
  
Robert Mowat