

DCMS CONSULTATION DOCUMENT: PROTECTING OUR MARINE HISTORIC ENVIRONMENT: MAKING THE SYSTEM WORK BETTER

Response by the Historic Environment Advisory Council for Scotland (HEACS)

Q1 *What could be encompassed by the term 'marine historic environment'.*

It should be acknowledged that the term “marine historic environment”, like “the historic environment”, is an umbrella term covering a range of aspects which could be set out in considerable detail to embrace every possible feature from shipwreck and ditched aircraft to inundated coastal settlements. Indeed many groups, keen to see their particular interest included, would espouse the process of listing all aspects to ensure formal recognition. However HEACS **recommends** that a simple definition of the marine historic environment as “anything within the marine environment that is the product of human activity” would best serve to ensure the existence of a term that included all interests, from archaeology to war graves, and one that also provided the bases, both philosophical and legal, for meeting the challenges to that environment posed by the continued use of the sea and seabed in the future.

Q2 *Should the legal basis for maritime heritage conservation continue to be UK-wide and should it be more closely integrated with terrestrial heritage conservation?*

(1) There are arguments on both sides of the question of the future legal basis of maritime heritage conservation: either UK based or Home Countries based. The argument for the continuation of the UK basis is partly historical in that, to date, UK legislation has been the norm and unlike the land, the coasts and seas of the UK are not separated in the same physical sense but conceptually are continuous. In the sense that certain UK legislation applies to the whole of the UK because of the national and international aspects of those considerations, there is no obvious issue in the area of marine conservation to suggest that the continuation of the UK approach would mean a lessening of impact and thus there is a case in favour of continuing a uniform approach.

However it should be acknowledged that the Home Countries already have devolved powers in a number of areas and that the responsibilities for heritage and culture are already discharged by different bodies in each country. It would be logical therefore to follow both the theory of devolution of powers and the practicality of separate Heritage bodies and suggest that the legal basis should shift to being Home Countries based. This need not necessarily mean a variation in legal applicability, since all administrations would be obliged to have regard to international marine law.

(2) Irrespective of the territorial legal arrangements there are substantial grounds for integrating maritime heritage conservation more closely with terrestrial heritage conservation. Firstly, the terrestrial arrangements are generally well understood and less open to misinterpretation.

Secondly, the extension to the maritime scenario can be based upon sets of principles that have stood the test of time. There is also a physical justification in the extension of terrestrial conservation, in that parts of the coastal archaeology of the UK are disappearing into the sea and salvage archaeology may have been the only possible short term action open to land-based activity. Also, obviously much longer term, while parts of the UK Western coasts are sinking, parts of the UK Eastern coast seabed are rising where recovery from the last glacier period is still underway. In essence, while recognizing the major differences, it seems only sensible to treat the marine environment with as much care as the terrestrial environment.

Q3 *Would it be helpful to have an elapse of time or a date as a criterion in respect of marine historic assets? If so, what should that time or date be?*

The usage of dates or elapsed time to determine that a marine asset is “historic” rests on a value system that relates to age rather than to significance. Typically thirty years, or roughly one generation in the past, can be regarded as setting a historic stamp on an asset, but that approach disregards significance. Many speakers refer to something completely novel as an “historic occasion” since they realize and attempt to convey to their audience the fact that in the future this novelty will be regarded as historic. For example, the, as yet unfinished, Scottish Parliament building is, and will be, regarded as an historic asset before it is even occupied. HEACS recommends that elapsed time/date are more restrictive than is necessary and that is more important to found on the criterion of significance.

Q4 *What kinds of criteria should be used to decide which marine assets should be protected? Should marine assets be subject to a set of generic criteria which might be constructed for the designation or should marine assets be subject to specific criteria relating to their special nature?*

The application of the criteria existing in terrestrial circumstances can be translated virtually en masse to marine circumstances and should be in the generic form to bring a degree of uniformity to various situations. It should be open to the relevant heritage agencies to apply additional criteria in exceptional circumstances, and where the exceptional circumstances are made transparent to all interested parties.

Q5 *Should protected sites be subject to standardised constraints on activity, or should the heritage agencies define individually what activities will or will not require consent on each site?*

Standardised constraints on activity should be the norm for protected sites. Where there is a case adduced for setting aside a constraint, this should form an appeal to the relevant heritage Agency where the matter can be considered on its merits.

Q6 Would a requirement for statements of importance for marine sites help to establish for owners, authorities and sea-users, 'what is important to conserve? How could they take account of inevitable changes in knowledge, understanding and values over time? How should the limits of individual sites be defined and publicised?

Statements of importance are key to the conservation issue and would focus on the correct aspect of significance. Unless there is a relevant statement then lack of information may lead to failure to capitalize on the marine asset or even loss through neglect or mis-usage. The statements would have to be subject to regular review, on, say, a ten year basis, to reflect any changes in knowledge, understanding or values. For example, it is possible to envisage a marine asset being classified as unique and hence highly significant on discovery but ten years later to have that asset classified as only one of a number of similar assets (and possibly not the best example of the type). In the first circumstance, permitting the adjacent development of a windfarm installation or seabed coal/aggregates extraction would be totally out of the question, but in the latter circumstance such activities might be permitted if conducted on a sensitive basis.

The limits on sites should follow the fishing conventions on establishing “boxes” and defining these boxes by latitude and longitude. Publicising these boxes should be undertaken in the relevant trade/leisure magazines as well as appearing on the relevant heritage agency’s website. There may be circumstances in which the “National Park” concept could be extended into the marine environment, with the boundaries designated on the box system.

Q7 Who should be consulted when an application is made to protect a marine historic. environment site?

We have identified finders, the Crown Estate, Defra, DfT, owners, local authorities, those pursuing economic activities such as dredging, amenity or special interest groups, the public - are there others? What would be a reasonable period for receiving representations and reaching decisions?

What form of interim protection would be reasonable to safeguard sites during the application and consultation process?

The list of consultees is reasonably extensive but does omit a number of interested groups. HEACS **recommends** that, in Scotland, where HEACS discharges an important advisory remit to Scottish Ministers, that HEACS should be included in the list. The Scottish Coastal Archaeology and Palaeoenvironmental Trust, as its name implies, has a particular interest in marine proposals. It is also suggested that the Universities and Research Establishments which have marine interests could be added. It is perhaps implicit in the list of economic activities but it should be explicit that Fishery organizations, and especially inshore fishery interests, will be consulted. Similarly, Diving organizations should be explicitly identified as consultees. A draft list of consultees might be circulated for comment.

A six-month period is **recommended** as a reasonable period for receiving representations and reaching decisions. Most organizations meet on a quarterly basis and need at least three months to pull together the views of members.

HEACS **recommends** that sites could be safeguarded during the application processes by the issue of temporary access prohibition notices in relation to identified boxes.

Q8 *In what circumstances would a right of appeal be justified? Should the suggested right of appeal against protecting marine assets apply just to owners or to other interested parties as well?*

A right of appeal should exist in all circumstances, as decisions by public bodies should be open to rational challenge in a democratic society. The right of appeal should extend beyond owners since ownership is not of itself a guarantee of interest and involvement.

Q9 *What might owners and others having an interest in protected sites of marine historic assets be reasonably expected to do in respect of long-term conservation, knowledge and public appreciation of sites in which they have interests? What sort of support should they be looking for?*

Owners should have the same expectations laid upon them as apply in terrestrial circumstances and should be eligible for State/HLF funding for the specialist conservation and protection measures that apply within the marine environment. Owners should certainly be looking for professional advice and support from the appropriate heritage agency.

Q10 *What information would be most useful to owners and those with other interests?*

HEACS **recommends** that the most useful information is in the following areas:
(1) Identification of significance. (2) Conservation restrictions. (3) Box identification.
(4) Access arrangements.

Q11 *In what circumstances would management agreements be most useful?*

HEACS **recommends** that management agreements are most useful in the following situations-(1)Where stabilization is a continuing concern, (2) Where access is most problematic, (3) Where amenity diving is both practicable and to be encouraged.

Q12 *What support could usefully be given to owners and other interested parties?*

The support requirements of owners and other interested parties are identical to the terrestrial situation-(1) Informational, with specific reference to conservation and protection, (2) Legal, with specific reference to responsibilities shared between owner and the State, (3) Financial, with specific reference to the eligibility and availability of grant-aid.

Q13 *How should the heritage agencies seek to encourage public access, both physical and virtual, to marine historic assets?*

The marine environment for most of the population is not dissimilar to outer space since physical access requires both special training and special equipment. While underwater craft permitting direct viewing by the public of the marine environment are presently available in some countries, it will take some time for such leisure-oriented submarine vessels to be common in UK waters and consequently physical access to marine historic assets is likely to be the province of divers. Divers can be encouraged to take an interest in marine assets in the same way as many are interested in marine wildlife. For the general public access is likely to be virtual through the usage of underwater video communications and website displays. One can imagine that just as the Scottish Ospreys are under camera scrutiny, marine assets could have similar static cameras transmitting views to interested observers. In addition the readily available pole-mounted cameras with underwater illumination which are appearing on safari cruises can be brought into the equation and enhance the experience of the sea-going public.

Q14 *What measures should be introduced to improve the overall accessibility and consistency of marine historic asset records in the UK?*

The first requirement is to carry out an audit of existing historical asset records to provide a baseline of information. A review of each category of record then requires to be conducted to establish the gaps which exist. The Review then requires to identify the major issues that have to be addressed, with a view to setting targets and directing a management programme to bring about consistency and to consider accessibility. Given the nature of the process this has to be a rolling programme, with regular updating of the information base. Naturally this process requires to be funded appropriately.

Q15 *What range of measures do you think the heritage agencies could take to promote 'high standards'?*

HEACS **recommends** the following-(1) Agree a definition of high standards within the context of the marine environment and then (2) Agree a specific quality programme to achieve those standards, with appropriate identification of costs and necessary personnel. (3) Undertake a collaborative programme amongst all the agencies, with each leading in a particular area and ultimately sharing information for the benefit of all.

Q16 *What should be the scope of voluntary codes of practice?*

The voluntary codes of practice should take as their starting point the importance of ensuring a common approach to the protection of the marine environment and build upon existing terrestrial codes of practice. Health and safety issues are important in all circumstances but the marine environment presents additional risks and these should be carefully addressed. The Codes should be drawn up in consultation with all interested parties, and the diving community especially should be included at the earliest opportunity.

Q17 *How should the heritage agencies and National Monuments Records for the home countries seek to promote publication and archiving of marine historic assets?*

HEACS **recommends** that the same principles which apply to terrestrial publication and archiving of historic assets should be applied to the marine environment, while recognizing the difficulties that relate specifically to the archiving of assets in the marine environment.

Q18 *How could heritage agencies build upon and support the role of professional and vocational marine archaeologists and recreational divers?*

HEACS **recommends** the following actions to involve the various marine communities: (1) Publicising the existence of the marine assets. (2) Sharing information with the marine interests on a regular basis. (3) Giving formal recognition to their contributions., and (4) Encouraging their interest through regular consultation on major issues.

Q19 *Would the introduction of an obligation to report the discovery, disturbance or recovery of all marine assets - similar to the current obligation to report the recovery of 'wreck' - be a useful improvement? Who would be the appropriate agency for. people to report to? To whom should the information then be passed? Should there be a co-ordinated network of agencies and who might be best placed to co-ordinate? Are there any other mechanisms which would improve reporting?*

The obligation to report all marine asset events would be a marked improvement. However, the matter of administrative responsibility is one that should be determined on the basis of a set of principles that set out the organizational arrangements which best addressed the various relevant concerns. Existing systems could be evaluated against the organisational principles and requirements and then a judgment made as to the best arrangements to meet these criteria.

- Q20 *Should marine historic assets be held by the person who has recovered them, under instruction from an appropriate agency? Which agency should be responsible for overseeing this process and for administering the mechanisms for identifying owners?*

Historic assets, including marine property should be regarded as the property of the State and the State, through its heritage agencies, should have the right to determine whether to exercise the right of ownership or to act in an advisory capacity to the person who has recovered them. Each of the heritage agencies in the Home Countries should have this responsibility, with the specific requirement in the case of historic wreck to work closely with the Receiver of Wreck.

- Q21 *How could the tension between salvage and historic shipwrecks be best addressed? How could this public interest be reconciled with the concept of 'salvor in possession'? Should the UK exercise its right not to apply the 1989 Salvage Convention to maritime cultural property, which would allow it to remove the current incentive of the salvage reward? What are the advantages and disadvantages of excepting marine historic assets from the law of salvage, taking into account the other measures proposed here?*

The tension between salvage and historic shipwrecks exists because the law introduced to help vessels in distress and to save marine property was not conceived in terms of recognizing the underwater historic environment. Basically the recovery of historic shipwrecks by a salvor using underwater detection systems falls into the same category as terrestrial treasure hunting with a metal detector, but the required input of resources is on a vastly increased scale. If the community of interest, rather than the individual entrepreneur, wishes shipwrecks to be recovered, rather than be left in situ, then the concept of salvor in possession seems a perfectly fair arrangement, whereby the salvor's efforts are properly rewarded. HEACS counsels against the blanket non-application of the 1989 Salvage Convention to maritime cultural property since the results would be counter-productive. HEACS **recommends** that where the community of interest wishes the shipwreck to be left in situ, then the appropriate action is to carry out a review of the Protection of Wrecks Act 1973, which was introduced as a temporary measure, with a view to updating it to take account both of the problems raised by the application of general salvage legislation and the scientific advances that are currently leading to more intervention in the contents of the seabed.