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

Consultation on marine licensing efficiencies
Opened: 20 June 2025 Closes: 29th August 2025

Removal of Abandoned Vessels

Disagree

Further comments

The Joint Nautical Archaeology Policy Committee (JNAPC) acknowledges that there is an environmental hazard posed by the presence of abandoned vessels, especially recreational Glass Reinforced Plastic (GRP) vessels, left on the foreshore and seabed, and is supportive of any initiative to remove these. However, this proposed exemption has the potential to remove a valuable protection for marine heritage assets which the marine licensing system has hitherto afforded, as will be illustrated below.

The introduction of the marine licensing system under the Marine and Coastal Access Act 2009 (MaCAA) was an extremely significant advancement in the protection of marine heritage assets. If this proposed exemption is not very carefully drafted it could have the unintended consequence of negating this advancement. The JNAPC assumes this is not the intention of the Marine Management Organisation (MMO).

Section 255(1) Merchant Shipping Act 1995 defines ‘Wreck’ as that which includes “... *derelict found in or on the shore of the sea or any tidal water.*” In turn a *Derelict* has been defined in case law as where there has been “... *an abandonment at sea by the master or crew without hope of recovery ...*” (*The Aquila* 1 C. ROB 39 at 40 per Sir W. Scott).

The courts have extended this definition of *derelict*, or as it is sometimes referred to ‘*wreck derelict*’, from vessels found abandoned but floating at sea to vessels and cargo which has become embedded in or on the seabed and foreshore, including vessels which are now regarded as marine heritage assets. Examples include:

HMS Thetis – cargo of gold on a sunken Royal Navy warship was held in 1835 to be derelict (*H.M.S. Thetis* 3 HAGG 228 at 235 per Sir John Nicholl).

The Tubantia – steamship sunk in World War 1, lying on the seabed and broken into three parts was held to be *derelict* (*The Tubantia* [1924] P. 78 at 87 per Sir Henry Duke).

H.M.S. Association – totally scattered seabed remains of HMS Association, sunk off the Scilly Isles in 1707, held to be *derelict* (*Morris v. Lyonesse Salvage Company Ltd.* [1970] 2 Lloyd’s Rep. 59 Per Dunn J. at 60).

The Lusitania – wreck of RMS Lusitania, sunk in 1915 and lying on the seabed off the coast of the Irish Republic, held by the Admiralty Court of the United Kingdom’s Queen Bench Division to be derelict:

“Once a vessel has become derelict, I find it difficult to think of any good reason why she should cease to be derelict merely because she is not afloat but is lying on the seabed. To my mind it is clear beyond doubt that a derelict which sinks remains a derelict.”

(The Lusitania [1986] 1 Lloyd's Law Rep. 132 per Sheen J. at 135).

Any vessel lying abandoned on the seabed or foreshore without hope (intention) of recovery is thus a *derelict / wreck derelict* in law. As a derelict it is a legitimate subject of salvage, including voluntary (*ex contractu*) salvage by any person (*Kennedy & Rose Law of Salvage* Rose, F.D. 6th Ed. (2002) Sweet & Maxwell London paras. 208- 212). Presently however, a marine licence would be required for its recovery or the recovery of material from it other than by hand. Marine licensing therefore provides a valuable protective mechanism where such derelicts may, or indeed do, also constitute a marine heritage asset.

The proposed new exemption will permit any person to remove abandoned vessels from the marine environment without a licence. An abandoned vessel is defined as *“any vessel left in a state of disrepair and left within the marine or coastal environment.”*

There are a number of difficulties with this proposed definition. A vessel can be in a state of disrepair, without the owner having the intention to abandon title to it, as would be the case where a vessel is undergoing restoration or repair, neither of which is yet complete. The absence of any reference to the owner’s intention in this definition would appear to be problematic.

Additionally, this proposed exemption could have significant adverse implications for marine heritage assets in the form of derelicts lying on the seabed or foreshore. As explained above, any vessel, including those constituting marine heritage assets, abandoned without hope (intention) of return by master and crew constitutes a derelict, which prior to MaCAA would be in danger of removal, without any requirement for appropriate archaeological methodology. MaCAA removed the danger of intrusive recoveries, other than by hand. This proposed exemption would reverse this protection afforded by MaCAA, reverting to the pre 2009 position, unless the exemption is drafted so as to engage expert heritage agency input in cases of reasonable doubt as to its potential heritage value.

JNAPC notes that this adverse impact upon marine heritage assets is intended to be averted by the disapplication of the proposed exemption to heritage assets designated by the Protection of Wrecks Act 1973 (1973 Act) or scheduled under the Ancient Monuments & Archaeological Areas Act 1979. However, these limitations will not adequately mitigate the adverse impacts on marine heritage assets of the proposed exemption for two reasons.

Firstly, designation or scheduling is based on a representative approach. Not all marine heritage assets of national or international significance are either designated or scheduled. This is emphasised by the United Kingdom’s Marine Policy Statement at:

<https://assets.publishing.service.gov.uk/media/5a795700ed915d042206795b/pb3654-marine-policy-statement-110316.pdf>

“Many heritage assets with archaeological interest in these areas are not currently designated as scheduled monuments or protected wreck sites but are demonstrably of equivalent significance. The absence of designation for such assets does not necessarily indicate lower significance and the marine plan authority should consider them subject to the same policy principles as designated heritage assets (including those outlined) based on information and

advice from the relevant regulator and advisors.” (para. 2.6.6.5)

Thus, simply because a marine heritage asset is not designated nor scheduled does not mean it is without heritage significance and this significance can only be evaluated by reference of the matter to appropriately qualified heritage advisors. If removal of abandoned vessels were permitted without specific authorisation under the marine licensing framework significant marine heritage assets could be adversely impacted without an opportunity for their heritage value to be evaluated, which would represent an unsupportable contradiction to the United Kingdom’s current marine policy position.

Secondly, designation or scheduling is reactionary. It requires the significance of a marine heritage asset to be initially evaluated. This significance is not always immediately apparent and indeed a vessel that is of considerable heritage importance can appear to be, to the non-expert eye, of no significance whatsoever. A classic case in point relates to the 58 foot Seaplane towing lighter in Poole Harbour. This was an unidentified hulk of no significant heritage value until a survey in 2010, by Bournemouth University, identified it. These lighters were the first naval craft designed to launch and recover naval seaplanes or launch, but not recover, naval fighter aircraft. The hulk is one of only three known survivors of these craft, which are a significant part of the United Kingdom’s naval heritage (See [Seaplane Lighter H21 | National Historic Ships](#)). Without expert marine archaeological evaluation this hulk could have been lost and is an example of the very adverse impact this proposed exemption could have on marine heritage assets.

This exemption is proposed upon the basis that allowing the abandoned vessel to remain in place will have an adverse impact upon the environment. While the need to conserve marine heritage assets is recognised, that recognition extends only to designated or scheduled marine heritage assets. As the UK Marine Policy Statement expressly recognises, this is too narrow a perspective and an archaeological evaluation should be mandatory before a removal, or other mitigation measure, is authorised, either under an amended exemption or by a requirement for a marine licence. In many cases this evaluation could be conducted remotely; for example, in the case of a more recently manufactured recreational GRP vessel a simple photograph(s) provided to archaeological advisers would be sufficient to establish there was little or no heritage value impacted by its removal.

On the basis of the above the JNAPC objects to the proposed exemption as drafted.

Eco Moorings

Disagree

Further comments

The JNAPC Joint Nautical Archaeology Policy Committee (JNAPC) acknowledges that there is an environmental hazard posed by the scouring of the seabed that occurs from the chains of traditional moorings or from anchor chains. The JNAPC also acknowledges that this exemption only relates to ‘like for like’ replacements solely in the same place and it does not authorise the installation of new moorings unless already exempt under Article 25 of the 2011 Order

However, the physical characteristics that make an anchorage or moorings attractive today will have been the same for many centuries. Thus, the possibility of buried marine heritage assets in such locations is quite high. Furthermore, unlike a traditional mooring that sits upon the surface of the seabed, eco moorings are screwed hydraulically for some distance into sub-seabed strata, hence increasing the potential damaging impact upon buried marine heritage assets in a way that traditional placement of moorings or anchoring does not. Consequently, the potential risk to unknown buried marine heritage assets from the installation of eco moorings is considerably higher than that for the

installation of traditional moorings or anchoring. In short. 'like for like' replacement by eco moorings poses a potentially higher risk to buried marine heritage assets.

The JNAPC notes that section 115(2) Marine & Coastal Access Act 2009 defines the 'environment' as including:

" ... any site (including any site comprising or comprising the remains of any vessel, aircraft or marine structure) which is of historic or archaeological interest."

Thus the risk to buried marine heritage assets by the use of eco moorings secured by screwing into seabed sub-strata is a material consideration to which the MMO must have regard. In the explanation in the Consultation document the JNAPC can find no evidence that the MMO has had regard to marine heritage in formulating the terms of this exemption and thus raises the possibility that the MMO's formulation of the exemption is potentially ultra vires.

The JNAPC objects to the proposed exemption for the reasons set out above and requests that the MMO reconsiders the matter, paying due regard to the preservation of the marine cultural environment by requiring a survey of the sea bed and its sub-strata prior to the installation of eco-moorings on a 'like for like' basis.

Marine Management Organisation and Natural England marine protected area marker requirements

Disagree

Further comments

The JNAPC Joint Nautical Archaeology Policy Committee (JNAPC) acknowledges the desirability of placing markers for the purposes set out in the proposed exemption. However, the JNAPC notes that this exemption is justified upon the basis that the public authorities seeking approval are bodies "... with direct interest in the management of the MPA or HPMA, such as the MMO or NE...". This statement is not entirely accurate. While the MMO and/or NE have a direct interest in the natural heritage located within a MPA or HPMA, neither body has an interest in the management of the marine cultural heritage located in a MPA or HPMA.

The JNAPC notes that section 115(2) Marine & Coastal Access Act 2009 defines the 'environment' as including:

" ... any site (including any site comprising or comprising the remains of any vessel, aircraft or marine structure) which is of historic or archaeological interest."

Thus, the marine cultural heritage is a material consideration the MMO must take into account in its decision-making processes. The JNAPC notes with serious concern that in formulating this proposal and in providing a justification for the proposal the MMO has not paid any consideration to the potential adverse impact upon the marine cultural heritage, as it is legally required to do so.

Consequently, the JNAPC objects to the proposed exemption in the terms currently proposed and requests that the MMO reconsiders the terms of the proposed exemption, taking into account its duty to pay consideration to the preservation of the marine cultural environment, if necessary by requiring an archaeological survey and evaluation prior to the installation of such markers.

Diver Trails within restricted areas

Disagree

Further comments

The JNAPC Joint Nautical Archaeology Policy Committee (JNAPC) objects to the proposed disapplication within HMPA of the exemption for Diver Trails.

The JNAPC notes that section 115(2) Marine & Coastal Access Act 2009 defines the 'environment' as including:

" ... any site (including any site comprising or comprising the remains of any vessel, aircraft or marine structure) which is of historic or archaeological interest."

Consequently, in its decision-making the MMO must have regard to the preservation of marine cultural assets, as well as the preservation of the natural heritage. The JNAPC does not accept that Diver trails would have a significant effect upon HMPAs. Marine heritage assets typically occupy extremely small spatial areas, typically around 250m in radius and sometimes less. The markers placed on such trails also occupy miniscule space in comparison to the total area of a HMPA. Thus, the JNAPC does not accept that Diver Trails have a significant effect upon the totality of a HMPA.

Diver Trails also serve an extremely important monitoring function in respect of marine heritage assets. Visiting divers are able to monitor and report back on any significant environmental changes, such as shifting seabed levels exposing previously buried heritage material, which would now be at risk, together with evidence of any unauthorised human interference. Given the limited resources of heritage agencies, this monitoring function is extremely important. That presence also confers analogous benefits to natural environment-focused regulators with regard to site monitoring.

Additionally, Diver Trails facilitate educated public access to cultural heritage. The right to access and enjoy cultural heritage is part of the human right to take part in cultural life as enshrined in Article 15 of the International Covenant on Economic, Social and Cultural Rights, which was ratified by the UK in 1976 (<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>). The proposed disapplication would also run counter to the United Kingdom's policy of encouraging physical activity. (<https://www.gov.uk/government/publications/get-active-a-strategy-for-the-future-of-sport-and-physical-activity/get-active-a-strategy-for-the-future-of-sport-and-physical-activity>).

The JNAPC notes that the MMO has provided no evidence to substantiate that the extremely small spatial occupation of Diver Trails would have a significant effect upon HMPAs. Nor has the MMO produced any evidence that it has taken into account in its decision-making its legal duty to have regard to the historic environment under section 115(2) of the 2009 Act. Nor has the MMO adduced any evidence that it has had regard to the adverse impact of this disapplication upon the right to public access to culture under the International Covenant on Economic, Social and Cultural Rights or the adverse impact upon United Kingdom's current policy of encouraging physical activity.

Consequently, the JNAPC is driven to the conclusion that the MMO has failed in its legal requirement to have regard to all material considerations when formulating the proposal for this disapplication and is potentially acting ultra vires.

In addition the JNAPC supports those responses made by Historic England on the following areas

- Investigations for unexploded ordnance
- Coastal flood defence works

- Further changes to self-service activities or Exemptions – Activities listed in the MMO’s Recreational Dive Activity Table, namely:
 1. **Removals – by hand** – The Removals – the by hand exemption should be brought into line with the ‘Marine Litter’ exemption. The latter only applies if the ‘activity is not likely to cause damage to features of archaeological or historic interest (or have significant effects on a marine protected area). For consistency the removals by hand exemption should contain the same condition.
 2. **Surveying of a dive site.** ‘A marine licence is not currently required to conduct surveys of shipwrecks, use survey lines or datums deployed for less than 24 hours’, implying that use of survey lines or datums etc. deployed for more than 24 hours would require a licence. Installing survey lines and datums can represent a significant investment of dive time, and often there is a need for datums to remain fixed for some time. This exemption should be revised to remove the current time limit.

Yours sincerely



Professor Dave Parham
dparham@bournemouth.ac.uk
Chair JNAPC