

JOINT NAUTICAL ARCHAEOLOGY POLICY COMMITTEE

MILITARY MARITIME GRAVES AND THE PROTECTION OF MILITARY REMAINS ACT 1986

CONSULTATION DOCUMENT

JNAPC response 12th May 2001

Introduction

- The JNAPC very much welcomes the Consultation Document and the opportunity to respond.
- The JNPAC believes this is an important step forward in recognising the important issues surrounding military maritime graves (*'war graves'*).
- The JNAPC hopes that the result of consultation will be to bring swift action to address these issues by MoD and other government departments.
- The JNAPC refers the MoD to its paper "War Graves – The Issues" produced in October 2000. The thrust of this paper is complementary to many of the comments and proposals in the Consultation Document.
- The membership of JNAPC is shown in Appendix 1. This response has been considered in committee and, where appropriate, written submissions are attached at Appendix 2, which include some of the more detailed reasoning behind this response. This response considers the Consultation Document in the order of the document. Where no comment is made, broad agreement can be assumed.

1. Aim

- As stated above the JNAPC welcomes the consultation process and notes that MoD recognises that policy in relation to PMRA 1986 needs revision.
- The JNAPC is pleased that MoD acknowledges the legitimacy of responsible recreational access to most sites and is concerned to develop a mechanism whereby this can be achieved.

2. Consultation

- The issue of war graves affects a number of government departments, including DCMS in so far as it administers the Protection of Wrecks Act 1973 (which makes provision for the protection of historically important wrecks (*'historic wrecks'*) and also dangerous wrecks) and DETR in so far as it administers the Merchant Shipping Act 1995 (which provides for the recovery of wreck materials).
- The need for close inter-departmental communication and cooperation (*'joined up government'*) is therefore fundamentally important.
- It is hoped that the National Maritime Museum and other maritime and naval museums have been consulted.

3. The Issue

The JNAPC has a particular interest in this matter because of the close relationship between the protection of *war graves* and the protection of *historic wrecks*. It feels strongly that it is possible to improve the respect for sites that are the last resting of the dead, while at the same time maintaining recreational access and also access for legitimate archaeological purposes.

4. Background

4.1 Record of Losses

- The following organisations hold information (including locations where known) on military shipwrecks, aircraft remains and historically attested losses, along with other maritime and foreshore discoveries:

England - The NMR Maritime, English Heritage, which is a comprehensive list of all losses and incorporates relevant UK Hydrographic data.

Scotland – National Monuments record of Scotland, Royal Commission on the Ancient and Historical Monuments of Scotland.

Wales – Cadw.

Northern Ireland – Environment and Heritage Service, DOENI.

4.2 Deterrent of PMRA 1986

- The JNAPC agrees that the mere existence of the PMRA 1986 is not a deterrent to divers and sea users.
- The JNAPC believes that a lack of action by MoD to designate sites under PMRA 1986 will undoubtedly be seen as a sign of weakness by survivors' associations and a signal to a minority of divers to continue their unacceptable behaviour, and possibly even to increase it.

4.3 & 4.5 Education

- The JNAPC has coordinated the production of “Wreck Diving – Don’t get Scuttled’ and other leaflets directed at diver education and intends to continue these initiatives.
- The JNAPC welcomes the MoD’s statement that it will continue to encourage and support the educational campaign and feels that this might usefully be extended to the survivors’ associations.
- The JNAPC believes that the MOD’s position on protecting *war graves* under the PMR 1986 should be clarified by a public policy statement and therefore welcomes the MoD’s proposal to publish its own guidance.

5. Political Background/Ministerial Statement

The JNAPC recognises that the moral authority rests with the survivors and their associations.

6. The Protection of Military Remains Act 1986

The summary of the PMRA is helpful.

7. Controlled sites

Factors relating to *controlled site* are noted

8. Protected places

Factors relating to *protected place* are noted.

9. Power to License

Noted

10. Criteria for designation

- The JNAPC believes that a site should meet the essential criterion that it is ‘the last resting place’ of those that lost their lives, irrespective of whether or not human remains are likely to be present.
- The JNAPC accepts the four criteria, in principle, as fulfilling their function within the Act both for national and international waters.
- Evidence of sustained disturbance should not be necessary before a site can be designated. However, it is important that disturbance should be recent.
- The consideration of ‘whether or not designation is likely to curb or put a stop to such disturbance or looting’ should not be influenced by whether or not a site is deemed difficult to police. In the UK and associated territorial waters, the lack of designation on the basis of ‘difficulty to police’ would indicate to divers and sea users that the MoD believes the PMRA 1986 is unenforceable.
- Criterion (c) is appropriate for vessels in international waters despite being difficult to enforce.

During consideration of the relevant criteria for designation MoD should be able to draw on detailed information about sites. MoD should, therefore, consider how the holding of information on individual wrecks might be unified between Royal Navy Historical Branch, naval museums, the UK Hydrographic Department, and relevant national and local sites and monuments records. MoD should also consider prioritising certain classes of sites, for instance, where the structural integrity of a wreck might have made the preservation of human remains more likely.

11. Form of Designation

- The JNAPC agrees that designation as a *controlled site* is preferable to designating the vessel itself as a *protected place* because it would be easier to prove an offence in relation to a *controlled site*.
- Designated sites, where clearly identifiable, should be marked on the seabed, on the surface (or both), with appropriate details of the loss including date, name, number of casualties and designated status.

12. Licensing

- The JNAPC believes, in principle, that licences should be granted for genuine recreational diving on a ‘look don’t touch’ basis in appropriate circumstances.
- The JNAPC believes that historical significance should be taken into account in the licensing process and that this should not be based solely on the age of a vessel. Many vessels lost between 1914-18 and 1939-45 have now become ‘*historic wrecks*’.
- A system of graded licences should be introduced for archaeological purposes, predominantly for identification, external investigation and research. Where research involves intrusive diving, excavation or recovery, and possible disturbance of human remains, special licensing conditions should apply.
- Licences should be conditional on full conservation provision for artefacts recovered being demonstrated to be in place prior to excavation. Expert advice should be sought by licensees on the ramifications of ‘unearthing’ or removal of parts. Licensees should ensure that conservation treatment is carried to completion.
- Licences should only be granted to individuals, or a single group of individuals, since experience under the PWA 1973 has shown that multiple licensing can be problematic. Consideration might be given to granting licences to appropriate charter boat owners.
- There should be a PMRA 1986 Licensing Advisory Committee (PLAC), similar in purpose to the Advisory Committee on Historic Wreck Sites (ACHWS), to aid transparency of designation. Common ground between ACHWS and PLAC should be investigated in the interest of ‘joined up government’.

13. Problems of Enforcement

13.1 Enforcement, fines, and property

- Enforcement will require close cooperation between MoD police, local police forces, Maritime and Coastguard Agency, Receiver of Wreck, harbour masters, and other agencies. This will require a process of education and improved awareness in some of these organisations.
- MOD should pursue thefts from government owned wreck sites and use the opportunity to publicise their rights of ownership of wrecked military vessels.
- Fines should be raised to £20,000 from the current level of £5,000. Fines for intentional obstruction should be raised to £5,000 from £1,000.
- Penalties should include confiscation of boats and equipment.
- Penalties should include the loss of licence by charter boat owners for aiding interference with designated *war graves*.
- As noted in 11 above, designated sites should be buoyed and marked on the seabed where possible.
- Observation of sites could be delegated to responsible diving groups, as in the NAS ‘Adopt a Wreck’ scheme.
- In international waters assistance should be sought from local governments, their navies, and their police forces. Special arrangements could also be made by MoD with local diving groups as in the NAS ‘Adopt a Wreck’ scheme in the UK.

13.2 Consequence of limited resources

- The JNAPC does not believe that ‘limited resources’ should be used as a reason for not designating an appropriate number of *controlled sites*.
- Provided that the process of enforcement is suitably delegated and organised, the central management role should be sustainable.
- Resources should be made available from within MoD and other government departments to provide adequate management and enforcement.

14. Other Sea Users

Any designated areas should be accompanied by notices to mariners and marked on Admiralty charts. Any offence would therefore be clear.

15. Proposal

- The JNAPC welcomes the proposals in 15.1 and gives its broad support for these.
- The JNAPC is in favour of designating wrecks that are under demonstrable threat rather than pursuing a policy of blanket designation.

The proposals do not, however, cover a number of ancillary areas and the JNAPC would like to make the following recommendations:

1. The proposals do not cover the method of management of *war graves* by MoD and the resources that will be required to undertake this process. The JNAPC believes this aspect should be addressed urgently.
2. There is considerable potential for overlap and conflict between the jurisdiction of the PMRA 1986 and the PWA 1973. The JNAPC recognises that although responsibility for designation under the PMR 1986 and the PWA 1973 rests with the MoD and DCMS respectively, there should be a formal agreement for close cooperation and consultation between government departments in respect of disposal of wreck, designation, licensing, and enforcement. The departments should encompass the Heritage Agencies, DCMS, MoD and the Maritime and Coastguard Agency (Receiver of Wreck). At an appropriate time when the problem of the fragmented legal structure relating to wrecks at sea is reviewed by government, consideration should be given to consolidating all the management, designation and licensing processes within a single entity which would then permit a more efficient use of expertise and resources.
3. The Heritage Agencies, DCMS and MoD should urgently consider the historical significance of MoD First and Second World War wrecks and their potential for protection under PWA 1973. On land, listing and scheduling have protected certain First and Second World War sites and buildings. DCMS could support MOD by funding archaeological assessment of the portfolio of historic wrecks pre 1945.
4. The JNAPC is aware that the PMRA 1986 applies only to vessels that were lost while “in service with, or being used for the purposes of,” any of the armed forces of the UK or any other country and therefore cannot be used to protect many merchant ships lost in wartime, or indeed merchant vessels lost at other times, with loss of life. However,

as a matter of principle, all maritime grave sites deserve respect and the JNAPC believes that the government should consider whether the PMRA 1986 should be extended to include vessels other than those in military service. At the very least, we believe that the definition of 'military service' in the Act should be given as broad an interpretation as possible.

5. The JNAPC would welcome the opportunity to work further with MoD to explore the implications of designation, licensing, education, training, and methods of enforcement.

12th May 2001

APPENDIX 1

Joint Nautical Archaeology Policy Committee

Members

Chairman - Robert Yorke

Association of Local Government Archaeological Officers, Maritime Committee - Robin Daniels

British Sub Aqua Club – Jane Maddox

Council for British Archaeology - George Lambrick, Valerie Fenwick, and Alex Hunt

Hampshire & Wight Trust for Maritime Archaeology - Garry Momber

Institute of Field Archaeologists, Maritime Affairs Group - Anthony Firth

ICOMOS - Chris Dobbs

National Maritime Museum - Gillian Hutchinson

National Museums & Galleries of Wales - Mark Redknapp

National Trust - Rob Woodside

Nautical Archaeology Society - Chris Brandon

Nautical Archaeology Society, Training - Chris Underwood

Professional Association of Diving Instructor - Suzanne Pleydell

Shipwreck Heritage Centre, Hastings - Peter Marsden

Society for Nautical Research - Alan Aberg

Sub Aqua Association - Stuart Bryan

UK Institute for Conservation - Amanda Sutherland

Barrie Andrian - University of Edinburgh, Department of Archaeology

Sarah Dromgoole - Lecturer in Law, Leicester University

David Tomalin - previously County Archaeologist, Isle of Wight

Michael Williams - Lecturer in Law, Wolverhampton University

Observers

Archaeological Diving Unit - Martin Dean

Cadw - Sian Rees

English Heritage – Paul Roberts (Stephen Trow)

English Heritage (RCHME) – Steve Waring

Heritage and Environment Service, DOE Northern Ireland - Brian Williams

Maritime and Coastguard Agency, Receiver of Wreck - Veronica Robbins

Ministry of Defence - Marion McQuaide

Royal Commission on the Ancient and Historical Monuments of Scotland –

Diana Murray and Bob Mowat,

APPENDIX 2

Copies of written submissions to JNAPC