

HERITAGE LAW AT SEA



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JOINT NAUTICAL
ARCHAEOLOGY
P O L I C Y
COMMITTEE

HERITAGE LAW AT SEA

PROPOSALS FOR CHANGE

The proposals contained in this document for changing the legal structure securing protection of underwater cultural heritage have been compiled following extensive discussion and consultation by the Joint Nautical Archaeology Policy Committee. The JNAPC is particularly grateful to the British Sub Aqua Club, the Professional Association of Diving Instructors, and the Sub Aqua Association for their endorsement of these proposals.

The JNAPC was formed over twelve years ago from representatives of several bodies and individuals with an interest in preserving Britain's heritage and especially those parts which lie underwater. The JNAPC launched *Heritage at Sea* in May 1989 with the particular aim of raising awareness of Britain's underwater heritage and persuading government that underwater sites of historical importance should receive no less protection than those on land. Since then the JNAPC has published *Still at Sea*, a review of progress of *Heritage at Sea*, the *Code of Practice for Seabed Developers*, a leaflet for divers *Underwater Finds- What to Do* and the more detailed *Underwater Finds - Guidance for Divers.*, Further details of the membership of the JNAPC are shown in Appendix 1.

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The cover illustration is by Joanne Fletcher, School of Legal Studies, University of Wolverhampton

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INTRODUCTION

It is now some 25 years since the Protection of Wrecks Act 1973 was enacted to provide a mechanism to safeguard wrecks considered to be of historical, archaeological or artistic importance and nearly 50 wrecks have been designated in that period. However, as the theory and practice of nautical archaeology continues to mature, awareness of the need for more comprehensive provision for the care of submerged archaeology is increasing. In particular, the disparity between the care afforded to important remains on land and those submerged in the territorial sea is becoming increasingly apparent.

In its consultation papers *Heritage at Sea* (May 1989) and *Still at Sea* (May 1993) the Joint Nautical Archaeology Policy Committee identified a number of deficiencies in the law and administration relating to nautical heritage. Recommendations made by the JNAPC in these papers have been influential in securing progress in a number of areas including Government support for compilation of information about submerged archaeology in the territorial sea; education of the diving community regarding conservation of wrecks; improvements in reporting mechanisms for historic material recovered from the sea; and greatly improved consultation in advance of damaging commercial seabed activities through production of a Code of Practice for Seabed Developers. This progress has been secured almost exclusively by administrative action or educational initiatives. While further progress can be achieved in this manner, new legislation is required to address the most significant needs. Foremost amongst these are improvements in the reporting of wreck, the management and physical protection of designated sites, the enhancement of public access to them, the elimination of uncertainties relating to rights in wreck and improving the transparency of the decision making process.

The JNAPC has concluded that the best course of action would be to build upon the existing legal structure, in collaboration with the diving community. Consequently the JNAPC is proposing further modifications to this structure, although such modifications would be quite extensive in certain areas. It is proposed that the existing provisions relating to the underwater cultural heritage in the Merchant Shipping Act 1995, the Protection of Wrecks Act 1973 and the Ancient Monuments and Archaeological Areas Act 1979 shall remain in force, except in so far as they are amended by the proposals in this document. A series of objectives for change are set out below. Each objective is accompanied by a statement of the problem that needs to be addressed, a proposed solution and an explanatory comment. The objectives are grouped in relation to the Merchant Shipping Act 1995, the Protection of Wrecks Act 1973, provisions relating to advice and information, and miscellany. It is envisaged that these proposals will provide a framework for a public debate as to the legal structure which will protect our nautical heritage into the 21st. century.

The JNAPC invites consideration of these proposals by interested parties and welcomes responses in writing by 30th June 2000 to:

JNAPC: Heritage Law At Sea
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PART 1 MERCHANT SHIPPING ACT 1995

1.1 Introduce a general obligation to report disturbances to historic wreck

Problem

Notification to the Receiver of Wreck is only required if wreck is recovered. As a result any amount of damage can occur to a wreck site before it is brought to the attention of archaeologists.

Solution

Introduce a general obligation to report disturbances to historic wreck, defined for this purpose as wreck which appears to have been submerged for 100 years or more.

Explanation

Under s. 236 Merchant Shipping Act 1995 any person finding or taking possession of wreck in UK waters must give notice to the Receiver of Wreck. However, current implementation of this provision suggests that there is no duty to report disturbance to a wreck in the absence of any recoveries being made. Such disturbance may occur where a wreck site is excavated, surveyed or otherwise investigated. While not seeking to prohibit disturbance, the JNAPC believes that divers and other sea-users should be obliged to report any disturbance to the Receiver, thereby enabling the Receiver to consult with appropriate persons and agencies. The obligation to report would also open up an avenue for providing appropriate advice and guidance to divers and sea-users who are engaged in activities which are causing disturbance.

This objective is seen as complementing the educational initiatives aimed at the diving community in recent years by the diving organisations, the Nautical Archaeology Society, the Department for Culture, Media and Sport, The Maritime and Coastguard Agency and the JNAPC. In respect of wrecks where less than 100 years have elapsed since their loss it is envisaged that the above organisations, departments and agencies will co-operate in the formulation of a voluntary code to facilitate appropriate diving practices.

However it is important to emphasise that merely diving on a site would not in itself constitute disturbance and nothing in this proposal removes the freedom to dive on a wreck whatever its age.

1.2 Introduce statutory discretion to delay giving notice of wreck finds

Problem

Premature publicity arising from the Receiver of Wreck's obligation to give notice of recoveries can result in damage to important sites.

Solution

Introduce a statutory discretion for the Receiver to delay giving notice of wreck finds.

Explanation

Under s.238 Merchant Shipping Act 1995, where the Receiver takes possession of any wreck, the Receiver must make available a record of it for inspection by any person and, if the value exceeds £5000, inform Lloyd's in London. A difficulty with these provisions has arisen in

relation to sites containing artefacts scattered on the seabed which are both visible and easily recoverable. Archaeological recovery of such artefacts can take a number of years. If the Receiver makes public these recoveries during that time, the security of an important archaeological site might be compromised.

The JNAPC believes that the Receiver should have discretion to delay giving notice of wreck where, in the opinion of the Receiver, the archaeological integrity of a wreck site would be endangered by giving such notice.

1.3 Extend the Crown's right of ownership of unclaimed wreck to that recovered beyond territorial waters

Problem

Title to unclaimed wreck recovered outside territorial waters and landed in the United Kingdom does not vest in the Crown. Instead title will vest in the salvors of such wreck and must be returned to the salvors, regardless of its historical importance.

Solution

Extend Crown ownership of unclaimed wreck to that recovered beyond territorial waters and landed in the United Kingdom.

Explanation

A problem has arisen in relation to artefacts raised beyond the 12 mile territorial limit and landed in the UK. This is due to the decision in the case of the *Lusitania*¹, which determined that where artefacts are recovered from beyond territorial waters, then unless the original owner or successor in title comes forward, the salvor is entitled to have the artefact returned, subject to the payment of the Receiver of Wreck's expenses. As diving groups can journey far offshore, the recovery of wreck from beyond territorial waters is an increasing problem. Furthermore there is evidence that the United Kingdom is becoming the favoured destination for salvors of historic wreck because of this legal regime in respect of recoveries made beyond territorial waters. There is a very real prospect that the United Kingdom will obtain an undesirable reputation for allowing trade in historical material and the British diving and archaeological communities will be seen not to care. For these reasons the JNAPC believes that it is necessary to restore the Crown's entitlement to wreck recovered from beyond territorial waters, thus enabling artefacts to be placed in publicly accessible collections.

¹ [1986] 1 Lloyd's Rep. 132.

