

TAF Policy Position on the Marine Historic Environment

Introduction

The historic environment includes all aspects of the environment resulting from the interaction between people and places through time, including all surviving physical remains of past human activity, whether visible buried or submerged. In a marine context this encompasses not only wrecks (of ships, aircraft and other vehicles) but also structures, submerged landscapes, artefacts and other material remains.

Law, policy and practice with regard to the management and protection of the marine historic environment has developed in the wake of terrestrial provision largely, in the past, as an ad hoc response to the recognition of specific threats. However, the development of marine spatial planning has provided the opportunity to create a comprehensive, fit for purpose regime for the management and protection of the marine historic environment. Details of the legal and policy framework for the marine historic environment can be found at Appendix 1.

Policy

The Archaeology Forum urges

1. The implementation of marine spatial planning and the streamlining of the licensing process in the marine zone in a manner that ensures proper protection and management of the marine historic environment.
2. A consistent approach by HM Government and the devolved administrations to the management and protection of marine heritage assets.
3. A holistic approach to the marine historic environment in legislation and policy, embracing all heritage assets (including submerged landscapes, lithic scatters and other traces of human existence) in addition to shipwrecks.
4. Closer integration of the management and protection of the natural and historic environment at sea. In particular, TAF supports the introduction of historic marine protected areas through the Marine (Scotland) Act 2010 and urges the adoption of a similar designation system elsewhere in the UK (whether as an extension of the marine conservation zones introduced by the Marine and Coastal Access Act 2009 or by the introduction of a new designation).
5. The declaration by the UK Government of a contiguous zone (to 24nm) to facilitate the management and protection of the marine historic environment beyond 12nm.
6. The clear definition of roles and responsibilities for the management and protection of the marine historic environment in the public interest both within and beyond 12nm (including the gathering, storage and management of information relating to cultural heritage).
7. The removal of historic assets of archaeological interest from the salvage regime.
8. Clear, consistent and comprehensive provision throughout the UK for the collection, storage and management of data, archives and collections in relation to the marine historic environment.
9. The ratification of the UNESCO Convention on the Protection of Underwater Cultural Heritage 2001 by the UK Government and adherence across Government to the rules contained in the Annex to the Convention (which Annex the UK Government already endorses as setting out best practice in relation to the marine historic environment).

Appendix: legal and policy framework for the marine historic environment

The main statutes directly affecting the marine historic environment include

- The Marine and Coastal Access Act 2009¹, the Marine (Scotland) Act 2010² and the Marine Act (Northern Ireland) 2013³ which provide the foundation for marine spatial planning and a unified marine licensing system throughout the UK. (The “UK marine area” for these purposes includes the territorial seas and offshore area adjacent to the UK, as well as any area of sea designated as UK Exclusive Economic Zone (to at least 200 nm or the edge of the continental shelf).) All these statutes make provision for marine protected areas but only the Marine (Scotland) Act 2010 provides for *historic* marine protected areas. Outside Scotland, marine protected areas (termed marine conservation zones) are regarded as an essentially ecological designation although provision is made to allow the consequence of such designation on sites of historic or archaeological interest to be taken into account.
- the Protection of Wrecks Act 1973⁴ – This provides for the designation of wrecks of ‘*historical, archaeological or artistic interest*’, originally in territorial waters (to 12nm) throughout the UK, although section 1 of the Act was repealed insofar as it relates to Scottish waters on 1 November 2013 when protected wrecks became historic marine protected areas under the Marine (Scotland) Act 2010 (see above). Approximately 60 wrecks are currently designated elsewhere in the UK.
- the Protection of Military Remains Act 1986⁵ – The primary purpose of this legislation is the protection of ‘war graves’. There are 2 forms of protection, ‘protected places’ which can be in any waters and automatically include all wrecked UK military aircraft together with designated vessels, and ‘controlled sites’ which are specifically designated in UK waters and impose more stringent restriction upon activity than the ‘look but don’t touch’ provisions applying to ‘protected places’. Approximately 60 vessels are specifically designated as protected places and controlled sites including SS *Stora*, a merchant ship the subject of litigation which reached the Court of Appeal on the issue as to when such vessels could be regarded as in ‘war service’ for these purposes – a matter that has not been fully resolved in practice.
- the Ancient Monuments and Archaeological Areas Act 1979⁶ – An Act introduced with the scheduling of ancient monuments on land in mind, but which has been applied in Scotland to schedule marine heritage assets under water (the German High Seas Fleet wrecks at Scapa Flow). Although Scottish Government intends historic marine protected areas normally to be favoured over scheduling in the future (see above), the use of scheduling is being considered elsewhere in the UK to protect assets within territorial waters.
- the Merchant Shipping Act 1995⁷ – This contains provisions relating to the salvage regime which applies to wreck and (in UK law) makes no distinction between heritage assets and non-heritage assets. Thus, the salvage regime in UK applies to archaeological remains (however defined).

Other non-statutory provisions (both domestic and international) impacting upon the marine historic environment include

- the Marine Strategy Framework Directive⁸ – A Directive adopted by the European Union in 2008 and aimed at maintaining or achieving ‘good environmental status’. The Directive does not, however, expressly recognise the marine historic environment and this has hampered efforts to ensure that the historic environment is fully recognised in the transposition of the Directive into national law and the formulation of a marine strategy (or strategies) for the United Kingdom
- Our Seas – a shared resource: High level marine objectives⁹ published jointly by HM Government and the devolved administrations in 2009. This sets high level objectives which (unlike the Marine Strategy Framework Directive) involve recognition of ‘the protection and management needs of marine cultural heritage according to its significance’.

¹ <http://www.legislation.gov.uk/ukpga/2009/23/contents>

² http://www.legislation.gov.uk/asp/2010/5/pdfs/asp_20100005_en.pdf

³ <http://www.legislation.gov.uk/niu/2013/10/enacted>

⁴ <http://www.legislation.gov.uk/ukpga/1973/33/contents>

⁵ <http://www.legislation.gov.uk/ukpga/1986/35>

⁶ <http://www.legislation.gov.uk/ukpga/1979/46/contents>

⁷ <http://www.legislation.gov.uk/ukpga/1995/21/contents>

⁸ <http://eur-lex.europa.eu/legal-content/EN/ALL/?jsessionid=xfL1TH6TTnWCMTjGYGLzypKtZgrnxJfYSjLNVTWwvgr8s1bRILyc!-1279642812?uri=CELEX:32008L0056>

⁹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/182486/ourseas-2009update.pdf

- the UK Marine Policy Statement (2011)¹⁰ – This provides the high level policy background to the implantation of marine spatial planning (embodying the above objectives and including the making of marine plans and decision-making) to be supplemented by guidance, best practice guides and other advice.
- Planning Policy under the Town and Country Planning Acts – In England the National Planning Policy Framework¹¹, National Planning Practice Guidance¹² and supporting documents provide policy and guidance in relation to planning and the historic environment on land (including the inter-tidal zone) and have adopted a more holistic approach to the historic environment. Equivalent (but not identical) provision can be found in Scotland in Scottish Planning Policy (SPP)¹³ and Planning Advice Note (PAN) 2/2011¹⁴; in Wales in Planning Policy Wales¹⁵ and Welsh Office Circular 60/96¹⁶ and in Northern Ireland in Planning Policy Statement 6 (PPS 6)¹⁷. a Coastal Concordat for England (2014)¹⁸ which is an agreement between the Department for Environment, Food and Rural Affairs, the Department for Communities and Local Government, the Department for Transport, the Marine Management Organisation, the Environment Agency, Natural England and the Local Government Association’s Coastal Special Interest Group. It sets out the principles according to which the regulatory and advisory bodies propose to work with local planning authorities to enable sustainable growth in the coastal zone.
- the Government’s Statement on the Historic Environment for England 2010¹⁹ – This provides an important commitment to the historic environment across Government. Furthermore, the historic environment is expressly defined to include the marine historic environment. Indeed, the reference to ‘our seas’ indicates that the Statement is applicable at least to 12nm and possibly beyond.
- the UNESCO Convention on the Protection of Underwater Cultural Heritage 2001²⁰ – This convention, which sets out basic principles for the protection of underwater cultural heritage, came into force in 2009 upon ratification by 20 States. However, the United Kingdom has not yet ratified the Convention nor has the United States.
- the Annex to the UNESCO Convention on the Protection of Underwater Cultural Heritage 2001²¹ – The annex, which sets out ‘*rules for activities directed at underwater cultural heritage*’, has, however, been accepted by the UK Government as best practice (confirmed, for instance, in the House of Commons in 2008: see <http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm081126/text/81126w0154.htm#0812021000015>).
- Protection and Management of Historic Military Wrecks outside UK Territorial Waters (2014)²² – This provides guidance from the Department for Culture Media & Sport and the Ministry of Defence on how existing policies and legislation apply to historic military wreck sites.

¹⁰ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69322/pb3654-marine-policy-statement-110316.pdf

¹¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf

¹² <http://planningguidance.planningportal.gov.uk/>

¹³ <http://www.scotland.gov.uk/Resource/Doc/300760/0093908.pdf>

¹⁴ <http://www.scotland.gov.uk/Resource/Doc/355385/0120020.pdf>

¹⁵ <http://wales.gov.uk/docs/desh/publications/140303planning-policy-wales-edition-6-en.pdf>

¹⁶ <http://wales.gov.uk/docs/desh/policy/961205circular6096en.pdf>

¹⁷ http://www.planningni.gov.uk/index/policy/policy_publications/planning_statements/pps06-archaeology-built-heritage.pdf

¹⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/256234/coastal-concordat-20131111.pdf

¹⁹ http://webarchive.nationalarchives.gov.uk/+http://www.culture.gov.uk/reference_library/publications/6763.aspx

²⁰ <http://unesdoc.unesco.org/images/0012/001260/126065e.pdf>

²¹ <http://unesdoc.unesco.org/images/0012/001260/126065e.pdf>

²²