



Department
for Culture
Media & Sport



Ministry
of Defence

Protection and Management of Historic Military Wrecks outside UK Territorial Waters

Guidance on how existing policies and legislation apply to
historic military wreck sites

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Policy & Legislation

1. This document sets out information for anyone who may discover a Historic¹ British Military wreck, located outside UK Territorial Waters anywhere in the world, and includes details on who must be notified, the protection that applies, and the process that follows in considering its long-term preservation and management. It brings together the Rules set out in the Annex to the UNESCO Convention on the Protection of the Underwater Cultural Heritage and Key Management Principles which represent best practice and would need to be adhered to should permission be sought to manage a historic military wreck site. Historic military wrecks include historic shipwreck sites and aircraft crash sites.
2. **It is UK Government policy to ensure our historic military wrecks are offered appropriate protection and management. If a military wreck is discovered it should remain undisturbed and a ‘look but don’t touch approach’ respected until options on future protection or management have been determined by the Ministry of Defence (MoD). In no circumstances should any artefacts be recovered without the written permission of the MoD.**
3. Under International law, naval warships, state vessels, aircraft and associated artefacts enjoy protection through Sovereign Immunity (**Appendix A**). **Sovereign Immunity is the default position for these type of vessels, aircraft and associated artefacts.** Military wrecks may also be offered protection through the Protection of Military Remains Act (1986) (**Appendix B**).
4. All military shipwreck discoveries should be reported to the MoD, Third Sector Team , Command Secretary, Navy Command Headquarters, MP 1-3 Leach Building, Whale Island, Portsmouth, Hants PO2 8BY,UK. Military aircraft discoveries should be reported to Defence Business Services, Joint Casualty & Compassionate Centre (SO3 Commemorations & Licensing), Innsworth House, Imjin Barracks, Gloucester, GL3 1HW, UK.
5. The MoD will then initially gather the information and evidence regarding the wreck discovery and then assess the most appropriate options for protection. MoD will consult with the Department for Culture, Media and Sport (DCMS) or the appropriate Devolved Administration, and other Government Departments and their agencies, including the Foreign and Commonwealth Office which is responsible for liaising with other national governments on wrecks that lie within non-UK territorial seas.

¹ Historic Military wrecks are valuable to this and future generations because of their heritage interest. Their significance can be defined in terms of their archaeological, artistic, and/or historic interest.

6. If permission is being sought to investigate a site then management options will be decided on a case by case basis according to their location and other relevant factors such as historic interest, archaeological significance, potential threat to the wreck site and whether there was loss of life. A Memorandum of Understanding or Management Agreement may be considered between UK Government and interested parties.
7. Since 2001 our underwater heritage policies have been developed in line with the Rules set out in the Annex to the UNESCO 2001 Convention on the Protection of Underwater Cultural Heritage. Though not currently a signatory to the UNESCO Convention, the UK Government has adopted the principles set out in its Annex (**reproduced at Appendix C**) as best practice in the archaeological and cultural management of underwater sites and artefacts. The Government has also developed Key Management Principles which, together with the Rules set out in the UNESCO Annex, must be followed. Examples of the Key Management Principles are set out at **Appendix D**.
8. **Anybody wishing to investigate an historic military wreck must agree to uphold the general principles of the UNESCO Annex. As such, a suitably experienced archaeologist should be appointed by the finder/proposer to manage the project and they would be expected to comply with current policies, legislation, standards and guidance applicable to UK maritime archaeology and marine heritage management.**
9. Under Section 66, Part 4 of the Marine and Coastal Access Act (MCAA) 2009, certain activities which might be directed at wreck sites within the UK Marine Area² may be defined as marine licensable activities and require a marine licence from the Marine Management Organisation (MMO). Marine licensable activities cover the removal from or deposit in the sea or under the seabed of substances as well as construction activities, and alteration or improvement of existing structures. Where activities are carried on from a British vessel, aircraft or marine structure anywhere at sea, and result in a deposition activity, then this is also a marine licensable activity under section 66 of the MCAA 2009 and will require a marine licence from the MMO. The primary purpose of marine licensing is to protect the marine environment, public health and the need to prevent interference with the legitimate uses of the sea. The marine environment includes sites of historic or archaeological interest. The Marine Management Organisation (MMO) is responsible for licensing in English inshore and offshore waters and for licensing in Welsh and Northern Ireland offshore waters. Marine Scotland is responsible for licensing within any parts of the Scottish inshore or offshore waters.
10. Should an application be made to the MMO or Marine Scotland for a marine licensable activity in relation to the investigation of a British Military Wreck within the UK Marine area, the licensing authority will consult interested parties, including all relevant heritage agencies (English Heritage, Historic Scotland, Cadw, DoENI) before granting a marine licence. A marine licence would be required in addition to any work previously agreed e.g. through an approved Project Management Plan by UK Government on the military wreck site. Further information regarding marine licensing

² As defined under Section 42 of the Marine and Coastal Access Act 2009

requirements can be obtained from marine.consents@marinemanagement.org.uk or contact details for Scotland are ms.marinelicensing@scotland.gsi.gov.uk.

11. UK policy in relation to marine planning and the historic environment is set out in the UK Marine Policy Statement. The UK Marine Area stretches up to 200 nautical miles from UK shores and includes the UK territorial seas and offshore area adjacent to the UK, and the UK sector of the continental shelf.

Appendix A: Sovereign Immunity

1. Under customary international law, naval warships, state vessels, aircraft and associated artefacts enjoy protection through Sovereign Immunity. This means that they are not subject to the jurisdiction of any other State. It does not apply to such vessels when they are used for commercial purposes, nor is it applicable to privately owned vessels. Sovereign Immune vessels cannot have salvage services conferred upon them without the consent of the Flag State i.e. the State that owned or operated them for non-commercial purposes.
2. The UK is of the view that unless expressly relinquished or abandoned by the Flag State, the Sovereign Immunity of the wreck of any Crown vessels remains in place, regardless of where the wreck in question is located. In the view of the UK its approval as the Flag State must be obtained for any activities directed at such Sovereign Immune sites. For military shipwrecks the MOD should be informed at the following location: Third Sector Team, Command Secretary, Navy Command Headquarters, MP 1-3 Leach Building, Whale Island, Portsmouth, Hants PO2 8BY. For military aircraft discoveries the following should be informed: Defence Business Services, Joint Casualty & Compassionate Centre (SO3 Commemorations & Licensing) Innsworth House, Imjin Barracks, Gloucester, GL3 1HW.

Appendix B: Protection of Military Remains Act (1986)

Military aircraft are automatically designated under the Protection of Military Remains Act (1986), however vessels that were sunk while in military service have to be specifically identified and designated, by means of a statutory instrument, for the Act to apply to them.

The Act is summarised in the following section.

PMRA 1986 provides for criminal sanctions for doing without authority certain prohibited actions or taking part in prohibited operations. Liability goes beyond those who actually carry out the prohibited actions to those who permit or cause another person to carry them out. The Act confers on an authorised person wide powers of boarding, search and seizure. The Act also gives discretionary power to confiscate equipment used or intended for use to commit an offence under the Act. This can be taken to include not just diving gear but also the vessel.

CONTROLLED SITES

Designation

1. The Secretary of State for Defence can make a statutory instrument designating as a controlled site any area in UK or international waters which appears to him to contain a place comprising the remains of a vessel, or aircraft which appears to him to have sunk or been stranded while in military service³.
2. Less than 200 years must have elapsed since the sinking or stranding.
3. If the vessel or aircraft sank or was stranded whilst in service of another country's armed forces, the remains of the vessel or aircraft must be in UK waters.

Prohibited Activities

4. Where the remains of a vessel or aircraft are in a place which is part of a controlled site, a person e.g. a diver or other sea user, is prohibited from
 - a. Tampering with, damaging, moving, removing or unearthing the remains
 - b. Entering any hatch or other opening in the remains
 - c. Causing or permitting another to do any of these things.

³ Military service is defined in the Act as meaning 'in service with, or being used for the purposes of, any of the armed forces of the United Kingdom or any other country or territory.'

A person who does any of these prohibited acts is guilty of a criminal offence regardless of his state of mind.

5. In addition "diving operations" are prohibited if they are carried out at a Controlled Site "for the purpose of investigating or recording details" of the remains of the vessel. Where a person "knowingly" takes part in, or causes or permits another person to take part in, the carrying out of any such operation, he commits a criminal offence. Similarly, if he knowingly uses, or causes or permits another person to use, equipment in connection with the carrying out of any such operation, he commits an offence.

6. A person who commits one of the offences mentioned above may ,
a. If convicted by a magistrates' court, be fined up to £5000.00 and
b. If convicted by the Crown Court, be fined such amount, as the court thinks appropriate.

7. Where any prohibited act or operation referred to above occurs in international waters, no offence is committed unless the act is committed either on board a British controlled ship or essentially by a British citizen.

PROTECTED PLACES

Designation

1. The Secretary of State for Defence can make a statutory instrument designating any vessel or aircraft, whether or not its last resting-place is known, which appears to him to have sunk or been stranded while in military service.

2. The sinking or stranding must have occurred on or after 4th August 1914.

3. If the vessel or aircraft was sunk or stranded whilst in the service of another country's armed forces, the remains of the vessel must be in UK waters otherwise it cannot be designated.

4. Where the remains of a designated vessel or aircraft are the reason for a site being a protected place, a person is prohibited from doing any of the things mentioned above in relation to those remains. If he does any of those prohibited acts he is guilty of an offence if, when he did the act in question he believed or had reasonable grounds for suspecting that the place comprised the remains of a vessel which had been sunk or stranded whilst in military service.

5. In addition, in relation to any vessel within a protected place "activities" are prohibited if they are carried out for the purpose of doing something that constitutes, or is likely to involve, one of the activities mentioned above. A criminal offence is committed if a person "knowingly" takes part in, or causes or permits another person to take part in, the carrying out of any such operation. Similarly, if he knowingly uses, or causes or permits another person to use, equipment in connection with the carrying out of any such operation he commits an offence.

Where a military shipwreck is discovered whether within or outside the scope of PMRA the MOD should be informed at the following location: Third Sector Team, Command Secretary, Navy Command Headquarters, MP 1-3 Leach Building, Whale Island, Portsmouth, Hants PO2 8BY. Advice can then be given as to whether the wreck is protected, the level of protection and the implications that any protection has for activities at the site. For aircraft the following should be informed: Defence Business Services, Joint Casualty & Compassionate Centre, (SO3 Commemorations & Licensing) Innsworth House, Imjin Barracks, Gloucester, GL3 1HW.

Appendix C: Annex to the UNESCO 2001 Convention on the Protection of Underwater Cultural Heritage

Rules concerning activities directed at underwater cultural heritage

I. General principles

Rule 1. The protection of underwater cultural heritage through in situ preservation shall be considered as the first option. Accordingly, activities directed at underwater cultural heritage shall be authorized in a manner consistent with the protection of that heritage, and subject to that requirement may be authorized for the purpose of making a significant contribution to protection or knowledge or enhancement of underwater cultural heritage.

Rule 2. The commercial exploitation of underwater cultural heritage for trade or speculation or its irretrievable dispersal is fundamentally incompatible with the protection and proper management of underwater cultural heritage. Underwater cultural heritage shall not be traded, sold, bought or bartered as commercial goods.

This Rule cannot be interpreted as preventing:

- (a) the provision of professional archaeological services or necessary services incidental thereto whose nature and purpose are in full conformity with this Convention and are subject to the authorization of the competent authorities;
- (b) the deposition of underwater cultural heritage, recovered in the course of a research project in conformity with this Convention, provided such deposition does not prejudice the scientific or cultural interest or integrity of the recovered material or result in its irretrievable dispersal; is in accordance with the provisions of Rules 33 and 34; and is subject to the authorization of the competent authorities.

Rule 3. Activities directed at underwater cultural heritage shall not adversely affect the underwater cultural heritage more than is necessary for the objectives of the project.

Rule 4. Activities directed at underwater cultural heritage must use non-destructive techniques and survey methods in preference to recovery of objects. If excavation or recovery is necessary for the purpose of scientific studies or for the ultimate protection of the underwater cultural heritage, the methods and techniques used must be as non-destructive as possible and contribute to the preservation of the remains.

Rule 5. Activities directed at underwater cultural heritage shall avoid the unnecessary disturbance of human remains or venerated sites.

Rule 6. Activities directed at underwater cultural heritage shall be strictly regulated to ensure proper recording of cultural, historical and archaeological information.

Rule 7. Public access to *in situ* underwater cultural heritage shall be promoted, except where such access is incompatible with protection and management.

Rule 8. International cooperation in the conduct of activities directed at underwater cultural heritage shall be encouraged in order to further the effective exchange or use of archaeologists and other relevant professionals.

II. Project design

Rule 9. Prior to any activity directed at underwater cultural heritage, a project design for the activity shall be developed and submitted to the competent authorities for authorization and appropriate peer review.

Rule 10. The project design shall include:

- (a) an evaluation of previous or preliminary studies;
- (b) the project statement and objectives;
- (c) the methodology to be used and the techniques to be employed;
- (d) the anticipated funding;
- (e) an expected timetable for completion of the project;
- (f) the composition of the team and the qualifications, responsibilities and experience of each team member;
- (g) plans for post-fieldwork analysis and other activities;
- (h) a conservation programme for artefacts and the site in close cooperation with the competent authorities;
- (i) a site management and maintenance policy for the whole duration of the project;
- (j) a documentation programme;
- (k) a safety policy;
- (l) an environmental policy;
- (m) arrangements for collaboration with museums and other institutions, in particular scientific institutions;
- (n) report preparation;
- (o) deposition of archives, including underwater cultural heritage removed; and
- (p) a programme for publication.

Rule 11. Activities directed at underwater cultural heritage shall be carried out in accordance with the project design approved by the competent authorities.

Rule 12. Where unexpected discoveries are made or circumstances change, the project design shall be reviewed and amended with the approval of the competent authorities.

Rule 13. In cases of urgency or chance discoveries, activities directed at the underwater cultural heritage, including conservation measures or activities for a period of short duration, in particular site stabilization, may be authorized in the absence of a project design in order to protect the underwater cultural heritage.

III. Preliminary work

Rule 14. The preliminary work referred to in Rule 10 (a) shall include an assessment that evaluates the significance and vulnerability of the underwater cultural heritage and the surrounding natural environment to damage by the proposed project, and the potential to obtain data that would meet the project objectives.

Rule 15. The assessment shall also include background studies of available historical and archaeological evidence, the archaeological and environmental characteristics of the site, and the consequences of any potential intrusion for the long-term stability of the underwater cultural heritage affected by the activities.

IV. Project objective, methodology and techniques

Rule 16. The methodology shall comply with the project objectives, and the techniques employed shall be as non-intrusive as possible.

V. Funding

Rule 17. Except in cases of emergency to protect underwater cultural heritage, an adequate funding base shall be assured in advance of any activity, sufficient to complete all stages of the project design, including conservation, documentation and curation of recovered artefacts, and report preparation and dissemination.

Rule 18. The project design shall demonstrate an ability, such as by securing a bond, to fund the project through to completion.

Rule 19. The project design shall include a contingency plan that will ensure conservation of underwater cultural heritage and supporting documentation in the event of any interruption of anticipated funding.

VI. Project duration – timetable

Rule 20. An adequate timetable shall be developed to assure in advance of any activity directed at underwater cultural heritage the completion of all stages of the project design, including conservation, documentation and curation of recovered underwater cultural heritage, as well as report preparation and dissemination.

Rule 21. The project design shall include a contingency plan that will ensure conservation of underwater cultural heritage and supporting documentation in the event of any interruption or termination of the project.

VII. Competence and qualifications

Rule 22. Activities directed at underwater cultural heritage shall only be undertaken under the direction and control of, and in the regular presence of, a qualified underwater archaeologist with scientific competence appropriate to the project.

Rule 23. All persons on the project team shall be qualified and have demonstrated competence appropriate to their roles in the project.

VIII. Conservation and site management

Rule 24. The conservation programme shall provide for the treatment of the archaeological remains during the activities directed at underwater cultural heritage, during transit and in the long term. Conservation shall be carried out in accordance with current professional standards.

Rule 25. The site management programme shall provide for the protection and management in situ of underwater cultural heritage, in the course of and upon termination of fieldwork. The programme shall include public information, reasonable provision for site stabilization, monitoring, and protection against interference.

IX. Documentation

Rule 26. The documentation programme shall set out thorough documentation including a progress report of activities directed at underwater cultural heritage, in accordance with current professional standards of archaeological documentation.

Rule 27. Documentation shall include, at a minimum, a comprehensive record of the site, including the provenance of underwater cultural heritage moved or removed in the course of the activities directed at underwater cultural heritage, field notes, plans, drawings, sections, and photographs or recording in other media.

X. Safety

Rule 28. A safety policy shall be prepared that is adequate to ensure the safety and health of the project team and third parties and that is in conformity with any applicable statutory and professional requirements.

XI. Environment

Rule 29. An environmental policy shall be prepared that is adequate to ensure that the seabed and marine life are not unduly disturbed.

XII. Reporting

Rule 30. Interim and final reports shall be made available according to the timetable set out in the project design, and deposited in relevant public records.

Rule 31. Reports shall include:

- (a) an account of the objectives;
- (b) an account of the methods and techniques employed;
- (c) an account of the results achieved;
- (d) basic graphic and photographic documentation on all phases of the activity;
- (e) recommendations concerning conservation and curation of the site and of any underwater cultural heritage removed; and
- (f) recommendations for future activities.

XIII. Curation of project archives

Rule 32. Arrangements for curation of the project archives shall be agreed to before any activity commences, and shall be set out in the project design.

Rule 33. The project archives, including any underwater cultural heritage removed and a copy of all supporting documentation shall, as far as possible, be kept together and intact as a collection in a manner that is available for professional and public access as well as for the curation of the archives. This should be done as rapidly as possible and in any case not later than ten years from the completion of the project, in so far as may be compatible with conservation of the underwater cultural heritage.

Rule 34. The project archives shall be managed according to international professional standards, and subject to the authorization of the competent authorities.

XIV. Dissemination

Rule 35. Projects shall provide for public education and popular presentation of the project results where appropriate.

Rule 36. A final synthesis of a project shall be:

- (a) made public as soon as possible, having regard to the complexity of the project and the confidential or sensitive nature of the information; and
- (b) deposited in relevant public records.

Appendix D: Example of Key Management Principles

Implementation of Project Plans: An overall ‘vision’ for the project that sets out the overall concept for the project is required. This includes curation, display and archiving and how these aspects will be funded. This would need to be submitted to the MoD⁴ for final approval. The MoD will consult DCMS, other Government Departments and their agencies as appropriate.

Reporting programme: Regular reports for any works that are agreed should be undertaken on the wreck site. Reports would include (but not necessarily be limited to): details of methods and techniques used, with relevant guidance/standards; results achieved; artefacts and non-artefactual evidence and remains recovered with proposals for their conservation; basic graphic and photographic documentation; recommendations for future activities; recommendations/plans for the future management and public display of any artefactual and non-artefactual evidence recovered; plans for the publication and dissemination of any work undertaken; specific recommendations and plans for the appropriate reburial of any human remains accidentally recovered.

Human remains: The following conditions apply. Activities shall avoid the unnecessary disturbance of human remains; wherever possible, human remains shall be left *in situ*; human remains will be treated at all times with the utmost respect and sensitivity and to try not to disturb them and to minimise any disturbance that proves to be inevitable. Should human remains be accidentally retrieved, the MoD shall be immediately notified. No photographic or other images of human remains shall be published, and no publicity material shall refer to any human remains associated with the wreck without prior written authorisation from the MoD. Human remains shall not be considered as artefacts.

Landing of artefacts: Dependant on location of wreck, and except where maritime emergency or stress of weather necessitate, any recovered artefacts should be landed at a site within the UK, and declaration of any items must be made to the Receiver of Wreck under the provisions of the Merchant Shipping Act 1995 or any succeeding legislation. Appropriate storage, treatment and conservation of recovered artefacts should all be in place prior to landing.

⁴ MoD, Third Sector Team, Command Secretary, Navy Command Headquarters, MP 1-3 Leach Building, Whale Island, Portsmouth, Hants, PO2 8BY

Treatment of recoveries: Archaeological material recovered from the wreck site and the associated archive including site plans, drawings and photographs will form one collection and shall be subject to the following conditions:

- In managing the collection abide by the Museums Association's Code of Ethics (dependant on location of wreck).
- All such recovered archaeological material and its associated archive should remain together as a single assemblage wherever possible.
- The commercial exploitation of underwater cultural heritage for trade or speculation or its irretrievable dispersal is fundamentally incompatible with the protection and proper management of underwater cultural heritage. Underwater cultural heritage shall not be traded, sold, bought or bartered as commercial goods (Rule 2 of the Annex to the UNESCO Convention).
- Where the disposal of any material from the collection is proposed, the principles of Rule 2 of the Annex to the UNESCO Convention and the Museums Association's Code of Ethics (dependant on location of wreck) will be applied.
- Any decision to dispose of archaeological material shall not be made without full consideration of the merits of the case. In the exceptional circumstances where consent is given to the disposal of archaeological material it shall normally be limited to the transfer of such material to an accredited museum or a body registered as a charity in England and Wales or Scotland (dependant on wreck location) rather than to private individuals or organisations.

Appendix E: Further information

Reporting Wreck – Receiver of Wreck <https://www.gov.uk/report-wreck-material>

Wreck and Salvage Law <https://www.gov.uk/wreck-and-salvage-law>

Marine Management Organisation <https://www.gov.uk/government/organisations/marine-management-organisation>

Marine Licensing <http://www.marinemanagement.org.uk/licensing/marine.htm>

UK Marine Policy Statement <https://www.gov.uk/government/publications/uk-marine-policy-statement>

English Heritage <http://www.english-heritage.org.uk/professional/advice/our-planning-role/consent/protected-wreck-sites>

Historic Scotland <http://www.historic-scotland.gov.uk/index/heritage/wrecksites.htm>

Marine Scotland <http://www.scotland.gov.uk/About/People/Directorates/marinescotland>

Cadw <http://cadw.wales.gov.uk/splash?orig=/>

Department of the Environment, Northern Ireland <http://www.doeni.gov.uk/>

UNESCO Guidance on the Rules of the Annex
<http://www.unesco.org/culture/en/underwater/pdf/UCH-Manual.pdf>

Merchant Shipping Act 1995 <http://www.legislation.gov.uk/ukpga/1995/21/contents>

Protection of Military Remains Act 1986
<http://www.legislation.gov.uk/ukpga/1986/35/contents>



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