

# **Joint Nautical Archaeology Policy Committee**

## **An Interim Report on**

### **The Valletta Convention & Heritage Law at Sea**

### **The legal framework for marine archaeology in the United Kingdom**

*Resurgam 1997*

The Valletta Convention & Heritage Law at Sea  
The legal framework for marine archaeology  
in the United Kingdom

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## Introduction

This interim report is a summary of the deliberations to date of the Joint Nautical Archaeological Policy Committee (JNAPC) concerning the present legal framework surrounding the protection of the underwater cultural heritage. Some two years have now passed since the publication of the JNAPC's report, *Heritage Law at Sea*<sup>1</sup>. During that time there have been significant developments relating to underwater cultural heritage in the United Kingdom.

In the Spring of 2001 the Receiver of Wreck from the Maritime and Coastguard Agency held an amnesty for unreported wreck recoveries, which was extremely successful and resulted in many unreported finds of wreck being declared and the educational message being widely disseminated of the necessity to report all future recoveries<sup>2</sup>. In parallel to this the Ministry of Defence, following an extensive public consultation exercise<sup>3</sup>, activated, for the first time in relation to shipwrecks, the Protection of Military Remains Act 1986<sup>4</sup>. This resulted in the designation of 21 wrecks under the Act and a rolling programme to review the status of all other maritime military remains in United Kingdom waters. It is understood that this programme will eventually result in all maritime military remains being designated under the Act. Additionally, Historic Scotland scheduled several wrecks of the scuttled German High Seas Fleet in Scapa Flow as monuments under the Ancient Monuments and Archaeological Areas Act 1979<sup>5</sup>. This marked the first utilisation of that legislation to protect underwater cultural heritage anywhere in the United Kingdom and Historic Scotland intends further scheduling of wrecked vessels<sup>6</sup>. The recreational diving organisations also launched an educational initiative, 'Respect Our Wrecks', which emphasised the best practice in wreck diving of leaving shipwrecks undisturbed in situ, while the Nautical Archaeology Society (NAS) launched its Diving with a Purpose initiative, which includes the Adopt a Wreck scheme. These widely supported initiatives<sup>7</sup> emphasise non-intrusive wreck diving and actively promote avocational marine archaeological activity, as well as fulfilling government's commitment to promote responsible public access to the underwater cultural heritage<sup>8</sup>. All the above have fostered an appreciation amongst recreational divers of the non-renewable nature of the underwater cultural heritage and have collectively effected a cultural change in attitude towards that heritage.

<sup>1</sup> Joint Nautical Archaeological Policy Committee, 'Heritage Law at Sea' (2000) School of Legal Studies: University of Wolverhampton.

<sup>2</sup> 'Wreck Amnesty, Final Report, 23<sup>rd</sup>. January – 24<sup>th</sup>. April 2001' (2002) Maritime and Coastguard Agency, CD Rom.

<sup>3</sup> "Military Maritime Graves and The Protection of Military Remains Act 1986: A Consultation Document" (February 2001) Ministry of Defence, Whitehall, London.

<sup>4</sup> "Military Maritime Graves and the Protection of Military Remains Act 1986: Consultation Report" (November 2001) Ministry of Defence, Whitehall, London.

<sup>5</sup> The Ancient Monuments & Archaeological Areas Act 1979 does not apply in Northern Ireland.

<sup>6</sup> CADW scheduled the wreck of the *Louisa* in December 2001 but the vessel is now part of the reclaimed area of the Cardiff Bay project.

<sup>7</sup> British Sub Aqua Club, Professional Association of Diving Instructors, Sub-Aqua Association, JNAPC, Maritime and Coastguard Agency, Ministry of Defence Police, Department for Culture, Media and Sport, English Heritage, CADW, Historic Scotland, Environment and Heritage Agency, Nautical Archaeology Society, and the National Trust.

<sup>8</sup> "broaden access and appreciation of the heritage". English Heritage's mission statement. 2003.

Against this background legal innovations have also occurred, with the responsibility for underwater cultural heritage in England being transferred to English Heritage<sup>9</sup> and the United Kingdom ratifying the *Valletta Convention*<sup>10</sup>. Individually each of these developments would have been significant, but taken together they can truly be said to have transformed the social, economic and political environment surrounding the underwater cultural heritage. Accordingly, notwithstanding the short time elapsed since the publication of *Heritage Law at Sea* and the fact that the United Kingdom is unlikely to ratify the *UNESCO Convention On The Protection of the Underwater Cultural Heritage*<sup>11</sup>, the JNAPC felt it was appropriate to review the legal structure surrounding the underwater cultural heritage. Since the United Kingdom's obligations to the archaeological heritage are now governed by the *Valletta Convention*, that instrument must form the template against which any assessment of the United Kingdom's legislative structure is made. This report assesses what amendments the United Kingdom should implement in order to comply with the *Valletta Convention*. The issues identified in this report are relevant to the commitment from the Department for Culture, Media and Sport in *Force for our Future*<sup>12</sup>, to conduct a review of marine archaeology legislation in order to ensure that it can meet present day requirements. They are also intended to form the basis for further substantive research and deliberation.

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<sup>9</sup> Under the National Heritage Act 2002.

<sup>10</sup> The United Kingdom ratified on 21<sup>st</sup> September 2000 and the Convention came into force in the United Kingdom on 21<sup>st</sup> March 2001. The full text of the Convention is available at <http://convention.coe.int/Treaty/en/Treaties/Word/143.doc>

<sup>11</sup> Hereafter 'the UNESCO Convention'. Although the United Kingdom is unlikely to ratify the Convention in the foreseeable future, it has stated broad acceptance of the Convention's basic tenets including the Annex, while disagreeing with certain specific provisions, in particular, those relating to Sovereign Immunity and 'blanket protection'; see further '*UNESCO Convention on Underwater Cultural Heritage: Explanation of Vote*' Foreign and Commonwealth Office: Whitehall (2001); '*Taking to the Water*' English Heritage (2002) para. 7.3, which makes reference to the Convention and states that there is broad support for virtually all of its provisions.

<sup>12</sup> '*Force for our Future: The Future of the Historic Environment*'. Department for Culture, Media and Sport. (2000) Para. 4.38; also available on-line at [www.english-heritage.org.uk/discovery/heritage-review](http://www.english-heritage.org.uk/discovery/heritage-review)

## **Executive Summary**

1. In order to comply fully with the articles of the *Valletta Convention*, the United Kingdom will be required to make amendments to the legal and procedural framework surrounding the management of the underwater cultural heritage. This interim report concludes that the following recommendations, most of which will require the introduction of new legislation, should be implemented as soon as possible:

- 1.1 The scope of the Protection of Wrecks Act 1973 should be extended to include aircraft and vehicles.
- 1.2 Local Authority Sites and Monuments Records should be a statutory requirement and in coastal authorities should include a maritime component.
- 1.3 Sites recorded on Maritime Sites and Monuments Records should be verified in-situ.
- 1.4 A general obligation to report disturbances to historic wreck should be introduced.
- 1.5 The transparency of procedures for designation and licensing should be improved.
- 1.6 Activities which cause disturbance in areas designated under the Protection of Wrecks Act 1973 should be regulated.
- 1.7 Licensing procedures for the removal of human remains should be extended to those found underwater.
- 1.8 Support for educational and museum initiatives to develop public awareness of the value of the archaeological heritage should be continued.
- 1.9 The Ministry of Defence should be prepared to licence appropriate intrusive activities under the Protection of Military Remains Act 1986 where a sound archaeological case can be made for granting a licence.
- 1.10 Provision should be made in the Protection of Wrecks Act 1973 and the Ancient Monuments and Archaeological Areas Act 1979 for the confiscation of equipment used in diving or salvage operations as a sanction in offences relating to underwater cultural heritage, on a similar basis to that provided for in the Protection of Military Remains Act 1986.
- 1.11 Consultation between the Receiver of Wreck and local and national curatorial authorities should be formalised.
- 1.12 Consultation between the relevant Secretary of State and local and national curatorial authorities should be formalised.

