

JOINT NAUTICAL ARCHAEOLOGY POLICY COMMITTEE

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Carrie Cowan and Mark Dunkley
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Email to: designation@english-heritage.org.uk

Dear Carrie and Mark,

Human Remains from Wreck Sites: a Proposed Policy for Consultation

The Joint Nautical Archaeology Policy Committee (JNAPC) has pleasure in responding to this Consultation and welcomes this important initiative which addresses a big gap in current practice.

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. Summary information on the JNAPC and its membership is attached in Appendices 1 & 2 below.

The JNAPC is grateful for the contributions made by its members to this response and in particular those from the Institute for Archaeologists, the Nautical Archaeology Society and Fjordr whose separate responses to this Consultation we would like to endorse.

Our comments are as follows:

Under the paragraph 'Issues' the future policy is stated to apply to human remains from wreck sites within the UK Marine Area, which extends to the edge of the Continental Shelf, whereas in the 'Summary of Key Points' the policy appears to apply only to UK territorial waters adjacent to England. Please would you clarify this point.

However we believe it is very important that the policy should also apply beyond territorial waters into the whole UK Marine Area and that some mechanism or statement of best practice should be included even if legislation is limited to 12nm. For instance in recent television programmes we have seen the disturbance of human remains during the investigation of HMS Victory (1744) and it is clear that the finders had no accepted way of dealing with this issue.

One way of dealing with the issue could be by including the proposed policy on human remains in marine licences issued by the MMO under the Marine and Coastal Access Act 2009 and licensees could also be reminded that an additional licence from Ministry of Justice would be required before any human remains could be recovered.

We suggest that reference could be made to human remains that are inadvertently recovered from the seabed and that this policy document should be made available from a wider number of sources such as Receiver of Wreck and sports diving organisations as well as English Heritage and Ministry Justice.

We suggest that attention should be drawn to England's marine borders with the other UK jurisdictions and readers should be referred to the relevant policies in Scotland, Wales and Northern Ireland.

In situations where human remains are recovered from wrecks where there is strong evidence that the ship or plane may not have had a British crew and was not British owned, the guidance could specifically state the need to consult with appropriate representatives of the country it is known, or is suspected the vessel may have come from, about plans for the remains' research, care and any final reburial.

The IfA has drawn attention to drafting points in its first two specific comments which we would like to endorse.

We also include below the IfA's fourth point because this appears to be quite significant and we would welcome your response.

“IfA is wholly supportive of this attempt to regularise practice with regard to human remains in the marine context and ensure that it is applied in a manner consistent with terrestrial policy and practice. However, if section 25 of the Burial Act 1857 does not apply to the majority of human remains encountered on wreck sites, it is not clear what legal basis there would be for the Ministry of Justice simply to ‘*stipulate ... that the exhumation licensing scheme applies to human remains found on wreck sites ...*’ (second paragraph of the fifth page of the draft policy document). For instance, how could the Ministry enforce against a failure to obtain a licence (an offence under statute) if there is no statutory power to grant a licence and how could it enforce against a failure to adhere to conditions? Conversely, would a ‘licence’ granted by the Ministry without statutory power be an absolute defence to the prosecution of a common law offence in relation to the disturbance of human remains? These questions are asked not to undermine this valuable initiative but with a view to ensuring that practice and policy are robust and defensible. Legislative provision would provide an answer but this may not be feasible in the short term.”

The JNAPC would like to suggest that English Heritage seeks endorsement of this policy from Ministry of Justice, Joint Casualty and Compassionate Centre and other appropriate government bodies.

We would be pleased to assist you in any further discussions on this matter.

Yours sincerely,

R A Yorke
Chairman

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 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 on the Protection of the Underwater Cultural heritage 2001 with the preparation of the *Burlington House Declaration*, which was presented to Government in 2006 and the Seminar on the Protection of Underwater Cultural Heritage in International Waters Adjacent to the UK in November 2010.

The JNAPC continues to work for the improved protection of underwater cultural heritage in both territorial and international waters.

Joint Nautical Archaeology Policy Committee

Chairman

Robert Yorke

Member Organisations

Association of Local Government Archaeological Officers
British Sub Aqua Club
Council for British Archaeology
Hampshire & Wight Trust for Maritime Archaeology
ICOMOS
Institute for Archaeologists
Institute for Archaeologists, Maritime Affairs Group
Maritime Archaeology Sea Trust (MAST)
National Maritime Museum
National Museums & Galleries of Wales
National Trust
Nautical Archaeology Society
Professional Association of Diving Instructors
RESCUE
Sea Change Heritage Consultants
Shipwreck Heritage Centre
Society for Nautical Research
Sub Aqua Association
United Kingdom Maritime Collections Strategy
Wessex Archaeology

Robin Daniels
Jane Maddocks
Mike Heyworth
Garry Momber
Christopher Dobbs
Tim Howard
Graham Scott
Jessica Berry
Gillian Hutchinson
Mark Redknapp
Ingrid Samuel
Adrian Olivier
Suzanne Smith
Stephen Appleby
John Gribble
Peter Marsden
Ray Sutcliffe
Stuart Bryan
Christopher Dobbs
Euan McNeil

Individual members

Sarah Dromgoole
Antony Firth
David Parham
Michael Williams

Affiliation

University of Nottingham
Fjordr Limited
University of Bournemouth
Plymouth University & UCL

Observers

Advisory Panel on Historic Wrecks, English Heritage
Cadw
The Crown Estate
Department for Culture, Media and Sport
Department for Transport
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
Polly Groom
Iain Mills
Helen Williams
Robert Cousins
Ian Oxley
Claire Foley
Louise Savill/Mina Patel
Philip Robertson
Alison Kentuck
Peter Fieldsend
Bob Stewart

Alex Hale