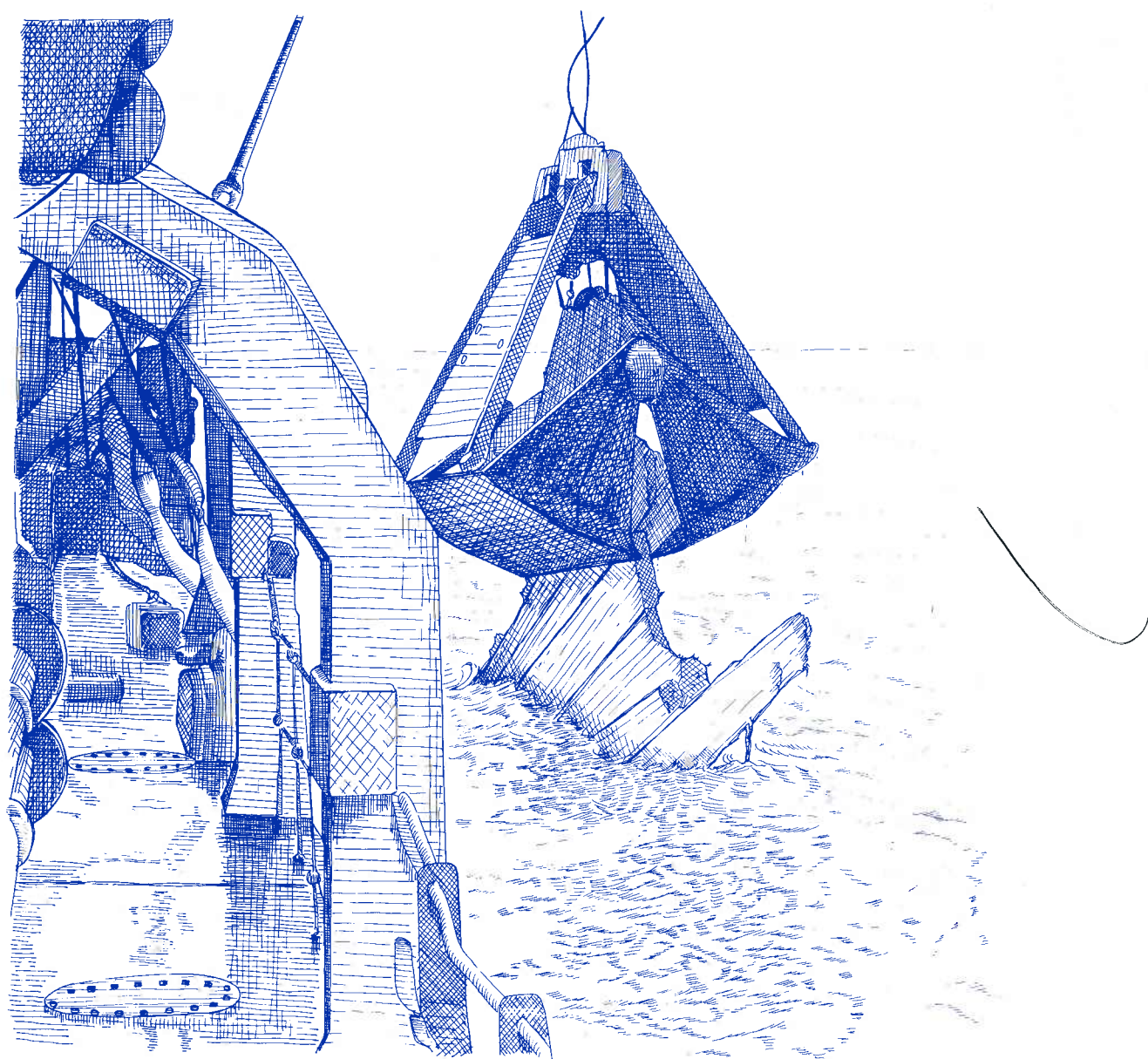


# HERITAGE AT SEA

Proposals for the better protection  
of archaeological sites underwater



Joint Nautical Archaeology Policy Committee

May 1989

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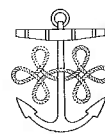
## **Proposals for the better protection of archaeological sites underwater.**

The proposals contained in this document have been compiled by representatives from several bodies with an interest in preserving Britain's heritage and especially those parts of it which lie under the sea, the National Maritime Museum, the Nautical Archaeology Society, the Council for British Archaeology, the Institute of Field Archaeologists and the Society for Nautical Research. The proposals represent a consensus of involved opinion, achieved through extensive discussions and public debate.

Compiled by The Joint Nautical Archaeology Policy Committee.

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The cover illustration by Caroline Caldwell shows the recent salvage of an East Indiaman from the Thames Estuary.

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## SUMMARY OF RECOMMENDATIONS

The principle underlying these proposals is that archaeological sites of national importance underwater should receive no less protection than those on land.

R1. New legislation, specifically drafted for the protection of underwater archaeological sites and the artefacts associated with them, and covering all aspects of the underwater cultural heritage, should be enacted as soon as possible.

R2. An inventory of underwater sites within territorial waters should be compiled and maintained at a national and local level. A set of criteria for assessing the importance of sites should be established and the sites should be graded accordingly.

R3. The payments, required by the Merchant Shipping Act 1894, of fees and VAT, based on the market value of items raised from the seabed, should be waived in the case of items which are to be kept in publicly accessible collections. This should include all finds from sites which are statutorily protected.

R4. Commercial seabed operators and statutory undertakers active on the seabed should be encouraged to carry out archaeological implication surveys before the seabed is disturbed and co-operate with archaeologists during potentially destructive work. They should be encouraged to contribute to the costs of rescue excavation of threatened sites.

R5. The Ministry of Defence, who have responsibility for historic naval wrecks, and the Foreign and Commonwealth Office, who are responsible for East India Company property in wrecks, should acknowledge and fulfil their responsibilities. They should enter into proper consultation with archaeological bodies before disposing of property from underwater. In the long term they should consider transferring the administration of these cultural resources to the maritime heritage protection agency proposed in recommendation six.

R6. The new legislation should provide for the establishment of a maritime heritage protection agency which should carry out and co-ordinate the survey work necessary for the inventory; assess the importance of sites; arrange for the protection of sites by buoying and burial; process applications for licences to carry out work on sites and co-ordinate archaeological diver training and public education.

R7. In the short term, better use should be made of existing legislation to protect underwater sites and effective arrangements should be made for the reporting of artefacts recovered from the seabed.

## INTRODUCTION

### The disparity between the protection of archaeological sites on land and underwater

1. Archaeological sites underwater are in urgent need of better protection. The present legislation protects only a handful of sites and unintentionally encourages the dispersal of historic artefacts from underwater sites. The principle underlying the proposals set out in this document is that archaeological sites of national importance underwater should receive no less protection than those on land.

2. The procedures and practice for the protection, preservation and investigation of archaeological sites and monuments on land have evolved over the past hundred years, stemming initially from the Ancient Monuments Act of 1882. Only a few of the many thousands of archaeological sites on land are visible and recognisable monuments. The majority are the now buried traces of structures of many forms from past societies which, together with the artefacts associated with those structures, provide the material evidence for understanding our past and have the potential to add to the sum of knowledge of the country's history.

3. A diverse and widely-based number of organisations, public and private, are concerned with the management and research into this cultural heritage on land. The Royal Commissions for Ancient and Historical Monuments have long been responsible for compiling inventories of archaeological sites; more recently, local sites and monuments records have been established. In England, these have been based on the counties, and serve to make the local planning authorities aware of archaeological considerations. The protection of monuments of national importance lies with the Secretaries of State for the Environment both in England and in Northern Ireland, and the Secretaries of State for Scotland and Wales. In each country, government provides heritage agencies with the specialist staff and resources to advise their respective Secretaries of State on those sites which deserve statutory protection. Applications must be made for scheduled monument consent to carry out works of any kind. These heritage agencies have the resources to manage archaeological sites and monuments, to encourage owners to do likewise, and may grant-aid the investigation and recording of sites which may be unavoidably destroyed, as a form of preservation by record. Increasingly, property developers, whose activities will destroy archaeological sites, contribute generously to the prior recording of the archaeological evidence. Codes of practice have been established between property developers and archaeologists, and with mineral operators through the agency of the CBI. Most archaeological activity is carried out by other bodies, public

and private: archaeological trusts and units, academic institutions, amateur archaeological societies and individuals.

4. Archaeological practice on land has long established the indivisibility of the site and the associated artefacts. Excavation of protected sites may only be carried out by those with suitable archaeological qualifications to do so. The removal of an object from a site without recording its stratigraphical relationships, such as occurs in unscientific metal detecting, is an action which is justifiably deplored. Unapproved metal detecting is forbidden at all scheduled monuments and by many landowners. It follows that archaeological practice on land recognises the importance of preserving in one place the total archive from an excavation, consisting of the paper and film records together with the artefacts. This archive is best deposited in a museum for future study and research. Ownership of artefacts found in the soil goes with the land, and there is a long tradition of donations of such objects to museums by the landowners.

5. The situation underwater is very different. Protective legislation which goes back to 1973 is hampered by the lack of a system for the identification, definition and charting of historic wreck sites of national importance and securing their preservation: nor does the Protection of Wrecks Act include other types of underwater archaeological site. The Secretary of State for Transport is advised by the Advisory Committee on Historic Wreck Sites. There is no executive archaeological agency comparable to those which exist on land to identify sites, to provide advice and to channel resources for the preservation, management and recording of underwater sites which are under threat of destruction. In the last three years an Archaeological Diving Unit has been created to advise the Department of Transport on a contractual basis but its terms of reference are severely limited and it consists of just one full-time individual and two seasonal staff. Resources and the means for effecting the physical protection of sites, other than some buoying of designated wreck sites, does not exist.

6. A fundamental difference from conditions operating on land is that, although legislation exists for the protection of sites, different legislation, deriving from the Merchant Shipping Act 1894, operates for the recovery and disposal of associated artefacts. Part IX of the 1894 Act is essentially directed to regulating salvage and can militate against the retention of the complete archaeological archive. Nor can it be said that the reporting of artefacts recovered from the sea is universally adhered to or that it assists in the documentation of archaeologically significant material.

7. Because of their inaccessibility until recently the archaeological potential of underwater sites was scarcely considered, nor was it much endangered by man. Over the last quarter of a century the aqualung has brought about a greater

ability to recognise what exists. As a result the threat of indiscriminate recovery of historic artefacts without regard to their archaeological context has increased dramatically. There is in addition increased inadvertent destruction of sites in the process of commercial seabed operations. The present legislation protects only a handful of sites and unintentionally encourages the sale and dispersal of artefacts from these and other historic wrecks.

## **Threats to archaeological sites underwater**

### Destruction of non-protected sites

8. Only thirty-three historic wreck sites have been designated for protection in the United Kingdom. Designation of a site under the Protection of Wrecks Act 1973 can be made immediately if the Secretary of State is satisfied that it is or may prove to be the site of a vessel lying wrecked... and on account of the historical, archaeological or artistic importance of the vessel, or of any objects contained or formerly contained in it which may be lying on the sea bed... the site ought to be protected from unauthorised interference. However there is at present no mechanism for gathering information about newly found sites and alerting the Secretary of State to them quickly, nor for assessing their importance and fixing their positions so that designation can be made. All undesignated sites are therefore at risk from archaeologically damaging interference.

9. All that the law requires of salvors is to report the artefacts they find to the Receiver of Wreck. It is entirely legal for salvors to destroy a wreck or other underwater site by any method, including using mechanical excavators or explosives. This has happened.

### Encouragement of the sale of artefacts

10. Part IX of the Merchant Shipping Act 1894 applies to all wreck, including those sites and their associated artefacts designated under the Protection of Wrecks Act 1973. This part of the 1894 Act was intended to repress disorder in connection with wreck and to provide for the determining of ownership of wreck and its disposal. Once recovered the Crown retains possession for a year. If it is unclaimed after this period ownership transfers to the Crown. Normally the artefact is sold to recoup the Receiver's expenses and the salvor receives a salvage award.

11. The effect of this is to encourage the sale of artefacts; almost, in practice, to make it obligatory to sell them as the salvors may have no other way of paying the fee of 7½% of the value of the artefact or, in the case of precious metals, retention for the Crown of 25% of the value, plus VAT.

12. It is extremely difficult, given the legislation relating to salvage, to avoid a market in artefacts which consequently prevents the retention of a total archive. This runs counter to the practice on land where there is no obligation to dispose of archaeological finds by sale.

#### Charges to museums

13. The need to pay the fees required by the Department of Transport often makes it difficult or impossible for museums to acquire an artefact or collection. Under present law the Department insists that museums must make payment. In 1988 the Secretary of State stated that 'To waive the charges when antiquities are to go to museums would amount to a hidden subsidy from the taxpayer to add to the grants already made to museums by Government and I do not believe that that would be acceptable.'

#### Lack of resources in museums

14. Museums are deterred from collecting material from underwater sites by the uncertainty about ownership until more than a year has elapsed after retrieval and by the expense of collection, conservation and storage of finds from underwater. Many have not considered this class of material when formulating their collections policies. Museums should give objects from underwater the same priority as those from land sites; they can provide a new dimension in the display and public presentation of the heritage which has not previously been undertaken.

#### Disposal of antiquities from government-owned sites

15. The Ministry of Defence takes the view that it is responsible for modern defence and not for the preservation of historic wrecks in its ownership. It has sold some of its historic wrecks to salvors and in some cases it gives antiquities to salvors in lieu of a salvage award. This attitude is in contrast to its active responsibility for the protection of historic properties on its land.

16. Likewise the Foreign and Commonwealth Office is responsible for East India Company property under the Government of India Act 1858 but takes no steps to discourage interference with its property in historic wrecks nor the dispersal of those artefacts.

#### Mineral extraction

17. Licences to extract sand and gravel from the seabed are issued by the Port Authorities and the Crown Estate Commissioners. Sand extraction from the Goodwin Sands led to the discovery and partial destruction of the East Indiaman Admiral Gardner. Unlike the circumstances on land there is



