

Please reply to:

Silver Birches
Bashurst Hill
Horsham
West Sussex
RH13 0NY

Tel: 01403 790311
Mobile: 07860 559445
robert.yorke@btinternet.com

29th April 2022

Defra
Seacole Building
2 Marsham Street
London
SW1P 4DF

email to: marine.licensing@defra.gov.uk

Dear Sir/Madam

Environmental Impact Assessment (EIA) Regulations: Post Implementation Review Impact Evaluation Survey

The Joint Nautical Archaeology Policy Committee (JNAPC) welcomes the opportunity to respond to this Environmental Impact Assessment (EIA) Regulations: Post Implementation Review Impact Evaluation Survey

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 and providers of professional archaeological services. The views expressed by the JNAPC do not necessarily represent the views of individual members and observers.

JNAPC is responding only to the questions on the Marine Works EIA Regime

1. To what extent have the EIA regulations succeeded in their objectives?

Above expectations

The EIA regulations have enabled the marine archaeological resource to be considered alongside other important environmental topics as part of the development process. This has

Joint Nautical Archaeology Policy Committee

c/o Council for British Archaeology, 92 Micklegate, York, YO1 6JX, UK
tel:01904 671 417 website: www.jnapc.org.uk

ensured that the marine historic environment has been protected, in line with industry guidance (see for example *Marine Aggregate Dredging and the Historic Environment: Assessing, evaluating, mitigating and monitoring the archaeological effects of marine aggregate dredging* (BMAPA and English Heritage 2003), *Historic Environment Guidance for the Offshore Renewable Energy Sector* (Wessex Archaeology 2007), and *The Assessment and Management of Marine Archaeology in Port and Harbour Development* (Historic England and Wessex Archaeology 2016). The known and potential marine archaeological resource is assessed, through desk-based research and archaeological assessment of geophysical and geotechnical data, which enables proportionate, applicable mitigation measures to be recommended to ensure that the resource can either remain *in situ*, unaffected by development, or, if impact is unavoidable, its effects can be minimised.

There is currently an issue in respect of marine heritage in that EIA regulations apply to developments in the whole UK Marine Area but there is an arbitrary boundary imposed on the curators at the 12 nautical mile limit in terms of what actions are available to them. This should be addressed.

How the regulations are applied across the devolved administrations in respect of marine cultural heritage depends largely on the stance of the curators and the appropriate marine licensing authority. This can vary widely but is becoming more consistent. As indicated above the system works well in England and also in JNAPC's experience in Wales but is more variable in Scotland.

2. *How effective has the policy been implemented?*

Well

3. *What are the costs that you/your business incurs in relation to the implementation of EIAs? Please quantify these where possible, considering costs such as staff time/wages, fees, consultants etc. If this is not possible, please provide a qualitative description of the costs.*

The costs incurred by JNAPC members in relation to the implementation of EIAs are covered by clients or developers as the work is contracted on their behalf. The scope of that work is determined by the need to follow the regulations and deliver on the requirements of curators and marine licencing authorities.

4. *How do these costs compare with the estimated costs outlined in the impact assessment which accompanied the regulations when they came into force?*

On Par

5. *Do you believe there has been a disproportionate impact on small and micro businesses from these regulations?*^[1]

JNAPC members do not believe that the costs are disproportionate to the nature of the proposed development. Where a small business is embarking on a project that requires full EIA regulations they would need to have sufficient funding in place before undertaking the work.

^[1] Micro-business = less than ten employees and turnover under €2 million; small business = less than 50 employees and turnover under €10 million; medium-sized business = less than 250 employees and turnover under €50 million).

6. *In your opinion, how well understood are the regulations among developers/project proposers/licensing users?*

Well

The developers, project proposers and licensing users with whom JNAPC members work understand the regulations. New clients and consultants are sometimes less well informed as to their requirements or obligations, especially if based in another country or administration.

6b. *Do you have any suggestions to improve the understanding of the rules or guidance?*

No

7. *Have there been any unintended effects caused by the regulations?*

No

8. *Do you have any suggestions to reduce any burdens inherent in the EIA process?*

No

JNAPC members believe the burdens are proportionate

9. *Do you feel refinements could be made to improve the enforcement and / or compliance rates?*

Don't know

Since JNAPC members usually work with clients who intend to follow the guidance as responsible developers they do not come across non-compliance. It is clear however that compliance does rely on a strong curatorial regime.

10. *How successful have the regulations been in securing their objective of helping Government to achieve its goal of living within environmental limits whilst achieving social and or economic sustainability?*

Well

JNAPC members believe the regulations have been generally successful, particularly in England. The regulations seek to ensure that the marine archaeological resource is understood ahead of development and that any impacts are minimised through mitigation. Normally this takes place. This ensures that this valuable, fragile, non-renewable resource is available for future generations. In addition, the dissemination of knowledge gained during the process helps the Government to increase social sustainability, by encouraging the public to engage with their heritage. However, curatorial capacity is key in this regards and with the massive increase in marine development in respect of renewable energy and ports and harbours the curatorial sector is completely under resourced to be able to deliver on the developments that are proposed. This could lead to less effective compliance and enforcement.

11. Do you feel the regulations could be improved to better meet the objective of living within environmental limits while achieving social and economic sustainability?

Yes

12. Do you believe there any gaps in the regulations that are causing or enabling negative environmental impacts / outcomes?

Yes

There is no consistent joined up policy across Government departments on the impact of development on marine and underwater cultural heritage within the whole UK Marine Area. Whereas there are provisions within DCMS and Historic England for the investigation, management and protection of historic marine assets within territorial waters, no such provisions exist beyond territorial waters but within the UK Marine Area.

An example of this is the historically significant Galloper Wreck discovered outside territorial waters within the Galloper Wind Farm. However, no UK Government sponsored archaeological investigation has been undertaken to identify the wreck or introduce an appropriate archaeological management and protection plan. There are also other examples.

With the planned growth of offshore development there will inevitably be an increase in the discovery of new historic wrecks which will then be at risk because of their very discovery. There is an urgent need to put in place a properly funded policy for the investigation, management and protection of historic marine assets beyond territorial waters but within the UK Marine Area.

13. Do you believe the existing form of Government regulation for environmental assessment is the correct approach? If not, what might you replace it with?

Yes

The JNAPC would welcome the opportunity to discuss further the above response and to assist Defra further in this matter, particularly in relation to historic marine assets discovered beyond territorial waters but within the UK Marine Area.

Yours faithfully

R A Yorke
Chairman

robert.yorke@btinternet.com
www.jnapc.org.uk

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*

Joint Nautical Archaeology Policy Committee

c/o Council for British Archaeology, 92 Micklegate, York, YO1 6JX, UK
tel:01904 671 417 website: www.jnapc.org.uk

Declaration, 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.jnaptc.org.uk . Other publications may be accessed by the following links:

<http://www.jnaptc.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>

Joint Nautical Archaeology Policy Committee

Chairman

Secretariat - Nautical Archaeology Society

Robert Yorke

Mark Beattie-Edwards

Member Organisations

Association of Local Government Archaeological Officers
British Sub Aqua Club
Centre for Maritime Archaeology, University of Southampton
Honor Frost Foundation

Maritime Archaeology Sea Trust (MAST)
Maritime Archaeology Trust
Mary Rose Trust
National Maritime Museum
National Museum of the Royal Navy
Amgueddfa Cymru - National Museum Wales
Nautical Archaeology Society
Professional Association of Diving Instructors
RESCUE
Shipwreck Museum, Hastings (Nautical Museums Trust)
Society for Nautical Research
Sub Aqua Association
The Honourable Company of Master Mariners
United Kingdom Maritime Collections Strategy & ICOMOS
Wessex Archaeology

Rebecca Loader
Jane Maddocks
Jon Adams
Arturo Rey Da Silva/
Lauren Tidbury
Jessica Berry/Anthony Dymock
Garry Momber
Christopher Dobbs
Andrew Choong Han Lin
Dominic Tweddle
Mark Redknap
Mark Beattie-Edwards
Suzanne Smith
Robin Densem
Peter Marsden
Chris Brandon
Stuart Bryan
TBA
Christopher Dobbs
Euan McNeill/Dan Atkinson

Individual members

David Parham
Michael Williams
John Gribble

Affiliation

Bournemouth University
Plymouth University
ACO Associates

Observers

Chartered Institute for Archaeologists (including CIIfA
Marine Archaeology Special Interest Group)
Council for British Archaeology
The Crown Estate
Department for Communities (Northern Ireland), Historic
Environment Division
Department for Digital, Culture, Media and Sport
Department for Transport
Foreign, Commonwealth & Development Office
Historic England
Historic Environment Scotland
Maritime and Coastguard Agency, Receiver of Wreck
Ministry of Defence

Rob Lennox/Michael Walsh
Neil Redfern
Phillip Turner

National Trust

Royal Commission on the Ancient and Historical Monuments
of Wales and Cadw

Colin Dunlop
Anishaa Aubeeluck
Sam Farnham
Colin Glen
Antony Firth
Philip Robertson
Graham Caldwell
Louise Baverstock/Matt
Skelhorn
Tom Dommett

Julian Whitewright

Joint Nautical Archaeology Policy Committee

c/o Council for British Archaeology, 92 Micklegate, York, YO1 6JX, UK
tel:01904 671 417 website: www.jnacp.org.uk

Joint Nautical Archaeology Policy Committee
c/o Council for British Archaeology, 92 Micklegate, York, YO1 6JX, UK
tel:01904 671 417 website: www.jnапc.org.uk