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Dear Sir/Madam

Historic England Advice Note: Commercial renewable energy development and the historic environment

The Joint Nautical Archaeology Policy Committee (JNAPC) has pleasure in submitting its response to the consultation on the Historic England Advice Note: Commercial renewable energy development and the historic environment.

The JNAPC was formed in 1988 from individuals and representatives of institutions who wished to raise awareness of the United Kingdom's underwater cultural heritage and to persuade Government that underwater sites of historic importance should receive no less protection than those on land. Some information on the JNAPC is shown in Appendix 1.

The JNAPC has a membership (see Appendix 2) that includes most of the governmental, museum, academic and voluntary organisations, and advisers concerned with submerged heritage assets, including the Nautical Archaeology Society, MAST, university professionals, various governing bodies for recreational diving, providers of professional archaeological services, the Council for British Archaeology, and the Chartered Institute for Archaeologists. The views expressed by the JNAPC do not necessarily represent the views of individual members and observers.

Introduction

1. JNAPC's concerns are principally with heritage assets in the marine zone. Our comments are directed to Sections 1 and 2, which are of general application, and Section 3 on Offshore Wind Energy.

2. JNAPC welcomes Historic England's approach of integrating its advice on commercial renewable energy development on land and in the marine zone in a single document. However, this integration is far from comprehensive and generates an array of inconsistencies. This points to a continuing gap within Historic England between people who are familiar with development on land but not in the marine zone, and people who are familiar with development in the marine zone but not on land. It is startling that –

Joint Nautical Archaeology Policy Committee

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almost 20 years after Historic England became responsible for the marine historic environment, that such a gap is so profound and so evident in its formal advice.

3. It is especially telling that lack of consistency should be so apparent in advice on commercial renewable energy development, which has implications that cross the land-sea divide. Some of these are acknowledged in the advice, as in paragraph 38 for example. But the implications are much more extensive and should be addressed comprehensively. Virtually all commercial renewable energy developments in the marine zone will have potential impacts at the coast and further inland; many commercial renewable energy developments on land at or near the coast are likely to have potential impacts on the setting of heritage assets and on historic landscapes/seascape encompassing the marine zone.

4. The failure of Historic England to fully integrate the advice is underlined at the very start. In the very first sentences of the Summary and the Introduction (para. 1), the advice refers to developments covering ‘large areas of land’ but omits reference to the sea, even though the advice applies expressly to developments at sea.

Heritage protection legislation

5. Sections on heritage protection legislation fail to fully recognise the application of the legal regimes to both land and sea. Paragraph 20 on Scheduled Monuments and Box 4 on nationally important archaeological sites should refer equally to wrecks protected under the Protection of Wrecks Act 1973, noting that Scheduled Monuments are also situated in the marine zone (which is not acknowledged until Box 7). It is unclear why hardly any reference is made throughout the advice to Listed Buildings, remembering that there are also Listed Buildings in the marine zone (e.g. listed piers, harbours, sea forts) – which should be noted at least in Box 7. It is also surprising that no reference is made at all to World Heritage Sites (WHS) whose outstanding universal value must surely be sensitive to commercial renewable energy development, including WHS encompassing tidal waters. It is again telling that the Protection of Military Remains Act 1986 is referred to only in Section 3 on offshore wind energy, when its provisions on aircraft apply equally to air crash sites on land. Besides, protection of aircraft that have crashed in military service does not involve ‘designation’, as stated.

Planning systems

6. Section 2 – which is framed as applying to commercial renewable energy developments across the board – completely fails to reflect the application of planning policy to developments in the marine zone.

7. It is staggering that no reference is made to the UK Marine Policy Statement (UK MPS), which is a statutory marine policy document that is binding on authorisation decisions by all public authorities. The UK MPS has express policies on the historic environment and seascape that are vitally important to decisions about commercial renewable energy developments. It is also surprising that no reference is made to the regional marine plans, which are equally binding and include express policies on the marine historic environment and on seascape.

8. The UK MPS and regional marine plans apply to Nationally Significant Infrastructure Projects (NSIPs), so it seems extraordinary that no reference is made to marine policy documents in paragraphs 7-10.

9. All references to the National Planning Policy Framework (NPPF) should be matched by reference to the UK MPS, which is equivalent to the NPPF for the marine zone (paras. 17; 21; 25; 29; 30; 31; Box 4). Where a specific provision from the NPPF is referenced, the equivalent provision from the

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UK MPS should also be referenced.

10. Although not only a coastal/marine issue, it is difficult to understand why there is no reference to local plan policies in the section on ‘Assessing significance and harm when determining an application’ (para. 24 et seq).

11. There is a section headed ‘Proposals that require planning permission’ (paras. 11-13), but there is no equivalent section on ‘Proposals that require a marine licence’. This omission seems inexplicable, not least as the reference to the Marine Management Organisation (MMO) in paragraph 40 is framed in terms of marine licences.

12. Noting that it addresses ‘Cooperating across administrative boundaries’, it is surprising that Box 2 makes no reference to the Government’s coastal concordat (<https://www.gov.uk/government/publications/a-coastal-concordat-for-england>), which applies to all forms of coastal development other than where co-ordinating measures are already in place (such as for NSIPs).

13. Compounding the impression that Section 2 is blind to the marine zone are the references to ‘local planning authority’ or ‘local authority’ (para. 29; 36), which effectively disregard the relevant authorities for NSIPs and the marine zone. All such references should be to the ‘consenting authority’ or similar. It is surprising that the MMO – as noted above – is not referred to until paragraph 40.

Seamless application of Historic England advice

14. The poor handling of planning equivalences between land and sea, and of existing co-ordination mechanisms, might give the impression that Historic England is equivocal as to the application of its advice to commercial renewable energy development in the marine zone. It is essential that Historic England dispels any equivocation: this document should make clear statements to the effect that Historic England advice applies equally to development in the marine zone, including its advice on: site allocation (HEAN 3 – referred to in para. 22); significance in decision-taking (GPA2 – referred to in para. 25, 26 et seq.); setting (GPA3 – referred to in para. 25); and statements of heritage significance (HEAN12 – referred to in para. para. 25).

Further lack of integration between Sections 2 and 3

15. Further indications of the lack of integration arise where matters are raised in Section 3 as applicable to offshore wind energy that are in fact generally relevant and more appropriately included (sometimes under existing headings) in Section 2. For example, the advice on cumulative impacts in paragraph 65 is not specific to offshore wind and should be included with paragraph 49 et seq. The advice on the effectiveness of avoiding impacts to heritage assets at the start of paragraph 57 applies generally – it is not specific to offshore wind – and should be included in Section 2. Similarly, the sentence in paragraph 67 on assessments being informed by national and local policy, HERs and other relevant sources is applicable generally and belongs in Section 2. Paragraph 69 on extending operational life applies also to renewable energy on land and would be better in Section 2, perhaps adjacent to paragraph 53 et seq. on Reversibility.

Effects on setting and landscape/seascape

16. As indicated above, the advice as currently drafted fails to deal adequately with questions arising from commercial renewable energy developments in terms of setting and landscape/seascape. The advice needs to fully account for the possibility of commercial renewable energy developments on land that are sufficiently close to the sea (e.g. Cleve Hill Solar Park) to have effects on the setting of heritage assets in

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the marine zone and on historic marine landscapes/seascapes. Equally, the advice needs to address the effects of commercial renewable energy developments at sea on the setting of heritage assets and historic landscapes on land. It is surprising, for example, that there is no distillation in this advice of the lessons from applications such as Navitus Bay, which were refused partly on grounds relating to impacts on the setting of listed buildings onshore.

17. Accordingly, the advice in Section 2 relating to setting, visual impact etc. should be amended to fully reflect onshore-offshore considerations, including paragraph 20, paragraph 41 et seq., and paragraph 45 et seq. The inadequate treatment of seascape in Section 3 would be better addressed as part of the overall advice on setting and visual impact in Section 2, and should at least be to a consistent standard: paragraph 63 on perceptions of historic character is not matched in Historic England advice elsewhere; nor should developers be expected to assess the ‘concept’ of historic seascape (para. 64). It is surprising that no reference is made to the MMO’s Seascapes Character Assessments.

Heritage assets in the marine zone

18. Paragraphs dealing specifically with the marine zone are disappointing. The only advice offered in paragraph 62 is that export and inter-array cabling should also be ‘fully assessed’ as part of the ES, which seems somewhat superficial given almost 20 years of Historic England experience in dealing with offshore wind energy.

19. Even straightforward descriptions seem to betray a lack of depth of understanding. The description of deposits in paragraph 56, for example, places undue stress on peat and might imply that deposits other than peat are not regarded as potentially important. The inclusion of the Cromer Forest Beds as an example could have helped this important point, but their character – muds and sands rather than peat – are not explained so the misleading impression is uncorrected. As the advice recognises, such deposits may be non-designated in terms of heritage legislation; but the advice should also note that palaeo-environmental sequences may be designated as Sites of Special Scientific Interest (SSSIs) or as protected features of Marine Conservation Zones (MCZs).

Archaeological investigations and the development process

20. With respect to physical impacts, paragraphs in both Section 2 (of general application) and Section 3 (offshore wind energy) are not as clear as they should be. These sub-sections need to be made more consistent, and to fully reflect other advice and practice. Specifically, the advice should be clearer on the relationship between forms of archaeological investigation and the consenting process.

21. Consistent language would include using ‘pre-determination’ rather than ‘pre-development’ (para. 59). Complete clarity is required in distinguishing between pre-determination investigations, commonly referred to as ‘(field) evaluation’ (NPPF para. 189), and post-determination investigations which are normally the subject of a Written Scheme of Investigation invoked by a condition on consent. References to WSIs in paragraph 37 blur this distinction when read in conjunction with paragraphs 38 and 40. ‘Evaluation’ is introduced –somewhat incidentally – only in paragraph 39. Even here, the advice only notes that evaluation can inform the design of the scheme, when it should also make clear that evaluation can also inform the determination of the scheme and the inclusion of archaeological conditions. Conditions requiring WSIs normally set out the timeframe within which the WSI must be agreed, not just when it should be ‘prepared’ (para. 40).

22. Confusion about process is also apparent in the reference to Archaeological Exclusion Zones (AEZs) in paragraphs 57-58. The implication is that AEZs are established at the outset; archaeological interpretation of geophysics is referred to as taking place ‘in areas outside AEZs’. This suggests a

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fundamental misunderstanding. AEZs are commonly established on the basis of geophysical survey, after such surveys have been interpreted archaeologically. The misleading sequence suggested by paras. 57-58 must be corrected. The general point that it is desirable to avoid heritage assets by design holds good; but, as noted above, it is generally applicable to commercial renewable energy developments in all environments and should be stated in Section 2 rather than Section 3.

23. The paragraphs in Section 3 on physical impacts and how they should be assessed, evaluated and mitigated are disappointingly lacking in detail. On AEZs, JNAPC has recently stated its view to Historic England that they should be a minimum size of 100m around the likely extents of a feature or anomaly unless demonstrated – on the basis of evidence – that effective protection can be achieved with a smaller AEZ. We expect this advice note to provide this level of detail when it is revised.

24. Apparent confusion over the role of different stages of investigation in the consenting process continues into paragraph 60. It needs to be clearly stated that the primary purpose of assessment etc. is to adequately inform the consenting authority so that they can determine the application, including any conditions that might apply. The scope for assessment to add to knowledge and understanding of the historic environment is secondary to this primary purpose, which is not entirely clear from the current text. In any case, the point about benefits arising incidentally from assessment (and the caveat in para. 61) apply generally to all forms of commercial renewable energy development and should be included in Section 2 rather than Section 3.

25. It is surprising that no reference is made to the detailed guidance available for offshore wind energy, much of which included Historic England in drafting, consultation or otherwise supporting the resulting documents. Although reflecting early work with commercial renewable energy developments rather than experience from more recent years, there is still a substantive body of information on best practice to which readers of Historic England advice could be directed. This guidance includes:

- COWRIE, 2007, Historic Environment Guidance for the Offshore Renewable Energy Sector.
- COWRIE, 2008, Guidance for Assessment of Cumulative Impacts on the Historic Environment from Offshore Renewable Energy.
- COWRIE, 2011, Offshore Geotechnical Investigations and Historic Environment Analysis: guidance for the renewable energy sector.
- The Crown Estate, 2010, Model Clauses for Archaeological Written Schemes of Investigation.
- The-Crown Estate, 2014, Protocol for Archaeological Discoveries: offshore renewables projects (2nd issue).

26. In the absence of reference to this body of detailed guidance, it is paradoxical that paragraph 3 in the Introduction cites *Tidal Range Developments: Considerations for the Historic Environment* (March 2018) as if it provides historic environment advice, when in fact it is a report by consultants to Historic England.

Omissions

27. There are several points on which specific advice from Historic England on commercial renewable energy development in the marine zone might be expected, but which are omitted.

28. It would be helpful for Historic England to set out the legal basis for its advice on commercial renewable energy development in offshore marine plan areas. We understand there is a distinction between HE's capacities within territorial waters adjacent to England and HE's capacities with respect to ancient monuments in offshore marine plan areas, which are beyond territorial waters. As commercial renewable energy developments may occur in either of these zones, or include elements in both, then it

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would be sensible to describe the distinction and its implications in this advice.

29. Although reference is made to Historic Environment Records (HERs) as a source of information (para. 22; 67), the coverage of the marine zone by HERs is uneven. In practice, reference is often made to historic environment data held in Historic England's maritime records. HE's maritime records appear not to be mentioned in the advice note, which is a surprising omission. It is also understood that HE's maritime records extend only to territorial waters adjacent to England at the present time, and that there is in effect no historic environment record for offshore marine plan areas. It would be reasonable for this advice to indicate what sources of historic environment data Historic England might expect to be consulted in the assessment of applications in offshore marine plan areas.

30. The Protocol for Archaeological Discoveries for offshore renewables projects, referred to above, has played a very significant role in mitigating potential impacts arising in the marine zone. It is surprising that no reference is made to the Protocol, the mechanisms for its implementation, and how it triggers investigation and management in response to reports of archaeological discoveries. It would be helpful for Historic England's advice to set out how reports made in the course of commercial renewable energy developments in the marine zone are to be used in assessing the possible effects of new proposals.

31. The UK MPS states that 'Opportunities should be taken to contribute to our knowledge and understanding of our past by capturing evidence from the historic environment and making this publicly available, particularly if a heritage asset is to be lost'. No reference is made in the advice to this obligation; again, this is a surprising omission. Given its overall public remit, Historic England might reasonably be expected to provide advice on how commercial renewable energy developments in the marine zone are expected to make evidence from the historic environment available to the public.

In view of the serious failings in this draft advice, JNAPC looks forward to its inclusion in a further round of consultation before this document is issued by Historic England.

Yours sincerely

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JOINT NAUTICAL ARCHAEOLOGY POLICY COMMITTEE

THE JNAPC - PAST, PRESENT AND FUTURE

The JNAPC was formed in 1988 from individuals and representatives of institutions who wished to raise awareness of Britain's underwater cultural heritage and to persuade government that underwater sites of historic importance should receive no less protection than those on land.

The JNAPC launched *Heritage at Sea* in May 1989, which put forward proposals for the better protection of archaeological sites underwater. Recommendations covered improved legislation and better reporting of finds, a proposed inventory of underwater sites, the waiving of fees by the Receiver of Wreck, the encouragement of seabed operators to undertake pre-disturbance surveys, greater responsibility by the Ministry of Defence and the Foreign and Commonwealth Office for their historic wrecks, proper management by government agencies of underwater sites, and the education and the training of sports divers to respect and conserve the underwater historic environment.

Government responded to *Heritage at Sea* in its White Paper *This Common Inheritance* in December 1990 in which it was announced that the Receiver's fees would be waived, the Royal Commission on the Historical Monuments of England would be funded to prepare a Maritime Record of sites, and funding would be made available for the Nautical Archaeology Society to employ a full time training officer to develop its training programmes. Most importantly the responsibility for the administration of the 1973 Protection of Wrecks Act was also transferred from the Department of Transport, where it sat rather uncomfortably, to the then heritage ministry, the Department of the Environment. Subsequently responsibility passed to the Department of National Heritage, which has since become the Department for Digital, Culture, Media and Sport.

The aim of the JNAPC has been to raise the profile of nautical archaeology in both government and diving circles and to present a consensus upon which government and other organisations can act. *Heritage at Sea* was followed up by *Still at Sea* in May 1993 which drew attention to outstanding issues, the *Code of Practice for Seabed Developers* was launched in January 1995, and an archaeological leaflet for divers, *Underwater Finds - What to Do*, was published in January 1998 in collaboration with the Sports Diving Associations BSAC, PADI and SAA. The more detailed explanatory brochure, *Underwater Finds - Guidance for Divers*, followed in May 2000 and *Wreck Diving – Don't Get Scuttled*, an educational brochure for divers, was published in October 2000.

The JNAPC continues its campaign for the education of all sea users about the importance of our maritime heritage. The JNAPC will be seeking better funding for nautical archaeology and improved legislation, a subject on which it has published initial proposals for change in *Heritage Law at Sea* in June 2000 and *An Interim Report on The Valletta Convention & Heritage Law at Sea* in 2003. The latter made detailed recommendations for legal and administrative changes to improve protection of the UK's underwater cultural heritage.

The JNAPC played a major role in English Heritage's (now Historic England) review of marine archaeological legislation and in DCMS's consultation exercise *Protecting our Marine Historic Environment: Making the System Work Better*, and was represented on the DCMS Salvage Working Group reviewing potential requirements for new legislation.

The JNAPC has also been working towards the ratification of the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage with the preparation of the *Burlington House Declaration*,

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which was presented to Government in 2006 and the Seminar on the Protection of Underwater Cultural Heritage in International Waters Adjacent to the UK in November 2010.

In 2013 the JNAPC was officially accredited as an NGO to the Meeting of States Parties and to the Scientific and Technical Advisory Body (STAB) of the 2001 UNESCO Convention.

The JNAPC endorses the report published in February 2014 by the UK UNESCO 2001 Convention Review Group entitled *The UNESCO Convention on the Protection of the Underwater Cultural Heritage 2001 – An Impact Review for the United Kingdom*.

The JNAPC also endorses *2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage - The case for UK ratification* and *Key facts about the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage* published in March 2014 and May 2016 respectively by the Honor Frost Foundation Steering Committee on Underwater Cultural Heritage.

The JNAPC continues to advocate the improved protection of underwater cultural heritage in both territorial and international waters and is working to persuade the UK Government to ratify the 2001 UNESCO Convention.

All JNAPC publications may be seen on www.jnapc.org.uk . Other publications may be accessed by the following links:

<http://www.jnapc.org.uk/UNESCO%20Impact%20Review%20February%202014.pdf>

<http://honorfrostfoundation.org/wp/wp-content/uploads/2016/04/2001-Convention-The-Case-for-Ratification-FINAL.pdf>

<http://honorfrostfoundation.org/wp/wp-content/uploads/2016/11/Key-Facts-about-the-2001-UNESCO-Convention-050516.pdf>

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Joint Nautical Archaeology Policy Committee

Appendix 2

Chairman

Secretariat - Nautical Archaeology Society

Member Organisations

Association of Local Government Archaeological Officers
British Sub Aqua Club
Chartered Institute for Archaeologists (including CfA
Marine Archaeology Special Interest Group)
Council for British Archaeology
Maritime Archaeology Sea Trust (MAST)
Maritime Archaeology Trust
Mary Rose Trust
National Maritime Museum
National Museum of the Royal Navy
National Museums & Galleries of Wales
Nautical Archaeology Society
Professional Association of Diving Instructors
RESCUE
Shipwreck Museum, Hastings
Society for Nautical Research
Sub Aqua Association
The Honourable Company of Master Mariners
United Kingdom Maritime Collections Strategy & ICOMOS
Wessex Archaeology

Individual members

Antony Firth
David Parham
Michael Williams
Josh Martin
John Gribble

Observers

Cadw
The Crown Estate
Department for Communities (Northern Ireland), Historic Environment Division
Department for Digital, Culture, Media and Sport
Department for Transport
Foreign and Commonwealth Office
Historic England
Historic Environment Scotland
Maritime and Coastguard Agency, Receiver of Wreck
Ministry of Defence
National Trust
Royal Commission on the Ancient and Historical Monuments of Wales

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Neil Redfern

Jessica Berry/Anthony Dymock

Garry Momber

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