

STILL AT SEA

May 1993

A review of progress since the launch of the Joint Nautical Archaeology Policy Committee's document *Heritage at Sea* in May 1989.

CONSTITUENT BODIES OF JNAPC:

Archaeological Diving Unit (observer)

Association of County Archaeological Officers

Council for British Archaeology

Hampshire and Wight Trust for Maritime Archaeology

Institute of Field Archaeologists

Royal Commission on the Historical Monuments of England (observer)

National Maritime Museum

National Trust

Nautical Archaeology Society

Scottish Trust for Underwater Archaeology

Society for Nautical Research

Further copies of *Heritage at Sea* are available from the Archaeology Section,
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STILL AT SEA

This is a review of the recommendations for the better protection of archaeological sites under water which the Joint Nautical Archaeology Policy Committee published in *Heritage at Sea* in May 1989.

Significant progress has been made during these four years. Credit is due to the appropriate Government departments. The Department of National Heritage minister, Robert Key, has acknowledged that archaeological sites under water are just as important as those on land (speech at Medieval Europe Conference, September 1992). Historic Scotland and the Historic Monuments and Buildings Branch for Northern Ireland have included the underwater cultural heritage within their spheres of operation. Historic Scotland has allocated rescue archaeology funds to the Duart Point wreck site.

There are now more people engaged in assessing maritime archaeological sites and the threats to them than before and there are more professional contacts with land archaeology and coastal management. It is, however, clear that there are still important strategic issues that need to be resolved before the principle underlying the *Heritage at Sea* proposals, that archaeological sites under water should receive no less protection than those on land, is fully satisfied.

This paper recapitulates the *Heritage at Sea* recommendations and the response which the Government made to them in December 1990. It reports on subsequent progress and the remaining problems. Furthermore it outlines the areas in which JNAPC still has work to do and the areas in which JNAPC continues to seek change.

1. LEGISLATION

1989 recommendation: 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.

Government response: The Government considers that the provisions of the Protection of Wrecks Act have served quite well. It is not convinced that serious damage is done to archaeological material, nor that important material is being lost to public collections, simply as a result of the requirements of salvage law. It intends to keep the working of the legislation under review.

JNAPC produced a paper in 1991 criticising the effects of the Merchant Shipping Act, 1894. This was debated with officials of DOE (prior to the responsibility passing to DNH) and DTp and misunderstandings on both sides were aired. This led to the joint initiative of producing an explanation for divers and the general public of what the law on wreck and wrecks actually says and how it is administered. It is anticipated that this paper, *Wreck Laws Explained*, will be distributed soon.

While JNAPC appreciates the efforts made by DNH and DTp to clarify current implementation of the 1894 Act, it remains firmly of the opinion that the Act is fundamentally unsuitable for dealing with archaeological material.

The aim of integrating archaeology under water with archaeology on land will be furthered by greater use of the Ancient Monuments and Archaeological Areas Act 1979 to schedule sites under water. This would also serve to integrate the treatment of remains associated

with ships with treatment of archaeological material from under water which is not wreck. The 1979 Act provides for scheduling of monuments in the territorial sea (s. 53), and refers specifically to vessels (s.61(7)(c)). Preference for the 1973 Act, stated in 1979, is no longer relevant as the context of the division of departmental responsibilities has been resolved. Use of the 1973 Act should be restricted to sites in circumstances where prohibition of unlicensed activity is absolutely necessary.

JNAPC supports the introduction of comprehensive Portable Antiquities legislation, with equal application to archaeological material irrespective of the environment in which it was discovered.

In the short term JNAPC wants to see the co-ordinated application of the Protection of Wrecks Act, the Ancient Monuments and Archaeological Areas Act and prospective Portable Antiquities legislation to achieve optimum protection for underwater sites and their contents. Legislation should be seen as an element of a comprehensive management strategy.

JNAPC is firmly of the opinion that legislative change is necessary and inevitable. British legislation needs to be comprehensively revised to take an integrated approach to land and underwater sites and to meet the changing situation in underwater archaeology. JNAPC will continue to research and prepare proposals for the strategic aims of future legislation in the light of experience here and abroad. EEC directives, the Council of Europe and a number of European countries have modified, advised or made changes in legislation relating to maritime heritage and the Government should take an initiative to change the present outmoded laws in Britain rather than wait until external pressure forces action.

2. INVENTORY OF UNDERWATER SITES

1989 recommendation: 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.

Government response: The Government accepted that for better management and preservation of underwater sites we need to improve our knowledge of where they are and what they comprise. In the White paper, *This Common Inheritance*, published in September 1990, it was announced that funding would be provided for the Royal Commission on the Historical Monuments of England for three years to begin work on an inventory.

The Royal Commission carried out a one-year pilot study in co-operation with the Isle of Wight and Hampshire County Councils. From this a data standard was developed which is now being used to record shipwrecks and areas of archaeological importance within a coastal limit of 12 miles and before a cut-off date of 1945. This is a considerable achievement. Northern Ireland will be funding a maritime inventory post from Autumn 1993. Parallel records are being planned for Scotland and Wales but lack of resources has held up development there. JNAPC believes that additional support should be made available to encourage the rapid and comprehensive introduction of Maritime Archaeological Records in Scotland and Wales.

JNAPC considers that the funding of the record needs to be maintained on a permanent basis and extended to provide for the validation, assessment and categorisation of the individual records which is required to turn the database into an effective management tool.

There is still an urgent need for the development of local marine archaeological records, by County Archaeological Officers and their equivalents. JNAPC regards the extension of local authority Sites and Monument Records to include areas below low water as necessary to meet the requirements of Government policy laid out in PPG 20. JNAPC supports the recommendation of RCHME that SMRs be given statutory status, and strongly urges that their scope be extended to the 12-mile limit. JNAPC seeks assurance that, whatever changes are to be made to the framework of local government, SMRs will be protected and marine sites will be included in them.

3. RECEIVER'S FEES

1989 recommendation: 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.

Government response: The initial response said that legislation would be required to abolish the requirement to pay commission to Receivers of Wreck but that the Department of Transport was looking into this possibility and an announcement will be made when it has reached its conclusion. As the result of a change of policy, recorded in Hansard for 6 March 1991, from April 1991 Receivers' fees ceased to be collected.

Since 1989 the Receiver of Wreck service for the whole of the United Kingdom has contracted to one individual. This is discussed below in section 7.

4. MITIGATING DAMAGE BY COMMERCIAL SEABED OPERATIONS

1989 recommendation: 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.

Government response: The Government declared a willingness to collaborate in developing a code of practice. DNH has financed a connected study by the Hampshire and Wight Trust for Maritime Archaeology.

JNAPC has drafted a Code of Practice for seabed operators, on similar lines to that for land developers. This has received support from DNH and has already done much to encourage a dialogue between developers and archaeologists. JNAPC will make proposals as to how the mechanism for its operation can be set in place; seek endorsement for the Code from archaeological bodies, and distribute it. JNAPC considers that, in the longer term, the codes for underwater and land development should be merged.

A Code of Practice can only be one element in development control. The Government has come to the position that development control through the planning process is the central element for protecting and managing archaeology. There is a need for clarification of the relationship between PPG 16 and the measures which local planning authorities are encouraged to take in PPG 20 and for specialised advice to cover the archaeological implications of PPG 20.

JNAPC will seek to ensure that principles and policies equal to those stated by the Government in PPG16 are applied to archaeology below low water. This will continue to be a central aim irrespective of the actual mechanism through which development control is extended to the coastal zone and territorial waters.

JNAPC believes that, in so far as central government departments take decisions relating to offshore development, they should seek advice from competent archaeological agencies, such as English Heritage, Historic Scotland, CADW, Historic Monuments and Buildings Branch for Northern Ireland and the Royal Commissions. Where local planning authorities are consulted, County Archaeological Officers should be included in the consultation process.

JNAPC will urge that archaeology underwater is given full consideration in the following areas:

- 1 Debate over extension of local planning authority planning powers to the coastal zone
- 2 Formulation of coastal management plans
- 3 Review of the marine aggregates licensing procedure
- 4 Application of Environmental Assessment (EA)
- 5 Heritage Coast initiative
- 6 Marine Protected Areas

JNAPC will seek to ensure that growing concern and provision for the flora and fauna of the coast and sea is matched with equal provision for the archaeological components of the marine environment. JNAPC will seek to contribute to every initiative relating to planning and development control until it is satisfied that archaeology under water is covered comprehensively and to the same level of protection and management as archaeology on land, and as marine flora and fauna.

5. MOD AND FCO WRECKS

1989 recommendation: 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 under water. In the long term they should consider transferring the administration of these cultural resources to the maritime heritage protection agency proposed in recommendation six.

Government response: MOD recognises its obligation to dispose responsibly of its interest in historic wreck. The FCO will consider whether it is possible to seek to establish any rights belonging to the Crown. DOE and equivalents would exercise any rights of ownership. The Government further stated in 1990 (Written Answer 1990 Official Reports, Parliamentary Debates (Lords) vol.524 WA 59-60) that it is willing to exercise Government powers of ownership, where these can be established, in favour of conserving wreck sites and artefacts recovered from them.

MOD continues to exercise its own rights but now consults DNH's Historic Wrecks Advisory Committee about whether the wrecks it proposes to sell should be designated under the Protection of Wrecks Act 1973. This leaves unresolved the problem of sale and dispersal of items from wrecks purchased from MOD, which can still take place whether or

not the site is designated. JNAPC urges MOD not to sell wrecks without the undertaking that their excavated contents will remain in publicly accessible collections.

FCO's responsibility is to be administered by DNH but it is not clear what progress if any has been made on establishing ownership. JNAPC will continue to press for progress on these matters.

6. MARITIME HERITAGE PROTECTION AGENCY

1989 recommendation: 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.

Government response: The Government is not persuaded of the need for setting up a new agency but proposes to consolidate the existing arrangements for maritime archaeology alongside those for archaeology on land. Responsibility for underwater archaeology was transferred to the Department of the Environment and has since been moved, with land archaeology, to the Department of National Heritage.

The transfer has brought about marked improvements. In England DNH has adopted an active role and is providing financial support for underwater archaeology. DNH considers itself responsible for "nautical archaeology in general" (Joint Circular from DOE/DNH, 29 July 1992) whereas DTP just confined itself to administering the relevant Acts. The remit of the Archaeological Diving Unit has been expanded to allow it to search for new sites to be designated.

It is still the case that land archaeology is Government funded and subject to a comprehensive management strategy while underwater archaeology is not. In English Heritage's *Exploring Our Past: Strategies for the Archaeology of England* (1991), emphasis is placed on developing protective measures for historical landscapes and areas of high archaeological potential; on liaison and co-operation with other conservation bodies; on survey and inventory. As yet equivalents do not exist for underwater sites. There is no policy for managing underwater sites. There is no funding for threatened sites (with the notable exception of Historic Scotland's allocation of rescue funds to the Duart Point wreck site).

With the development of the management of underwater sites as a part of co-ordinated coastal planning, the work-load and specialisation required will be inappropriate for DNH to deal with at first hand. Land and underwater systems have been more or less treated together in Scotland and Northern Ireland but not in England and Wales.

JNAPC believes that the two systems, for land and under water, should be amalgamated. In England this means that English Heritage should be encouraged to take on responsibility for underwater archaeology and must be given sufficient funds.

7. EFFECTIVE ARRANGEMENTS FOR REPORTING FINDS

1989 recommendations: 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.

Government response: The White Paper announced the transfer of responsibility for the protection of historic wreck sites in English waters to the Secretary of State for the Environment, with parallel arrangements for other parts of the UK.

JNAPC envisaged that the statutory obligation to report wreck to the Receiver could be harnessed for heritage management purposes. Heritage at Sea suggested creating a user-friendly local archaeological structure for the reporting of finds, based on Sites and Monuments Records and local museums, to complement the Receiver of Wreck requirements. This would provide the finder with identification and interpretation of the find and the archaeological record with information about location and context. For this to work it would be necessary to encourage a far higher proportion of finders to report their finds, with practical and unambiguous procedures for local reporting of material, and for mandatory links to be established between Receivers and maritime archaeological records. The procedures must provide that, while respecting the interests of original owners and salvors, access for recording and conservation would be assured.

DNH have not taken up these suggestions. The recent reduction of the Receivership service, which meant that the network of local Receivers has been replaced by centralised reporting, reinforces the urgent need for a local archaeological reporting system.

8. CONSERVATION AND STORAGE

Conservation and storage of material from under water was discussed in a supporting paper in *Heritage at Sea*. This recommended that museums ought to be the ultimate repository of nautical archaeological material and that the Museum and Galleries Commission was the appropriate national body to take a leading role.

In the period under review finds have continued to be dealt with on an ad hoc basis. The lack of an effective reporting system for nautical archaeological material means that museums do not receive or even hear of many casual finds. Only modest quantities of waterlogged material have been recovered from the sea and there has been cause for concern as steadily increasing pressure on resources has meant that institutions such as the National Maritime Museum are reducing their wet wood conservation facilities. The volume of excavated material may well increase as a result of increased archaeological awareness on the part of seabed operators. It is vital that facilities should not be contracted to such an extent that it would be impossible to deal with a sudden influx of material. It is encouraging that English Heritage has helped enhance the laboratories of the York Archaeological Trust, which already has a track record in treating waterlogged material and is now well placed to treat more. The MGC Conservation Unit offered to fund a one-year training post at York, but no suitable candidate could be found.

The MGC funded a report carried out by the North of England Museum Service, *Catching the Tide*, which provides a clear picture of collections of maritime history, including underwater archaeology, in the region and serves as a model for other Area Museum Councils to follow. *Standards in the Museum Care of Archaeological Collections*, published by

the MGC in 1992, makes specific reference to material from underwater sites and in particular to the need to apply the same standards of excavation, sampling and object care. The MGC's National Registration Scheme for museums, introduced over the last four years, provides a means of validating museums which might be recipients of material from under water. The Registration Scheme has also led to the development of regional collecting strategies, which have the potential to embrace underwater archaeological material.

JNAPC sees the need for a nationally integrated policy for collection, retention and research and for a UK overview on conservation provision for underwater archaeological material.

9. TRAINING AND PUBLIC EDUCATION

DNH has provided funding for the Nautical Archaeology Society training scheme and this has now reached a significant proportion of the sports diving community. The NAS has now run 98 courses for over 1,200 participants at the initial level and many divers are following the scheme through to the higher levels. Funding is now also being allocated for Scotland, Wales and Northern Ireland. Training is a complement to legislation and essential to management, producing people capable of enhancing the record of seabed sites and contributing to the self-policing of sites. JNAPC will seek permanent funding for the NAS training scheme and an increase in resources to enable effective expansion of schemes to sports divers and higher education.

As part of the increased initiative on education, the National Maritime Museum is producing a video and teacher's pack on underwater archaeology, linked to the National Curriculum Key Stage 2. It is also collaborating with the Area Museums Council for the South West, with support from the Museums and Galleries Commission, to mount a travelling exhibition on Shipwreck Archaeology.

PRIORITIES

This document lists many tasks still to be completed and challenges yet to be met. Running through them are a few consistent themes. These include

- a) the need to develop management tools and strategies
- b) the need for an integrated approach to archaeology above and below water and
- c) the need for the heritage organisations of the constituent countries of the United Kingdom to move forward together.

JNAPC has the following priorities. Firstly to press for closer integration of the management of underwater and land archaeology at national level. Secondly to bring the Code of Practice into operation and raise the awareness of commercial seabed operators about the archaeological implications of their work. Thirdly to pursue the issue of planning in the coastal zone and Local Government responsibility in this area and fourthly to contribute to legislative change.

JNAPC is eager to work with the appropriate Government departments to prepare a programme and timetable for the changes and recommendations outlined in this report.