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# Developing marine historic environment management policy: The English Heritage experience

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## ABSTRACT

This paper provides an opportunity to examine the involvement of English Heritage in the development of policy and practice with particular regard to how archaeology and features of historic interest are addressed under national legislation, international conventions and EU law. In this paper we provide an explanation of action taken to support conservation, understanding and enjoyment of the historic environment, such as those sites that are legally protected as historic shipwreck sites, and other features that comprise the historic environment, but which are recognised and protected through other legal mechanisms e.g., military vessels and aeroplanes. It is apparent to us that when considering the management agenda for the marine environment attention is also given to archaeological material that predates tidal inundation, as well as the subsequent legacy of maritime activities. To support this approach we examine how the historic environment is defined and included in objectives, policy and law, such as the Marine and Coastal Access Act 2009, as well as other European or international programmes to promote marine policy and spatial planning. In the years since the National Heritage Act 2002, and the empowerment of English Heritage to support marine projects, we assess the production of explanatory statements and guidance to inform protection in recognition of how change may affect historic environment features. In addition, it is apparent that extensive development is now taking place further offshore (e.g., renewable power projects) and we direct attention at how English Heritage's role is affected by legally defined maritime territorial limits that dictate interpretation of what the marine environment comprises and how such limits influence regulatory controls placed on the management of cultural heritage.

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## 1. Introduction

The management of the historic environment depends on sound principles, clear policies based on those principles, and the quality of the decisions that flow from the policies. It is therefore important to explain the role played by English Heritage as the Government's advisor on all aspects of the historic environment in England. The organisation's general powers under section 33 of the National Heritage Act 1983 were amended by the National Heritage Act 2002 to include the preservation of monuments in, on, or under the seabed, within the English area of the UK Territorial Sea (to 12 nautical miles offshore). English Heritage operates as an Executive Non-Departmental Public Body sponsored by the Department for Culture, Media and Sport reporting to Parliament through the Secretary of State for Culture, Media and Sport (DCMS).

With the introduction of the National Heritage Act In 2002, English Heritage published *Taking to the water: An Interim Policy for the Management of Maritime Archaeology in England* [1], which set out how the organisation intended to deliver its new responsibilities through a professional framework designed to encompass avocational involvement in the management of England's underwater cultural heritage. In subsequent years English Heritage has published a sequence of thematic position statements directed at key sectors, such as *Wind Energy and the Historic Environment* [2]; *Ports: the impact of development on the Maritime Historic Environment* [3]; *Regeneration in Historic Coastal Towns* [4]; and *The European Landscape Convention: English Heritage Action Plan for Implementation* [5].

This paper will describe the role of English Heritage and the work carried out to develop marine historic environment management policy with particular reference to the obligations under English and UK legislation and the formulation and development of our policies since 2002. Attention will also be given to how international conventions and EU law affect English Heritage's work, the various interpretations of what the marine environment comprises and the implications of the Marine and Coastal Access Act 2009 for management of marine cultural heritage.

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## 2. Conservation principles

English Heritage's *Conservation Principles, Policies and Guidance* [6] sets out an approach for the sustainable management of the historic environment; these policies are intended to promote consistency across our decision-making, with the ultimate objective of creating a management regime for all aspects of the historic environment that is clear and transparent in its purpose and sustainable in its application. As such, “conservation” is taken to be the process of managing change in ways that will best sustain the values of the historic environment in its contexts, and which recognises opportunities to reveal and reinforce those values. *Conservation Principles* are applicable to all parties with coastal and marine responsibilities including partnership work with central government departments, local authorities, voluntary bodies and the private sector. The key principles can be summarised as follows:

- the historic environment is a shared resource;
- everyone should be able to participate in sustaining the historic environment;
- understanding the significance of places is vital;
- significant places should be managed to sustain their values;
- decisions about change must be reasonable, transparent and consistent; and
- documenting and learning from decisions is essential.

## 3. The historic environment

Central to the application of the *Conservation Principles* is an understanding of what comprises the historic environment. From the marine perspective, English Heritage considers the historic environment to include submerged (and often buried) prehistoric landscape areas and elements, together with archaeological sites and remains of coastal activities (e.g., fish traps) dating from all eras of history, wrecks of boats and ships and inclusive of historic aircraft losses at sea.

With respect to shipwrecks, in March 2012 there were 46 sites designated for historic and archaeological importance within the English area of the UK Territorial Sea; this total includes possible prehistoric seafaring craft with associated cargoes through to prototype submarines. The number of designated historic shipwrecks—when expressed as a proportion of known losses—is very small, and these designated sites are one component of English Heritage's interests in promoting the understanding, management and public enjoyment of the historic environment. To put the designated sites in context, English Heritage's National Heritage List for England (the national public archive for the historic environment) contains over 46,000 records for the English area of the UK Territorial Sea. However, this record comprises disparate sources of information including: seabed obstructions; fishing hazards; and named locations which correspond to sea areas within which both vessels and aircraft were reported lost (e.g., Lyme Bay off Dorset). From this large number of records 5200 shipwreck sites are identified, with most of these records occurring from the 18th century onwards reflecting more accurate record keeping as required by shipping insurance and other changes in legislation that defined and required the reporting of ‘wreck’.<sup>2</sup>

The remains of more recent non-vessel casualties (such as lost Second World War vehicles and aircraft) are of undoubted historic interest because of the incidents which generated the sites, but

they are not eligible for protection under the Protection of Wrecks Act 1973. Similarly, former military vessels that are now under the curation of private organisations or museums, such as HMS *Trincmalee* (launched 1817) and Motor Torpedo Boat (MTB) 71 (built 1942), lie outside of statutory protection. English Heritage can, and does, take a proactive role in the management of sites, subject to limited powers, duties, and budgets. However, the remains of military warships and submarines, located in UK Territorial Waters, and other vessels in military service when lost (such as the merchant ship *SS Storra*), can be protected under the Protection of Military Remains Act 1986; such vessels are managed either proactively or reactively under this Act to prevent unauthorised interference by designating the site as either a ‘protected place’ of a ‘controlled site’. ‘Protected place’ status is automatically afforded to any crashed military aircraft (on land or at sea) or for specific military vessels, of any nationality, if located within UK Territorial Waters; the management of these sites allows public access, but without disturbance. In contrast, all access to ‘controlled sites’ is subject to licence granted by Ministry of Defence and by convention these sites are often designated because of considerable loss of life. It is also possible for ‘protected place’ status to be afforded to British military vessels lost beyond UK waters, such as a number of British warships lost in the Battle of Jutland (1916).

The 1986 Act sets out particular criteria, such that ‘protected place’ status may only be afforded to named vessels lost after the start of World War I (4 August 1914), even if the actual location of loss is not known. For ‘controlled sites’ the loss must have occurred within 200 years. However, the 1986 Act does not operate in isolation and it possible for military sites to merit protection through heritage legislation although policy and practice has not yet produced sites designated under both legislation mechanisms. Although with time increasing since the start of the First World War, it is evitable that categories of military heritage assets will merit protection as a component part of the historic environment.

## 4. Historic shipwreck policy

The first legal mechanism to be introduced that enabled specific protection to be afforded to shipwrecks of historic and archaeological importance was the Protection of Wrecks Act 1973, which was originally introduced as a Private Member's Bill following a number of instances of damaging salvage operations [7]. To support delivery of section 1 of the 1973 Act, as relevant to England, English Heritage established the Historic Wrecks Panel in 2011 to replace the former UK Advisory Committee for Historic Wreck Sites. The Historic Wrecks Panel reviews the evidence base prepared by English Heritage for historic shipwreck sites proposed for designation, including the spatial extent of the protected area around the wreck which could encompass archaeological material, the status of existing designated sites and the granting licences for access within the designated area<sup>3</sup> to conduct archaeological projects. The fact that access to these sites is controlled by a licensing system allows for a protected marine area to be established and should prevent other activities that might impact or interfere with the historic shipwreck within a defined area. Due to the highly protected nature of these sites the authority to designate and award licences (informed by the advice prepared

<sup>2</sup> The legal requirement to report ‘wreck’ is presently set out in the Merchant Shipping Act 1995.

<sup>3</sup> Section 1 (Historic Shipwrecks) allows for an area to be designated that effectively encloses the wreck site and its associated debris field, to date the designated area has varied from 50 m to 300 m in radius. Section 2 of the 1973 Act is discharged by the Maritime and Coastguard Agency and allows for the designation of wrecked vessels that are deemed dangerous by virtue of their contents.

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