

(DRAFT)

**Response from the Maritime Affairs Group of the Institute of Field
Archaeology to the Draft Heritage Protection Bill**

IFA Maritime Affairs Group

The Institute of Field Archaeologists (IFA) is the professional body for archaeologists. It promotes best practice in archaeology and has c 2,200 members across the UK and abroad. Archaeologists who are members of the IFA work in all branches of the discipline: heritage management, excavation, finds and environmental study, buildings recording, underwater and aerial archaeology, museums, conservation, survey, research and development, teaching, and liaison with the community, industry and the commercial and financial sectors.

This response has been compiled by the IFA's Maritime Affairs Group, to which most professional maritime archaeologists belong. The Group exists to:

- advance the practice of maritime archaeology by promoting professional standards for the management, conservation, understanding and enjoyment of the maritime archaeological resource;*
- provide advice and commentary to the IFA on matters relating to maritime archaeology;*
- aid in the development of professional guidelines and standards for the execution of maritime archaeological work;*
- promote the training of archaeologists and others in maritime archaeological practice; and,*
- facilitate the exchange of information and ideas about maritime archaeological and to communicate these to the wider profession.*

General Comments

IFA MAG has from the outset of the Heritage Protection Review process strongly supported its stated goals of clarity and parity in our Heritage Protection legislation. As such, we welcome the clear acknowledgment in the Draft Heritage Protection Bill of the importance of marine heritage assets, the commitment to integration in the management of marine and terrestrial heritage assets, and in particular their inclusion on the same heritage register. IFA MAG also welcomes many specific details of the draft Bill, such as the potential to register non-wreck marine heritage assets and resolution of the long-standing issue of provision for geophysical marine survey on designated sites under the Protection of Wrecks Act 1973 (PWA 1973).

However, IFA MAG is concerned that whilst issues of principle are clear in the parts of the draft Bill referring to terrestrial elements of the historic environment (HE), several such issues remain unresolved for the marine historic environment (MHE). Whilst there are specific matters of detail both positive and negative that IFA MAG would like to raise, our ***primary concerns*** remain questions of:

1. Who will take responsibility for development and management of Historic Environment Records in the marine zone?

2. Why does the responsibility in England for designation of marine heritage assets remain with the Secretary of State and DCMS when the responsibility had been devolved to EH for terrestrial heritage assets?
3. Are palaeo-environmental sites or the submerged remains of prehistoric landscapes registerable as marine heritage assets under the Draft Bill?
4. Where is the scope to formalise levels of importance of heritage assets in the new register system?
5. How will the question of commercial salvage of historic vessels be resolved by the Draft Bill?
6. With the repeal of the PWA 1973, what new provision is there to cover vessels currently protected under section two of the 1973 act which addresses dangerous vessels, such as the SS Richard Montgomery?
7. How will enforcement be implemented? Who will be responsible for (and resourced to) police and enforce the licensing conditions at sea?
8. How will the increased registration, designation, licensing and management of marine heritage assets be resourced?

If Government is going to realise clarity and parity in this Heritage Protection legislation, then these issues, which have been consistently raised during the consultation process, must be addressed.

Specific Comments:

A. Designation and Licensing

- IFA MAG welcomes the clear commitment to immediate and emergency designation of heritage assets in the MHE, as well as new provision for designation of non-wreck marine heritage assets. However, we have some concerns about whether palaeo-environmental sites would be registerable as marine heritage assets under Clauses 46 and 47 of the draft Bill. Since the definition still remains artefact or point based, will those areas sites, particularly those of early prehistoric sites characterised by examples at Bouldnor Cliff in the Solent and in Brown Bay on the north-east coast, be included? Although this may only be required in a few cases, without being certain of the capacity to register and designate, there is a danger that several sites of international significance could not be included (and hence we would not be fulfilling our duty under the Valetta Convention).
- The resolution of the problem of provision for geophysical survey of designated sites in the MHE under PWA 1973 is an equally positive step, (though there are may need to be further clarification in the implementation stage over which survey equipment requires licence: is it necessary for hull-mounted multibeam or fish-finding equipment, or does it refer to towed equipment in particular?).
- There is a lack of clarity surrounding who will grant licences in English waters. Clauses 188(2), 192(1) and 194(1) do not elucidate on when or why the Secretary of State might take up the role of granting licences.
- It has been suggested that the 'new' system does not seem so new for the MHE. In particular, this remains a problem regarding the issues relating to commercial salvage of historic vessels. This issue is of equal concern to the commercial

salvage sector, which seeks clarification of the current situation in the Heritage Protection system. The most significant problem for MHE in this regard, are the few cases of destructive commercial salvage operations being undertaken, under the current system, on un-designated and often recently identified wreck. The new duty imposed on the Receiver of Wreck (Note 280) does not satisfy this problem. The phrase 'duty to pass on any information she *considers* relevant in relation to the protection of marine assets' is problematic. This lack of resolution is also reflected in references to 'the salvor in possession of the marine asset' (Clause 198(5b)), and to potential licensees being 'competent, and properly equipped, to carry out diving or *salvage* operations' (Clause 196(5a)). This and similar references are of considerable concern to IFA MAG.

- In relation to this, there are implementation concerns about the 'Certificate of No intention to Register' (Clause 74). This element appears to be part of the terrestrial system mapped onto the MHE. Given the existing 'commercial in confidence' system that has constrained the ability of the Receiver of Wreck to report sites of potential heritage importance in the past, and the window that has provided for salvage operation on historic vessels, of the kind that compromised and dispersed material from the *Rooswijk*, is this appropriate for the MHE? Will the onus be placed on the applicant to prove the validity of the application, or will that additional burden be placed on EH?
- There is also a need for clarification over the position, and if necessary the continued resourcing, of the Advisory Committee on Historic Wreck Sites (ACHWS). Although there is no mention of a role for ACHWS in the draft Bill, once EH has assumed responsibilities for the licensing (as well as management) of heritage assets in English waters and the Welsh Ministers in Welsh waters, they are included in the 'Projected Costs for the new Marine Licensing Process' in Annex E of the Impact Assessment.
- The repeal of the PWA 1973 has significant implications for the Marine and Coastguard Agency's (MCA) responsibilities for dangerous vessels. This SS *Richard Montgomery*, for example, which lies across Medway Approach Channel, in the Thames Estuary with c.1400tons of explosives still onboard, is currently managed under section 2 of the Act.

B. Overlap with other legislation

- Since designation of historic vessels by the Ministry of Defence under The Protection of Military Remains Act 1986 will continue, what provision for consultation, and integration in terms of management and enforcement will be made?
- IFA MAG have concerns about the lack of integration between the Draft Heritage Protection Bill and the Draft Marine Bill. The Draft Marine Bill, for example, includes an integrated approach to fisheries, nature conservation and licencing enforcement, and there appears to be a missed opportunity to realise cost/efficiency benefits by linking MHE enforcement with this system. Since the question of who will be responsible for enforcement under the Draft Heritage Bill, the police, the MCA, or EH, remains unanswered.

C. Impact Assessment

- The low number of future marine designations predicted in the Impact Assessment seems to infer that the current situation will continue. However, it is worth noting that the current low number of marine designations reflects the inadequacies of the present system. Reporting of sites remains low, since the current system is perceived as un-inclusive and obstructive to work under, whilst the process of designation is seen as inefficient and closed. As a result, if a site is not under direct and immediate threat it is unlikely to be put forward for designation. With implementation of the new, more open system, the number of registered and designated sites will increase significantly, and as a result the Impact Assessment underestimates the resource and management costs significantly.
- A direct consequence of this, the predicted additional costs to EH outlined in the Impact Assessment seem significantly underestimated. IFA MAG have concerns about the additional cost/resource burden will be resolved, and in particular over the increased resources needed for post-registration/designation of these sites. There is a very large gap here.