



# Protecting our Marine Historic Environment: Making the System Work Better

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## Preamble

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This consultation document concerns the UK marine historic environment. It is being published jointly by the Department for Culture, Media and Sport, the Welsh Assembly Government, the Scottish Executive and the Department of the Environment, Northern Ireland. Its text has been approved by the Secretary of State for Culture, Media and Sport, Alun Pugh AM, the Welsh Assembly Government's Minister for Culture, Welsh Language and Sport, Frank McAveety MSP, Minister for Tourism, Culture and Sport in the Scottish Executive, and Angela Smith MP, Parliamentary Under Secretary of State for Northern Ireland.

In the text, the term 'the Government' refers collectively to the UK Government and the devolved administrations. The term 'heritage agencies' refers to English Heritage, Cadw, Historic Scotland and the Department of the Environment, Northern Ireland.

## Introduction

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1. In July 2003 the Department for Culture, Media and Sport published a consultation paper *'Protecting our historic environment: Making the system work better'* and the Welsh Assembly Government published *'Protection of Historical Assets in Wales'* which set out ideas for improving the system for protecting buildings, above and below ground archaeology and other land-based heritage assets, in England and Wales respectively. Those documents promised this further consultation paper about the marine historic environment. Because of the nature of the legal structure for the marine historic environment, this consultation covers the whole of the United Kingdom.
2. The aims of these two exercises are the same. The proposals in this paper seek to provide:
  - a positive approach to managing the marine historic environment, which will be transparent, inclusive, effective and sustainable and central to social, environmental and economic agendas at a local as well as national level;
 and
  - a legislative framework that protects the marine historic environment but enables appropriate management techniques to be applied and to evolve.
3. Although the aims of the two exercises are the same, differences in the marine and land-based environments, and the legislation affecting them, mean that the approach to improving and updating their protection must be tailored to the circumstances. However, the proposals in the two papers seek the closest integration where possible.
4. The current legislation on the protection of wrecks largely applies to all the devolved administrations, but with some differences and exceptions.
5. There are a number of issues that affect the marine historic environment which are not addressed in this document, namely those around marine development control and what happens on and beyond the continental shelf. This document applies to territorial waters only. Wider issues are continuing to be looked at in other government fora.

## Marine Historic Environment Review

6. English Heritage, which provides the secretariat support for the UK Advisory Committee on Historic Wreck Sites (ACHWS), has commissioned a specific review of marine historic environment legislation<sup>1</sup> to form the background research to this consultation exercise. The review assessed key documents and legislation and incorporated reports and consultations carried out by the Joint Nautical Archaeology Policy Committee (JNAPC) since 1989. During this period the JNAPC consulted widely with seabed and historic asset owners, divers, salvage interests, conservation experts, archaeologists, developers, local authorities, planners, consultants, individuals and heritage agencies.

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<sup>1</sup> *English Heritage Marine Archaeology Legislation Project* (2003) School of Legal Studies: University of Wolverhampton.

7. The JNAPC reports have already resulted in a number of policy and administrative changes but it has been recognised that the existing legislative framework limits the extent to which such changes could effect reform. The accession of the United Kingdom to the Valletta Convention in 2001 added a new imperative. JNAPC's recent report on maritime archaeology and the Valletta Convention<sup>2</sup> identified those areas of the legislative framework on designation and scheduling which require further study.
8. This first stage of the English Heritage sponsored review examined the operation and effectiveness, in relation to the marine historic environment, of the *Protection of Wrecks Act 1973*, the *Ancient Monuments and Archaeological Areas Act 1979* and the *Protection of Military Remains Act 1986*. It identified the constraints placed upon these legislative measures by the application of the salvage regime, the concept of 'salvor in possession' and the *Merchant Shipping Act 1995*. The Department for Transport (DfT) is responsible for the implementation of the *Merchant Shipping Act 1995*. The Maritime and Coastguard Agency which has operational responsibility in these matters is an executive agency of the DfT and includes the office of the Receiver of Wreck.
9. This paper sets out for consultation the key issues and questions in relation to marine historic environment designation. Details of how to respond are on page 32. The consultation will run from 26 March to 30 June 2004. The responses will be analysed and a report made to Ministers.

## History of marine historic environment protection

10. Marine historic environment protection has been developed, mainly over the last three decades, against the following background:
  - conservation of the marine historic environment has been approached on a UK-wide basis, albeit implemented by the devolved administrations
  - a large number of organisations are involved in the planning and management framework of marine archaeology
  - many government departments have responsibilities in marine areas and activities
  - many sea bed activities require full environmental impact assessments, including consideration of marine archaeology, as part of existing consent/licensing activities<sup>3</sup>
  - many interests and activities have different administrative boundaries such as the low water mark or the territorial limit
  - the public rights of fishery and navigation need to be respected
  - ownership of objects found in the sea rests with the original owners or their successors
  - establishing ownership can be a prolonged and onerous process
  - initiatives are increasingly required to be integrated on a European or international basis.

<sup>2</sup> Joint Nautical Archaeology Policy Committee *An Interim Report on the Valletta Convention & Heritage Law at Sea* (2003) JNAPC and School of Legal Studies: University of Wolverhampton.

<sup>3</sup> The DTI's offshore energy Strategic Environmental Assessments already include consideration of marine prehistoric archaeological remains e.g. *The Scope of Strategic Environmental Assessment of Continental Shelf Area SEA4 in regard to prehistoric archaeological remains* (2003) N C Flemming.

11. Archaeological sites of any type underwater in the UK are not protected unless specific action has been taken to protect them. There are relatively few pieces of legislation with direct relevance to archaeology underwater. Legislation relating to ancient monuments extends to monuments in, on or under the seabed. Specific legislation applies to the sites of shipwrecks of historical, archaeological or artistic significance.

## Key Issues

12. The Government has set out four key objectives to support sustainable development. These aim to ensure that future long-term interests are safeguarded while meeting today's needs. The objectives are:
- social progress which recognises the needs of everyone
  - effective protection of the environment
  - prudent use of natural resources
  - maintenance of high and stable levels of economic growth and employment.
13. The marine historic environment is an integral and irreplaceable element of the sea and seabed. In developing an effective system to protect it for generations to come, it is essential to recognise the many economic and other activities that take place in the sea. This paper invites views from all those with an interest and represents a first step towards achieving a solution which best balances all these issues.
14. In order that people know when their activities might be affected by heritage protection, there has to be a definition of what things are covered by laws concerning the historic environment. Existing rules about reporting finds and establishing ownership are based on a definition of 'wreck'. This definition works reasonably well for things that originated from a ship or boat. However, for much of human history people were able to walk across parts of what is now the seabed, and the objects and structures that they left behind need not come from an aircraft, ship or boat. There are, for instance on Scilly, many examples of prehistoric field systems and palaeo-peat deposits of high historic value and potential that are now submerged as a result of subsequent sea level rise. At the moment it can sometimes be unclear which legal rules should be applied to specific finds. This is because it can sometimes be difficult to work out whether an artefact came from a boat and therefore is legal 'wreck'. For example, Bronze Age axes and swords have been discovered underwater that might be part of a lost cargo or might have been eroded from nearby cliffs. If from a boat they are 'wreck', but if from a cliff they are not.<sup>4</sup>
15. The sea is a busy industrial and natural environment. It is an environment with public rights of fishery and navigation and private uses including dredging, oil and gas extraction, energy and communications. It is also used for recreational purposes, including sports diving. The protection of submerged archaeological sites and material must be seen in this context, and, to be effective, protection regimes must take an integrated approach and be known and understood by those implementing them and by those to whom they are being applied.

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<sup>4</sup> In Northern Ireland all archaeological objects must be reported whether from a wreck, a submerged archaeological site or a casual loss at sea. Judgement calls can be difficult as to the nature of the discovery and in practice a Department of Environment archaeologist would recommend, based on the available evidence, whether the object(s) should be reported under the *Merchant Shipping Act* or the *Ancient Monuments and Archaeological Areas Act*.

16. This means that developing effective protection for marine archaeology must be approached in a different way from that on land, and that it must take into consideration a number of key differences between the two environments. These include:
- the seabed is a dynamic environment – it shifts and changes. This can make site-based management more difficult
  - natural processes can reveal and cover sites and wrecks. This has implications for discovery, recovery and protection
  - artefacts may become scattered at some distance from their original position
  - different techniques, equipment and expertise are needed to survey the seabed. This is both difficult and very expensive compared with land archaeology. Many marine archaeologists use information from surveys supporting other underwater activity
  - ownership of the seabed of the Territorial Sea is vested almost entirely in the Crown Estate, although there is considerable private ownership of foreshore, estuaries and tidal riverbeds
  - the Crown Estate works within the planning system but the Town and Country Planning legislation does not apply below low water. In the marine environment functional legislation covers different activities. For example: the Department for Environment, Food and Rural Affairs (Defra) issues licenses to deposit articles or materials in the sea below Mean High Water Springs in connection with construction activities or disposal of dredged materials<sup>5</sup>
  - there are public rights such as fishery and navigation.

The main areas this paper addresses can be summarised as follows:

- there is no commonly implemented protection for marine historic assets, such as submerged land surfaces, other than wrecks
  - there is currently no comprehensive marine heritage data collection nor are there any mature management frameworks or procedures
  - salvage law, dating from the nineteenth century, has no specific reference to heritage protection needs
  - property ownership issues are widely misunderstood.
17. The marine review has therefore identified four major areas for improvement:

**Simplification:** the marine historic environment protection system is highly selective and coverage is incomplete. New protections have been added in a largely reactive fashion. Few people have a grasp of all parts of the legislation. There are gaps and inconsistencies in interpretation. Where there are complex sites, such as a submerged prehistoric landscape, designation can be unwieldy or problematic.

**Openness:** processes are often (albeit for good reason) kept confidential. A consultation process exists but is not necessarily wide. The official designation of protected sites is often not understood nor widely publicised. There is little encouragement to seabed or asset owners to feel involved. Nor is there currently easy access to sites and information for the general public.

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<sup>5</sup> Under the *Food and Environment Protection Act 1985*. Similar responsibilities are devolved to the National Assembly for Wales and the Scottish Executive.

**Flexibility:** the present system requires individual designation of assets and individual consents for each activity. Where there are complex sites this can prove laborious. There are lessons from the management of the natural environment and advances in thinking about Integrated Coastal Zone Management and community involvement which have not fully fed through into marine heritage protection.

**Rigour:** in 1973 there was one designated<sup>6</sup> wreck site and no submerged Scheduled Ancient Monuments. There are now 54 designated wreck sites in the UK and two submerged Scheduled Ancient Monuments. There are many hundreds of thousands of un-designated sites. This is a rich inheritance but a huge stock to manage. The new system must be robust enough to conserve the best and to continue to take on board changes in what people value without devaluing the currency.

18. The proposals and questions set out in this paper are not designed to undercut the protections which have been carefully built up over time. They are designed to improve the way the system operates for the benefit of all that use it.
19. The suggested changes would:
  - better inform seabed users and stakeholders about why items and features of importance have been protected, what is considered important and how they can best be looked after
  - ensure amenity societies and others concerned locally or nationally with conserving the marine historic environment would be better able to obtain information and participate
  - be beneficial to all interested parties and other sea users by making licensing procedures simpler and clearer and providing better access to information, guidance and assistance.

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<sup>6</sup> I.e. a restricted area identified as the site of a vessel of historical, archaeological or artistic importance under the *Protection of Wrecks Act 1973*.

## The Current Legal Framework

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20. England, Wales, Scotland and Northern Ireland share much of the legislation which governs the marine historic environment, and so DCMS, the Welsh Assembly Government, the Scottish Executive and the Department of the Environment in Northern Ireland are all partners in this process. The interests of all partners will be reflected in both the discussions which will take place and in any conclusions that emerge.

### Designation legislation

21. The *Protection of Wrecks Act 1973* was passed as a direct consequence of the damage to wrecks of historical interest. Designation and licensing are the chosen mechanisms of control. The Act empowers the Secretary of State for Culture, Media and Sport, and the Welsh and Scottish Ministers (hereafter ‘the appropriate Minister’) to designate as a restricted area the site of a vessel of historical, archaeological or artistic importance lying wrecked in or on the seabed. Fifty-six sites have been designated since 1973, two of which have been subsequently revoked. The 1973 Act was intended as a temporary expedient but has become a mainstay for protecting the underwater cultural heritage for the past thirty years.
22. The *Ancient Monuments and Archaeological Areas Act 1979* can be applied within territorial waters adjacent to Great Britain as it contains a general provision for scheduling monuments in the territorial sea and it also refers specifically to vessels and aircraft.<sup>7</sup> The only wholly submerged sites to have been scheduled in the UK (in May 2001) are the seven remaining warships from the German High Seas Fleet scuttled in Scapa Flow after World War I and the *Louisa* in Cardiff Bay. Historic Scotland, as part of their published policy to treat submerged remains as far as possible in the same way as terrestrial archaeology, chose to use the 1979 Act in the case of Scapa Flow because of the need to maintain and encourage a high level of appropriate access to the sites by the recreational diving community. Cadw scheduled the *Louisa* because, following the construction of the Cardiff Bay Barrage, the remains were in inland waters rather than on the seabed and could not therefore be designated as a wreck under the 1973 Act.
23. The *Protection of Military Remains Act 1986* provides for the protection of the remains of military aircraft and vessels that have crashed, sunk or been stranded – and this includes any associated human remains. Wreckage of ships has to be designated as a ‘Protected Place’ or as a ‘Controlled Site’ by the Secretary of State for Defence. Once designated it is an offence to tamper with, damage, move, remove, unearth or enter such remains. Divers are allowed to visit Protected Places provided that no interference results but require authorisation from the Secretary of State for Defence to visit a Controlled Site.
24. The passing of the 1986 Act followed the high-profile disturbance of a number of naval vessels during the 1980s. It applies to all military aircraft and to specified military vessels lost from

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<sup>7</sup> In Northern Ireland equivalent domestic legislation – *Historic Monuments and Archaeological Objects (NI) Order 1995* – can be used.

World War I onwards in British waters. In respect of the conduct of British nationals it can also be applied to British military aircraft and vessels lost in international waters from World War I onwards. Following a public consultation in 2001, the Secretary of State for Defence announced a set of criteria that would be considered in determining whether to designate vessels under the Act, one of the criteria being historic significance. He also stated that 16 vessels, within UK jurisdiction, would be designated as Controlled Sites; five vessels, in international waters, would be designated as Protected Places and that there would be a rolling programme of identification and assessment to designate all other British vessels meeting the necessary criteria.

25. The *National Heritage Act 2002* gave the Secretary of State for Culture, Media and Sport the power to direct English Heritage to carry out her administrative functions in relation to underwater archaeology. It also widens English Heritage's functions to include underwater archaeology.

## Salvage Law

26. In addition to the specific protection legislation above, the marine historic environment is directly affected by other laws which apply more generally to the marine environment as a whole, most notably the law relating to salvage which is intended to encourage people at sea to help vessels in distress and to save property that would otherwise be lost.
27. The *Merchant Shipping Act 1995* (which incorporates the Salvage Convention 1989) and Admiralty law relating to salvage applies equally to historic wrecks and their contents as it does to other shipwrecks (it does not affect submerged landscapes, dwellings or other former human habitation or activity). The Salvage Convention 1989 provides that salvors are entitled to a reward if they carry out a successful salvage operation, and specifies criteria to be taken into account in determining the level of their reward. *The Merchant Shipping Act 1995* makes more detailed provision for valuation of property, its detention and sale, all of which fall within the responsibilities of the Receiver of Wreck.
28. The Act also contains other provisions dealing with wreck and ownership: it imposes a duty on finders of wreck to report finds to the Receiver of Wreck who then advertises the discovery. Owners can come forward for up to a year to reclaim their property, which is returned to them upon settling an award to the salvor and the Receiver's costs. In the course of the years, general practice has been for the finder to keep possession of the find according to the instructions of the Receiver. If no owner comes forward, ownership of unclaimed wreck vests in the Crown (unless the right to unclaimed wreck has been granted elsewhere). The Receiver is required to dispose of it. In many cases the finder will be allowed to keep wreck in lieu of a salvage award. Nowadays, most salvage of vessels in distress or sunk is done by specialist companies in accordance with a contract agreed in advance between salvor and owner. The UK has reserved its right not to apply the Salvage Convention where marine cultural property is involved, although this right has not yet been exercised.

## Suggestions for Change

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29. The sea has been – and continues to be – a prominent and diverse factor in our history, and in order to safeguard this history, it is important that the historic environment of the UK is regarded as extending seamlessly from land to sea. In accordance with previous statements (*England's Coastal Heritage, Power of Place, A Force for our Future* and Historic Scotland's *Operational Policy Paper no 6 on Conserving the Underwater Heritage*), **the Government proposes to seek the closest practical integration of marine and terrestrial historic environment protection.**
30. However, the law governing archaeological material differs between land and sea. On land it is relatively straightforward to distinguish between 'immovables' such as building and archaeological sites, and 'movables' such as artefacts (which may have a different legal owner from the person owning the land upon which they are found). Immovables are generally part of the landowner's holdings. People's access to land is subject to rights of way or the owner's permission; any archaeological material they find may belong to the landowner. The only general exception to this is 'treasure', which under the *Treasure Act 1996* is vested in the Crown (or one of its grantees) irrespective of land ownership. In Scotland the Crown may exercise its rights to *bona vacantia*, and claim any found property whose original owner or heirs are not known.
31. Some artefacts and structures in the sea will be owned in the same way as on land, that is by the owner of the land on which they rest. In the case of foreshore and seabed this is in the vast majority of cases the Crown Estate.<sup>8</sup> However, this is unlikely to include wreck, which continues to belong to whoever owned it before it sank, or whoever has since had that ownership transferred to them (e.g. successors, insurance companies, people who have bought wrecks). The wreck, its cargo and the personal possessions of crew or passengers may have numerous, separate owners.
32. Where such wrecks and artefacts are owned, there is a key difference from the situation on land. People are generally free to have access to the sea. There is a public right of navigation and fishing, and sports divers are free to dive in unrestricted areas. Furthermore, an entirely different set of rules applies to people who find wreck compared to people who find artefacts on land, even though ownership ultimately lies not in the finder but in an original owner, or in the case of unclaimed wreck – like treasure – in the Crown, unless the right has been granted elsewhere.
33. In seeking to bring as closely together as is practicable the protection of the historic environment on land and sea, the Government has to address these different legal backgrounds and wishes to continue to tailor heritage protection to the type of asset. This approach, rather than 'blanket' protection, could be the most effective way of matching the needs of each marine asset with an appropriate level of intervention.

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<sup>8</sup> The Crown Estate is an estate in land which includes:

- substantial blocks of commercial and residential property
- almost 300,000 acres of agricultural land
- 55% of the foreshore and all the seabed out to the 12 mile limit

The Estate is the property of the Sovereign 'in right of the Crown'.

34. Given this approach, **the Government proposes that all marine historic assets be subject to some general rules regarding reporting, initial treatment and ownership, but that ‘protection’ be applied only to specific sites that are sufficiently significant to warrant restrictions on activity.** If a UK-wide approach to the conservation of the marine historic environment continues to be the preferred option, sites on which specified activities are restricted may be included in whatever list of protected sites is created: restrictions would be limited only to those activities likely to cause damage to the particular site.
35. Consequently, it is expected that non-damaging diving would be allowed on the majority of Listed sites – in contrast to current designations under the 1973 Act. In England and Wales, marine historic assets may be included with land-based assets in any proposed unified ‘List of Historic Sites and Buildings’ for each country, but the intention is that the underpinning legislation, and the status of such assets, will be the same in all the constituent countries of the UK.

## A New Approach

36. The sea is a rich resource for economic, scientific and recreational purposes. It is likely that the use we make of the sea will grow heavier and more complex as our technologies and the needs of society develop. It is therefore timely to begin to develop an approach to designation that is appropriate for the 21st century and enables us to continue to do so while preserving our marine heritage for future generations.
37. The piecemeal nature of the various designations applying underwater has meant that there can be confusion about which legal rules should be applied to specific finds. **A new single definition of marine historic assets** would remove that confusion and bring clarity to procedures following the discovery of significant remains. It would also open the prospect of developing a more up to date, flexible approach to designation and the management of change to protected sites, as well as better integration with other marine activities. This would be particularly valuable in the case of archaeologically complex sites.
38. Introducing a new definition of marine historic assets would provide an opportunity to address other gaps. In particular, provision needs to be made for deposits whose microscopic remains include direct evidence of the interplay of human activity and environmental change. It would be helpful for the definition to include deposits where the evidence demonstrates that they are highly likely to contain archaeological remains; otherwise, it might be necessary to dig into and disturb sensitive remains in order to know whether rules intended to protect that sensitivity apply. The potential breadth of the definition would have to be balanced with a test of ‘reasonableness’, to the effect that the likelihood of an artefact, structure or deposit falling within the scope of this definition could be readily gauged by a finder.
39. Things falling within the definition would **not** be automatically protected (but see paragraphs 68-69 on interim protection); but certain rules would apply to reporting their finding, disturbance or recovery. This paper is seeking views on how best to develop a more flexible system that takes the needs of all sea users into account.

40. There has already been some consideration of how to marry the interests of the marine historic environment and legitimate economic activity. The British Marine Aggregate Producers Association have produced a guidance note in association with English Heritage,<sup>9</sup> which recognises the need to understand marine archaeological issues and provides a mechanism by which archaeological remains can be taken fully into account in assessing the environmental impact of dredging for marine aggregates. It examines a pro-active approach to the assessment and evaluation of an area, identifies sources of advice and information and could provide a useful model for other marine industries.
41. **The Government proposes to introduce a statutory definition of ‘marine historic asset’ that encompasses all parts of the anthropogenic<sup>10</sup> marine historic environment.** The definition might encompass structures (such as wrecks) and ‘portable’ objects, together with their immediate setting and associated deposits. The definition might also include sites that have demonstrable potential to include physical traces of the historic environment that were once dry land and are now beneath the sea.<sup>11</sup>
42. **The proposed new marine definition should include all elements of the marine historic environment currently covered by the *Protection of Wrecks Act 1973* and the *Ancient Monuments and Archaeological Areas Act 1979*.** Any unified system of listing operated by any of the home countries would also include sites already protected under the *Protection of Wrecks Act 1973* and the *Ancient Monuments and Archaeological Areas Act 1979*, which would be transferred to the new designation.

*Q1 What could be encompassed by the term ‘marine historic environment’?*

*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?*

43. The Government is considering ways of ensuring that measures intended to safeguard the historic environment should not be applied to recent marine debris. On land, it is already possible to list or schedule important relics of the UK’s role in World War II and it would be fitting to recognise equally the historic wartime importance of aircraft, ships and other structures that have come to rest at sea. Practically, the end of hostilities in 1945 marked a massive fall in the numbers of ships being lost and one option then is a cut-off point of 1945. However there would need to be provision to declare, in special cases, specific items deposited after this date to be marine historic assets. For example, a ship may be important because of its history before 1945, but was sunk after 1945.

<sup>9</sup> BMAPA & English Heritage (2003), ‘*Marine Aggregate Dredging and the Historic Environment: guidance note.*’ British Marine Aggregate Producers Association and English Heritage, London.

<sup>10</sup> i.e. those remains relating to the impact of humans on nature rather than geological assets.

<sup>11</sup> This could include, for example:

- assets related to the use of the sea: e.g. boats, submarines, sea planes and maritime weapons munitions
- assets related to the use of the sea bed: e.g. fish traps, quays etc that used to be in the inter-tidal zone but are now submerged, oil rig installations and military installations
- assets unrelated to the use of the sea or the sea bed: i.e. items that have dropped into the sea from the air, such as planes, rockets and munitions fired from the land
- assets related to dry land activity that are now submerged: e.g. old land surfaces, paleoenvironmental deposits; field systems, settlements and stray finds.

44. However it may be that such a cut-off date is too restrictive. There is no cut-off date for the listing of buildings for their architectural or historic interest and, in theory at least, a building could be completed one day and listed the next, though, in practice, buildings under 30 years old are not often listed. (Practice varies across the home countries.) The general scope of archaeology has widened during the last 60 years and an elapse of time for marine assets may provide more flexibility. For example, it might be useful to use the lapse of 50 years as the appropriate definition. This would have the advantage of including the important pre-1945 remains but allowing more recent marine historic assets to be included.
45. Alternatively, if proposals are supported for the development of Statements of Significance for designated sites, which would set out the reasons for protection (see paras 57-60), these would have the effect of sifting out significant sites from the generality of marine sites. Under these conditions, it may not be considered necessary to set a cut-off date at all.

***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?***

46. Another form of designation that incidentally protects marine sites of historic interest is the *Protection of Military Remains Act 1986*. This Act, which was not intended to safeguard the historic environment, is administered by the Ministry of Defence (MoD). Nonetheless, many of the sites which could be protected by maritime heritage designation measures fall within the terms of the 1986 Act and the level of protection afforded by that Act is broadly comparable to that offered by the *Protection of Wrecks Act 1973*. Furthermore, historic significance is one of the criteria that has been proposed for selecting sites to be designated under the 1986 Act.
47. However, the Government does not want individual sites to be subject to multiple designations. As a result, the Government proposes that the *Protection of Military Remains Act 1986*, administered by the Ministry of Defence, should continue to be used to protect military remains. However, where military remains may have a historic significance, then the Ministry of Defence will agree with the heritage agencies on a case-by-case basis the most effective way of protecting the asset. In such cases, formal arrangements will be made between the appropriate national heritage agency and the Ministry of Defence to safeguard military interests – notably the sanctity of the last resting-places of those who died on board.

**Who should be responsible for national designation?**

48. The Government has proposed that statutory responsibility for designating marine sites in English waters be given to English Heritage; powers to designate wrecks of historic interest are already held by the other home country heritage agencies and the National Assembly for Wales.
49. If the Government were to transfer responsibility in England to English Heritage, English Heritage's powers would be subject to four safeguards:
- English Heritage would be required to act within published Government policies and criteria for designation;
  - the Secretary of State would retain a power to call in exceptional cases for her decision;

- owners and others who have applied for designated status for historic assets would have a new right of appeal (see paragraph 70);
- English Heritage would be required to give an annual account of its stewardship of the new designation against the published policies and criteria.

## Criteria and discretion

50. The processes and practices of designating historic assets have grown up differently over time in the four home countries. In *‘Protecting our historic environment: Making the system work better’* the DCMS consulted on the case for allowing English Heritage some discretion and discernment in deciding what would be on the List,<sup>12</sup> and responsibility for maintaining it, in England. (Such discretion is already available to and operated by other home country agencies.) This might be within the framework of national criteria. It might allow for the condition of the asset or its possible future use, thus perhaps placing restrictions only on those sites that are sufficiently important to warrant protection. All criteria would be published.
51. The Government does not propose to have different grades of protected marine sites; each site will have an individual ‘statement of significance’ (see paragraphs 57-60) and will be subject to specific, stated restrictions.

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

## Management and control for protected sites

52. When a marine site is designated a range of activities will be restricted. The restricted activities can only take place in accordance with a licence and any attached conditions. At present, the *Protection of Wrecks Act 1973* restricts activities such as diving and salvage and those which cause damage, and the *Ancient Monuments and Archaeological Areas Act 1979* restricts works to demolish, destroy, alter or repair a monument and prohibits damage to it.
53. The activities that are restricted by designation will not, however, be wholly prohibited. The Government recognises that the sea bed has a variety of uses, many of which already require a full environmental impact assessment, including consideration of marine archaeology as part of existing consent or licensing activities. Some activities may be able to coexist with archaeological remains, and where this is the case, total exclusion from the site may not be necessary.<sup>13</sup>

<sup>12</sup> Currently, on land, buildings meeting specific criteria are placed on a statutory list of buildings of ‘special architectural or historic interest’ compiled by the Secretary of State for Culture, Media and Sport under the *Planning (Listed Buildings and Conservation Areas) Act 1990*. The Government has consulted on bringing together the different regimes for protecting the historic environment (including scheduling ancient monuments and the Registers of Historic Parks and Gardens, and Battlefields) into a single ‘List of Historic Sites and Buildings of England’.

<sup>13</sup> For example, a wind farm could be constructed by spacing the individual turbines in such a fashion that the remains were left intact and that access could be retained.

54. The Government is therefore seeking views on how best to develop a system that takes the needs of sea users into account, and aligns with other environmental requirements. For the marine environment **the Government proposes a consent system whereby a licence can be sought that will expressly permit an activity.** Some activities – destruction of a site, for example – are unlikely to receive consent other than in exceptional circumstances; excavation licenses will, as now, depend upon plans submitted to the heritage agencies; on other activities, such as survey and recording, or visitor trails, and non-damaging fishery and navigation may be enabled quite routinely. Wherever possible the Government proposes to make use of standardised restrictions, so that sea-users can broadly anticipate what activities are allowed in respect of a specific site.
55. **The Government proposes to underline clearly the types of activity for which consent is not required.** There will be a single consent regime for all designated sites. It is proposed that all those activities that can take place without consent and all those for which consent is required will be highlighted at the time of designation.
56. It is more difficult to monitor and thus enforce regulation under the sea compared to land. However, the Government recognises that great strides have been made in developing effective partnerships between the various users of the sea and sea bed; for example, the development of codes of practice and other initiatives such as Defra's *Marine Stewardship* report, which are aimed at better integration and management of marine activities. It looks to users of the sea and sea bed to further that spirit of co-operation in helping support and uphold the protection afforded to designated sites. Other initiatives in place aimed at developing effective partnerships for monitoring sites include the Maritime and Coastguard Agency and the Nautical Archaeology Society's *Adopt a Wreck* scheme, intended to help divers develop their survey and preservation of wrecks.

*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?*

## Making protection more transparent and removing uncertainty

### Statements of Significance

57. **The Government proposes to produce a 'statement of significance' for each designated site showing the reasons for protection, what is important about the site and indicating, possibly by reference to generic types, the activities for which consent would be needed.**
58. The heritage agencies will prepare statements of importance for each of the sites protected under the *Protection of Wrecks Act 1973* and the *Ancient Monuments and Archaeological Areas Act 1979* and transferred to the new system of protection. These could be prepared from existing data and work could begin as soon as practically possible after implementation of any new system. Where an application to designate a site results in a decision not to do so, then the Government proposes that a similar statement of reasons will support that decision.

59. While statements of significance have the benefit of establishing clearly the reasons for which a site is protected, present knowledge of the marine historic environment is limited and it is likely that future discoveries – as well as the reconsideration of existing knowledge – are likely to change current perceptions of what is important. Significance is not only a matter of knowledge; society's values change over time also. Such value changes may affect which aspects of the past we want to give weight to. For instance, the value of industrial and recent military sites has been 're-discovered', often as the remains of the site were on the point of destruction.
60. Therefore **the Government has proposed that statements of significance be subject to periodic review.** Where a statement is changed, then the list of activities for which consent is required will also be reviewed. Where the review of the statement of significance indicates that the site's importance no longer meets current criteria, then protection will be revoked.

### Site Boundaries

61. In order that people are aware that their activities are affected by historic environment protection and to enable infringements to be readily policed and enforced, the boundaries of protected sites need to be clear and widely known. On land, boundaries can be drawn along features that are visible in the landscape such as footpaths, roads and hedgerows. They can also be marked physically by walls and fences with gates, so that people going in are clearly aware when they are within the area of a protected site.
62. The sea is less amenable to being marked; its surface does not support features that can be mapped and have boundaries drawn around them. Wreck and artefacts can be scattered over a wide area, and can continue to move with the action of the sea. On some sites designated under the *Protection of Wrecks Act 1973*, buoys are used to indicate the approximate position of the restricted area, but they cannot be definitive. Consequently, reliance has to be placed on boundaries drawn against abstract positions given in latitude and longitude, or grid references. Recent advances in position-fixing and mapping technologies mean that most sea-users can be expected to know where they are relative to a specified area to a high level of accuracy.
63. **The Government proposes to continue defining the geographical limits of designated marine sites by distances around a point, by boxes or by other mapped shapes.** Protection will apply to the entire area within the defined limits of the site, not simply to the visible elements of – for example – wreck structure. Sites will be limited in extent so as not to present an unreasonable constraint on sea-use, but will be sufficiently large to cover both known and potential deposits and to facilitate policing. Where a site is defined around a precise point this point need not be centred on the remains whose protection is being sought and the area may be sufficiently large to avoid 'signposting' the remains to those people intending to cause disturbance or damage.
64. The heritage agencies would make information available to sea-users showing the extent of protected areas and giving details of the restrictions applying.

*Q6 Would a requirement for statements of significance for designated historic marine sites help to establish for owners, authorities and sea-users, what was 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?*

## Openness and interim protection

### Consultation

65. Under the *Protection of Wrecks Act 1973* the appropriate Minister is required to consult with ‘such persons as he considers appropriate’ before designating a site. In practice, consultation has largely centred on a non-statutory committee – the Advisory Committee on Historic Wreck Sites (ACHWS) – with further advice from a team of professional archaeologists contracted to provide diving services and, where relevant, other Government bodies.
66. ACHWS, which is UK-wide, has made a valuable contribution over the last 30 years and the Government envisages that its role will continue in relation to the protection of historic wrecks under any new arrangements. Non-wreck sites will continue to be assessed by the heritage agencies. Nevertheless, consultations hitherto have not encompassed all the interests – in particular those of the general public – that may be affected by protection.
67. **The Government proposes to consult more widely when a proposal is made to designate a site.** In particular, owners – where known – will be informed that protection is being considered. This would, where appropriate, include the Crown Estate as the public body in which ownership of the sea bed is vested and the licensing authority for much economic or other activity. Open debate about protection proposals will be encouraged so far as is practical and not prejudicial to the site.
68. While consultation is essential, it takes time. In some instances the threat to a site, which protection is intended to address, may be imminent. By the time that consultation is complete, the site may be lost. Consultation may have the effect of advertising the discovery of a site or alerting people that activities are soon to be restricted, prompting ‘last chance’ visits. The *Protection of Wrecks Act 1973* addresses these possibilities by enabling dispensation with consultation entirely in cases of immediate urgency.
69. **The Government therefore seeks views on providing interim protection for sites for which protection is proposed while a consultation is carried out.** Such protection would be immediate but temporary and so would not constitute a lasting impediment to people’s interests.

*Q7 Who should be consulted when an application is made to designate a marine historic environment site? We have identified finders, 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?*

### Appeals procedure

70. The more open processes described in paragraphs 65–69 above should allow evidence from owners and others to be put forward before the decision to protect is taken. But the Government recognises there will be times when there has been a fault in the process. An appeal system would help maintain confidence in the system and ensure initial decisions are taken in accordance with good regulatory practice. **The Government is considering the introduction of a right of**

**appeal against decisions to protect marine historic assets.** The grounds for appeal would be limited to challenging whether the designating authority had reached its decision through correctly applying the statutory process and criteria and any published policy guidance. Where an appeal was refused, then the reasons for that refusal would be stated.

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

## Ongoing Management of Designated Items

### Owners and those with other interests

71. Where a marine historic site is designated, any restrictions on activities will be warranted by the importance of the site. Those who propose a legitimate economic or other activity will be free to apply for consent to carry out activities that are otherwise prohibited.
72. On land, the owners of historic properties play a key role in the long-term care of the historic environment. Equally, at sea, some owners of wrecks or other stakeholders, such as divers' groups, take a strong and continuing interest in safeguarding the historical importance of their sites. The Government would like such examples to become more widespread, as it regards marine owners as being in the best position to influence how their sites are treated even where other sea-users are free to have access.
73. **The Government proposes to encourage owners and others having an interest in designated marine assets to address the long-term management of sites.** The heritage agencies may be able to support owners and others having an interest who want to encourage compatible public access where feasible and appropriate, to facilitate scholarly investigation, excavation as appropriate and to ensure long-term care of material recovered from the site, but not the carrying out of activities that might cause the site to be disturbed.

*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?*

74. Ownership and related interests will be affected by designation and it is important that those having such interests are aware of its implications. **The Government proposes that the heritage agencies should provide all sea users and interest groups with clear information explaining what designation means and guidance on how to protect and enhance designated sites.**

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

### Management agreements

75. In some instances, owners and others with interests in designated marine sites may wish to manage those sites actively within the context of their more general operations. For example, a

single owner of several designated wreck sites might wish to encourage responsible access by placing moorings each Spring, laying diver trails, clearing fishing nets and other actions that involve a degree of impact for which consent is required. Rather than seeking multiple or repeat consents, it may in some cases be possible to agree an overall management agreement to be undertaken by such persons. The management agreement would specify those activities which did not require consent. This would provide a degree of certainty for such persons over the term of the agreement, removing the need to seek separate consents on each occasion. The heritage agencies would have to be satisfied that such persons had both sufficient control and resources to make such a management agreement effective.

76. **The Government proposes that owners and other interested parties should be able to enter into management agreements with the heritage agencies in respect of designated marine historic asset sites.**

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

#### **Support for owners and other interested parties**

77. Under the *National Heritage Act 1983*, English Heritage is empowered to give advice, carry out or contribute to the cost of research and make grants. Powers relating to expenditure on archaeological investigations, management agreements and grants are provided to the other home country heritage agencies through the *Ancient Monuments and Archaeological Areas Act 1979*. The *National Heritage Act 2002* for the first time made explicit legal provision for public funds to be made available to sites designated under the *Protection of Wrecks Act 1973*. We anticipate that the heritage agencies' powers will be maintained and could be extended in respect of expenditure in any new system.
78. **The Government and the devolved administrations propose that the heritage conservation agencies continue to provide support to owners and other interested parties in addressing the long-term management of designated marine historic assets.** In particular, the agencies will seek to support owners and other interested parties by way of their own grant schemes and by assisting owners in applications to other grant-awarding bodies.

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

## Promoting Access and High Standards

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### Access

79. Historic sites are protected in the public interest. The public are entitled to visit, learn about and enjoy protected sites. Currently, the public has, under the *Ancient Monuments and Archaeological Areas Act 1979*, right of access (which can, however, be restricted) to monuments that are in the care of the national heritage agencies or local authorities. English Heritage has a specific duty to promote the public's enjoyment of monuments under the *National Heritage Act 1983*, as do Historic Scotland and Cadw through their Framework Documents. Divers may apply for licences to visit designated wrecks under the *Protection of Wrecks Act 1973*. Under the Valletta Convention, the UK is required to promote public access to important elements of its archaeological heritage, particularly sites.
80. One of the main outcomes sought from a new approach to the marine heritage would be to enable controls to be targeted on the specific needs of each 'asset'. Hence where marine sites are protected because they are important, but they are sufficiently robust to be dived upon, then public access will be allowed. However, this only addresses access by the relatively small proportion of the public that dive. Physical access by the wider public is made difficult by the environment. It is not within the power of any Government to make underwater sites accessible to every member of the public. However, there is scope to increase 'virtual' access by making information about marine sites more widely available.
81. **It is proposed that the heritage agencies should promote public access to marine historic assets.** Physical access will be encouraged to the extent that it does not impinge unreasonably on condition and continued survival, or interfere with owners' and others' interests.

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

### Historic Environment Records/Sites and Monuments Records

82. Sites and Monument Records contain information on a wide range of archaeological sites, monuments and landscapes of all periods. Many also contain information on historic buildings and settlements. Sites and Monuments Records are maintained and managed by local authorities – and by the four Welsh Archaeological Trusts – as the essential core of wider historic environment services. While they were initially developed to provide advice through the planning system, they are now used extensively for sustainable management of the landscape, in education and outreach and play a key role in social, economic and environmental development, for example, through regeneration initiatives. Throughout the UK the role of the Sites and Monuments Record is being developed; for example, in England and Wales into Historic Environment Records or Services, which include all aspects of our surroundings that have been built, formed or influenced by human activities from earliest to most recent times.

This sort of enhanced record provides access to systematically organised information about these surroundings in a given area. It is maintained and updated for public benefit in accordance with national and international standards and guidance.

83. This sort of enhanced record makes information accessible to all in order to:
- advance knowledge and understanding of the historic environment
  - inform its care and conservation
  - inform public policies and decision-making on land-use planning and management
  - contribute to environmental improvement and economic regeneration
  - contribute to education and social inclusion
  - encourage participation in the exploration, appreciation and enjoyment of the historic environment.
84. Various initiatives exist in the UK to develop benchmarks for good practice, accessibility, interoperability and sustainability. For instance, Defra is co-ordinating through the Government's Marine Stewardship initiative consideration of how a range of marine datasets might be brought together.

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

## Standards

85. Where designated historic ship wrecks are being investigated, explored or recorded, the *Protection of Wrecks Act 1973* requires that the appropriate Minister only grants licences to people who appear to be competent and properly equipped to carry out recovery operations in a manner appropriate to the historical, archaeological or artistic importance of the wreck, or to people who have some other legitimate reason for carrying out otherwise prohibited activities.
86. There have been some exceptional investigations by professionals and by amateurs. Government and the heritage agencies have sought to encourage rising standards through their support in England, Scotland and Wales for the Nautical Archaeology Society's Training Scheme. **It is proposed that the heritage agencies should continue to promote high standards in the investigation and treatment of marine historic assets both in its own activities and in the activities of others that it supports or regulates.**

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

87. Given its wish to encourage broad public access, its commitment to promoting high standards generally and its approach of protecting sites selectively, the Government does not intend to introduce any general restrictions on archaeological activities or of the use of devices capable of detecting marine historic assets. These activities will require consent only where they concern specifically protected sites (see paragraphs 52-56 above).

88. The heritage agencies are, however, seeking the introduction of a Voluntary Code of Conduct for people involved in archaeological activities. The draft Voluntary Code of Conduct applies to archaeological activities underwater as well as to archaeological activities above and below ground. A consultation document on the Code is to be published later this year.
89. As well as people who are directly involved in marine archaeological activities, the Government would like other sea-using groups to develop high standards in their own general activities insofar as they affect the marine historic environment. **The Government therefore proposes to give the heritage agencies a specific role in supporting the development of voluntary codes of practice by sea-using groups.**

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

## Expanding Research and Skills

90. The Government regards publication – made up of both scholarly works and other forms of dissemination, including the use of digital and broadcast media – to be integral to marine archaeological investigation. Publication is central to maintaining the transparency which is essential to achieving high standards of investigation. Publication to a wide audience is also an important means of overcoming the constraints on public access generated by the marine environment. Archiving the results of archaeological investigation to publicly accessible records and depositories secures them for people to re-examine in years – and in generations – to come.
91. Accordingly, **the Government proposes that the heritage agencies and the National Monuments Records should promote publication and archiving of information relating to marine historic assets, both of the results of its own activities and of the activities of others that it supports or regulates.** The National Monuments Records' role in respect of archiving might include taking a co-ordinating role in addressing the conservation and long-term storage needs of material archives.

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

92. *Taking to the Water*<sup>14</sup> noted that the professional framework for marine archaeology – in terms of survey, excavation, site management and finds conservation expertise, is very poorly developed and supported. *Taking to the Water* also acknowledged the central role that 'amateur' archaeologists have in marine archaeology. There is a clear need to expand professional expertise and capacity while also enabling amateurs to undertake work that is rewarding and uses the skills that they bring to the discipline.
93. English Heritage is sponsoring a study of maritime archaeological skills in England to inform the development of a training strategy. The study encompasses both professional archaeologists and 'avocational' (people who are involved in marine archaeology but whose

<sup>14</sup> *Taking to the Water: English Heritage's Initial Policy for the Management of Maritime Archaeology in England* (2002) Paul Roberts and Stephen Trow: English Heritage.

main trade/employment is in another field). A questionnaire has recently been circulated to marine archaeologists – both ‘professional’ and ‘avocational’.

94. As well as the ‘avocational’, recreational divers have made a substantial and welcome contribution to marine archaeology over the years by respecting the sites that they visit and reporting new discoveries. **The Government proposes that all the heritage agencies should build on and support the role of recreational divers in safeguarding marine historic assets.**

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

## Reporting Issues

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### Reporting discoveries

95. When something is found, it is important that the new discovery is brought to the attention of people with the necessary expertise and capacity to ensure appropriate treatment. **The Government is considering an obligation on people who discover marine historic assets to contact an appropriate agency.** The proposal reflects existing statutory obligations to report 'wreck' and 'treasure' and voluntary reporting arrangements such as the Portable Antiquities Scheme .
96. It is important that those with expertise and capacity are made aware of marine historic assets which are undergoing major changes which may affect their future survival and the condition of any other marine historic assets in their vicinity, whether artefacts or landscape. In particular, it is important that disturbance and recovery be reported, as both can have catastrophic consequences. **Hence the Government is also considering that there be an obligation on people who disturb or recover marine historic assets to contact an appropriate agency.** This proposal would apply to marine historic assets whose discovery has already been reported, as well as to new discoveries.
97. However, the Government recognises that it is not always easy to judge whether a discovery is of historic interest or not (see paragraphs 41-42 on the new definition of marine historic assets). The nature of the marine environment also means that artefacts or parts of wreck may be discovered some distance from their original position. Artefacts may have become dislodged from cliffs, and even wreck covered with sediment may become partially exposed and be swept around the sea bed.
98. The role that people can play in reporting discoveries of marine historic assets is very important to increasing our knowledge of the past and to our ability to protect the most important remains. There is already a duty to report all discoveries of 'wreck' which has been recovered to the Receiver of Wreck and that duty will remain.
99. However, the Government does not wish the need to report any marine historic discoveries, disturbance or recovery to be a burden that discourages people from coming forward. Reporting should be simple, straightforward and as satisfying as possible. People need first and foremost to know which agencies they should report to. Those agencies should be encouraged to have a common approach and standard of service so that the member of the public making contact can be sure of being greeted with efficiency, expertise and authority. The relevant agencies should have an agreed means of networking so that standards of service are shared and the resulting information from any discovery is stored and made available through the appropriate archaeological records.

*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?*

100. The Government proposes that at the same time the discoveries of marine historic assets are reported, they would be advertised to enable any owners to come forward while the assets are still on site. Where marine historic assets have been recovered, then provision could be made for them to be held, according to instructions, by the person that has recovered them. Unclaimed marine historic assets would – as for ‘wreck’ at present – vest in the Crown, unless granted elsewhere. The opportunity could be used to clarify the relative responsibilities of finders and owners for the care of marine cultural property while ownership is determined.
101. The reporting of recoveries of historic wreck has, for many years, been administered by the office of Receiver of Wreck, which since the mid-1990s has made very great progress in encouraging people who discover historic assets to behave responsibly. The Receiver has the trust of the various communities with which she deals, and has both infrastructure and experience suited to dealing with issues of ownership. The advances made by the Receiver have been widely welcomed.
102. **The Government proposes that mechanisms relating to the identification of owners and the holding of marine historic assets in satisfactory conditions be administered by an appropriate agency along the lines practised currently by the Receiver of Wreck in respect of historic wreck.**

*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?*

## Salvage Issues

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103. Salvage law is intended to encourage people at sea to help vessels in distress and to save property that would otherwise be lost. Salvors act on behalf of owners, and the law provides incentives and safeguards to make sure that the salvor's actions are rewarded. Prior to the recovery of a wreck, salvors may establish themselves as the 'salvor in possession' of it, in order to protect the wreck site from interference from competing salvors and protect their potential entitlement to a salvage award. The possibility of a salvage award depends on wreck material successfully being recovered from the seabed.
104. The freedom to initiate salvage means that archaeological material can be lawfully recovered when it may be more appropriate for it to be preserved in situ. It can also result in museums being faced with offers of archaeological material which they lack the resources to conserve and curate. Material held in private hands can also suffer from the same problem. Those wishing to study collections in the future might find that they are widely dispersed and their locations unrecorded.
105. Neither the need to avoid unnecessarily disturbing archaeological sites or the suggested provision of interim protection discussed in paras 68–69 above, fit easily with the present concept of 'salvor in possession' and the approach of salvage law in general which operates with a view to giving a salvor possessory rights and encouraging the successful recovery of a ship wreck using the incentive of the salvage award.
106. The tension which exists between salvage and historic shipwrecks has been recognised for some time. Indeed the *Protection of Wrecks Act 1973* was originally introduced as a temporary measure to offer a degree of control but it did not address all the underlying issues. In the light of the large and growing public interest in preserving the nation's cultural heritage the Government now wishes to address the tension which exists between salvage and historic shipwrecks.

*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 award? What are the advantages and disadvantages of excepting marine historic assets from the law of salvage, taking into account the other measures proposed here?*

## Overall Resource Impact on Proposals

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This consultation paper forms part of a wider review of heritage protection legislation and focuses on marine and maritime issues. Although it is currently too early to determine the overall resource impact of the suggestions in this paper, we expect this consultation exercise to provide further evidence to inform the preparation of a full Regulatory Impact Assessment (RIA).

The aim of this exercise is the same as that of the wider review, i.e. to provide:

- a positive approach to managing the marine historic environment, which will be transparent, inclusive, effective and sustainable and central to social, environmental and economic agendas at a local as well as national level; and
- a legislative framework that protects the marine historic environment but enables appropriate management techniques to be applied and to evolve.

The DCMS has prepared a partial Regulatory Impact Assessment to accompany this consultation paper. The partial RIA identifies the potential costs and benefits relating to the issues raised in this document and can be found on the DCMS website (<http://www.culture.gov.uk>).

The suggestions aired in this paper are intended to open the prospect of developing a more up to date, flexible approach to designation and the management of change to protected sites, to better integration with other marine activities, to remove confusion about which legal rules should be applied to specific finds and to bring clarity to procedures following the discovery of significant remains. The paper simultaneously recognises that the sea is a rich resource for economic, scientific and recreational purposes, and that it is likely that the use we make of the sea will grow heavier and more complex as our technologies and the needs of society develop. It is therefore timely to begin to develop an approach to designation that is fit for the 21st century and enables us to continue to do so while preserving our marine heritage for future generations.

We would welcome further information which the Government can use in developing the comprehensive Regulatory Impact Assessment. It would be helpful to have access to both quantitative and qualitative information for this purpose. Where monetary costs and benefits are suggested, please indicate briefly the basis on which they have been calculated. We would particularly welcome information relating the impact that these proposals could have on small and larger businesses, charities and the voluntary sector.

The main areas on which the Government would welcome information on likely costs and benefits are the suggestions in the paper that:

- a statutory definition of ‘marine historic assets’ be drawn up that includes all elements of the marine historic environment;
- that all marine historic assets be subject to some general rules regarding reporting, initial treatment and ownership, but that ‘protection’ be applied only to specific sites that are sufficiently significant to warrant restrictions on activity;
- that there should be wider consultation when a proposal is made to protect a site. This could involve interim protection of the site while consultation is carried out;

- that statutory responsibility (subject to safeguards) for designating marine historic assets be given to English Heritage (these powers are already held by the other home country heritage agencies and the National Assembly for Wales);
- that a 'statement of significance' be drawn up for each designated site showing the reasons for protection, what is important about the site and indicating, possibly by reference to generic types, the activities for which consent would be needed;
- that the introduction of a right of appeal against a decision to protect a marine historic asset be considered;
- that heritage agencies should provide all sea users and interest groups with clear information explaining what designation means, guidance on how to protect and enhance sites, and continue to provide support to owners and other interested parties in addressing the long-term management of protected assets;
- that owners and other interested parties should be able to enter into management agreements with the heritage agencies in respect of protected marine historic assets;
- that the heritage agencies and the National Monuments Records for the home countries should promote publication and archiving of information relating to marine historic assets;
- that the heritage agencies should promote public access to marine historic assets.

## How to Respond

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Responses in the form of answers to the questions on pages 36 and 37 of this document, should be sent to [mhe@culture.gsi.gov.uk](mailto:mhe@culture.gsi.gov.uk), or to Eve Trueman of the Department of Culture, Media and Sport at 2-4 Cockspur Street, London SW1Y 5DH by 30 June 2004. Copies of all responses will be sent to all the heritage agencies.

This paper can also be accessed at the DCMS website (<http://www.culture.gov.uk>), via which responses can also be sent. The document can also be downloaded from the Historic Scotland (<http://www.historic-scotland.gov.uk>), Cadw (<http://www.cadw.wales.gov.uk>) and Department of the Environment in Northern Ireland (<http://www.doeni.gov.uk>) websites.

We aim to respond to all contributions acknowledging receipt. If you do not receive a response within fifteen working days, please call us on 020 7211 2357 to check that your contribution has been received. Unless a respondent requests otherwise, all responses will be available for public scrutiny.

## Summary of Suggestions for Change

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### General approach

- Seek the closest practical integration of marine and terrestrial historic environment protection (*paragraph 29*), but to maintain a regulatory system that is UK wide and takes account of the special nature of the marine environment.
- Marine historic assets to be subject to some general rules regarding reporting, initial treatment and ownership, but ‘protection’ will only be applied to specific sites that are sufficiently important to warrant restrictions on activity (*paragraph 34*).

### Marine historic assets

- Introduce a statutory definition of ‘marine historic asset’ that encompasses all types of physical trace of the marine historic environment (*paragraph 41*).

## A new unified designation for marine heritage assets

### Approach

- Include in a new designation all elements of the marine historic environment, including those covered by the *Protection of Wrecks Act 1973* and the *Ancient Monuments and Archaeological Areas Act 1979* (*paragraph 42*).
- Continue to use the *Protection of Military Remains Act 1986* to protect military remains, but where military remains may have a historic significance, then the Ministry of Defence will agree with the heritage agencies on a case-by-case basis the most effective way of protecting the asset. (*paragraph 47*).

### Who should be responsible for national designation

- Responsibility for administering the new designation would remain with Historic Scotland, Cadw and DoENI, and would be given to English Heritage in England, subject to four safeguards (*paragraphs 48-49*).

### Criteria and discretion

- Publish criteria that marine cultural heritage sites will need to satisfy in order to be designated (*paragraph 50-51*).

### Management and control for protected sites

- Introduce a single consent regime for all protected maritime sites, applicable to activities that are otherwise prohibited. A licence can be sought that will expressly permit an activity (*paragraph 54-55*).
- Use of standardised restrictions, so that sea-users can broadly anticipate what activities are allowed (*paragraph 54*).

## Statements of significance

- The heritage agencies to provide a ‘statement of significance’ for each protected site showing the reasons for protection, what is important about the site and indicating the activities for which consent would be needed (*paragraph 57*).
- Statements of significance to be subject to periodic review. Revoke protection where the review indicates that the site’s importance no longer meets current criteria (*paragraph 60*).

## Site boundaries

- Continue to define the geographical limits of protected sites by distances around a point, boxes or other mapped shape (*paragraph 63*).
- Provide clear geographical information concerning protected areas and restrictions on activities to mariners in an appropriate format (*paragraph 64*).

## Openness and interim protection

### Consultation

- Introduce a formal requirement for wider consultation when a proposal is made to protect a site (*paragraph 67*).
- Consider a form of interim protection for sites for which protection is proposed during the period in which people are being informed and consulted (*paragraph 68-69*).

### Appeals procedure

- Introduce a right of appeal against decisions to protect marine historic assets (*paragraph 70*).

## Ownership and ongoing management for items on the List

### Owners and those with other interests

- Encourage owners and others having interests in marine historic assets that are designated to address the long-term management of sites (*paragraph 73*).
- Provide owners and other interests with clear information explaining what protection means and guidance on how to protect and enhance sites (*paragraph 74*).

### Management agreements

- Owners and other interested parties to be able to enter into management agreements with the heritage agencies in respect of designated marine historic asset sites (*paragraph 76*).

### Support for Owners

The heritage agencies to provide advice to owners and other interests in addressing the long-term management of marine historic sites (*paragraph 78*).

## Promoting Access and High Standards

### Access

- Promote public access to marine historic assets, to the extent that such access does not impinge unreasonably on continued survival and condition, or interfere with owners and others' interests (*paragraph 81*).

### Standards

- The heritage agencies should continue to promote high standards in the investigation and treatment of marine historic assets (*paragraph 86*).
- Support the development of voluntary codes of practice by sea-using groups (*paragraph 89*).

### Expanding Research and Skills

- The heritage agencies to promote publication and archiving of marine historic assets (*paragraph 91*).
- Build on and support the role of recreational divers in safeguarding marine historic assets (*paragraph 94*).

## Ownership

### Reporting Finds

- Consideration of an introduction of an obligation on people who discover, disturb or recover marine historic assets to contact an appropriate agency (*paragraph 95-96*).

### Identifying Owners

- Introduce a mechanism for identifying owners of marine historic assets and for resolving issues of ownership that may arise along the lines of the Receiver of Wreck's office (*paragraph 102*).

## List of Questions for Consultation

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- Q1 What could be encompassed by the term 'marine historic environment'.*
- 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?*
- 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?*
- 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?*
- 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?*
- 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?*
- 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?*
- 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?*
- 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?*
- Q10 What information would be most useful to owners and those with other interests?*
- Q11 In what circumstances would management agreements be most useful?*
- Q12 What support could usefully be given to owners and other interested parties?*
- Q13 How should the heritage agencies seek to encourage public access, both physical and virtual, to marine historic assets?*

- Q14 What measures should be introduced to improve the overall accessibility and consistency of marine historic asset records in the UK?*
- Q15 What range of measures do you think the heritage agencies could take to promote 'high standards'?*
- Q16 What should be the scope of voluntary codes of practice?*
- Q17 How should the heritage agencies and National Monuments Records for the home countries seek to promote publication and archiving of marine historic assets?*
- Q18 How could heritage agencies build upon and support the role of professional and avocational marine archaeologists and recreational divers?*
- 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?*
- 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?*
- 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?*

## Code of Practice for Consultation

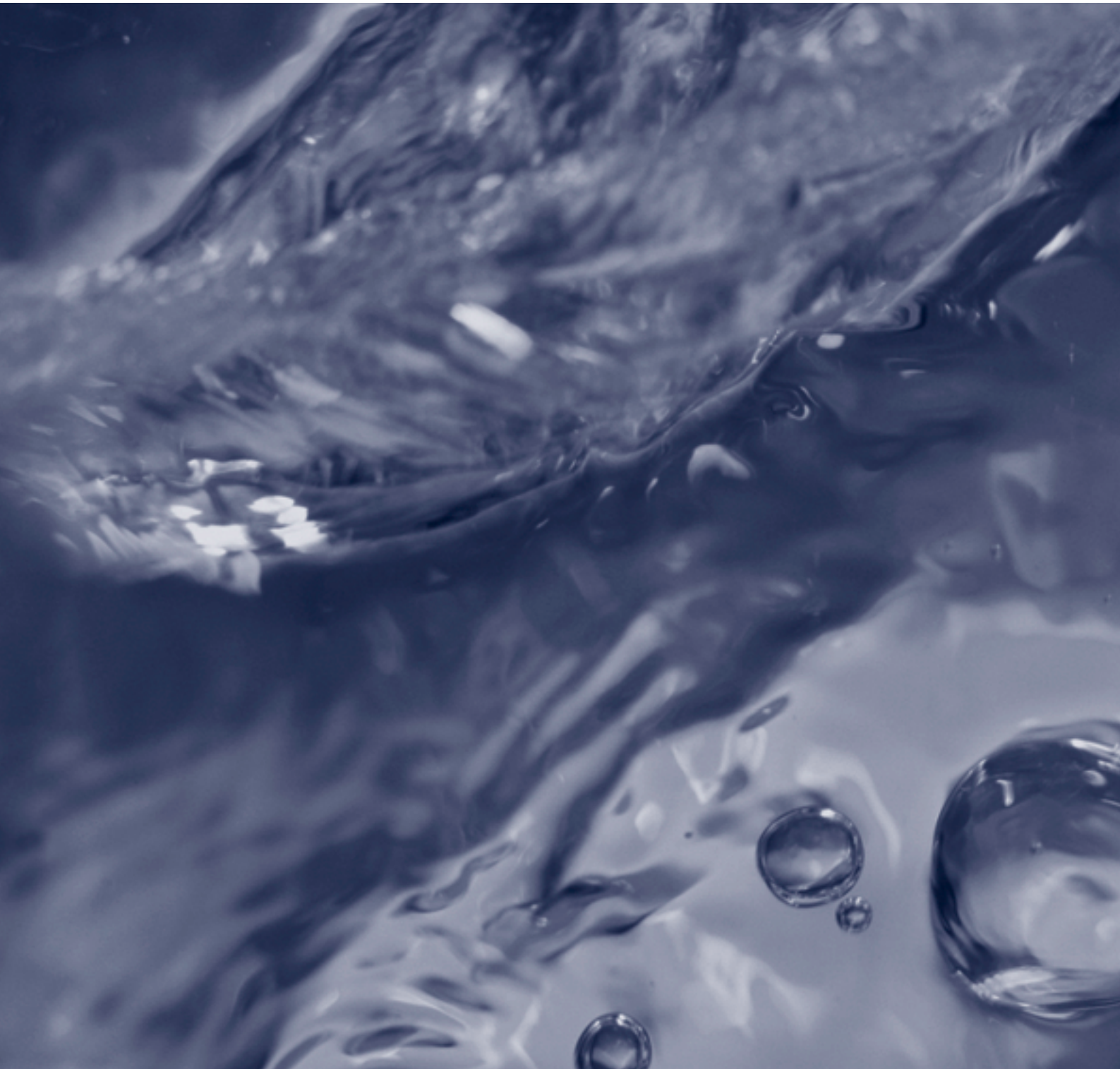
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This consultation is being carried out in accordance with the Government's Code of Practice for written consultation, available on the Cabinet Office website. It meets the following criteria in the Code:

1. Timing of consultation should be built into the planning process for a policy (including legislation) or serve from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage.
2. It should be clear who is being consulted, about what questions, in what timescale and for what purpose.
3. A consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain.
4. Documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others), and effectively drawn to the attention of all interested groups and individuals.
5. Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation.
6. Responses should be carefully and open-mindedly analysed, and the results made widely available, with an account of the views expressed, and reason for decisions finally taken.
7. Departments should monitor and evaluate consultations, designating a consultation coordinator who will ensure the lessons are disseminated.







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