

**Shared Heritage: Joint Responsibilities in the
Management of British Warship Wrecks Overseas**



International Seminar

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ENGLISH HERITAGE

Frontispiece illustration: Engraving of the sinking of HMS Guardian- published Dec 24th 1791, J & W Stratford, Holborn Hill- collection of John Gribble.

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'Shared Heritage: Joint Responsibilities in the Management of British Warship Wrecks overseas'

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EDITOR'S PREFACE

This is a collection of papers that were given at a seminar at the University of Wolverhampton on 8 July 2008, organised by **Michael Williams** of the School of Legal Studies and English Heritage. The importance of the topics discussed was emphasised by the attendance of delegates from North and South America, Europe and Australia. Archaeologists, lawyers, representatives of recreational diving groups and government departments listened to the invited speakers and joined in the discussions.

The promotional material for the Seminar emphasised the wealth of wreck of British ships, both war and merchant, in the World's oceans, The United Kingdom has, whilst asserting sovereign immunity for the wrecks of its warships, acknowledged that these wrecks may also comprise the underwater cultural heritage of other Sovereign States when they lie in their littoral waters.

The papers given at the Seminar consider case studies of cooperation between the United Kingdom and other sovereign states in the preservation and study of British wrecks, and examples of best practice in achieving the delicate balance between access for archaeologists and recreational divers to the underwater cultural heritage and the damage that can be caused by this access. Many of the papers exemplify the value recreational divers may have in discovering, documenting and preserving underwater cultural heritage.

In her introduction to the seminar **Barbara Woroncow** OBE, Conference Chair and then Deputy Chair of the UK National Commission for UNESCO Culture Committee, reminds all present of the human tragedy involved in wreck.

Dolores Elkin of CONICET (National Research Council) and the National Institute of Anthropology of Argentina discusses the development of national legal protection of underwater cultural heritage and the development of maritime archaeology in Argentina because of the HMS *Swift* archaeological project. The paper also considers international cooperation involved in protecting the underwater cultural heritage citing several examples of the positive bilateral relationship between Argentina and the UK, especially in relation to the treatment of the human remains found in the site.

Mark Staniforth of Flinders University, South Australia, discusses four case studies related to late eighteenth and nineteenth century Royal Navy vessels and associated underwater cultural heritage material located within the Australian jurisdiction.

John Gribble of Wessex Archaeology considers the wrecks of two British warships in South African waters, HMS *Sybil* (1901) and HMS *Birkenhead* (1852), discussing the question of shared heritage and the status of warships and other sovereign vessels in foreign waters.

Della A. Scott-Ireton of the Florida Public Archaeology Network discusses the many maritime archaeological remains which are scattered around Florida's shores, describing British shipwrecks in Florida waters, some of which have been archaeologically investigated and some of which have been ravaged by treasure hunters. The State of Florida's strategies for managing these shipwrecks for the public benefit is explored, including innovative educational and heritage tourism programs.

Thijs J. Maarleveld, Professor of Maritime Archaeology, University of Southern Denmark, in a paper entitled 'International Good Practice or a few comments upon them' asks a series of questions about heritage, management and good practice.

Mark Dunkley and **Ian Oxley**, of English Heritage, discuss the work of English heritage in the management and conservation of the underwater cultural heritage, particularly military remains. The paper also discusses balancing access to these sites with conservation and developing awareness programmes to achieve this.

The final paper is that of **Chris Underwood**, of the National Institute of Anthropology in Argentina. This paper entitled 'Public Archaeology' discusses the challenges for archaeology of the increased public interest and involvement in the discipline, including managing the impact on sites, and maintaining archaeological standards, as well as balancing public involvement with academic and scientific pursuits.

The importance and fragility of the underwater cultural heritage is such that international cooperation in its management must be encouraged. Advances in technology have increased in line with interest in underwater cultural heritage thus there is a need to include educational and awareness programmes in management plans. The papers in this collection give examples of the damage that can be done to the underwater cultural heritage when there is no management or mismanagement of sites and also consider some notable successes in international cooperation to protect the underwater cultural heritage.

The editor would like to thank the authors and English Heritage for their kind cooperation in this project and especially Michael Williams without whom the Seminar would not have occurred.

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Shared Heritage: Conference Introduction

My introductory remarks, it should be made clear, are not made from the perspective of a specialist in underwater archaeology or maritime law, although I do confess that I am a long-lapsed archaeologist. However, I do have a family connection with the subject of this conference – British warship wrecks - albeit ones that are more modern than most of the vessels with which the conference participants are involved.

Following his release from a Siberian forced labour camp after Russia entered the Second World War on the side of the allies, my grandfather Jan Kwapinski was on his way to join the Polish government-in-exile in London as Minister of Trade and Shipping. From Murmansk in northern Russia, he joined one of the British Royal Navy convoys.

Unfortunately, the light cruiser on which he sailed was the H.M.S. Edinburgh which was torpedoed on 30th April 1942, some 200 miles from the Norwegian coast. Most of the crew and passengers on board survived and were taken the 400 miles back to Murmansk to start their journey again. The H.M.S. Edinburgh had been carrying gold bullion and the later recovery of part of its cargo in the early 1980s generated considerable media attention, not least because of protests at the disturbance of an official war grave.

I sometimes think that my grandfather was like a cat with nine lives because the second ship from Murmansk on which he found himself was the H.M.S. Trinidad, also a Royal Navy light cruiser, which was bombed and torpedoed before being scuttled on 15th May 1942. In this instance, there was considerable loss of life, not only of naval crew (many of whom had been rescued from previously sunk warships) but also of a smaller contingent of Poles, Czechs and other nationalities who were being taken to the relative safety of Britain. Finally, having been rescued and landed in Iceland, my grandfather eventually made it to this country on a third ship, the H.M.S. Somali.

I often reflect that, although these warship wrecks are UK war graves, they are also a small part of the history of some of the other nations which were catapulted into the global conflict of World War II.

During the very interesting pre-conference public lecture given by Dr Elkins on the excavation of the 18th century British warship H.M.S. Swift in Patagonia, I was very struck by her comment during the discussion that the ship is “far from being an icon in our culture.” This is precisely one of the key dilemmas and contradictions which this conference aimed to explore. How do we move from issues of sovereignty and cultural appropriation to a truly shared heritage where various public, national and international interests can be balanced? How can we achieve consensus and practical action to manage these important cultural assets which, in some cases, are also of considerable spiritual significance?

Barbara Woroncow OBE, Conference Chair and then Deputy Chair of the UK National Commission for UNESCO Culture Committee

CASE STUDY: HMS SWIFT – ARGENTINA

Dolores Elkin- CONICET (National Research Council) and National Institute of Anthropology, Argentina

ABSTRACT

This contribution provides an overview of the HMS *Swift* archaeological project, which deals with a British sloop of war which sank off Patagonia in 1770 and is conducted by the underwater archaeology team of a federal Argentinean government agency, the National Institute of Anthropology. Special consideration is given to the role of this archaeological site in the legal protection of the underwater cultural heritage and the development of maritime archaeology in Argentina. The paper also includes several examples of the positive bilateral relationship between Argentina and the UK, especially in relation to the treatment of the human remains found in the site.

Keywords: HMS *Swift*, Argentina, maritime archaeology, human remains

INTRODUCTION

HMS *Swift* was a British sloop of war built at John Greave's dockyard in Limehouse in 1762 and launched the following year. By the end of that decade it was sent off on two occasions to the base of Port Egmont, in the South Atlantic Falklands/Malvinas Islands. Although the Seven Years war was over by then and the *Swift* was not meant to engage in a military conflict, the geopolitical atmosphere was one of sovereignty disputes over the archipelago between France, England and Spain. According to the available historical documentation (ADM, 5304; Gower, 1803) her mission was to conduct as many geographical surveys as the weather conditions allowed. It was in this context that the *Swift* left Port Egmont in early March 1770 but severe weather conditions and strong gales eventually led the vessel towards the continental shore of Patagonia, some 370 nautical miles from Port Egmont.

Different historical sources coincide in stating that, given the circumstances, it was decided to enter into the estuary of Deseado (Desire in English) to seek shelter and allow the crew to recover, but in this process, and always pushed by the wind, the vessel hit two submerged rocks, the last one resulting in the loss of the ship and three of her crew.

A diary with a detailed account of the loss of the *Swift*, including a quite precise indication of the location of the wrecksite, was published in London some time later by the first lieutenant of the ship, Erasmus Gower (Gower, 1803). None the less, the first initiative to find the wreck did not take place until nearly two centuries later, when an Australian Army officer called Patrick Gower, descendant of Erasmus Gower, travelled to the town of Puerto Deseado carrying a copy of Erasmus' diary to find out whether he could learn more about the wreck of the HMS *Swift*. To his surprise, nobody in the town knew about it, but the seed was sewn among a group of local people interested in diving and in maritime history.

After a systematic search based on Gower's diary, the remains of HMS *Swift* were discovered in 1982.

The following sections will present different aspects of the significance of the HMS *Swift* project, including its role in the process of legal protection of historic shipwrecks in Argentina, its influence in development of underwater archaeology at a national and regional level, and the increasing application of the concept of shared heritage between Argentina and the UK.

THE LEGAL PROTECTION OF HISTORIC SHIPWRECKS IN ARGENTINA

By the time the *Swift* was searched for and subsequently discovered the legal protection of the archaeological heritage in Argentina was restricted to land, prehistoric sites (National Law 9080, passed in year 1913).

Notably, the search for the *Swift* set a non-legal precedent towards the protection of historic vessels since the divers informally agreed that if the HMS *Swift* was ever discovered there would not be any commercial exploitation of the wreck and all the artifacts would remain in the town of Puerto Deseado. Surely because of this agreement, shortly after the *Swift* was discovered a decree was passed and it stated that the ship's remains were Historical Heritage of the Province of Santa Cruz. Moreover, a museum was specially created to host the HMS *Swift* archaeological collection (Figure 1).





Figure 1 (This page and previous): The Mario Brozoski Museum, specially created in 1983 to host the archaeological collection of the HMS *Swift* site, and one of the artefact display cases (Photo: Chris Underwood).

Although the HMS *Swift* was a single wrecksite, its designation as historical heritage must have been a significant enough case, given that when two attempts at commercial exploitation of historic shipwrecks took place in the 1990's (based on the criteria of commercial salvage), both legal court resolutions which followed them were in favor of the State.

By 1998 a systematic excavation of the HMS *Swift* site had begun under the scientific direction of this author and conducted by a team from the National Institute of Anthropology. This federal government agency, which is part of the Ministry of Culture, periodically provides technical advice in heritage legal matters. In due time, when the increasingly obsolete National Law 9080 was about to be replaced by new legislation, a considerable degree of effort was put into promoting the inclusion of submerged historical sites within the concept of archaeological heritage. This was successfully achieved in 2003, when the National Law 25743 on Archaeological and Paleontological Heritage was passed, which defined that all cultural remains submerged for over 100 years, including shipwrecks, were to be considered Archaeological Heritage.

The consistency of the National Law 25743 with the UNESCO Convention on the Protection of Underwater Cultural Heritage (UNESCO, 2001) may be related to the fact that by then Argentina had voted in favour of such convention. *

* Ratification is still pending.

THE ARCHAEOLOGICAL RESEARCH PROJECT

As stated above the Argentinean National Institute of Anthropology became responsible for the study of the *Swift* site in the late 1990's. This became the first underwater archaeology project to be conducted in the country, and one of the first in South America under the direction of a trained archaeologist.

The original research design (Elkin, 1997) proposed that several topics were to be addressed. One of the initial ones had to do with the *Swift's* role within the geopolitical context of the late 18th century, and several years were devoted to the compilation of

historical documents in archives in the UK and to identify the sense of Britishness in different Royal Navy vessels sent to distant colonies and settlements at that time (Dellino-Musgrave, 2007). The topics, which are still being addressed, comprise site formation processes, technological progress of the time and the relationship between artefacts and social status within the crew, ship construction features, and several aspects of life on board such as those related to food and drink. The site is outstandingly well preserved, and a great variety of ceramic, glass, stone, wooden and metallic artefacts, together with other types of evidence, contribute to the study of all the research strands just listed. The results of this ongoing work have been periodically published, (Bastida et al, 2004, 2008; Dellino-Musgrave, 2007; Elkin, 2002, 2003 and 2008; Elkin et al, 2000, 2001 and 2007, Murray et al, 2002-2003, among others) and will be briefly summarized below.

Site formation processes

The understanding of how an archaeological site varies through time (in this case, since the moment the *Swift* sank in 1770 until nowadays) allows the refining of the interpretation of what is found and may even predict future changes.

In the case of the *Swift*, the research includes the monitoring and study of different marine organisms which have colonised the site and which “interact” with the archaeological remains in various manners. For instance, the kelp *Macrocystis pyrifera*, combined with the strong tidal currents which occur in the area, can produce severe mechanical damage to the exposed timbers of the ship’s structure. Other agents like woodborers have attacked the structure and artefacts made not just of soft wood but of hard wood as well (Bastida et al, 2004, 2008; Grosso, 2008). Such situation influences the criteria for excavation and conservation, since the best possible protection of wooden remains has become the priority.

Contemporary technologies and the relationship between material culture and status

One of the research themes within the HMS *Swift* project is the analyses of the artifacts associated with the officers and the ordinary seamen of the *Swift*. In general terms, this is based on the hypothesis that the higher quality items will be associated with the officers and the lower quality ones with the ordinary seamen. The high quality artifacts are also expected to be an indicator of the technological progress which characterized the European region in the 18th century.

Most of the artefacts -especially the ceramic tableware- found in the officers’ quarters show a good quality manufacturing technique, and they include stoneware, refined earthenware and porcelain (Figure 2).



Figure 2: Examples of tableware pieces made of stoneware (a), refined earthenware (b) and porcelain (c) recovered from the HMS Swift site (Photos: Underwater Archaeology Programme, National Institute of Anthropology, Argentina).

Most of these pieces are, as expected, of English origin. In some cases the similarities in manufacture techniques and decoration motifs with some pieces found in the Staffordshire potteries by David Barker suggest that they might have been made in the same factory (Barker, pers. comm.).

Other items owned or used by the officers have shown a poorer manufacturing technique than was expected (Ciarlo, pers. comm; Grosso, pers.comm).

Future excavations in other parts of the ship are expected to yield artefacts used by the ordinary seamen on board, and in that way it will be possible to make comparisons between them and the ones associated with the officers and address this research line in more detail. In this sense a variable, which should be taken into account at some point, is which of the items were likely to be personal belongings, such as the officers' tableware, and which were supplied by the Navy, such as some furniture pieces which clearly display the Admiralty's broad arrow.

Ship construction

Regarding the study of the ship construction, as soon as the original ship's plans were obtained it was noticed that one of them showed the vessel with two masts (NMM 3642) and the other one indicated it was a three-masted one (NMM 3606 A). Consequently, one of the first issues to address during the survey of the ship's structure was to establish whether, at least at the moment of sinking, the vessel had two or three masts. Luckily, in the context of one of the initial surveys it was possible to identify the remains of the mizzen mast –broken at the step, which thus confirmed the existence of three masts by the time the *Swift* left England for his final journey. A question which remains to be clarified is whether the *Swift* was originally built with two masts and then modified, or whether it never had two masts other than on the drawing table. A combination of archival and archaeological research will hopefully provide the answer in the future. Nonetheless, it is worth stating that some structural modifications have already been identified on the deck and rigging layout, as well as in the sternpost (Elkin et al, 2007; Murray et al, 2003). It is possible that these changes were made with the purpose of adapting the vessel to the last missions it performed, such as transoceanic sailing. As the excavation of the ship continues to progress and larger areas of the deck are uncovered, it is expected to find more modifications such as an enlargement of the internal space of the ship occupied by ordinary seamen, since the original design of the ship assigns a reduced space for them (NMM 3606A).

Eating and drinking on board

Some of the archaeological evidence found in the *Swift* has begun to shed light on the topic of food and drink. Many items such as spirits, bread, beef, pork, peas, oatmeal, butter, cheese, flour, suet, raisins, oatmeal, stockfish, oil and vinegar were commonly supplied by the Victualling Board at that time, and some of them are even mentioned for the *Swift* in different contexts prior to its final voyage (ADM 110/24; ADM 111/65; ADM 1-1789; ADM 30/44; ADM 52/1463). Although the galley of the ship has not been excavated yet, various condiments and other botanical remains have been found in other sectors such as the officers quarters. The species identified to date include white mustard (*Brassica aff alba*), two species of pepper (*Piper nigrum* and *Pimenta officinalis*), nutmeg (*Myristica fragrans*), raisins (*Vitis vinifera*) and squash (*Cucurbita* sp.) (Museo Argentino de Ciencias Naturales, 1983; Rodríguez, 2002; Picca, pers. comm.). A few animal bones were also found in the site,

and the identifications conducted to date correspond to a middle-sized mammal, possibly pork (*Sus* sp.). Perhaps the most interesting food category found in the *Swift* are pieces of eggshell of King penguin (*Aptenodytes patagonicus*) (Frere, pers. comm.). This shows how local resources were used to complement the provisions supplied by the Admiralty's Victualling Board (Elkin, 2008).

As regards drink on board, chemical analyses of the content of different types of bottles, which were found with the cork stopper in place, were performed. One of the cylindrical 'wine' bottles contained a type of sweet, sherry-type white wine (Dirección Nacional de Química, 1982). The content of the 'gin' bottles was found to be highly contaminated with seawater, but a gas liquid chromatography revealed that some ethanol still remained in the samples (UDV Laboratory, 2001).

One current research topic which was unforeseen is the study of human remains, and given its peculiar nature and the various extra-archaeological implications it generated, it will be addressed separately within the next section.

Back to general considerations of the HMS *Swift* research project, it is finally worth mentioning that, partly because of the unusually good preservation of the site and partly because of its pioneering role in the field of underwater archaeology in the region, it also became attractive internationally. Students from Uruguay, Chile and Mexico began to acquire training in the field, and experienced archaeologists from Canada, the Netherlands, the USA and the UK provided valuable collaboration. The interaction with British organisations and individuals will now be described in more detail.

A SHARED HERITAGE BETWEEN UK AND ARGENTINA

The relationship between the *Swift* project and the UK is obviously rooted in the origin of the vessel. Shortly after the first artefacts were extracted from the ship—even before the archaeologists from the National Institute of Anthropology team became involved in the project—contact was made with British institutions such as the National Maritime Museum in Greenwich and the Museum of London. A fruitful outcome of this was the acquisition of the decks and the sheer and profile plan of the vessel (NMM 3642 and 3606 respectively) and the first morphological and cultural classification of some ceramic artefacts.

When the Institute of Anthropology team started their research, the bilateral relationship became stronger. In 2000 contact was made with the British Embassy in Buenos Aires, and a collaborative agreement was proposed. As a result, the embassy sponsored a trip for conservator Glenn Mc Connachie, a highly experienced professional from the Mary Rose Trust in England, to participate in the first excavation field season at the *Swift* site. Although the *Swift* Project has always had its own conservator appointed by the Brozoski Museum of Puerto Deseado (Conservator Alberto Orsetti), Mc Connachie's presence was very useful in terms of sharing his expertise on the Mary Rose materials, advising on laboratory equipment and consumables, and giving public and specialised talks both in Puerto Deseado and in Buenos Aires.

By the same time that the British Embassy financed Mc Connachie's trip to Argentina, the England-based NGO The Magic Penny Trust also contributed to the HMS *Swift* Project by providing some financial support for it.

From the point of view of the historical and archaeological research, the UK certainly offered the richest potential in terms of archival documentation, comparable artefact collections, professional expertise in British historical and maritime archaeology, and bibliography. One of the first steps in the *Swift* project research, then, was to begin a systematic compilation and analyses of the historical documents which could provide insight into the ship and its crew, and also into more contextual matters such as the politics of the Royal Navy at the time. With joint financial support from the Argentinean Fundación Antorchas and National Research Council (CONICET) together with the British Embassy and British Council, an Argentinean graduate student who was part of the HMS *Swift* research team completed her Masters and PhD studies at the University of Southampton (Dellino 2000 and 2004 and Dellino-Musgrave 2007).

At the same time, further correspondence began to be maintained between various researchers from the HMS *Swift* project and overseas colleagues -from the UK and other places, for instance Australia- regarding topics such as 18th century ship construction technologies, English pottery, and the oriental porcelain trade.

Gradually the *Swift* project became more known internationally, due to the growing number of publications and participation in specialised meetings. Presentations of the *Swift* project at the Argentinean Embassy in London, at the Nautical Archaeology Society Annual Conference in Portsmouth, and at a Society for Historical Archaeology Meeting in York are some examples which took place between 2003 and 2005. Funding was provided by different sources including Argentinean and British organisations.

In 2005 a group of volunteers from the NAS sponsored a short, non-intrusive, field season at the *Swift* site and participated in various tasks aside from the underwater survey. One of the NAS team members took the opportunity to do some post-field research work at the headquarters of the National Institute of Anthropology in Buenos Aires.

As the head of research within the HMS *Swift* Project, this author has also visited various UK-based museums such as the *Victoria and Albert*, the *Mary Rose*, the *Royal Marines*, *The Potteries*, and the *Museum of London*, always interacting with specialists in different topics.

Very recently a significant landmark took place, which was a 4 week-long internship for the conservator of the National Institute of Anthropology at the Mary Rose Trust. This stay was sponsored jointly by UNESCO-ICUCH and by the Mary Rose Trust itself, thus contributing to the development of expertise in the conservation of waterlogged materials in Argentina, a discipline where more trained people are urgently needed. Hopefully this will eventually benefit not just the *Swift* Project but also others.

The special case of the human remains

In November 2005, during the excavation of the captain's cabin at the stern of the ship, an unexpected find took place: a leather shoe with (human) foot bones inside, adjacent to the

corresponding leg bones, suggesting that an entire skeleton might be lying under the sediment. The reason why the find was unexpected was because, according to historical documents, only three men perished when the ship went down, and one of them was buried in the shore. The other two, whose bodies were never found, were two private marines named Robert Rusker, aged 21, and John Ballard, aged 23, (ADM 33-688; ADM 5304; Gower 1803). The archaeological team presumed their bodies were washed away after the sinking and no provisions were made in that sense. Suddenly the body of John Ballard or of Robert Rusker seemed to have been found after nearly 240 years missing.

Given the nature of the archaeological discovery, the first decision made was to stop the excavation in that sector covering it with sandbags to prevent further disturbance until the news were reported to the Argentinean authorities and the British Embassy and an agreement was reached regarding how to proceed. Also, although the fact that human remains were found could not be kept secret, an internal agreement of the research and conservation team was to keep a relatively low profile with the press and to prevent the publication of images of the bones and the shoe which were found. The newspaper news in those days (e.g. Guajardo, 2005) respected such criteria.

The archaeological excavation during that season therefore continued in the adjacent excavation unit from where the human remains were found, and, once in Buenos Aires, personal meetings were held at the British Embassy, specifically with the Naval Attaché at that time, Captain Christopher Hylton.

After the Embassy got in touch with other entities in the UK, primarily the Joint Casualty and Compassionate Centre of the MOD's Service Personnel and Veterans Agency, and after the archaeological research team expressed the desire to be able to continue with the excavation and study of the bones for some time, it was jointly agreed to continue the excavation and investigation of the human remains for a period of around ten months and then bury them at the British Cemetery in Argentina. The interment of the private marine from the *Swift* (Figure 3) took place on March 3rd 2007 in the context of a very special ceremony (Underwood, 2007). This included the presence of British Ambassador and Naval Attaché, representatives from the Argentinean Navy, the director of the Argentinean Institute of Anthropology, the Mayor and the Mario Brozoski Museum director from Puerto Deseado, as well as the archaeological research team and the person who found the HMS *Swift* site back in 1982. Some selected media covered the ceremony and presented the news to the public in a respectful manner.



Figure 3: Funeral of the private marine found at the HMS Swift site (Photo: Alejandro Balbiano).

The studies conducted with the skeleton prior to the burial established that the person was a young male of about 25 years old, a bone age estimation which could correspond to either of the two private marines. The person was 1,67m tall and probably right-handed. He had a general good bone health, although his teeth had abundant calculus and a few cavities (Barrientos et al 2007).

Samples were also taken from the bones in view of genetic studies which, if successful, would help to establish whether the person found in the *Swift* was Robert Rusker or John Ballard. The first step for that, which is the extraction of DNA from the archaeological bones, was done in 2008 by Chilean specialist from Universidad de Chile Mauricio Moraga (Moraga, pers. comm.). What follows now is the labyrinthine process of conducting genealogical studies in the UK with the goal of finding descendants either of Rusker or of Ballard, obtaining DNA from such person/s, and comparing that DNA with the archaeological DNA samples.

The final studies which will be done with the bone samples taken from the skeleton found in the *Swift* consist of diet reconstruction through the analyses of Carbon and Nitrogen isotopes, in order to compare the results with was the standard diet on board the *Swift* and other vessels of the time (ADM 111/65).

In the context of the concept of shared heritage discussed in this conference, it is certainly worth remarking the fact that the finding of human remains in the *Swift* generated, for the first time since the ship had been found, joint decision making with UK authorities. This level of cooperation, which took into account the respectful treatment of human remains and the interest of bodies from the flag state and the coastal state, can be considered very good examples of some of the recommendations indicated in the UNESCO Convention on Underwater Cultural Heritage 2001 (see, for example, Articles 2 and 19).

IN SUM, WHO SHARES THE *SWIFT*?

The obvious answer to the question of who shares the HMS *Swift* as their underwater cultural heritage is, along the lines of the UNESCO Convention (2001), Argentina and the UK. Although much more could have been and still can be done regarding such sharing, which in practical terms means caring about and preserving such heritage, these two states have shown a quite exemplary relationship regarding the HMS *Swift*. They deserve considerable credit given that neither has ratified the UNESCO Convention, that the *Swift* was a warship, that it turned out to have human remains in it, and that certain political matters between Argentina and the UK (specifically, the sovereignty dispute over the Malvinas/Falklands archipelago) has not been settled yet.

At the end of the day, what the flag and coastal states need are actual stakeholders who, as said before, take the sharing theory into the caring and preserving practice.

In the case of the *Swift* the main stakeholders in Argentina are the museum in Puerto Deseado, the National Institute of Anthropology Underwater Archaeology team, the local divers and other people who launched the *Swift* project in the early 1980's and somehow continue to be involved in its development, all the Argentinean organisations which have been funding and supporting the project for more than 25 years, and all the individual people who have been contributing to it with their time, their knowledge and many other valuable resources.

In the UK several organisations and individuals already mentioned in previous sections have also demonstrated that they care about the *Swift*, and the list is growing. All of them are certainly sharing the cultural heritage represented by the *Swift* with their Argentinean partners.

But Argentina and the UK are not the only sources of interest in the HMS *Swift*. Mr. Patrice Decenci re and family in France and Mr. Patrick Gower in Australia are the respective descendants of the ship's Captain and Lieutenant. As such, they could possibly be justified to claim title to items (such as the officer's personal tableware) that belonged to their predecessors. However, they have not done so and, furthermore, they have taken every opportunity to support, assist and contribute to the development of the HMS *Swift* Project in Argentina. As the archaeological research continues, more people related to the 1770 HMS *Swift* crew may be located in different parts of the world and should have a say in this heritage.

Finally, the international archaeology and cultural heritage community is showing increasing interest and providing support to the HMS *Swift* project. The recent funding given by UNESCO/ICUCH for the internship of a conservator at the Mary Rose Trust is a very good indicator.

In short, there is no doubt that the HMS *Swift* is shared heritage and hopefully it can serve as an inspiration to other historical shipwrecks.

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AUSTRALIAN APPROACHES TO SHARED HERITAGE: ROYAL NAVY VESSELS IN AUSTRALIAN WATERS

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SUMMARY

This paper considers four case studies related to late eighteenth and nineteenth century Royal Navy vessels and associated underwater cultural heritage material located within Australian jurisdiction. The first considers some of the material left on a reef-top in the Great Barrier Reef after HMB *Endeavour* ran aground in 1770. The second looks at the site of HMS *Sirius* (1790), the flagship of the First Fleet, which is located in shallow water off one of Australia's territories – Norfolk Island. The third examines the archaeological investigations of the frigate HMS *Pandora* (1791), a site forever linked in the popular imagination to the mutiny on the *Bounty*. The final case study is one of future possibility which currently has no physical reality – the possibility of locating the remains of HMS *Sappho* (1858).

Keywords: Royal Navy, Shipwrecks, Australia, Legislation, Shared Heritage

INTRODUCTION

This paper considers four case studies related to late eighteenth and nineteenth century Royal Navy vessels and associated underwater cultural heritage material located within Australian jurisdiction. The first considers some of the material left on a reef-top in the Great Barrier Reef after HMB *Endeavour* ran aground in 1770. The second looks at the site of HMS *Sirius* (1790), the flagship of the First Fleet, which is located in shallow water off one of Australia's territories – Norfolk Island. The third examines the archaeological investigations of the frigate HMS *Pandora* (1791), a site forever linked in the popular imagination to the mutiny on the *Bounty*. The final case study is one of future possibility which currently has no physical actuality – the possibility of locating the remains of HMS *Sappho* (1858).

These four case studies represent slightly less than half of the nine Royal Navy wrecks or artefact assemblages (termed relics under Australian legislation) from Royal Navy vessels that are known to lie, or once lay, in Australian waters. The other five are the two wrecks of HMS *Porpoise* and HMS *Cato* located at Porpoise Cay in the Great Barrier Reef, Queensland; the two anchors lost, and yet to be located, from HMS *Beagle* in the Northern Territory; two anchors lost from HMS *Investigator* near Esperance in Western Australia, which have been recovered and are now on display at museums in Western Australia and South Australia and finally some material from HMS *Success* that was jettisoned after that

vessel stranded on Carnac Reef in Western Australia, which was recovered and is now on display at the WA Maritime Museum.

In the 1960s and 1970s Australia was a world leader in introducing legislation for the protection of historic shipwrecks. The state of Western Australia had first introduced legislation designed to protect shipwrecks in 1964 with the *Museum Act Amendment Act 1964* and followed this with the *Maritime Archaeology Act 1973*. In 1976 a successful High Court challenge to the Western Australian legislation on jurisdictional grounds suggested that Federal legislation was required for the protection of cultural heritage sites within the territorial seas and further offshore. As a result the Australian Federal Government (the Commonwealth of Australia) enacted the *Historic Shipwrecks Act 1976* which initially only automatically applied to waters in the Australian territories including the Northern Territory and Norfolk Island. Over the next six years, all six Australian states requested that the provisions of the Act be applied to the waters off their particular state, with the last being Tasmania in 1982 (Jeffery, 2006). As a result of amendments to the legislation in the early 1990s the *Historic Shipwrecks Act 1976* now provides legislative protection to all shipwrecks (but not other kinds of underwater cultural heritage such as aircraft) which sank more than 75 years ago (a rolling date) and that are located in the territorial seas, contiguous zone and Exclusive Economic Zone (EEZ) from the High Water Mark (HWM) out to 200 nautical miles offshore. There is similar state legislation which covers historic shipwrecks in state internal waters such as rivers, lakes and certain bays as well as cultural heritage material from shipwrecks found above the High Water Mark.

According to the Australian Federal Government, historic shipwrecks are protected by the *Historic Shipwrecks Act* whether or not their precise location is known and regardless of their ownership status. Should any shipwreck or article associated with a shipwreck be discovered, the Act requires that the find be reported to the appropriate authorities. It is an offence to destroy, damage, cause interference with or the disposal of a historic shipwreck or relic, or cause a historic shipwreck or relic to be removed without a permit issued under the Act. A small number of highly significant or fragile historic shipwrecks lie within protected zones with a maximum area of 200 hectares and it is an offence to enter a protected zone without a permit. As a result most, if not all, of whatever remains of the nine examples of Royal Navy shipwrecks and artifact assemblages (relics) are fully protected by Australian legislation and, presumably, are in very little danger of being disturbed, looted or destroyed without an archaeological permitting process being implemented prior to that disturbance.

Legislation is only as good as the administration system(s) established to deal with the public education and enforcement issues that arise from that legislation. To a large extent the Federal government has delegated responsibility for the day-to-day activities associated with historic shipwrecks to an agency in each state called a “delegated authority”.

At the federal level over the past thirty years there has been a procession of different versions of the same basic government department responsible for historic shipwrecks

starting with the Department of Home Affairs (DHA) and running through a number of other incarnations with acronyms including DEHA, DAS, DASETT, DEWR, DEH and DEHWR. There have been regular changes of personnel who, until recently, often had no background in, or knowledge of, the subject area. If the administration has been variable then the funding has been very consistently limited. If one had to characterise Australian federal government priority towards historic shipwrecks it has been low, lower or lowest

The Australian Federal government department, in whatever incarnation, has always provided the principal contact point for bilateral negotiations and agreements between the Australian and British governments with regard to Royal Navy vessels since 1976. In the context of this paper it is known that notification was given to the British government and Royal Navy before the excavations of HMS *Sirius* in the 1980s and HMS *Pandora*, primarily in the 1990s. Furthermore there is an existing agreement between Australia and Britain, signed in 1981, allowing for the progressive transfer of ownership to Australia of relics retrieved from HMS *Pandora*. Under this agreement, lists of retrieved relics are provided to the British Government, which then formally agrees to the transfer of ownership of the listed artefacts to Australia.

HMB ENDEAVOUR (1770)

In 1768 the British government, at the request of the Royal Society, sent Lieutenant James Cook, in command of His Majesty's Bark *Endeavour*, on an expedition to Tahiti to observe a transit of Venus across the sun. This was Cook's first voyage into the Pacific Ocean and after completing the primary task on 3 June 1769, *Endeavour* circumnavigated New Zealand and Cook explored the east coast of New Holland, which would later become known as Australia. On the evening of 10 June 1770 HMB *Endeavour* ran ashore on part of the Great Barrier Reef, south-east of what is now Cooktown in Queensland. In an effort to float the vessel off the reef, Cook eventually ordered approximately 40 to 50 tons of material to be thrown overboard into shallow water, including six of the vessel's 10 four-pounder cannons, a bower anchor, stores, water casks and a substantial quantity of stone and iron ballast. Cook and his crew then managed to haul *Endeavour* off the reef using windlass and anchors. They subsequently beached *Endeavour* on the Australian mainland, at what would later be called Endeavour River, where the vessel was repaired and later successfully sailed away (Beaglehole, 1968: 344-49; Callegari, 1994:10-17; Hooker, 1896:274-80; Parkin, 1997:299-323; Parkinson, 1972). As a result the material left on the reef-top in this case came not from a shipwreck but from a stranding site.

There were occasional, but unsuccessful, searches to locate the material from HMB *Endeavour* in the late nineteenth and into the twentieth century. Interestingly an expedition in 1886, organised by the Working Men's Progress Association of Cooktown, managed to obtain a letter from the Earl of Granville, the British government's secretary of state for the colonies, which agreed to the transfer of the guns thrown overboard from the *Endeavour* to the government of Queensland "if they can be recovered" (Callegari, 1994:18). In 1962 the

New England University Explorations Society also requested that the British government waive any rights to the *Endeavour* material, which was again agreed to, but the material in question was still not found (Callegari, 1994:19). The lead-up to the bicentenary year of the *Endeavour* voyage in 1970 saw increased interest in Cook's voyage and the *Endeavour* material with several unsuccessful search expeditions in 1966 & 1968 (Callegari, 1994:18-20).

Then in January 1969, Dr. James C. Tyler, curator in the Ichthyology Department at the Academy of Natural Sciences in Philadelphia, USA led an expedition to the Great Barrier Reef, sponsored by Dr Virgil Kaufman and General Alfred L. "Abby" Wolf. In addition to the fish collected during that trip, the *Endeavour* stranding site was found using a magnetometer designed by geophysicist Dr Virgil Kauffman (Callegari, 1994:22-32). The six cannon and some of the iron ballast were freed from the coral using explosives and subsequently were sent to the Defence Standards Laboratory (now part of DSTO – the Defence Science and Technology Organisation) for conservation treatment (Callegari, 1994:33-53). A subsequent expedition by a group of Australian divers using a magnetometer, located and then raised the bower anchor in December 1971. The anchor was also sent to the DSL where it was conserved and, after some years on display in Melbourne, was relocated to Cooktown in 1980 to join one of the *Endeavour* cannon at the James Cook Historical Museum (Callegari, 1994:80-84; Knuckey, 1988).

The question of "ownership" of the cannon was considered by the Australian Federal Government's Attorney-General's Department in 1970 which, quite rightly, concluded that the British Government owned the cannon. Fortunately an informal approach to the British Government had already extracted an agreement to abandon these rights in favor of the Australian Government. Nevertheless there were many pressing claims and requests from organizations, governments and places to have one of the cannon. In the end, five of the six *Endeavour* cannons were given by the Australian Federal Government in a ceremony held in Canberra on 17 March 1970 to organizations or governments in New South Wales, Queensland, New Zealand, the UK and the USA (Callegari, 1994:69-71). As a result, the *Endeavour* cannon are now on display in four different countries at six separate locations in London, Wellington, Philadelphia, Cooktown, Sydney and Canberra (pers.comm. Hetherington, M., 12 Nov 2008). There are three cannon located in Australia. One was given to the NSW Government and is displayed at Captain Cook's landing site at Kurnell south of Sydney. A second cannon was presented to the Queensland Government and is on loan to the Queensland National Trust and held at the James Cook Historical Museum in Cooktown, Queensland. The third and final Australian cannon forms a part of the National Historical Collection of the National Museum of Australia (NMA) and, after having spent some years on display at the Australian National Maritime Museum in Sydney, will be on display in the Australian Journey's Gallery at NMA in Canberra from 2009. There are three cannon that are now located outside Australia. The Academy of Natural Sciences in Philadelphia, USA has one cannon which is on display on the second floor outside the library. The Te Papa/National Museum of New Zealand in Wellington, New Zealand has a

second cannon and the National Maritime Museum in Greenwich has the third (Callegari, 1994:69-71).

There is no question that the exploration voyage of James Cook in HMB *Endeavour* is of considerable, to some extent shared significance in the recorded history of a number of countries, not least of which are Australia, New Zealand and the UK. The Australian Federal Government considers the *Endeavour* material to be of great significance due to its association with Australian exploration. Furthermore it can probably be argued that the events of this particular voyage were of global significance in terms of European expansion into the Pacific Ocean region. Nevertheless the precise significance of any particular Royal Navy 4-pounder cannon, outside its particular historical associations, is somewhat more difficult to argue.

Unfortunately before 1976, no effective national, or state, legislation or administrative organisations in Australia existed that would allow for direct government control of, or even involvement in, any investigation of significant archaeological heritage material such as these six *Endeavour* cannon. Furthermore there were no trained, experienced or qualified maritime archaeologists working in Australia in the late 1960s and the first to be employed was Jeremy Green by the Western Australian Museum in 1971. As a result there were two major issues that arose. The first was that the salvage, and raising, of the *Endeavour* material was not conducted in what today would be considered a proper archaeological manner and therefore the methods employed and some of the record keeping were not as good as we might like. The second was that it was difficult to acknowledge any other countries interest(s) in the material except by simply handing over a cannon, which is exactly what the Australian Federal Government did with five of the six cannon. Interestingly the Australian National Maritime Museum is proposing to undertake maritime archaeological fieldwork on the *Endeavour* stranding site in 2009, one suspects, at least in part, to locate and perhaps excavate some of the smaller items that were not recovered from the site during the rushed salvage work in 1969-1970 (pers. comm. K. Hosty) Overall the case of the *Endeavour* material was one of the reasons why the Australian Federal Government enacted the *Historic Shipwrecks Act* some years later in 1976.

HMS SIRIUS (1790)

After the loss of the American colonies, Britain decided to establish a penal colony at Botany Bay under the leadership of Captain Arthur Phillip. As a result, the First Fleet of 11 ships left Portsmouth in 1787 with more than 1480 men, women and children onboard and in January 1788 the First Fleet arrived in Botany Bay. The flagship, and largest, Royal Navy vessel to accompany the First Fleet was HMS *Sirius* which had been built at Rotherhithe on the River Thames in 1781 as the Baltic trader *Berwick*. The vessel was purchased by the Royal Navy and later commissioned as a sixth rate and renamed *Sirius*. As well as being the flagship of the First Fleet, from 1788 onwards HMS *Sirius* also took on the role as the principal naval defence vessel for the new colony at Port Jackson (later Sydney) and as one means of communication with the outside world. In

1790 HMS *Sirius* together with HMS *Supply* made a voyage to Norfolk Island to transport convicts and Royal Marines to that island in order to establish a colony there and hopefully start growing food both for themselves and the Port Jackson colony. For HMS *Sirius* the voyage ended in disaster with the ship being driven backwards onto the reef near the new settlement of Kingston (Hunter, 1793; Bradley, 1969).

During the 1980s with funding from the Australian Bicentennial Authority (ABA), sponsorship from private companies and support from a number of museums and government agencies three seasons of archaeological fieldwork were conducted on the HMS *Sirius* site in 1985, 1987 and 1988. These expeditions were led by Graeme Henderson of the WA Maritime Museum and included a team of about 12 professional maritime archaeologists and avocational volunteers (Henderson and Stanbury, 1988; Stanbury, 1991; Stanbury, 1994). A fourth expedition took place in 2002 (Erskine, 2002). Although the approximate position of the wreck had always been known, there had been no accurate survey work done to evaluate or record the extent of the archaeological material. The site is located in very shallow water which is regularly subjected to very heavy wave action and most of the artefacts have been located in gullies and holes in the limestone reef flat. Furthermore, very little work had been done to catalogue the artefacts believed to be from HMS *Sirius* held in the Norfolk Island museums or by Island residents. The four expeditions and a program of artifact conservation and cataloguing carried out over the last twenty years has been largely funded with grants from the Australian Federal Government's Historic Shipwrecks Program. This work has provided accurate survey data as well as raising and conserving hundreds of small artefacts. The resulting archaeological assemblage contains a wide variety of material from a small copper coin to large anchors. The archaeological assemblage consists of material primarily associated with:

- the structure of the ship, its fastenings and fittings
- the equipment and personal belongings relating to the crew and passengers.

The wreck of HMS *Sirius* was a very significant event in Australian history generally and specifically in the history of Norfolk Island. The connections to the events of the First Fleet and British convict settlement of Australia make the site of enormous importance to all Australians. If you consider the analogy with the United States it would be like finding the archaeological remains of the *Mayflower* or Christopher Columbus' *Santa Maria*. The shipwreck remains are also an important part of Norfolk Island's cultural heritage as well as being a significant tourist attraction. On a wider scale, HMS *Sirius* and the archaeological material from the site are of limited significance outside Australia and probably of limited interest to countries like Great Britain or to organizations like the Royal Navy. Certainly there was no UK involvement in the *Sirius* project either in terms of funding and supporting the work or in the direct involvement of any British maritime archaeologists.

The survey and excavation work on HMS *Sirius* took place primarily during, and only to a much lesser extent after, the 1980s and the work was conducted to the highest archaeological standards. In many respects it was an excellent example of collaboration and

co-operation between professional maritime archaeologists and avocationalists and, perhaps more importantly, saw the contribution of staff (maritime archaeologists and conservators) from many of the state delegated authorities. Many specialist reports have been written and articles published in respected international journals such as *IJNA* as well as a popular paperback book called *Sirius - past and present* (Henderson & Stanbury, 1988; Stanbury, 1991; Stanbury, 1994). Artefacts from *Sirius* are now on display both in lower floor of the Norfolk Island Museum (Pier Store) on Norfolk Island and some loan material has been on display at the Australian National Maritime Museum (ANMM) in Sydney. Overall the *Sirius* archaeological assemblage is under the direct control of a single government agency (the Norfolk Island Museum), it has been extensively documented and is available for comparative study.

HMS *PANDORA* (1791)

As a consequence of the now infamous mutiny which took place on HMS *Bounty* in 1789, the Royal Navy dispatched the 24-gun frigate HMS *Pandora* under the command of Captain Edward Edwards to the South Pacific in 1790. Built in 1779 *Pandora* was a Porcupine class frigate that was equipped not only with enough stores and material for the long voyage but also sufficient spares to refit HMS *Bounty* should they manage to recapture that vessel. The task was to capture the 25 mutineers and bring them back to the UK for trial and punishment. 14 of the *Bounty* mutineers were captured in Tahiti, where it was reported that two others had been killed, while the remaining nine had evaded capture by sailing to remote Pitcairn Island and burning HMS *Bounty*. Despite searching for four months these nine mutineers were never found and eventually Captain Edwards decided to sail back to the UK through the northern end of the Great Barrier Reef. HMS *Pandora* ran onto a reef-top during the night of 29 August 1791 and the next day sank in deeper water (Gesner, 2000a).

Despite a number of expeditions to search for the wreck in the 1960s and 1970s it was not until November 1977 that the site of HMS *Pandora* was relocated by two rival groups of divers with the assistance of an airborne magnetometer carried aboard an RAAF (Royal Australian Air Force) maritime reconnaissance aircraft. The wreck was reported to the Australian Federal Government and initially inspected in April 1979 by a team led by maritime archaeologist Graeme Henderson, and including Pat Baker, from the WA Maritime Museum. The site is in an extremely remote location, some 50 miles offshore, which would normally fall outside the claimed offshore jurisdiction of some, perhaps many, countries, certainly during the 1970s. Nevertheless Australia had recently passed the *Historic Shipwrecks Act 1976* which claimed a 200 nautical mile jurisdiction and so HMS *Pandora* was declared as a historic shipwreck in November 1979. In 1981 the site was given protected zone status which *requires* a permit to enter a zone extending for a radius of 500 metres from the wreck. The site is still a protected zone which probably makes it one of the longest periods (now 27 years) of direct government control over access to a historic shipwreck anywhere in the world.

The wrecksite lies in approximately 34 metres of water which, with the remote location, makes archaeological investigation both person-intensive and expensive. Nevertheless between 1983 and 1999 the Queensland Museum undertook at least nine expeditions to survey and partially excavate the site (Gesner, 2000a & 2000b; Campbell & Gesner, 2000).

At one level it could be argued that *Pandora* is of limited direct significance to Australia as the vessel was simply passing by when it was wrecked. Nevertheless the Queensland Museum argues that HMS *Pandora* has historical, archaeological and educational significance as well as significance to conservation science and cultural tourism and has made the claim that *Pandora* is “one of the most significant shipwrecks in the Southern Hemisphere”. That claim to world or international significance can probably be best demonstrated through the historical associations with the *Bounty* mutiny and the archaeological importance of the site assemblage, in particular the collections of artificial curiosities made by the officers and crew.

There has been national level government to government correspondence which acknowledges British and Royal Navy interests in the site and material remains of HMS *Pandora*. As much of the archaeological excavation took place in the 1990s British maritime archaeological activity at a national level had reached the point where there was some involvement in the *Pandora* project from staff of the Archaeological Diving Unit (ADU) in the UK.

HMS SAPHO (1858)

HMS *Sappho* was a 16 gun brig of 428 tons built at the Plymouth Dockyard and launched in early 1837. Designed by Sir William Symonds to be both very fast under sail and to carry heavy firepower the vessel was employed primarily on the Africa station in the suppression of the slave trade. In 1857 HMS *Sappho* was involved in a diplomatic incident with the USA when the American barque *Panchita* was seized and subsequently the vessel was ordered to the Australia station. Under the command of Commander Fairfax Moresby, son of Admiral Sir Fairfax Moresby, HMS *Sappho* sailed from the Cape of Good Hope for Sydney on 8 January 1858 but never arrived. The vessel was last seen heading east off Cape Bridgewater, on the coast of Victoria at the entrance to Bass Strait, by crew of the brig *Yarra* on 18 February 1858. It is believed that the vessel either struck a rock or capsized during gales in Bass Strait and sank with her entire crew of more than one hundred. Material which may have come from the vessel was reportedly seen, or found, on the coast of Victoria and at Flinders Island, Tasmania.

HMS *Sappho* was selected as a case study for this chapter because at present the site has not been found but it is possible, or even probable, that the remains of the vessel will be found at some time in the future. As there was no contemporary salvage, the 16 cannon, a number of anchors and, perhaps, a significant quantity of iron ballast are presumably still there and will make a large magnetometer target. Furthermore HMS *Sappho* probably represents the Royal Navy site with the greatest, undisturbed maritime archaeological

potential within Australian jurisdiction as the other Royal Navy wrecks have either already been excavated or, in the cases of HMS *Porpoise* and HMS *Cato*, by virtue of the circumstances of their sinking and subsequent salvage are considered not likely to have nearly as much material remaining on site. HMS *Sappho* is considered historically significant by Australian government authorities and, despite not having been located yet, is protected by the *Historic Shipwrecks Act 1976* (Heritage Victoria - Victorian Heritage Database – entry for HMS *Sappho*, Department of the Environment, Water, Heritage and the Arts – National Shipwreck Database – entry for HMS *Sappho*). The loss of HMS *Sappho* was by far the greatest loss of life to result from the sinking of a Royal Navy vessel in Australian waters which makes the wreck an important gravesite and presumably of some significance, or interest, to the British Government, Royal Navy and British people, particularly those related to, and descended from, those who died when the vessel sank.

Interestingly the remains of HMS *Sappho* probably lie in relatively shallow water, possibly in less than 100m of water and therefore potentially can be reached by technical divers. The site probably lies close to the coastline of Victoria and, possibly within a few hundred kilometers of the second largest city in Australia, Melbourne. By way of contrast in March 2008, using more than \$4 million in Australian Federal government funding, the remains of HMAS *Sydney* were located just under 2,500 meters of water more than 100 nautical miles off a remote stretch of the Western Australian coast. It is often not a question of whether a particular site can be located or not but how much time, effort and money people, and governments, wish to spend in locating any particular site.

DISCUSSION

The problems and issues created by the salvaging and raising of the *Endeavour* Material in 1969-1970 were largely addressed by the enactment of the *Historic Shipwrecks Act* in 1976. Australia has effective legislation for the protection of Royal Navy vessels in Australian jurisdiction. Generally Australia has recognized foreign country claims to ownership of, or interest in, both flagged vessels and vessels owned or operated by companies or organizations in foreign countries. Even before the enactment on the *Historic Shipwrecks Act* (1976) Australia had negotiated an agreement with the Netherlands with regard to the Dutch East India Company (VOC) ships wrecked in Australia waters and established the Australia Netherlands Committee on Old Dutch Shipwrecks (ANCODS). Other examples include the recognition of Japanese interests in two Japanese World War II submarines - the I 125 submarine lost off the Northern Territory and the M24 midget submarine lost off Sydney, NSW (McCarthy Smith)

Since 1970 the employment, and later training, of maritime archaeologists (and maritime conservators) first ensured, and then improved, the quality of the maritime archaeological fieldwork being conducted in Australia.

The Australian Federal government is currently negotiating an agreement with the United Kingdom regarding the transfer of ownership to Australia of all Admiralty wrecks and relics in Australian waters.

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HMS *BIRKENHEAD* AND THE BRITISH WARSHIP WRECKS IN SOUTH AFRICAN WATERS

John Gribble, Wessex Archaeology

SUMMARY

This paper considers the wrecks of two British warships in South African waters – HMS *Sybilie* (1901) and HMS *Birkenhead* (1852) – both of which have histories that are relevant to the question of shared heritage and status of warships and other sovereign vessels in foreign waters. The paper also raises the question of the status of British troopship wrecks in South African waters – whether they too qualify to be state vessels, and what, if anything, this means for their future management and protection. Finally, it makes some suggestions regarding possible future South African / UK co-operation in relation to these state vessels.

Keywords: South Africa, Warships, HMS *Birkenhead*, HMS *Sybilie*, Troopship, *Mendi*

INTRODUCTION

The South African coast occupied an important and central geographical position in the global European expansion of the last 500 years. Situated at the southern tip of the continent it was the key to the East and since 1498, when the Portuguese explorer Vasco da Gama made the first recorded voyage to India via the Cape (Knox-Johnston, 1989), tens of thousands of vessels have passed along this coast.

The vast majority were trading vessels, but there were also the warships of many nations, engaged in furthering or protecting the interests of their respective countries on the ever-changing stage of international power and influence in the East. The South African coast, and particularly the first port in Table Bay, became an international crossroads of huge strategic importance. Whoever held the Cape could control much of the shipping between Europe and the East.

The severe sea and weather conditions that characterise the South African coast have meant that maritime casualties have been high with more than 2300 vessel losses recorded, including 11 Royal Navy vessels. These warship wrecks are listed in Table 1, and cover a period of just over a century.

Vessel Name	Date of Loss	Type	Event
<i>Guardian</i>	1790	Sloop (44-gun) (Storeship / Transport)	Struck iceberg and condemned
<i>Sceptre</i>	1799	Ship (64-gun) Third Rate	Wrecked
<i>Trident</i>	1800	Ship (64-gun) Third Rate	Wrecked
<i>Emu</i>	1817	Brig (Armed Transport)	Wrecked
<i>Cockburn</i>	1823	Schooner (Naval Tender)	Wrecked
<i>Martin</i>	1826	Sloop (20-gun)	Foundered
<i>Thunderbolt</i>	1847	Sloop (7-gun) Sail Paddle Steamship	Wrecked
<i>Birkenhead</i>	1852	Frigate (Sail Paddle Steamship)	Wrecked
<i>Nerbudda</i>	1855	Brig (16-gun)	Disappeared – foundered
<i>Osprey</i>	1867	Despatch / Gunvessel (4-gun)	Wrecked
<i>Sybille</i>	1901	2nd Class Protected Cruiser	Wrecked

Table 1: British warship losses in South African waters

This paper will concentrate on the wrecks of the *Sybille* (1901) and the *Birkenhead* (1852), both of which have interesting legal histories that are relevant to the question of shared heritage and status of warships and other sovereign vessels in foreign waters. The recent histories of these two wrecks have highlighted a range of potential and real issues and questions with regard to British warship wrecks in South African waters, and the potential benefits of closer links between the flag and coastal states as this relates to the protection and management of such wrecks.

The paper will also ask questions about the status of British troopship wrecks in South African waters - whether they too qualify to be state vessels, and what, if anything, this means for their future management and protection, before making some final comments about possible future South African / UK bi-lateral co-operation in relation to these warships.

Before turning to the *Sybille* and *Birkenhead*, however, it is worth briefly considering some of the other warship wrecks as illustrations of the range of importance, significance and potential sensitivities related to these shared heritage sites.

HMS *SCEPTRE* (1799)

HMS *Sceptre* was a 64-gun third rate, launched in 1781 and stationed at the Cape after 1796.

On 5 November 1799 the *Sceptre*, along with a number of other merchant and naval vessels was caught in Table Bay by an unseasonal northwesterly gale. Gale force winds pushed huge seas into the Bay and the *Sceptre* soon found herself in trouble. After parting from her last anchor she was driven broadside onto a reef in the south-eastern corner of Table Bay, no more than a hundred meters from the beach. Her age and condition sealed her fate: in no time at all her old worm-ridden hull broke up, spilling hundreds of her crew into pounding surf. Of the more than 400 seamen and marines on board the *Sceptre* when the storm began, only 19 officers and 109 men survived. 281 officers and men, including her captain, Valentine Edwards, lost their lives (Burman, 1976; Gribble and Athiros, 2008; PRO ADM1/57; PRO ADM1/5351).

The wreck of the *Sceptre*, which is believed to lie under an area of reclaimed land on the Cape Town Foreshore, is significant as an example of a warship loss accompanied by huge loss of life.

HMS *GUARDIAN* (1790)

The wreck of HMS *Guardian* is important for her association with the UK's system of penal transportation to Australia. Records suggest that only five vessels carrying convicts to Australia were wrecked during the life of the transportation system and two, the *Guardian* (1790) and the *Waterloo* (1842) lie in Table Bay.

The *Guardian* was a 44-gun Royal Navy frigate, converted to a storeship and despatched to the new penal colony at Sydney Cove with much-needed supplies and a small complement of convicts (Nash, 1989).

On Christmas Eve 1789 she struck an iceberg in the South Atlantic, about 1400 miles southeast of the Cape. Such was the damage she sustained to her hull that it seemed clear the vessel would sink. Those of her crew who could be accommodated took to the boats, but her commander, Lieutenant Edward Riou refused to leave, and with a skeleton crew, against all the odds, managed to nurse her back to Table Bay (Burman, 1986; Nash, 1989).

There she was assessed to be irreparable and in February 1790 was run aground, stripped and abandoned. The loss of the *Guardian* almost brought an end to the penal colony experiment, and it was only the arrival of another convict ship, the *Lady Juliana*, which was carrying supplies, including some of those saved from the *Guardian*, that prevented the colony from starving to death (Nash, 1989).

THE WEIGHTY CASE OF THE *SYBILLE* PROPELLER

HMS *Sybille* was a twin screw, second-class cruiser of 3,400 tons. Her keel was laid in Newcastle-on-Tyne in 1889 and she was completed in 1892. She was one of twenty-one Apollo Class Protected Cruisers – the largest class of cruisers ever built for the Royal Navy – and carried a crew of 273 (Colledge and Warlow, 2006).

The *Sybille* was first commissioned at Devonport on 8 January 1895 for the Mediterranean Station where she served until early 1898. She returned to Devonport to be paid off and

remained laid up until 9 October 1900 when she was commissioned to relieve the HMS *Barossa* at the Cape of Good Hope Station (The Navy List, 1899).

The *Sybille* left Plymouth for the Cape on 26 October, under the command of Captain Hugh P. Williams. She arrived in Simonstown on 5 January 1901 and after coaling left for Lamberts Bay on the Cape west coast to start her patrolling duties (PRO ADM 53/15944).

First and Last Patrol

By September 1900 the first phase of the South African War (1899-1902) was over. British forces controlled both the Transvaal Republic and Orange Free State and with the fall of Boer Republics the British assumed that the war was all but over. In reality, however, it was merely entering a new phase – that of a guerrilla conflict.

In an attempt to draw the fight away from the former Boer republics and onto British territory the Boers undertook a number of invasions of the Cape Colony in late 1900. Some of the commandos that managed to cross the Orange (Gariep) River spent the next few months carrying out a series of lightning raids across the Colony. One of the groups, 1200 men under the command of General JBM Hertzog, swept down the Cape west coast, penetrating as far south as Lamberts Bay, only 280 kilometres from Cape Town, before they were checked. Not surprisingly, these raids were of some concern to the British authorities at the Cape. In a letter to the Secretary of the Admiralty in London, Rear-Admiral Harris referred to 'their somewhat near approach to the Cape Peninsular [sic]' and outlined plans for countering any possible future incursions (PRO ADM 1/7510). These included sending the *Sybille* to Lamberts Bay 'with the view of securing a landing there for troops, should it be required, and also of securing it as a base upon which any British forces employed in the vicinity may fall back'. This then was the reason for the *Sybille's* hasty despatch up the west coast (Gomm, 1970).

On arrival off Lamberts Bay a special landing party, comprising the *Sybille's* captain, junior lieutenants and the naval brigade went ashore, leaving the vessel under the command of the first lieutenant and navigating lieutenant. The ship remained at anchor off Lamberts Bay for the next week until late on 15 January the wind freshened considerably and swung to the northwest, a sure sign that bad weather was on the way.

As a precaution, and in view of the limited protection the anchorage at Lamberts Bay offered to a vessel of the size of the *Sybille*, the first lieutenant decided it would be prudent to put to sea. The *Sybille* weighed anchor and steamed out into a moderate northwesterly swell and heavy squalls. Shortly after 4.30am the following morning as the *Sybille* steamed back up the coast she ran aground on a reef about three miles, or five kilometres south of Lamberts Bay. She filled rapidly and it was quickly clear that she would not be refloated. Battered by heavy surf, which was breaking above her funnels, her company made a number of unsuccessful attempts to get a line ashore. The outlook may have been grim indeed had the wreck not been spotted by the *City of Cambridge*. With great difficulty a line was attached to the *Sybille*, and as the sea moderated the ship's company was transferred to safety. The only casualty was a nineteen-year-old ordinary seaman, W.H. Jones, who sustained fatal internal injuries when he was swept across the deck by the heavy seas and

flung against one of the vessel's 4.7 inch guns. He was buried ashore, and his grave lies in a small cemetery in Lamberts Bay.

Salvage and Looting

Time has not been kind to the wreck of the *Sybille*. The exposed nature of the reef she came to rest on ensured that she broke up rapidly in the heavy surf, but not before she was heavily salvaged and all but one of her heavy guns removed.

More recently, human interventions have accelerated the deterioration of the wreck since it was rediscovered during the 1970s, at a time which pre-dated legislative protection for wrecks of this age in South Africa. Numerous divers worked on the site, removing large quantities of non-ferrous metal for scrap, including one of her two propellers. Some of this work involved the use of explosives which further damaged the wreck.

In 1999 the maritime archaeologist at the then National Monuments Council (NMC), South Africa's heritage compliance agency, was notified by a member of the public in Lamberts Bay that the *Sybille's* second bronze propeller had been recovered by local diamond divers and was about to be taken to Cape Town to be sold for scrap.

By this time the National Monuments Act (Act 28 of 1969) had been amended to include blanket protection for any shipwreck older than 50 years of age (Gribble, 2002). The NMC therefore notified the South African Police (SAP) of the illegal recovery of the propeller, and after it had been impounded by the police, laid charges against the divers concerned.



Figure 1: HMS *Sybille's* propeller- John Gribble

Prosecution

This case was the first prosecution of a shipwreck offence under National Monuments Act. It was also the last because by the time it came to court in 2000, the Act had been replaced by the current legislation, the National Heritage Resources Act (Act 25 of 2000).

For a variety of reasons the State lost the case and the divers were acquitted. In his judgement the presiding magistrate stated that he had been forced to find in favour of the defendants because the State had failed to prove that the propeller came from the *Sybille*.

Although it was abundantly clear from the artefact itself, which was stamped with the broad arrow and from a range of other information available to the NMC that this was indeed the *Sybilie's* second propeller, on balance the court was not able to find for the State. This was partly due to shortcomings in the preparation for the case by the State Prosecutor, partly due to the legislation, which in its strictest interpretation required that the removal of an item from a protected wreck had to be witnessed *in situ*, and also because much of the information gathered by the NMC was treated as hearsay by the court and could therefore not be admitted into evidence.

One area in which the NMC had particular problems in presenting an argument for the propeller coming from the *Sybilie* was in gathering information related to the development of British naval propellers during the late 19th century. Although approaches were made to a number of UK institutions, these were largely unsuccessful. If suitable inter-agency or -institutional mechanisms for co-operation or information sharing between the UK and South Africa had been in place at the time this may have affected the outcome of the case. If nothing else, interest by a foreign government in the case may have focussed the mind of the State Prosecutor in the run-up to the trial.

Postscript

After their acquittal the defendants applied to court for the return of the propeller and it seemed it would be lost after all. Due to the bulk of the item, however, the propeller had never been transferred from the SAP to the court as is usual in terms of Section 33 of the Criminal Procedures Act (51 of 1977). As a result, the magistrate could not decide on its disposal and it fell to the SAP to decide who 'may lawfully possess such article' (Section 31(1)(a), Criminal Procedures Act). The standard of proof regarding such possession is 'on balance of probabilities' and not 'beyond reasonable doubt' which applies in criminal proceedings. Because the new heritage legislation had come into effect by then, in terms of which all archaeological material, including shipwrecks over 60 years of age, are deemed to be the property of the State, SAHRA was able to present evidence to the SAP indicating why the divers would be in unlawful possession of the propeller should it be returned to them. This affidavit to the SAP was strong enough for legal counsel for the divers to advise them to abandon their attempts to gain ownership of the propeller, and they eventually agreed instead that it should go to SAHRA, to be held in trust for the South African nation.

A decision then had to be made by SAHRA as to what to do with a three-ton propeller and shaft. The solution was its semi-permanent loan to the local museum in Lamberts Bay, where it is displayed along with a variety of other items from the wreck.

The most recent development with regard to the wreck of the *Sybilie* has been the refusal by SAHRA, in 2007, of a salvage application, on the grounds that the vessel is a British warship (pers. comm. Jonathan Sharfman, Maritime Archaeologist, SAHRA).

HMS *BIRKENHEAD* CREATES A DIPLOMATIC STIR

The second wreck that will be considered in detail is that of HMS *Birkenhead*, one of the earliest iron vessels built for the Royal Navy. She was a paddle frigate and was launched in

December 1845, but unease within the Admiralty about the use of iron for a fighting ship led to her conversion to a troopship in 1847 (Brown, 1993; Lyon, 2001).

In January 1852 the *Birkenhead* sailed from Cork in Ireland with 479 soldiers from a variety of regiments who were bound for the Eastern Cape, where they were to reinforce the British troops involved in the Eighth Frontier War. A number of military and naval officers, more than 50 women and children, and a crew of 125 rounded off the *Birkenhead's* complement on her last voyage – a total of 693 people (Bevan, 1972).

After a rough but uneventful passage to the Cape the *Birkenhead* arrived in Simonstown on 23 February to take on provisions before the final two day push to Port Elizabeth. She steamed out of False Bay early in the evening of 25 February. By 2am the following morning she was passing Danger Point near Gansbaai when she struck an uncharted rocky pinnacle – today known as Birkenhead Rock – about 2km offshore (Bevan, 1972).

Her hull near the bows was ripped open and icy water rushed into the lower troopdeck. She began to sink rapidly by the bow and minutes later her entire bow section broke away and sank. Shortly thereafter her hull tore again, just forward of the paddle boxes and within 20 minutes of striking the rock the *Birkenhead* plunged to the seabed (Seton, 1890; Bevan, 1972).

After striking the rock it quickly became clear to her captain, Robert Salmond, that the *Birkenhead* was doomed and he had given the order to abandon ship. Realising that a rush of men trying to get away from the sinking vessel would endanger the few boats carrying the women and children that had been got away, the senior military officer on board, Lieutenant-Colonel Alexander Seton, called on the soldiers not to go overboard. Instead, they formed up in their ranks on the poop deck and stood together as the *Birkenhead* gave one last convulsive lurch and slipped beneath the water (Seton, 1890; Bevan, 1972).

The loss of the *Birkenhead* was a naval disaster of the first order. Of the 693 people aboard, 445 perished. But it is not only for this reason that the loss of HMS *Birkenhead* is commemorated. The sacrifice by the troops who stood fast on the deck and allowed the women and children to be saved was an act of unparalleled discipline and selflessness which has echoed down the years and the 'Birkenhead Drill', as it is still known, of 'women and children first' remains one of proudest moments in British naval history.

After the event

A month after the sinking, the wreck of the *Birkenhead* was sold at public auction in the Cape by agents of the Admiralty. The sale notice published in the supplement to the Government Gazette and Trade List on 25 March 1852 reads:

‘... will be sold, by Public Auction, ... the above Vessel as she lies in the Sea, with RIGGING, SPARS, YARDS, &c., &c., STORES AND PROVISIONS, and whatever may be on board’ (Kayle, 1990).

The wreck was bought by H. Adams of Cape Town for £235.

Salvage Attempts

It is not known whether Adams recovered anything from the wreck beyond what had washed ashore, but ten years later he sold the submerged wreck on for £2,790, a substantial return on his original investment. A series of further salvage attempts were made on the site – which lies in about 30m of water – in 1898, 1935 and 1958. This sustained interest in the wreck was based on rumours that the *Birkenhead* was carrying an army payroll of 250,000 gold sovereigns when wrecked (Bevan, 1972; Kayle, 1990).

There is no evidence in any of the documents related to the *Birkenhead* and her last voyage to support this rumour. Despite this, the story has proved remarkably persistent and most recently, in 1983, led to the application for, and granting by the NMC of a salvage permit to the Depth Recovery Unit (DRU) (Kayle, 1990).

The NMC was able to control activities on the wreck through a permit because it had provisionally declared a number of wrecks, including the *Birkenhead*, to be National Monuments in 1980. At the time this was the only legal way to protect a wreck in South African waters for its archaeological or historical value (Gribble, 2002).

The *Birkenhead* permit was one of the very earliest issued by the NMC and carried what were, for the time, strict conditions that tried to ensure that at least the fundamentals of archaeological recording would taken place as work on the site proceeded, and to ensure that material from the site would find its way into museum collections where it could be preserved and studied. However, there was no denying the fact that the DRU project was primarily commercial, rather than archaeological in nature, and aimed at finding the gold.

The UK Steps In

When news of the issuing of the permit became publicly known the British Embassy in Cape Town sent a note to the South African Minister of Foreign Affairs, Pik Botha, notifying him that the UK retained 'its interest in the wreck and contents as a war grave' (Deacon, 1990: 1).

The Embassy was informed that the sale of the wreck by public auction in 1852 meant that it was no longer British property and that as no human remains had been recovered from the site it could also not be classed as a war grave. Legal advice obtained by the NMC was that according to international law the British Government could neither authorise nor deny salvage rights on South African National Monuments. The NMC was the only authority which could do so (Deacon, 1990). The DRU's permit was upheld and the group was allowed to proceed with planning its proposed work on the site.

This took some time and it was January 1986 before the group was finally ready to proceed. At this juncture the British Government, through its Embassy in South Africa again restated a claim on the wreck and its contents. It suggested that the original sale of the wreck was confined to flotsam and did not affect the rights of the British Crown or amount to an abandonment of the vessel. In this submission to the South African authorities the British Ministry of Defence stated that it was 'not prepared to discuss the terms under which it would permit the salvors to keep any treasure reclaimed from the wreck nor to negotiate

what proportion the British Crown might demand from the value of salvage until the ownership question is clarified' (Deacon, 1990).

An International Agreement

International temperatures started to rise and in an effort to resolve the issue the Minister of Foreign Affairs proposed a meeting of interested parties. As a result of this initiative an agreement on the *Birkenhead* was finally reached at a meeting in July 1987 with the following terms:

- The *Birkenhead*, as a military grave would continue to be treated at all stages with respect. In particular, the South African Government would seek to ensure that the salvors treated reverently and refrained from disturbing or bringing to the surface any human remains;
- British military historians would have temporary access for research purposes to salvaged artefacts bound for South African museums;
- The South African Government would ensure that representative examples of salvaged artefacts identifiable with particular British regiments or institutions were offered without charge to that regiment or institution;
- The British Government would not enter into any salvage contract in respect of the *Birkenhead* and would not object to the South African Government maintaining its existing salvage arrangements in regard to the wreck under the applicable South African legislation;
- Any gold coin recovered (apart from the coins considered to have been in private ownership) would be shared equally between the two governments, after deduction of the share due to the salvors in accordance with the existing salvage arrangements; and
- To facilitate the implementation of these arrangements, consultations would be held as necessary between representatives of the two governments, the salvors and other South African institutions concerned.

This agreement, in the form of an exchange of notes between the Minister of Foreign Affairs and the British Ambassador to South Africa represents one of the earliest international, bi-lateral agreements made in relation to underwater cultural heritage (Governments of the United Kingdom and South Africa, 1989).

Salvage Results

The DRU eventually worked on the wreck between 1986 and 1988 and recovered large numbers of artefacts; particularly ships fittings, items from the ship's stores and numerous personal items belonging to those who travelled on the *Birkenhead*. In total though, no more than 60 gold coins were recovered and these are assumed to have been the personal property of those aboard (Deacon, 1990; Kayle, 1990).

THE QUESTION OF OWNERSHIP

While the 'Birkenhead Agreement' was made without prejudice to the respective legal positions of the two Governments concerned it does raise some fundamental questions applicable to the question of British warships in foreign waters. These include:

- Who owns British warships in foreign waters?
- What does it mean if the wreck of a British warship was sold on public auction? Does such a sale, in effect, constitute an irrevocable alienation of the UK's rights to the wreck, not constitute abandonment?
- How does or can the concept of sovereign immunity apply in such cases?

HISTORICAL SHIPWRECKS WITHIN SOUTH AFRICA'S LEGAL REGIME

As mentioned above, historical wrecks in South African waters have enjoyed a degree of legal protection since 1979. This limited protection was extended in 1986 with an amendment to the National Monuments Act, which gave blanket protection from unauthorised disturbance to any wreck older than 50 years of age. Followed by the gradual development of a maritime archaeological capacity in South Africa, the NMC was able to begin the slow process of developing and implementing strategies to manage historical wrecks as underwater cultural heritage sites rather than as salvage. For a more detailed discussion of the early years of legislation and wreck management in South Africa see Gribble (2002) in the *International Handbook of Underwater Archaeology*.

In 2000 the National Heritage Resources Act replaced the National Monuments Act. The new legislation again gave blanket protection to all wrecks in South African waters, although now a site had to be over 60 years of age to qualify. Where the new legislation differs markedly from the old Act is in the inclusion of historical wrecks in the broad definition of archaeology. This is important because in terms of the Act, all archaeological material – including wrecks – is deemed to be the property of the State which holds it in trust for and manages it on behalf of the nation.

There are clearly bound to be issues with this aspect of the legislation in relation to some historical wrecks. But in following this route the lawmakers reasoned that the positive value of a clear statement with regard to the ownership of archaeological material far outweighed the limited number of potential claims against such a position that could be expected in relation to wrecks. Any counterclaims in relation to the ownership of individual wrecks could be dealt with on a case-by-case basis.

Under the terms of the current heritage legislation historical wrecks in South African waters are thoroughly protected on behalf of not only the South African nation but also any sovereign state with a verifiable link to, or interest in these archaeological sites. A strong, national Shipwreck Policy, which will support and give practical effect to the provisions of the Act, is in the final stages of preparation (pers. comm. Jonathan Sharfman, SAHRA). In addition to the domestic legislation, South Africa is also in the process of ratifying the 2001

UNESCO Convention. This will not only provide another string to the bow of wreck management and protection in South Africa, but which should also facilitate interaction between South Africa and other sovereign states with regard to shared underwater cultural heritage.

THE STATUS OF TROOPSHIPS?

Vessel	Date	Casualties
<i>Arniston</i>	1815	372
<i>Doncaster</i>	1836	58
<i>Abercrombie Robinson</i>	1842	0
<i>Birkenhead</i>	1852	445
<i>Charlotte</i>	1854	110
<i>Miles Barton</i>	1861	0
<i>Bosphorus</i>	1861	58
<i>St Lawrence</i>	1876	0
<i>Ismore</i>	1899	0
<i>Llandaff Castle</i>	1942	2

Table 2 British troopship losses in South African waters

In addition to the wrecks of warships, ten British troopships have been lost along the South African coast since 1815, the details of which are summarised in the table above.

One of the warships discussed above, the *Birkenhead*, was also a troopship and this dual nature suggests that within the context of this paper the status of other troopships should be questioned.

Although the majority of these vessels were privately owned, they were under hire to the UK government and carrying troops (and official cargoes) to the Cape Colony when they were lost. In many of the instances listed in the Table 2 above, the wrecking of the troopship was accompanied by the loss of British military personnel and equipment. There are thus potential sensitivities applicable to these wrecks with regard to the presence of human remains; the same sensitivities which were in part responsible for the British government's involvement with the *Birkenhead*.

In very general terms the recent High Court judgement regarding the status of the ss *Stora* may also have a bearing in a consideration of the status of troopship wrecks. In as much as the *Stora* case (Fogg and Ledgard v the Secretary of State for Defence, 2006) established that non-military vessels, lost whilst on government service, are eligible for protection in terms of the Protection of Military Remains Act (1986), it can be argued that since troopships were also on government service their wrecks should be considered to have the same, or at least very similar status to warship wrecks.

This argument for this similar status to warships for troopship wrecks can perhaps be further illustrated by turning the question around to consider the South African interest in a 'military' ship lost in 1917 in UK territorial waters whilst carrying South African labourers to the Western Front.

The ss *Mendi* was a British vessel, hired by the British government in late 1916 as a troopship. In January 1917 she left Cape Town carrying 803 men and officers of the 5th Battalion, South African Native Labour Corps, bound for France. Within hours of her destination on 21 February she was sunk after a collision in the English Channel, about 11 miles southwest of the Isle of Wight, and 649 of those aboard were lost.

The story of the *Mendi* the sacrifice of the mainly black labourers who died that morning was, until recently little known in South Africa – the legacy of white minority rule which deemed it unwise and unnecessary to acknowledge the contribution and sacrifice of black South Africans during World War I. Since the end of *apartheid*, however, the story of the *Mendi* has become a national symbol of bravery and unity and the wreck of the vessel – the tangible link to the long-ignored and forgotten story of the SA Native Labour Corps – has taken on a new meaning and importance. For South Africans, this troopship wreck illustrates the special significance of this class of wreck sites.

CO-OPERATION IN MANAGING STATE SHIP WRECKS

Having established that there is a clear, mutual interest in the wrecks of state vessels in each other's waters, it is perhaps useful to put forward some ideas for managing this shared heritage in future. The Birkenhead Agreement was a first attempt to put in place an arrangement between South Africa and the United Kingdom for managing shared maritime heritage. The agreement was, however, a product of its time – a time when the effective legislative protection of wrecks in South Africa had yet to be achieved. Although the agreement did address the sensitivities around dealing with human remains on the wreck, the time in which it was born meant that it was, in reality, little more than a mechanism for dividing the spoils.

Today the picture is markedly different. South Africa's heritage legislation guarantees protection for historical wrecks as archaeological sites and at an international level the UNESCO Convention on the Protection of Underwater Heritage (2001), which entered into force on 2 January 2009 sets standards for managing underwater cultural heritage, and creates a mechanism for bi-lateral co-operation in the management of shared underwater heritage. Within this context a possible scenario for future co-operation between South Africa and the United Kingdom can perhaps be seen in a shared heritage agreement for underwater heritage currently being finalised between South Africa and the Netherlands.

The agreement was brokered through Dutch Embassy by SAHRA and the national Department of Arts and Culture (DAC) and will see an initial infusion of Dutch funding, to be matched by long term commitments to underwater heritage management and funding by DAC. This agreement is premised on the concept of shared maritime heritage and aims to

facilitate the better management and understanding of that common heritage through building capacity in South Africa, very much in the spirit of the UNESCO Convention.

The initial work associated with the agreement will include an assessment of the national training needs in relation to underwater heritage management, the creation of practical training programmes (diver training, geophysical survey, archaeological mapping and site recording, excavation techniques, artefact conservation, etc.) to build capacity in South Africa, and a strong emphasis on getting maritime archaeology and underwater heritage management into all levels of education (pers. comm. Jonathan Sharfman, SAHRA).

Given the considerable maritime and cultural heritage shared by South Africa and the United Kingdom, the increased awareness in South Africa, the United Kingdom and internationally of the fragility and importance of maritime heritage, the encouragement and best practice offered by the UNESCO Convention, and the desire by both South Africa and the United Kingdom to protect warships or state vessels wrecks (but not forgetting the many hundreds of other British wrecks scattered along the South African coast) future co-operation in the management of shared underwater heritage seems not just desirable, but almost inevitable.

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SHARED HERITAGE: BRITISH SHIPWRECKS IN FLORIDA

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SUMMARY

Florida's geographical position historically made the state strategically important to imperialistic nations looking to expand their New World influence. Britain and Spain, and even France, made efforts to settle and dominate colonial Florida through naval means. The maritime archaeological remains of these imperial endeavours are scattered around the state's shores. This paper describes British shipwrecks in Florida waters, some of which have been archaeologically investigated and some of which have been ravaged by treasure hunters. The State of Florida's strategies for managing these shipwrecks for the public benefit is explored, including innovative educational and heritage tourism programs.

Keywords: Florida, British shipwrecks, Archaeology, Public interpretation, Heritage tourism, Treasure hunting

The State of Florida's unique geographical position historically made the state strategically important to imperialistic nations looking to expand their New World influence by controlling Atlantic entrances to the Gulf of Mexico and Caribbean Sea. Britain and Spain especially, and even France, made efforts to settle and dominate colonial Florida through naval means and the maritime archaeological remains of these imperial endeavours are scattered around the state's shores. Ships belonging to or contracted by the Crown or owned by private entrepreneurs wrecked on reefs, bars, and shoals, and as a result of hurricanes and tropical storms. This chapter describes British shipwrecks in Florida waters, some of which have been archaeologically investigated and some of which have been ravaged by treasure hunters. The State of Florida's strategies for managing these shipwrecks for the public benefit are explored, including innovative educational and heritage tourism programs. Issues related to the state's legalized commercial salvage of historic shipwrecks also are discussed with implications for future discoveries.

FLORIDA'S COLONIAL HISTORY

The peninsula of Florida projects from the southeast corner of North America, creating a geographical boundary between the Atlantic Ocean in the east and the Gulf of Mexico in the west. Immediately to the south the islands of the Greater Antilles stretch away into the Caribbean Sea. The largest island, Cuba, is located only 145 km (90 miles) from the peninsula forming the Straits of Florida, historically a navigational highway for discovery, settlement, commerce, and warfare. Thus, Florida became, from earliest European exploration, a maritime crossroads and, occasionally, an obstacle for unlucky or unwary vessels.

Spanish interest in the long peninsula began in 1513 with the voyage of Juan Ponce de León, who sighted unknown land and named it *La Florida* (Weddle, 1985: 38-54). Expeditions led by Pánfilo de Narváez in 1528 and Hernando de Soto in 1539, as well as a short-lived religious enterprise in 1549, revealed more of the land, although no permanent settlements were established (Weddle, 1985: 185-250). The first major colonization attempt was made in 1559 at present-day Pensacola on the Gulf coast. Led by Tristán de Luna, the colony of 1500 people was thwarted by a hurricane that sank most of the ships in the fleet and destroyed the colony's food and other supplies (Hudson, et al., 1989: 119-134; Smith et al., 1995; Smith et al., 1998). In 1564, approximately 200 French under René Goulaine de Laudonnière established a settlement at Fort Caroline near present-day Jacksonville on the Atlantic coast (Bennett, 2001). The Spanish responded in 1565 when Pedro Menéndez de Avilés attacked and burned the French fort, replacing it with a Spanish garrison he named St. Augustine – the first permanent European settlement in Florida and today the United States' oldest continuously occupied city (Lyon, 1976; Hoffman, 1990: 205-230). A second Spanish fort was successfully established at Pensacola in 1698, nearly 140 years after Luna's failed attempt (Bense, 2003). These two colonies consolidated Spanish control of the peninsula and ancillary settlements and religious missions began to appear in their wake (McEwan, 1993).

The French again attempted to stake a claim in Florida when, from 1719 until 1721, they occupied the presidio at Pensacola as a result of hostilities stemming from the War of the Quadruple Alliance, although the treaty at war's end returned Pensacola to Spain (Weber, 1992: 166, 171; Hoffman, 2002: 186). The 1763 Treaty of Paris ending the Seven Years' War resulted in Spain relinquishing control of its Florida colonies to Britain (Weber, 1992: 199). British forces immediately occupied the Spanish forts at Pensacola and St. Augustine, enlarging and strengthening the fortifications and surrounding towns. British control lasted only 20 years, however, until the end of the American Revolution in 1783 when Florida was returned to Spain (Weber, 1992: 269). This Second Spanish Period lasted until 1821, when Florida became a Territory of the United States. Statehood followed in 1845 and continues to the present day, although the Confederacy controlled Florida, with the exception of a couple of isolated forts, during the American Civil War from 1861 until 1865 (Wynne and Taylor, 2002).

These many nations recognized the value of holding Florida as a means of dominating an important maritime crossroads. Circular currents in the Gulf, the narrow passage of the Straits of Florida, and the powerful northerly flowing Gulf Stream along the east coast all were utilized by maritime states. Some of the vessels that sailed Florida waters, however, never reached their destinations.

BRITISH SHIPWRECKS IN FLORIDA

Although the British held Florida for only 20 years, from 1763 until 1783, maritime traffic was heavy between England's Caribbean and North American colonies, and from the homeland and the rest of the empire. Even before British forces were officially stationed in

Florida, British warships patrolled the waters surrounding the peninsula during voyages to and from England. Treacherous reefs, storms, and mischance resulted in more than a few British ships inadvertently remaining in Florida.

HMS *Winchester*, a 60-gun 4th-rate built in 1693, was returning to England from Caribbean service as part of the West India Squadron in 1695. With most of her crew dead or dying of disease, probably yellow fever, she strayed into shallow water and wrecked on the Carysfort Reef of the Upper Florida Keys (Straight, 1988). *Winchester's* cannons were discovered and salvaged in the 1930s by local fishermen who thought they had found a treasure ship; certainly never conserved, these cannons now are likely only lumps of rust. Today, the remains of HMS *Winchester* are located within John Pennekamp Coral Reef State Park, where they are a popular diving attraction and are protected from further salvage (McCarthy, 1992: 20-23).

HMS *Looe*, a 44-gun frigate built in 1741, was sailing at night through the Straits of Florida in 1744 with a captured Spanish ship when both vessels ran aground on a reef in the Keys, now called Looe Reef (Singer, 1998: 68). All hands survived and swam to a near-by island, from which they eventually escaped; *Looe's* captain destroyed the ship before leaving to prevent the Spanish recovering her guns (McCarthy, 1992: 40-43). An early treasure hunter and shipwreck salvor named Art McKee, nicknamed "Silver Bar" McKee, raised *Looe's* cannons in the 1950s at a time when cannons and anchors from many historic Keys shipwrecks were being identified and raised. Today, some of these artefacts still may be seen in front of dive shops and strip malls along highway A1A, the Keys Overseas Highway, slowly rotting away.

During the British Period of Florida's history, vessels were lost near the major towns of Pensacola, capital of British West Florida, and St. Augustine, capital of British East Florida. Three of these ships have been discovered and archaeologically investigated, shedding light on this short but significant era of the state's history.

In 1988, children playing on the beach of a small, sandy island in Pensacola Bay alerted archaeologists, who were performing a survey of the island, to the presence of timbers in the shallow water near shore (Bense, 1988). The timbers proved to be part of an historic shipwreck and the site was dubbed the Deadman's Island Wreck after the island where it was located. The following summer, the University of West Florida held its first academic underwater archaeology field school at the site, under the direction of Dr. Roger Smith, Florida's State Underwater Archaeologist with the Florida Bureau of Archaeological Research (Smith, 1990). Students performed 12 weeks of investigations, partially exposing the site, recording timbers, and recovering artefacts (Fig. 1).



Figure 1: The timbers of the 18th-century British Deadman's Island Wreck are visible in the shallow water of Old Navy Cove, Pensacola Bay (photo courtesy of the Florida Bureau of Archaeological Research).

The site consisted of the lower port side of a small vessel constructed of white oak (Finegold, 1990: 26). Artefacts collected included a leather shoe sole, ceramics, wine bottle glass, a well-preserved wooden cleat, copper sheathing tacks, and a uniform button belonging to a member of the British 60th Regiment of Foot (Smith, 1990: 111). This button proved a valuable clue to the wreck's nationality and possible identity.

The 60th Regiment of Foot was stationed in Pensacola from 1776 to 1781 and saw action in the Battle of Pensacola (Bense, 1988: 17). The 60th Regiment uniform button, discovered lodged in a knothole in a lower hull timber of the Deadmans' Island Wreck, indicated a British connection for the vessel. Historical research revealed that the area of Deadman's Island long was used as a careening ground, with deep water close to shore and a shallow, gently sloping sandy beach. During British occupation of Pensacola, two vessels were careened on the island, then called Old Navy Cove, and proved to be too damaged to be repaired. They were stripped of useful items and abandoned where they lay; the Deadman's Island Wreck is one of these ships. The two candidates for the Deadman's Island Wreck are HMS *Florida* and HMS *Stork*. Both sloops-of-war, the 14-gun *Stork* was purchased by the Royal Navy in Jamaica in 1777, and the patrol schooner *Florida* was fitted out in Jamaica in 1778 (Rea, 1981: 196-197; Morgan, 1986: 120-121). The Deadman's Island Wreck showed evidence of severe damage, its garboard strake split along nearly the entire length – a grave enough injury to render the sloop unseaworthy and, together with the 60th Regiment button, strong circumstantial support for the Deadman's wreck to be either *Stork* or *Florida*. Artefacts from the Deadman's Island Wreck were conserved and placed on display

in a local community centre where they remain today. Sadly, the year after the wreck was investigated, timbers from the Deadman's wreck were pulled loose and scattered on the beach by ill-informed vandals looking for non-existent treasure (Fig. 2).

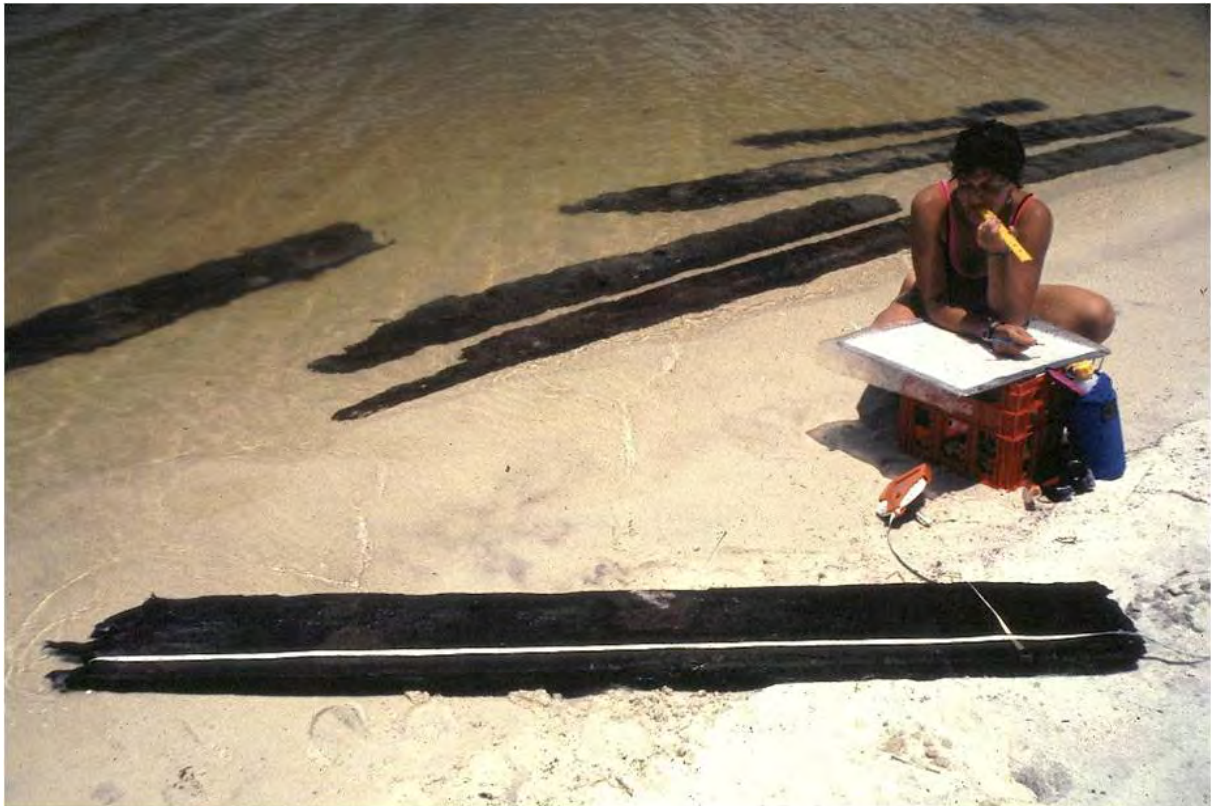


Figure 2: Planking from the Deadman's Island Wreck was ripped up and tossed on the beach by vandals (photo courtesy of the Florida Bureau of Archaeological Research).

During a subsequent survey of Pensacola Bay to identify the remains of historic watercraft, a second shipwreck was discovered near the Deadman's Island Wreck on the same stretch of beach. Named the Town Point Wreck for the northern end of the island, the ship was investigated in 1993 by archaeologists with Southern Oceans Archaeological Research, Inc. (Morris and Franklin, 1995). The vessel was similar in size to the Deadman's wreck and contained artefacts from the same time period and cultural affiliation, including ceramics, case bottle glass, lead shot, a gunflint, and wooden rigging components (Morris and Franklin, 1995: 46-50). The hull itself showed evidence of extensive repair (Morris and Franklin, 1995: 52). Archaeologists are confident that both HMS *Stork* and HMS *Florida* have been found, although questions remain about which wreck is which ship.

A wreck dating to the British Period in east Florida also has been investigated and positively identified. The transport sloop *Industry* ran aground on the St. Augustine bar in 1764 while attempting to enter the harbour with a cargo of supplies for the newly British fort. When Spanish troops evacuated the town and its fort of Castillo de San Marcos in 1763, they took everything of use or value with them, leaving the town without cannons for defence or tools for maintenance. *Industry* was chartered to bring this necessary equipment and was loaded with eight cannons, boxes of axe heads, mill stones, ammunition, and artificer's tools

(Franklin, 2005). The wreck was discovered in 1997 during a submerged cultural resource survey of the historic port conducted by Southern Oceans Archaeological Research, Inc. Investigations revealed cannons still in position as they were loaded in the hold, as well as wooden crates and boxes full of tools and other supplies. A Texas A&M University PhD dissertation was written on the site by Dr. Marianne Franklin (2005), and an exhibit of recovered materials is on display at the St. Augustine Lighthouse Museum. Unfortunately, as with the Deadman's Island Wreck, the wreck of *Industry* was damaged by vandals and thieves who illegally removed two of the cannons; to date, the guns have not been recovered nor have the culprits been apprehended.

Another ship from the British Period in Florida awaits discovery. HMS *Mentor*, a 24-gun sloop-of-war, was built in 1778 as an American privateer called *Who's Afraid* (McCarthy, 1992: 44-47). Seized by the British, the vessel was renamed and sent to Pensacola to help hold the fort against Spanish aggression during the American Revolution. Realizing the small ship could not be of assistance, the British commander in Pensacola had *Mentor's* guns removed to the fort and sent the disarmed vessel up the Blackwater River, a tributary of Pensacola Bay, in an attempt to prevent it falling into Spanish hands (Servies, 1982). While up the river, a sudden squall capsized the sloop and she subsequently burned and sank; *Mentor's* crew escaped into the surrounding forest. The wreck has not, to date, been found, although the sloop's ballast of pig iron should make its location by magnetometer readily apparent and the vessel is high on the University of West Florida Nautical Archaeology Program's list of targets. As a ship directly involved in the Revolutionary War Battle of Pensacola, HMS *Mentor* is significant for American, as well as British, heritage.

FLORIDA'S TROUBLE WITH TREASURE

The State of Florida is in the unusual, and unfortunate, position of allowing the commercial salvage of some of its historic shipwrecks. This situation is the result of several factors; the primary relating directly to the state's unique geography that resulted in several treasure-bearing fleets wrecking on its coasts. The *carrera de Indias*, the system of yearly fleets carrying goods between Spain and her New World colonies, routed ships from Mexico and South America to Cuba and then through the Straits of Florida and along the east coast following the Gulf Stream, before turning east at the latitude of Bermuda to head to Spain (Andrews, 1978). In 1622, 1715, and 1733, Spanish plate fleets en route to Europe wrecked on Florida's shores, all as a result of hurricanes. The 1622 fleet crashed into the small islands of the Dry Tortugas to the west of the Keys, the 1715 fleet was pushed onto the east coast, and the 1733 fleet ran aground on the reefs and shoals of the Keys. Immediately after the disasters, Spanish authorities sent salvage crews to recover the cargos, including silver coins, gold bullion, Chinese porcelain, and the spices and exotic goods of the New World. Although the Spanish salvors were extremely successful in their efforts and much was raised to be shipped on to Spain, not everything from the wrecked ships could be recovered.

With the development of accessible self-contained underwater breathing apparatus (SCUBA) in the 1950s, the wrecks of these fleet ships began to be discovered and early

treasure hunters hurried to plunder the sites. With the growth of underwater archaeology as a science and proof that good archaeological methods could be followed underwater, state officials worked to prevent further damage to submerged cultural remains and to use state historic preservation laws to protect the sites. Nevertheless, historic shipwrecks still were viewed by much of the public as places to be mined for personal gain, rather than as finite, non-renewable resources for understanding the past. The popular media continue to foster the myth of sunken treasure chests and galleons loaded to the gunnels with gold, and often depict modern-day treasure hunters as adventurous entrepreneurs. The result is that commercial salvage is allowed at some historic shipwreck sites in Florida waters, and the salvors are monitored and managed by state-employed archaeologists – a situation that archaeologists deem to be unethical and salvors feel is limiting to private enterprise.

Current commercial salvage, as practiced in Florida, is based on admiralty law, descended from ancient law of the sea, which provided an incentive for captains to go to the aid of vessels in peril on the sea. A captain who put his own vessel in danger by assisting a foundering ship could expect to receive part of the proceeds of sale of the cargo in compensation. In this way, lives were saved and cargo was rescued to be returned to commerce circles. Although admiralty law never was intended to be applied to historic shipwrecks, attorneys for treasure hunters successfully persuaded United States courts that the historic cargos could be “rescued” and returned to the economy. In this way, commercial salvors placed admiralty arrests on historic shipwrecks which gave them title and right to the wrecks. This practice persisted until passage of the federal Abandoned Shipwreck Act (Pub.L. 100-298; 43 U.S.C. 2101-2106) in 1988 provided states with a means of preventing the arrest of heritage resources; however, shipwrecks already claimed under admiralty law when the Act was passed were “grandfathered in” and still are held under arrest. Although the State of Florida no longer allows the arrest of newly discovered historic shipwrecks, salvage contracts on the “grandfathered” wrecks still are allowed by law and likely will continue to be used by commercial salvors until the state law is changed.

This history of treasure hunting in Florida led to the codification of commercial salvage in the laws of the state. The Florida Historical Resources Act, Chapter 267 of the Florida Statutes, was specifically written to allow the commercial salvage of historic shipwrecks (see Rule 1A-31), although historical and archaeological resources on state-owned or controlled lands, including submerged lands, are protected from unauthorized disturbance, excavation, or removal of artefacts and the state is mandated to manage these resources for the public benefit. Despite commercial exploitation of archaeological sites being unethical and contrary to public benefit, the State of Florida allows the salvage of certain shipwrecks and the dispersal of recovered artefacts into private collections. The Bureau of Archaeological Research, part of the Florida Department of State’s Division of Historical Resources, administers and manages the Exploration & Salvage Program by strictly regulating the industry and the companies engaged in salvage, including requiring them to sign a performance contract, hire an archaeologist, and submit periodic reports of activities. The state may also retain up to 20% of artefacts recovered on behalf of the people of Florida on

whose property the material was found. Much of the shipwreck material claimed by the state can be seen on public display in facilities such as the Museum of Florida History in Tallahassee, the state capital.

The result of allowing commercial shipwreck salvage in Florida is that British shipwrecks are subject to this law and may become the targets of treasure hunters. For example, the British merchantman *Spring of Whitby* currently is held under a salvage contract. Built in 1801, she wrecked in 1809 or 1810 on Florida's east coast very near the wrecksite of a Spanish ship called *San Martín* that sank in 1618 (Singer, 1998: 140). *San Martín* was carrying coins and several have been recovered from the area, although some confusion exists regarding whether the coins come from *San Martín* or *Spring of Whitby*, extending largely from the poor record-keeping practices of the commercial salvors. Little information pertaining to *Spring of Whitby* is available and no reports of investigations have been produced.

The Case of HMS *Fowey*

The shipwreck with perhaps the most influence on Florida's approach to British vessels in its waters, and to treasure hunting in the state in general, is HMS *Fowey*. *Fowey* was a 5th-rate warship of 44 guns, built in 1744. In 1748 the ship bilged on a reef, in an area now called Fowey Rocks, in the Upper Keys and was lost. The wreck site was identified by National Park Service archaeologists in the 1970s during a survey of Biscayne National Park, near Miami (G. Fischer, 2008, pers. comm.). Despite the site's identification as a British warship, an admiralty arrest was attempted in 1979 by a treasure hunter who thought the site was a Spanish galleon. The case went to court and, in 1983, the United States won the case to prevent an admiralty arrest and subsequent salvage of the wreck. The court decision constituted a landmark in United States historic preservation case law. The judge determined the remains of HMS *Fowey* were an archaeological site, and not a ship in terms of admiralty salvage. Further, the site was determined not to be in marine peril and therefore did not need to be rescued by the salvor, a major tenet of admiralty law and legal salvage. Rather, the wreck of *Fowey* was found to be public property and part of United States' heritage which should be managed in the best interests of the public rather than privately salvaged and sold for profit (G. Fischer, 2008, pers. comm.; Skowronek and Fischer, 2009).

While HMS *Fowey* is undeniably the property of the British government as a Crown warship, the National Park Service was found to have 'constructive possession' of the wreck site because it is located in a national park and is a park resource. The National Park Service also has jurisdiction for the wreck site's protection and management because it is imbedded in the federal submerged lands of Biscayne National Park. This on-going jurisdiction is sufficient, in the opinion of the court, to deny unwanted salvage (G. Fischer, 2008, pers. comm.).

Archaeological investigation at the *Fowey* site has been conducted by the National Park Service, Florida State University, and the State of Florida (Skowronek, et al., 1987;

Skowronek and Fischer 2009). Currently, HMS *Fowey* is the only historic shipwreck in Florida waters that is off-limits to divers, snorkelers, and other visitors, due to continual problems with looting at the site. As a matter for consideration and debate, because HMS *Fowey* is the property of the United Kingdom and is entitled to sovereign immunity, should UK laws that prohibit diving on historic shipwrecks without a government license be applicable in this case?

PUBLIC ACCESS AND HERITAGE TOURISM AT HISTORIC SHIPWRECKS

The state of Florida has found, in recent years, much success in shipwreck preservation through promoting public access to and stewardship of historic shipwrecks (Scott-Ireton, 2003, 2007). Florida is the top diving destination in the United States and the state's clear, warm waters and variety of marine resources annually draw hundreds of thousands of divers and snorkelers from all over the world. Because patrolling all shipwreck sites is impossible for law enforcement, the Florida Bureau of Archaeological Research launched an intensive public education campaign to teach diving visitors the importance of shipwreck preservation for research and for enjoyment. Over the years, the message that shipwrecks and other submerged cultural resources are heritage sites to be conserved rather than "treasure mines" to be consumed has been stressed through educational literature, magazine articles, television programs, museum exhibits, public lectures, and training workshops. Although problems with looting and vandalism are not entirely solved, the message seems to be getting through to divers who now understand shipwrecks should be conserved as part of the marine environment. In particular, dive shops and charter boat operators have begun to realize that if they allow divers to take "souvenirs" from their local shipwrecks, then soon nothing will be left, people will no longer want to visit, and they will have lost a vital part of their economic foundation.

By promoting historic shipwrecks as attractions for heritage tourism, archaeologists and submerged cultural resource managers can tap into a culture of stewardship and reverence for the ancient to help preserve the sites for the future. One program in Florida that is immensely successful and popular is the state's Underwater Archaeological Preserve system. These are historic shipwrecks around the state that are interpreted as "museums in the sea" for divers and snorkelers (www.museumsinthesea.com).



Figure 3: Florida's Underwater Archaeological Preserves are interpreted for divers and snorkelers through brochures, underwater plaques, a website, and this poster (image courtesy of the Florida Bureau of Archaeological Research).

Eleven Preserves currently have been established, all through partnerships between state archaeologists and local communities for research, promotion, and on-going management; more Preserves are in process. By providing a means of education through recreation, the Preserves help teach diving visitors about the importance of shipwrecks as parts of our common maritime past and as tangible remains of the United States' multicultural heritage.

Because public education is an enormous task and no one group can hope to accomplish the mission alone, partnerships for outreach have proven extremely effective in Florida (Scott-Iretton, 2008). Organizations including the Florida Public Archaeology Network (www.flpublicarchaeology.org), the Florida Bureau of Archaeological Research (www.flheritage.com), the Lighthouse Archaeological Maritime Program (www.staugustinelighthouse.com/lamp.php), and the National Oceanic and Atmospheric Administration's National Marine Sanctuaries Maritime Heritage Program (<http://sanctuaries.noaa.gov/maritime/welcome.html>) work together to develop and implement outreach programs targeted to Florida's diving citizens and visitors. Local dive shops, SCUBA clubs, and avocational organizations, such as Florida's own Maritime Archaeological Research & Conservation, Inc. (MARC) team (www.marinearcheology.org), are vital components of outreach initiatives and are incorporated into research projects, educational program development, and management strategies.

MANAGING A SHARED MARITIME HERITAGE

British shipwrecks in Florida's waters are rare and significant relics of the state's, and the nation's, colonial and early American history, as well as remains of England's imperial endeavours. To date, British shipwrecks have been managed by State of Florida administrators based on state law and regulation that govern all historic shipwrecks located on Florida's sovereignty submerged lands. These laws, in most cases, provide for adequate protection while allowing legitimate scientific research and much information has resulted from archaeological investigations at the Deadman's Island Wreck, Town Point Wreck, HMS *Fowey*, and the *Industry* site. The legal pursuit of treasure hunting and salvage in Florida, however, means that British ships discovered in future may be subjected to commercial exploitation. Although the case of HMS *Fowey* provides a solid precedent for preservation, British ships located outside of federal jurisdiction or in other circumstances, or brought to court in front of a less preservation-minded judge, may not fare so well.

The success of public education strategies designed to stress the historical and cultural importance of shipwrecks, rather than any intrinsic value of their cargos, is recognized by the governments of both Florida and the United Kingdom. Popular programs such as the UK's Hampshire and Wight Trust for Maritime Archaeology Dive Trails (www.hwtma.org.uk) and Florida's Underwater Archaeological Preserves indicate the public's interest in learning about, preserving, and visiting historic shipwrecks. The growth of heritage tourism provides an economic incentive for shipwreck preservation that is entirely separate from the dubious value of salvaged material. With common goals of protection and education, perhaps Florida and the UK can also become partners in management of their shared heritage. If UK administrators made clear to Florida government officials that British-owned shipwrecks are not eligible for commercial salvage and, as vessels entitled to sovereign immunity, were not to be disturbed except where explicit permission was granted (for example, for research purposes), then Florida's submerged cultural resource managers would be able to better protect British vessels in state waters.

While UK regulations that restrict visitation at historic shipwrecks likely would not be feasible in Florida, due to the vast numbers of divers and snorkelers who live in and visit the state, certainly a partnership for protection and outreach would serve both governments. In addition, a successful scheme for management could serve as a model for other locations and for other administrators. Perhaps a shared management approach is the answer for a shared heritage.

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‘Shared Heritage: Joint Responsibilities in the Management of British Warship Wrecks overseas’

INTERNATIONAL GOOD PRACTICE OR A FEW COMMENTS UPON THEM

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THE MATTER AT HAND

‘Shared Heritage’ is the title of this conference, but the subtitle is more elaborate: ‘Joint Responsibilities in the Management of British Warship Wrecks overseas’. That seems to be an interesting topic on which perhaps it is appropriate to congratulate the organizers. It is also clear that the focus is on a very specific part of the heritage of humankind. What part of heritage is that? We are looking at an overlay of:

- British heritage,
- overseas heritage
- (perhaps non-British heritage, but not necessarily so),
- international heritage,
- maritime heritage,
- heritage of conflict,
- heritage of remembrance,
- heritage of war,
- heritage of destruction,
- heritage of heroes,
- heritage of winners,
- heritage of losers.

With so many overlapping and delimiting qualifications, we may really have ended up at the fringe of the heritage spectrum. Have we, however? I am certain that in the view of many of my highly professional archaeological colleagues, whether prehistorians or classicists, whether researchers or curators, we are on that fringe indeed. But then, their professional specialism and opinion may have influenced them to be studious about other specific

'heritage' values. Moreover, alongside with that, in their private lives they may have high moral opinions on sites and issues we are dealing with today. Such opinions may or may not be at odds with their professional judgement on other types of sites, archaeological items or topics.

At the same time one might contend that the more issues a particular part of the world's heritage unites, the more it touches the core dilemmas of archaeology as a human science informing us about the past as well as of heritage management that has the double duty and function of catering for archaeology's resource and knowledge base and of catering for the vitality of rememberings of the group that puts that management in place (Lowenthal, 1996).

Who puts that management in place?

Who puts that management in place in this specific instance?

And why?

Well, those are preliminary but central questions; preliminary and central in a changing world; preliminary and central under circumstances under which management is starting to cross its traditional borders, starting to outreach the competence of those who indeed put that management in place, moving into new, international, spheres, new competences, shared competences and joint responsibilities. However – and that is where it starts to be interesting – the traditional interests of those who put (parts of) heritage management in place do not fade away. On the contrary: they become more outspoken, partial and explicit.

Is that what we are dealing with here and today, addressing the management of British warship wrecks overseas? If so, what is wrong with that? In civil society after all, it is a very good thing to make interests and roles very explicit, whether this be at the local, regional, national or international level. Yes, good thing, good practice; that is what I was asked to look into today. I was asked to comment on international good practice in the context of the developing worldwide concern for the underwater cultural heritage and to the background of the ideas behind such international instruments as the 2001 UNESCO Convention and the ICOMOS Charter that lies at the basis of its operational rules in the Annex. Or more specifically I was asked to comment on the way in which those ideas are or should be implemented and what that means for the underwater cultural resource. And then, of course, the organizers asked me to formulate 'best practice', or 'good practice' for that matter. (I never know whether good or best is better. Best may be better than good, but the best we can do may not be good enough).

Anyway, it is easy enough for me or anyone else to take the high moral ground, to say 'thou shalt' this, 'thou shalt not' that... It is easy enough to find many examples of what is not good practice. Many stories are told; many beers are spilled over them.

SOME EXAMPLES

Let me give a simple example from Denmark, the country where I presently live. (I). Just like many other countries, Denmark has a water authority that deals with issues of safe

navigation. It maintains beacons and lights, and whenever appropriate it takes care of obstructions such as wreck. Early in 2008 the authority provided a permit for a maritime service company to do several things:

- to assess a range of small German vessels scuttled in a sound near the island of Langeland at the end of World War II,
- to choose one,
- to lift it.

Permits and assignments for clearing wreck are not unusual. Granting such permits, after all, is to the benefit of safe navigation after all, especially in shallow waters. But some aspects are very unusual in this case. The first is the reason why the permit was asked for in the first place, and the second is the option of choice between several locations. Airlifting and detailed assessment of the condition of remains are not normally necessary in order to find out which 'object' is the worst navigational obstruction. No, but that was not the point of this operation nor of its permit. The aims of the permitted operation were different indeed. It was not the obstructive qualities of the remains but concepts like 'conservation', 'authenticity', 'integrity' and 'heritage quality' that the service company had to assess for its client, the British Wheatcroft Foundation. This foundation is very much concerned about upkeeping a good array of World War II military heritage. It owns all sorts of vehicles, tanks and motorcycles. Conservation and restoration are to a high standard and the collection is used for purposes of exhibition, for events and for using the 'real thing' in period movies. The motto of the organisation is: "Preserving the Past, Protecting the Future" (<http://www.wheatcroftcollection.com/home.html>). Extending their collection of German 'Schnellboote' and spare-parts was the reason for assigning the 'salvage' in Danish waters. The Danish authority, *Farvandsvæsenet*, is well aware of heritage regulations and even though Danish heritage legislation has a 100-year cut-off date, they informed the heritage authority before they issued the permit. The heritage authority, *Kulturarvstyrelsen*, for their part took the information for granted. It did not realize that, unlike in most of such requests, considerations of heritage significance lay at the basis of this one. They did not realize that it would be 'good practice' to inform and solicit opinions from the local museum entrusted with the deployment of heritage policies in the particular waters around Langeland and the German authorities alike. Would considerations of heritage significance make it imperative to do so? There are so many issues with sites older than 100 years which are covered by law. Moreover, these particular sites would not easily qualify for listing within the Danish system of allocation of significance and which authority in Germany to inform anyway? Heritage issues are the prerogative of the 'Bundesländer' and what of international heritage issues? It was only when the maritime service company was in full operation that fierce outcries emerged.

Actually, the outcries are easy criticisms. The heritage value of the sites is not – in this case – defined by any objective criteria. It is, however, by the very fact that the interested parties in the operation are interested because of heritage values in the first place. The main

problem is not their interest, but the fact that the dilemmas of retrieval in one country for (heritage) benefits in another country, while yet a third country has a 'verifiable link' (2) have not been faced at all. In this case, maritime heritage management at the national level is virtually absent and as a consequence it can not be deployed at the international level either. (3). Good Practice? Hardly, I would say.

Another example, slightly more dated: a wood-stove reseller's exhibition hall in Alkmaar, the Netherlands, and a city renowned for its heritage cheese market. The Netherlands is the country where I worked for government until three years ago and, walking along the street in Alkmaar, I look into the wood-stove reseller's window and see what you see in Figure 1: the copper turret of an English World War I submarine, the E3 actually, exhibited as a trophy amidst the wood-stoves.



Figure 1. The turret of the World War I submarine E3 in the exhibit of a wood-stove retail shop in Alkmaar, The Netherlands, in June 2003, photo: author.

Good practice? Rather doubtful isn't it? World War I falls well beyond the 50-year legal cut-off date for archaeological reporting in the Netherlands. But then Of course, the process of educating interested wreckers is not something that happens overnight. We, the government heritage agency evidently contacted the group that had carried through the lift and with whom we had been in contact before. (4). Their area of operation is north of the Frisian Islands, mostly the German Frisian islands, actually. Additional information was collected, embassies were informed and that was it. Good practice? Well, no, certainly a lot

to elaborate on and as I am well aware a reason for outcry in the context of the interests central in the topic of today's conference.

VALUES AND INTERESTS

Let us look at those interests more closely. The four quotes that we were all given as an introduction (Figure 2) help in doing so.

Four quotes as introduction to the seminar's aims:

"It is probable that a greater number of monuments of the skill and industry of man will in the course of ages be collected together in the bed of the oceans, than will exist at any one time on the surface of the continents."

(Lyell, C., 1832, Principles of Geology).

"..according respect to the dead and protecting the sanctity of human remains [are] considerations at the forefront of the values of a civilised society.."

Mr Justice Newman, R. v. Fogg & Sec. State for Defence & Short, [2006] 2 Lloyd's Rep. 576

"Poor is the country that has no heroes, but beggared is that people who, having them, forgets"

William A Jones

Colonel, United States Air Force

"They shall not grow old as we that are left grow old, age shall not weary them nor the years condemn, at the going down of the sun and in the morning we will remember them"

Prayer of Remembrance

Figure 2. The four quotes introducing the seminar Good Practice. Shared Heritage: Joint Responsibilities in the Management of British Warship Wrecks overseas. University of Wolverhampton.

They perfectly voice the specific interest of today's major interest group and they do so by presenting these interests as universal values. That is useful, as they so articulate a particular stakeholder's interest in a way that makes it easily understandable and easy to subscribe to, or at least easy to decide that it is an interest that can be accommodated without any problem while resolving dilemmas that ethical decision-making always revolves about. But does that make them into universal values as such? Let us look at them more closely.

The first one, from Charles Lyell's Principles of Geology, *"..it is probable that a greater number of monuments of the skill and industry of man will in the course of ages be collected together in the bed of the oceans, than will exist at any one time on the surface of*

the continents”; is a quote I occasionally used myself (for example Deeben et al, 2002; Lenihan, 1983). I have no problem to see that as a universal basis for deployment of archaeological heritage policies at sea.

The second and third quote voice claims on what a civilized society is, and the fourth quote is from a prayer of remembrance. There is no way I am going to deny the meaning of these values for many. What I would like to point out is that the combined assertion of civilized values and Christian prayer is exactly the same mix of moral well-meaning and proselytizing that defined such endeavours of ‘bringing civilisation’ that have come to be denoted as orientalism or imperialism in present-day globalizing society (C.f. Said, 1979; Legêne, 1998). Without in any way denying any respect to those subscribing to those values, I doubt whether it is useful to use this set of values as a basis for further deployment of universal heritage management the world over. Rather, I would like to see them as a set of values that needs to be taken into account and that can be catered for when resolving dilemmas in that management. Some or many take them seriously and why not respect that.

RESPECT AND DISRESPECT

Now, let us look at the mass grave in Figure 3, a result of war.



Figure 3. A wargrave at Wassenaar, the Netherlands. Photo: Faculty of Archaeology, Leiden (Courtesy L.P. Louwe Kooijmans).

It was discovered during an archaeological survey in advance of a planned development (Louwe Kooijmans). A value that I subscribe to in a tradition of 'western' curiosity also called 'science' is that traces give us the potential to find out things. In order to find out, the same tradition has it that we may disturb and efface, not at random, but by resolving a range of dilemmas in scientific 'good practice'. This having been done in this case, I do not think this site or the war-deaths, heroes or losers have been dealt with disrespectfully. The mass grave dates from 1700 BC. I do not think that in the treatment of the discovery these war-deaths, heroes or losers, fighting for their cause or slaughtered for it, have been dealt with disrespectfully at all and I suppose many of you will feel the same.

This very fact that distance and date make a difference is both remarkable and practical. In day-to-day practice, the fact that we think differently of a war-grave distant in culture and time than of a war-grave that one might (rightly or not) associate with present-day suppression or freedom, has been a practical guide to resolve the arising dilemmas. However, subject-wise scientific curiosity and the assertion of values such as embedded in the last three quotes are more and more likely to overlap.

At the same time the world is trying to find a really international basis for the treatment of heritage worldwide. This cannot be done on the basis of scientific curiosity. Moreover,

scientific curiosity may not be considered respectful on an *a priori* basis. Nearly twenty years of resolving issues marrying the interests codified in the 'Native Americans Grave Protection Act' (see for instance Scarre & Scarre, 2006) and just over fifty years of resolving issues related to the 'International Principles Applicable to Archaeological Excavations' as laid down in the so-called Delhi Recommendation (Maarleveld, 2007) prove just that. But, on the other hand, if it cannot be done on the basis of scientific curiosity exclusively, it cannot be done on the basis of respect for dead servicemen, war deaths and heroes as a universal value either. Universal as the values may be perceived, and universally respected as they can be – out of respect for those who care most – they can nevertheless not be defined in a way that is universal.

I must say I was not so aware of that until one intervention during the negotiations for the 2001 UNESCO Convention. It was an intervention in the context of the discussions related to the concept of sovereign immunity. There had been lots of discussion on the specific definition of warships and how far the concept of sovereign immunity could be stretched. Many delegations were of the opinion that in relation to sunken ships, immunity had a specific purpose, intelligence, and that the concept was not to be used in such a way as to exclude state ships from the heritage spectrum or from heritage protection if otherwise they qualified. Moreover, many delegations were of the opinion that the definition could not be stretched beyond the time when its application to sunken ships first became accepted in customary law. That is to say, that it cannot be stretched to extend before World War I. Many states still feel like that. Not the United Kingdom, however. That is the exception rather than the rule.

At some point during the discussion, it was actually the U.K. delegation who strongly voiced today's concern for fallen servicemen and for an exclusive status for war graves. Fair enough, one would think. But, taking the specific status of State Ships in customary law as a starting point for the appeal means that one takes the specific rules adhering to them as basis for the concept of respectful hands off and respectful protection. This was combined with and thus limited to a strict definition of a State Ship that implies that it is a ship under military command and that it has a crew of disciplined servicemen with military status, rank and number.

Completely unexpectedly – at least to me – the intervention provoked a very outspoken reaction from the delegation of Vietnam, who until then had not interfered. In short, the drift of their reaction was: 'we, the Vietnamese, deplore great, great numbers of violent deaths, related the 20th century warfare in our country, tucked away in improvised graves, shoved away in rivers and seas around Indochina. Many of these victims have no specific military status. Now you want us to accept that we have to accord more respect to the graves of those who have, the rank and file of the Americans, of the French? That is absolutely unacceptable.' In consequence, the Convention now features the following formulation:

Article 2: Objectives and general principles

9. State Parties shall ensure that proper respect is given to all human remains located in maritime waters.

Consequently, I also became even more convinced than I had been before that the specific interest we are dealing with today is one to be kept in mind in considerations, but that it is not one that in itself forms a universal basis.

GOOD PRACTICE?

How then does all this inform us on 'Good Practice'? How does the specific interest fit in good practice? Well, it fits very well actually. The UNESCO Convention on the Protection of the Underwater Cultural Heritage of 2001 is not the first Convention to address international heritage issues and basic considerations. In order to develop 'international good practice' one has to start with basic considerations and take them seriously. In that perspective it is useful to recall one of the basic considerations of the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict, which says '... that damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind ...'. Such concepts have further been elaborated both in the World Heritage Convention of 1972 and in the 2001 Convention. Have they really been internalized, however, in our thought? Perhaps a bit. But perhaps we need a bit of extra effort really to develop 'good practice' on this point. In my view, doing so means that specific rights, specific claims, specific title, specific sovereignty, specific rules for war graves, specific ownership should give ample way to overarching general considerations that lie at the basis of the deployment of policies regarding the underwater cultural heritage world-wide. Cannot then specific rights support this general deployment? Yes, they can, but they can equally stand in its way, and that is not good practice. Put the emphasis on the Shared and the Joint, rather than on the British in the title of this conference ('Shared Heritage: Joint Responsibilities in the Management of British Warship Wrecks overseas'). That will help others, whose background, recent history and culture are different, distant in space if not in time, to respect your specific interests as part of the greater picture. Exclusiveness will not help at all.

The best 'good practice' I can think of, is to follow the UNESCO Convention closely and to take that, rather than any exclusivity as the formal basis for weighing the dilemmas and taking the decisions. The Australian approach, which created far less problems than the British approach, seems to be a good point in case. (Staniforth, 2009). Unlike Mike Williams, I do not think that the United Nations Law of the Sea of 1983 came too early. (5). In fact, I think it came too late. Its reference to objects of an archaeological nature is very ill informed. And that reference was inserted at the very last moment. That late insertion has complicated, rather than facilitated the development of a protective regime (Platzöder, 1987; Watters). If the negotiations had been brought to termination just a bit before, this would not have happened.

In the British context, there is one last remark I would like to make, or actually two. One is that title and protection are quite separate issues. This should be stressed. The second is

that the Convention, in Article 22 calls for the establishment of competent authorities. The United Kingdom has many, all with limited competence. That is not helpful. I am not referring to the different offices for Scotland, England and Wales, but to the fact that different types of heritage are the competence of different departments. Reports of finds are never unequivocal. There is a tendency for rapid, preliminary identification. Where different authorities take responsibility for different types of site that is not helpful at all. Reports are twisted at will to be this or that; warship, merchant ship, whatever. What of a troopship? Creating confusion may creatively be abused, creative confusion. Not good practice on behalf of finders and discoverers, perhaps, but something to take into account in management, organizing it in such a way that confusion is reduced rather than kindled. It would be helpful for good international practice indeed if the U.K. would establish a single authority, following a single policy. In that sense, the title of the conference, 'Shared Heritage: Joint Responsibilities in the Management of British Warship Wrecks overseas', has a double meaning. Shared and joint internally as a basis to share and join internationally.

NOTES

1. For details on this incident I am grateful to Ole Grøn (Langelands Museum) and Tinna Damgård Sørensen (Vikingskibsmuseet) and in particular to Otto Uldum, Langelands Museum.
2. The concept is introduced in the UNESCO 2001 Convention.
3. on the friction between regionalization and protective policies at sea see also: Th.J. Maarleveld, Maritime management matters. Chapter 6 in: J. Satchell & P. Palma (eds.), *Managing the Marine Cultural Heritage: Defining, Accessing And Managing the Resource*, CBA Research Report 153. York 2007, pp. 49-58.
4. I had actually opened an exhibition of their finds in Het Noordelijk Scheepvaartmuseum in 1996, see also Th.J. Maarleveld, *Archaeological heritage management in Dutch waters: exploratory studies*, Leiden/Lelystad 1998, p. 77.
5. Comment by Mike Williams in the discussion during the Wolverhampton conference.

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THE MANAGEMENT OF PROTECTED HISTORIC WARSHIP WRECKS IN ENGLAND'S WATERS

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INTRODUCTION

English Heritage has had wide engagement with military heritage. In 2002, archaeological guidance was published on the significance and future management of military aircraft losses (Holyoak & Schofield, 2002). The following year, English Heritage sponsored (with the Royal Naval Museum, Portsmouth) a Military Maritime seminar which sought to work towards developing good practice for dealing with military maritime remains while in 2004, *Modern Military Matters* (Schofield, 2004) was published providing discussion on studying and managing the twentieth-century defence heritage in Britain. Most recently, the University of Wolverhampton and English Heritage jointly supported a conference in 2006 which sought to develop international co-operation in relation to the wrecks of the WWI Battle of Jutland.

English Heritage also undertakes *ad hoc* casework and provides advice in relation to undesignated British military sites in UK Territorial Waters adjacent to England and, on occasion, for sites in International Waters. In the case of the latter, such casework is undertaken, and advice given, without prejudice.

This paper therefore aims to introduce, as a further country case in the Shared Heritage seminar, English Heritage's approach to, and experience in, the management of those historic shipwreck sites, including military wrecks, which are designated as being of significant importance, and protected by law. In addition, methods of conservation management practice that aim to sustain the special character of historic wreck sites, whilst minimising the effects of impacts and the need to develop access and awareness programmes, will also be addressed.

ENGLISH HERITAGE'S ROLE AND RESPONSIBILITIES

English Heritage is the UK Government's statutory advisor on the historic environment of England and provides expert advice about all matters relating to the historic environment and its conservation as set out in the National Heritage Act 1983. English Heritage is sponsored by the UK Department of Culture, Media and Sport, with the Department of Communities and Local Government and the Department of Environment, Food and Rural Affairs being co-signatories to the funding agreement with Government.

English Heritage works in partnership with central government departments, local authorities, voluntary bodies and the private sector, to conserve and enhance the historic environment, broaden public access to the heritage and increase people's understanding of the past. Here, English Heritage aims to create and promote a heritage cycle where valuing the marine historic environment leads people to want to care for it and, as a consequence,

enjoy it more. An environment enjoyed normally brings an appetite to learn more, and it is through understanding that cultural heritage sites are valued, thus cycling back round to caring.

Functions relating to underwater archaeology derive from the National Heritage Act 2002 which extended English Heritage's general powers under s33 of the National Heritage Act 1983 to cover ancient monuments in, on, or under the seabed within the seaward limits of the UK territorial waters adjacent to England. These powers include providing grant assistance in respect of any protected wreck within the seaward limits of UK territorial waters adjacent to England, and the provision of advice to any person in relation to any ancient monuments in UK territorial waters adjacent to England.

In addition, the Secretary of State for Culture, Media and Sport issued Directions to English Heritage under Section 3 of the 2002 Act to exercise administrative, UK-wide functions with respect to the Advisory Committee on Historic Wreck Sites (ACHWS); the Contract for Services in Support of The Protection of Wrecks Act 1973 (which is administered by English Heritage on behalf of the Scottish Ministers, the National Assembly for Wales and the Department of the Environment (DOE) in Northern Ireland); and the Protection of Wrecks Act 1973 (in relation to historic wrecks situated in UK territorial waters adjacent to England).

These administrative functions were assumed by the newly formed Maritime Archaeology Team within English Heritage which was charged with the physical management of England's 39 (now 46) Designated Wreck Sites as well as 'wider responsibilities' for England's maritime archaeology. In fulfilling this latter responsibility, English Heritage advocates a seamless approach to conservation management which is not determined by where the sea is now –

or where it will be.

In addition, central government has access to a specialist conservation advice service within English Heritage through the Government Historic Estates Unit (GHEU). This Unit sets and monitors standards for the care of government departments' historic estates and handles statutory casework for specific sites.

UK LEGISLATIVE FRAMEWORK

The current statutory protection that can be applied to historic warships is varied, comprising the Protection of Military Remains Act 1986, the Ancient Monuments and Archaeological Areas Act 1979 and the Protection of Wrecks Act 1973.

The Protection of Military Remains Act 1986 enables the designation of maritime military graves by providing protection for the wreckage of military aircraft and certain military wrecks. Administered by the Ministry of Defence, designations can be either as a Controlled Site or Protected Place where access is allowed, but interference and entry prohibited. There are currently six Controlled Sites and 450 Protected Places (including 434 recorded aircraft) in England's Territorial waters.

The Ancient Monuments and Archaeological Areas Act 1979 enables protection of a site due to it being of national importance as an *ancient monument*. Access is allowed to such sites but damage is a Criminal Offence. This type of designation has yet to be implemented in England unlike the remains WWI German High Seas Fleet at Scapa Flow, Orkney, Scotland, scheduled by Historic Scotland (Oxley 2002).

This paper will principally address the opportunities of The Protection of Wrecks Act 1973 where Section 1 empowers the appropriate Secretary of State or Minister to designate, by Order, a restricted area around the site of a vessel lying on or in the seabed in UK waters (excluding the Isle of Man and Channel Islands) if he/she is satisfied that, on account of the historical, archaeological or artistic importance of the vessel, or its contents or former contents, the site ought to be protected from unauthorised interference. At the time of writing, there are 46 wreck sites designated in England's waters; 61 across the UK.

When an Order has been made it becomes an offence for unauthorised persons to tamper with, damage or remove any part of the wreck or its contents or former contents; to carry out diving or salvage operations to explore the wreck; and to deposit anything which would obliterate or obstruct access to the site. It is also an offence if someone causes or allows the above to happen in a restricted area. Activity on designated sites can only be undertaken under the authority of a licence issued by the appropriate Secretary of State or Minister.

The Secretary of State's Advisory Committee on Historic Wreck Sites (ACHWS) was set up to facilitate the operation of the Protection of Wrecks Act 1973 by providing independent advice on designation, licensing and strategic historic shipwreck issues (DCMS & English Heritage, 2009).

Section 2 of the Protection of Wrecks Act 1973 enables designation of dangerous wrecks (e.g. SS *Richard Montgomery*, Thames Estuary). This section is administered by the Maritime & Coastguard Agency (MCA).

ASSESSMENT OF IMPORTANCE

Criteria used for assessing the importance of wrecks (or the sites of wrecks), and for considering whether designation as a restricted area under the terms of the Protection of Wrecks Act 1973 is appropriate, by reference to eight indicators; Period, Rarity, Documentation, Group Value, Survival/Condition, Fragility/Vulnerability, Diversity and Potential. These indicators are not regarded as definitive, and wrecks or wreck sites need not satisfy them all in order to qualify for designation. Rather they contribute to a wider judgement based on the individual circumstances of each case informed through marine scientific research (such as hydrography and oceanography).

In addition, the phases of a vessels' career may be presented as a summary *Ship Biography* which draws together the main attributes of a site (Build, Use, Loss, Survival, and Investigation) which provides a statement of a site's archaeological interest (Wessex Archaeology 2006). However, the basis for assessing actual significance of a wreck site requires consideration of its cultural and natural heritage values. Here, assessment of the

varying degrees of significance of different values (Evidential, Historical, Aesthetic, Communal and Instrumental) of the site is required (see Dunkley, 2008).

When considering a case for designation, a wreck site is subject to an Initial Assessment which collates and summarises known documentary records for the vessel. Where warranted, a case progresses to a Full Assessment which comprises fieldwork undertaken by the Government's Contractor for Archaeological Services in Relation to the Protection of Wrecks Act 1973. Here, an annual programme of archaeological investigation is determined in agreement with the UK Heritage Agencies (English Heritage, Historic Scotland, Cadw and Department of the Environment, Northern Ireland). The archaeological contractor provides advice to the Heritage Agencies and to the Government's Advisory Committee on Historic Wreck Sites (ACHWS).

DESIGNATED WRECK SITES UNDER THE PROTECTION OF WRECKS ACT 1973

England's designated wreck sites comprise artefact scatters and upstanding wreck structures ranging from the Middle Bronze Age to the early 20th Century. In 2002, English Heritage assumed immediate conservation management responsibilities for 39 sites and commenced a programme of investigation, intervention and back-log dissemination. Since 2002, English Heritage has recommended the designation of seven additional sites.

Of the current 46 designated wreck sites in the English Territorial Sea, around 40% can be considered warships, and therefore Sovereign Vessels, which includes the *Grâce Dieu* (1439), *Mary Rose* (1545), *Coronation* (1691), HMS *Colossus* (1798), HMS *Pomone* (1811) and HMS/m *AI* (1911). These vessels range from a medieval carrack to the first British designed and built submarine and together chart five centuries of the evolving Royal Navy.

CASE STUDY – STIRLING CASTLE

Between 1701 and 1714, Britain was engaged in the War of Spanish Succession. The Third Rate *Stirling Castle* was part of a squadron that had returned from Mediterranean duties during the summer of 1703 and she was wrecked in the early hours of 27th November 1703 during the 'Great Storm', along with two other Third Rates (*Restoration* and *Northumberland*), the Fourth Rate *Mary*, and many other casualties. Only 70 out of 349 members of the *Stirling Castle's* crew were saved.

Local amateur divers undertaking a survey of wrecks off Ramsgate, Kent discovered the wreck of the *Stirling Castle* in 1979. The site was designated, under The Protection of Wrecks Act 1973 in 1980 and was re-designated in 2004 to increase the size of the restricted area.

The *Stirling Castle* represents the only identified Third Rate of 70 guns in the archaeological record, and the aesthetic value of the *Stirling Castle* as a warship is closely tied to its evidential value on the seabed in terms of its historical context and technological development. The regeneration of the Navy under Pepys' shipbuilding programme of 1677, for example, was affected by the supply of timber for the English Civil War, the Great Fire of London and the general expansion of the navy which had taken its toll on the availability

of suitable wood. Construction of the *Thirty Ships* was delayed and compromises were made because of a lack of large timber elements. For the frames of the new warships, one solution was to mortise a triangular shaped wooden chock (butt-chock) into particular futtocks. The use of frame butt-chocks in the construction of the *Stirling Castle* was recorded in 1999 and represents rare evidence of the methods employed to counter the inadequate supply of suitable grown timber, despite her rebuild in 1699.

In addition, the recovery of a wooden fixed block from the wreck in 2002 may provide evidence on the introduction of the ship's steering wheel (Endsor, 2004) and could also be related to the rebuild of the *Stirling Castle* in 1701. The date of the introduction of the steering wheel has been the subject of some debate and the block, into which is set a pair of angled sheaves, may have formed a component of the steering rope mechanism connected to the tiller. Endsor (2004) argues that the *Stirling Castle* may have been fitted with both a steering wheel and the earlier whipstaff. If so, then the *Stirling Castle* provides archaeological evidence for this important transition in steering mechanisms for warships.

Research aimed at understanding the deterioration processes showed that the *Stirling Castle* site is not stable and important elements of it are at risk: A comparison of multibeam data collected by the University of St Andrews in April 2005 and an earlier 2002 Archaeological Diving Unit dataset indicated that several metres of sediment had accreted in places around the stern and to the north east of the wreck since 2002, although substantial scour was identified in other areas (Bates *et al*, 2005) (Figure 1). Further comparisons between 2005 and 2006 data demonstrated a net deposition of sediment (Bates *et al*, 2007: 99), though the monuments' stern-post and one of the attached transom cross-timbers was noted to have fallen further astern (Dean, 2006)

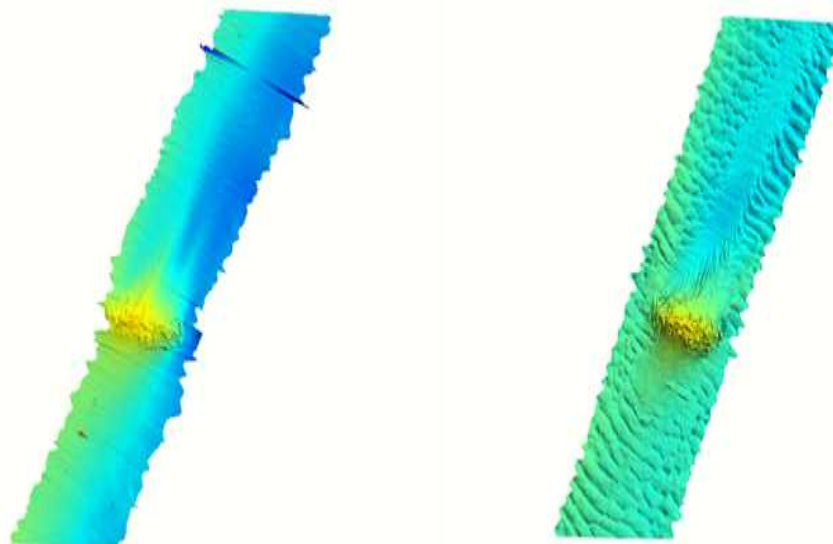


Figure 1: Stirling Castle multibeam comparison of 2002 (left) and 2005 (right) data (University of St Andrews).

In 2007 and 2008, the general trend for increased sedimentation was observed by the long-standing licensed dive team (Peacock, 2007 and 2008).

Formal field investigation and monitoring continued in 2009 while additional project work has sought to catalogue the archive of material recovered from the site since its discovery,

and prior to English Heritage's involvement. It is planned that appropriate material will be forwarded for full assessment and publication in the near future.

All this work is intended to identify the key gaps in understanding the significance of the site's component parts so that these can contribute to informing the future conservation management of the wreck site. Here, significance is articulated through the site *Conservation Statement and Management Plan* published in late 2007 (Dunkley, 2007) (see below).

DATA ON KNOWN WARSHIP LOSSES

It is useful to compare the number of existing warship wrecks that benefit from designation under The Protection of Wrecks Act 1973 and what may exist on the seabed. The National Monuments Record (NMR) is the public archive of English Heritage and maintains the national inventory of archaeological sites and monuments (accessible through www.pastscape.org.uk). The inventory includes some 32,777 identified wrecks and recorded casualties within England's Territorial Sea with a cut off date of 1945 and was recently expanded to include aircraft casualties and submerged prehistoric archaeological sites and findspots.

Biases and trends within the data are recognised: The records show that 122 English Warships were lost in English waters before 1700 AD, 308 British Warships were lost post-1700, 24 British Submarines were lost as were 543 Admiralty Vessels. In all, 592 warship losses of all nations and periods are recorded.

The Great Storm of 1703 is arguably the most severe storm ever recorded in the southern part of Britain. In addition to the vessels lost off Kent, the warship *Resolution* was lost off Pevensey and the *Vanguard* was wrecked at Chatham. In all, the navy lost 13 ships and some 1500 seamen to the storm.

PRACTICAL CONSERVATION MANAGEMENT

Given the quantity of data, and the number of potential sites of special interest, English Heritage's approach to the management of designated historic warships is informed in five principal ways; national and corporate policy, facilitating authorised public access and activities, strategic research and intervention, proactive interpretation / presentation and ongoing dialogue with stakeholders (Oxley, 2007).

The European Convention on the Protection of the Archaeological Heritage (Revised), 1992 (ratified by the UK government in September 2000), and the UK Government's adoption of the Annex to the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage as best practice for archaeology in 2005 (House of Commons Debate 24 January 2005 c210917) frame the national policy background to the marine historic environment.

While English Heritage's *Research Strategy 2005-2010* (English Heritage, 2005) outlines the core organisational priorities, *Taking to the Water: English Heritage's Initial Policy for the Management of Maritime Archaeology in England* (Roberts & Trow, 2002) structures the specific management context which addresses both the professional framework for, and

avocational involvement in, England's underwater cultural heritage. English Heritage's *Conservation Principles, Policies and Guidance* (2008) for the sustainable management of the historic environment are intended to promote consistency across corporate heritage 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 a wreck in its contexts, and which recognises opportunities to reveal and reinforce those values.

Site specific conservation management is informed in two principal ways; assessment and understanding of anthropogenic and environmental risks to a particular site and the requirement for the conservation, maintenance and enhancement of the values and features of a site. The latter is expressed through the publication of Conservation Statements and Management Plans for individual sites which are prepared to enable local, regional and national stakeholder involvement in English Heritage's aspirations for the conservation management requirements of sites by balancing conservation with economic and social needs. Here, the Ministry of Defence is routinely consulted in the preparation of Management Plans for designated historic warships (*e.g. Stirling Castle* and *HMS Colossus*).

Conservation Statements and Management Plans set out agreed policies for future management action on designated wreck sites, and they propose a staged-approach to investigation, interpretation and presentation. In some cases, an understanding of a site's environmental characteristics is required in order to inform intervention. Here, a programme of marine environmental assessments would be commissioned upon which to base informed decisions. Through knowledge of a site's environment, English Heritage will be more able to manage and accommodate change.

RISK MANAGEMENT

In July 2008, English Heritage launched the first all-encompassing register of the country's heritage. This initiative, known as *Heritage at Risk*, assessed 30,687 Grade I and Grade II* listed buildings, 19,711 scheduled monuments, all 1,595 registered historic parks, gardens and landscapes, all 43 registered battlefields and all England's Protected Wreck Sites.¹

The unpredictable nature of the historic environment makes the identification and management of risk characteristically difficult to anticipate, particularly as risks to maritime archaeological sites have been identified as being derived from both environmental and human impacts; it is accepted that all historic wreck sites are at risk simply because of the nature of their environment. An innovative methodology was therefore devised for the field assessment of risk to historic wreck sites to understand their current management patterns, their likely future trajectory and how that can be influenced to ensure their significance is maintained for both present and future generations (the assessment methodology, *Protected Wreck Sites at Risk*, is available to download from the English Heritage website at english-heritage.org.uk).

Assessment indicated that the proportion of designated warship wrecks at High Risk in 2008 was 44% (8 out of 18). In 2009, this had fallen to 37% (7 out of 19) owing to strategic intervention during the intervening period.

On some sites, such as HMS *Hazardous*, the environmental conditions affecting the special interest of a site are not well understood. Here, a programme of Marine Environmental Assessment has been devised so as to inform a programme of intervention. *Quantifying the Hazardous Threat*, undertaken by the Hampshire and Wight Trust for Maritime Archaeology (HWTMA) in 2006, identified areas of co-incidence between areas of high archaeological potential and areas of degradation of archaeological features (HWTMA, 2006) (Figure 2).

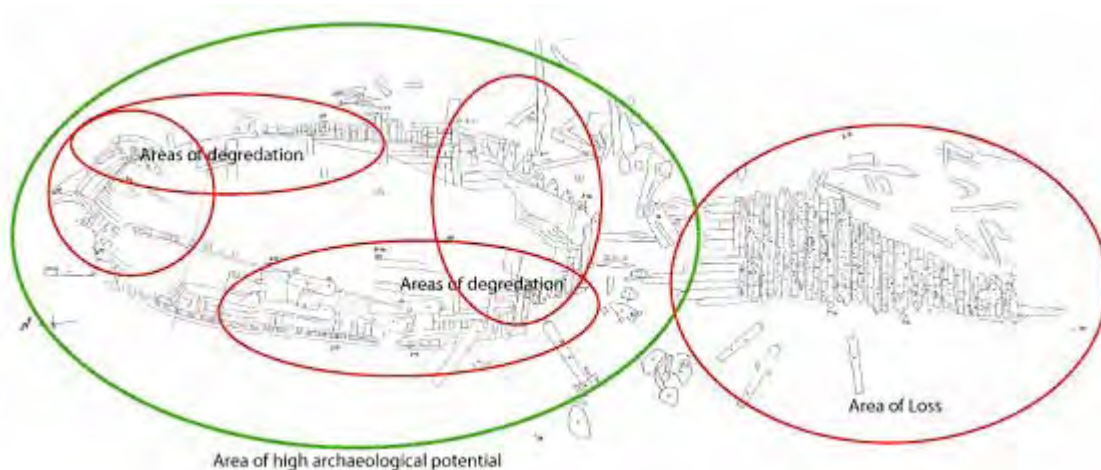


Figure 2: Hazardous Designated Wreck Site sensitivity mapping courtesy HWTMA/ Hazardous Project

CASE STUDY – HMS *COLOSSUS*

HMS *Colossus* was a 74-gun warship built in 1787 at Gravesend by Cleveley that was wrecked off Samson in the Isles of Scilly in 1798. *Colossus* saw action at Toulon, Groix and Cape St Vincent. In December 1798, she was returning to England with wounded sailors and marines from the Battle of the Nile and a cargo which included Sir William Hamilton's collection of Etruscan pottery. Sheltering in a gale in St Mary's Roads, Isles of Scilly, *Colossus*' anchor cable parted and she was driven aground to the South of Samson.

Colossus' importance lies in her being the only surviving vessel of the late eighteenth century *Courageux* Class of warship in the archaeological record. Part of the site (probably the bow) was therefore designated in 1975 when Roland Morris recovered a large number of pottery shards from Sir William Hamilton's collection, which are now in the British Museum, London.

In 2001, the stern area of *Colossus* was finally located and designated. Where identified, the fabric of the vessel is remarkably well preserved in this area (as evidenced by the recovery of a stern carving in 2001). Given the likely preservation of buried archaeological remains, it was recommended that wherever possible unnecessary disturbance should be avoided. However once material is exposed (due to the sand of the surrounding seabed being

eroded), deterioration due to biological decay is fairly rapid. While the precise reasons for this erosion are not well understood –current studies indicate a pattern of seasonality (pers. comm. K. Camidge) - deterioration in exposed timber is marked.

Given that both the potential aesthetic value of buried hull remains and the evidential value of artefacts are of vital significance to the site, a site stabilisation trial was undertaken between 2003 and 2005 (Camidge, 2005). The trial collected data on chemical, physical, biological and human processes affecting the site and demonstrated that, of the three stabilisation methods, geotextile matting (Terram 4000) was clearly the most efficient and cost effective of the systems trialled.

Preparation and adoption of the site *Conservation Statement and Management Plan* in 2007 recognised the need to stabilise and implement conservation *in situ* installations to elements at the stern as well as the requirement to both support, and develop visitor access to the monument as a mechanism to develop the instrumental value of the *Colossus*.

However, the deterioration continued and gradual exposure of timber posed a challenging recording task for the voluntary project team; a programme of recording and targeted stabilisation was agreed. In 2008, Members of the Cornwall & Isles of Scilly Maritime Archaeology Society (CISMAS) recorded a targeted area (20.90m²) of the stern followed by reburial under geotextile material. Placement of an underwater information panel followed explaining the purpose of the matting to licensed visiting divers was also supported by English Heritage (Camidge, 2008).

In 2009, coupled with displays in the adjacent museum, CISMAS installed a diver trail on the stern area of *Colossus* to address wider public presentation of the site (Figure 3).



Figure 3: Diver trail on HMS Colossus (CISMAS)

Access to the underwater interpretation, by interested parties, non-vocational archaeologists and professional teams, remains subject to the authorisation by the Secretary of State, DCMS. Licensed teams are required to provide an annual report on activities undertaken thereby providing valuable information to assist management.

Clearly, such a system depends on the voluntary contribution of both licensees and archaeologists to progress site investigation combined with commissioned investigations and targeted research.

It has been proposed that the preferred method of recording the *Colossus* is to expose small sections of structure and record them while the timber is fresh and clear, followed by reburial (pers. comm. K. Camidge). This methodology could form part of a future stabilisation project.

ONGOING ISSUES

As referred to above, several legislative mechanisms could be applied to protect historic warship wreck sites yet they all have differing management regimes, and there are a number of significant issues impeding consistency of awareness, responsibility, authority and ability to act, in the interests of the care and protection of the heritage values of the sites.

In terms of the inter-organisational recognition, the celebration of the tercentenary of the loss of Sir Cloudesley Shovell's Fleet on the Isles of Scilly, where some 1500 sailors lost their lives, is an interesting example. The tragedy was commemorated in 2007 led by HMS

Ledbury, a Hunt Class Mine Counter Measures Vessel. One of the vessels of Shovell's fleet, either the *Eagle* or *Romney*, is a designated wreck site but the material remains of this former warship was not acknowledged as a place of memory during the tercentenary commemorations. This is in contrast to those sites designated under the terms of the Protection of Military remains Act 1986 which recognises loss of life. Here, the remains of vessels, *and associated human remains*, are secured from unauthorised interference, mainly for the interests of survivors and relatives, rather than for the purposes of heritage management.

POWERS TO INFLUENCE

Unlike some historic properties, English Heritage does not own any designated wreck site. While this has had implications for corporate 'ownership' of the wreck sites in our care, ownership of individual vessels is subject to the investigations of the Receiver of Wreck, where appropriate. Historic wrecks, including the remains of military vessels, remain subject to the possibility of salvage and the risk of dispersal of the collection.

PRESENTATION AND INTERPRETATION

Until recently, there was no national programme for providing interpretation panels or outreach resources in relation to maritime archaeology. Information boards had previously been installed for a handful of shipwreck sites designated under the Protection of Wrecks Act 1973 at places such as Ramsgate, Salcombe and Hastings, but most of these are now outdated and in a poor state of repair. English Heritage has therefore undertaken an audit to identify designated wreck sites where new interpretation panels would have the biggest impact on coastal users. Local authorities and other organisations have, with English Heritage advice, also provided information and interpretation for intertidal designated wreck sites, such as the beached collier at Seaton Carew, Hartlepool, and the wreck of the *Amsterdam*, a Dutch East Indiaman beached near Hastings, East Sussex, in 1749.

In some cases, the nearby presence of a staffed historic building has provided a welcome opportunity for fuller interpretation of a maritime site. At Yarmouth Castle, on the Isle of Wight, English Heritage has included displays about the adjacent 16th century 'Yarmouth Roads Wreck' in a new interpretation scheme. Opportunities exist for similar displays at Deal Castle in Kent, overlooking the treacherous Goodwin Sands on which five designated wreck sites are located, and at Garrison Walls on the Isles of Scilly where the historic property again overlooks many wreck sites, two of which are those of designated historic warships.

HERITAGE PROTECTION REFORM

In April 2008, the UK Government published the Heritage Protection Bill. This innovative document proposed legislation to enable a wholesale revision of the existing law that protects the historic environment in England and Wales out to the 12-mile limit of the Territorial Sea. The Bill also intended to repeal several Acts, including the Protection of Wrecks Act 1973. However, Parliamentary time was not found to take the Bill forward in

the current session and so introduction of new legislation has been delayed. Despite this perceived set-back, we know that Government remains committed to introduce legislation at the earliest opportunity.

Provisions in the draft Bill allowed for the establishment of a unified list of all Heritage Assets, the creation of Marine Heritage Sites and the protection of non-vessel Marine Heritage Assets, such as military vehicles and aircraft. Where a marine heritage site qualifies for statutory protection, it is intended that future designation decisions will be based on special architectural, historic, archaeological or artistic interest. Detailed *Principles of Selection* will define what is 'special' in the marine environment with particular reference to 'vessels'.

English Heritage is also mindful that the Marine and Coastal Access Bill, being developed by the UK Government to reform protection of the wider marine environment, will provide some level of protection for marine heritage in English waters.

NEW INITIATIVES

Several recent and new projects are worth flagging as they will strengthen English Heritage's approach:

The Protected Wreck Site *post-excavation backlog*, accumulated between implementation of the Protection of Wrecks Act 1973 and the National Heritage Act 2002, has previously been addressed by English Heritage on an *ad-hoc* basis, determined principally by the research interests of third parties. Recent strategic prioritisation by English Heritage has seen work targeted at collections management, such as the *Stirling Castle* archive audit.

Material archives of the non-designated resource are the focus of a current project that seeks to address the broad disparate nature of maritime archaeological archives by establishing maritime archaeological collection policies, the extent of the current situation regarding maritime archives, and to gauge future demand for maritime archaeological archive capacity. These issues have been adopted as one of the key future targets of the Archaeological Archives Forum and it is envisaged that the project results will deliver baseline data survey that will assessment of the most appropriate way to deliver increased support for those creating archaeological archives. The results of the first phase of the project are available as a downloadable report (HWTMA, 2009).

Bringing many of the strands of archives, investigation and designation together, we have commissioned the Centre of Maritime Archaeology at the University of Southampton to co-ordinate the development of a *research framework* for the maritime, marine and coastal archaeology of England. It is intended that through consultation, the research framework will provide a coherent overview of previous research into the maritime and marine historic environment of England, in order to enable long-term strategic planning, to inform policy and to provide a statement of agreed research priorities within which researchers can shape projects.²

For practitioners themselves, research was also commissioned to relate *maritime archaeological training* to recognised standards by building on Edwards & Aitchison's work (2004). This research aimed to define those issues specific to what is broadly described as *maritime* archaeology to enable the integration of *maritime* issues into the on-going development of a training system for archaeology that is fit for purpose to ensure the development of appropriate expertise for the future (particularly with respect to continued exploitation and interest in our seas).

A report on this work is now available (NAS, 2009) from the English Heritage website with recommendations from the study being the:

- Promotion and support for UK National Occupational Standards for Archaeology;
- Encouraging the use of the National Vocational Qualification in Archaeological Practice;
- Creation of a competency scheme to allow verification of practitioners' abilities;
- Creation of standards for peer reviewing of archaeological work;
- Future use of the European Qualification Framework to harmonise training standards;
- Need to increase practitioner's abilities to work on and understand submerged landscapes and industrial archaeological remains, and;
- A training strategy that incorporates skills acquisition via short course attendance and increasing opportunities for experience and mentoring for practitioners through collaborative long term research driven training projects to help bridge the gap between academic education and vocational skills training.

CONCLUSIONS

Under the Protection of Wrecks Act 1973, the Department for Culture, Media and Sport (DCMS) is responsible for protecting significant wreck sites. English Heritage can, and does, take a proactive role in the management of such sites, subject to limited powers, duties, and budgets. However, the remains of historic military warships and submarines, located in UK Territorial Waters adjacent to England, and those in military service when lost (such as the SS *Storra*), can be designated under different legislative regimes. Such vessels are managed either proactively or reactively under those regimes dependant on the historic interest and/or the requirement to prevent unauthorised interference.

There are therefore wide differences in policy and practice relating to categories of military heritage asset which begs the question: 'What is a heritage asset and what is not?' While the draft Heritage Protection Bill provides a statutory definition of a marine heritage asset, the remains of more recent non-vessel casualties (such as lost and abandoned Second World War vehicles and aircraft) are of undoubted historic interest but lie outwith of the Protection of Wrecks Act 1973. Similarly, former military vessels that are now in

preservation (and most usually in private ownership and management), such as HMS *Trincomalee* (launched 1817) and MTB 71 (built 1942), lie outside of statutory protection.³

Since 2002, English Heritage has developed an evidence- and ecosystem-based approach (encompassing marine scientific research) to frame the organisation's role in the care and management of England's most important historic shipwreck sites designated under The Protection of Wrecks Act 1973. English Heritage's *Conservation Principles* provide the framework for making transparent, consistent, well-informed and objective conservation decisions (English Heritage, 2008), while the innovative methodology for the Risk Management of Protected Wreck Sites assists with strategic prioritisation. Site specific *Conservation Statements and Management Plans* articulate a shared vision of how the values and features of particular sites can be conserved, maintained and enhanced through local and regional stakeholder involvement.

Within this policy framework and where the historical, archaeological or artistic importance of a vessel, or its contents or former contents, meets the threshold for designation, sites are proactively managed according to need and prioritisation, irrespective of ownership or former function.

Given this, it is worth remembering English Heritage's specific Conservation Principles that provide a comprehensive framework for the sustainable management of the historic environment:

- 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
- Documenting and learning from decisions is essential

It is recommended that English Heritage's approach could form the basis for good practice in the management of British warship wreck sites wherever they lie.

NOTES

1. For more information on *Heritage at Risk*, see <http://www.english-heritage.org.uk/server/show/nav.19074>.
2. For more information, visit: http://www.southampton.ac.uk/archaeology/research/projects/maritime_research_framework.html.
3. The historic interest of such vessels is administered by the Government's Advisory Committee on National Historic Ships (see <http://nationalhistoricships.org.uk>) who advises the Secretary of State for Culture, Media and Sport and other public bodies on ship preservation and funding priorities.

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PUBLIC ARCHAEOLOGY

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Public archaeology is one of the fastest growing sectors of archaeology, which is acknowledged in recent UK government heritage policy documents. This increase in public interest and involvement poses a number of challenges for the discipline, including managing the impact on sites, providing meaningful opportunities, maintaining archaeological standards, as well as balancing public involvement with academic and scientific pursuits. Particular issues that affect military sites, which form such an important component of the underwater heritage also need to be addressed. However should the challenges be successfully resolved the benefit of increased public support for the discipline should not be underestimated.

Keywords: archaeology, education, inclusion, public, protection, tourism.

INTRODUCTION

Although the scope of the journal *Public Archaeology*, includes a wide range of topics including, 'ethnicity, indigenous archaeology, cultural tourism, policy, public involvement and the antiquities trade' (Maney, 2008), this paper will focus on those aspects that relate specifically to public involvement and cultural tourism. Included will be examples of how heritage organisations have and are developing policies that are aimed at educating the public; including them in management decisions; providing projects for volunteers; outlining some of the challenges and opportunities, as well as identifying any special considerations that apply to warships.

In countries with established archaeological policies and capacity, public archaeology is a rapidly growing activity, and for those countries where policies relating to underwater cultural heritage are being considered or are in their infancy, heritage managers and archaeologists should be aware of the opportunities and challenges, so as to make provision, when and if resources become available.

The growth of public archaeology in the UK is acknowledged in the White Paper, *Heritage Protection for the 21st Century*. (Department for Culture, Media & Sport, 2008)

'Levels of public participation in the historic environment are high, and are rising. Whether through visiting, volunteering, or studying, substantial numbers of people choose to access or care for heritage in their free time.....' & (p8)

‘Our vision is for a heritage protection system that is understandable and accessible, that engages the public in decisions on protection, and provides wide opportunities for involvement for individuals, owners, and community groups. ‘ (p8)

It is noteworthy that the principles outlined within the document expressly take account of the sentiments of international heritage convention, including, the Convention for the Protection of the Architectural Heritage of Europe (*Granada* 1985), and the European Convention on the Protection of Archaeological Heritage (*Valletta* 1992), both ratified by the UK government, as well as the Convention concerning the Protection of the World Cultural and Natural Heritage (1972), and the European Landscape Convention (*Florence* 2000), the principles of which were also influential. (Conservation Principles, Policies and Guidance for the Sustainable Management of the Historic Environment, English Heritage, 2008) UNESCO’s Convention on the Protection of the Underwater Cultural Heritage (2001) echoes the Valletta Convention, making reference to public education and involvement in Articles 2 and 20 and Rule 7 of the Annex:

Article 2. Objectives and general principles

10. Responsible non-intrusive access to observe or document *in situ* underwater cultural heritage shall be encouraged to create public awareness, appreciation, and protection of the heritage except where such access is incompatible with its protection and management.

Article 20. Public awareness

Each State Party shall take all practicable measures to raise public awareness regarding the value and significance of underwater cultural heritage and the importance of protecting it under this Convention.

Rule 7.

Public access to *in situ* underwater cultural heritage shall be promoted, except where such access is incompatible with protection and management.

Public image: sometimes a case of out of sight, out of mind

One of the comments made during the opening address of the Shared Heritage seminar encapsulated the public’s potential lack of awareness.

‘.....I never realised while standing waist deep in the ocean (while on holiday) that heritage existed beyond the land.....’

While the comment has to be placed in the context of being a memory of what had been said some time previously, it will non the less focus the mind of the heritage manager or archaeologist faced with the challenge of first raising the public’s consciousness to the very existence of, let alone the fragility and threats, human or natural, and the preservation of the underwater resource.

The public is often unaware of underwater sites, not just because they are submerged. Those that are adjacent to coastal habitations are sometimes marked by interpretive boards to help the visitor to imagine and appreciate the local significance of a past historical event, but those sites further away remain largely un-marked and as such are not in the public’s consciousness.

Although in some countries the perception of heritage and archaeology may well remain low, this should not generally be the case in the UK. Over recent years there have been numerous television programmes dedicated to archaeology, with underwater sites receiving a reasonable proportion of coverage. *Time Team*, first screened in the early 90’s is an outstanding example, with several programmes featuring maritime sites, notably, *the wreck of the Colossus* (2002), *the site at Kinlochbervie* (2002) and *In search of Henry V’s flagship (Grace Dieu)* (2005). To complement the programme there is a range of educational packages, available through a dedicated website that also includes further information about archaeology, and also includes a section on *getting involved*, providing links to organisations that offer opportunities for the public to take part in archaeological projects.

ACCESS TO SITES

If public inclusion and access to important archaeological sites is to be encouraged, there is the issue that this does not naturally complement the archaeologist’s concern for physically protecting sites *in situ*, a process which often means their burial. Such measures may be effective in protecting the site, but they are not naturally conducive in providing a positive experience for the visitor. While some visitor trails have operated successfully on partially covered sites such as the site of the *Swan*, in the Sound of Mull (Robertson, 2003), it was necessary to explain the reasons for the protection, to improve the understanding of the management decisions and the overall experience of the visit.

Archaeologists make the valid point that by raising public interest it is likely that there will be an increase in activities that potentially have a negative impact on the heritage. Any detrimental impact also reduces the attractiveness of them to future underwater visitors, and therefore potentially on local tourist business. It is therefore possible to make the link

between the active preservation, or as a minimum greater respect for and ideally a neutral impact on underwater sites, with a resultant benefit of a higher quality experience for the recreational diver, something which is clearly a benefit to diver related tourism. The potential for a mutually beneficial partnership between the archaeologist and diving business seems obvious. Better-preserved shipwrecks are more attractive to divers, clearly a positive outcome for both the diver and archaeologist.

To help reduce the impact of this potential problem, educational initiatives can be targeted to provide a better understanding of the impact that leisure activities could have on the archaeological research potential of sites. *Respect our Wrecks* initiated by the British Sub Aqua Club (BSAC), Sub Aqua Association (SAA) and the Professional Association of Diving Instructors (PADI) was specifically aimed at raising awareness to the need to improve diving practices, and *Save Ontario Shipwrecks (SOS)*, a Canadian organisation deserves special mention as they have developed an initiative *Low Impact Diving*, aimed specifically at raising awareness of the impact of poor diving technique on the preservation of underwater sites.

This is not to suggest that all sites should be made accessible to the public. It is important that fragile sites should be physically protected, and where necessary access restricted. But, where such decisions are made it is important to explain the reasoning, without which it is possible that the public may believe that the most important sites are being kept for the sole preserve of archaeologists.

DELIVERING A CONSISTENT MESSAGE

An issue for the archaeologist involved with the public is the need to respond to questions relating to policy decisions that appear to lack consistency. For example, UK archaeological policy has generally been to promote non-intrusive activity, but policy makers have been accused of allowing some designated sites to continue to deteriorate, seemingly ignoring the possibility of saving artefacts from being washed away, while at the same time undertaking contracts with commercial organisations to recover valuable cargoes from historic shipwrecks. At its most simple level, such contradictions can appear to be based on whether there is a possibility of financial return, not on the possibility of academic benefits. The archaeologist engaged with the public is sometimes confronted with the need to explain the rationale behind such apparent contradictions, something that is not always easy. Greater effort needs to be devoted to helping the public to understand the relatively complex range of issues involved in such cases.

LEGISLATION AND EDUCATION

Protective heritage legislation is very important, as in the broad sense it sends a clear message that (underwater) heritage is important to the country and as such warrants protection, but equally important legislation also serves as a disincentive against those that seek to illegally exploit the resource, with the possibility of sanctions against those that seek

to do so. Whatever legislative structure is in place it has proven beneficial to complement the legal structure with initiatives that educate the public with regard to their legal responsibilities and obligations covered by the legislation. While there has been a long-standing statutory duty to report finds (section 236 of the Merchant Shipping Act 1995, previously 1894) this did not prevent many artefacts being recovered from shipwrecks and going un-declared. The recovery of souvenirs from the UK's many wartime shipwrecks became widespread after recreational scuba diving became more popular since the 60's. Awareness of the value of the underwater heritage at that time was considered to be low and the public's knowledge of their responsibilities to report was also not well developed.

Following a series of recommendations to the UK government by the Joint Nautical Archaeology Policy Committee (JNAPC) aimed at the "*better protection of archaeological sites underwater*" (Heritage at Sea, 1989) an educational policy was adopted by the UK. *Heritage at Sea* included the statement, "*that education can play almost as important a role as legislation in the protection of the underwater cultural heritage.*"

Government responded positively to some of the recommendations, including the provision of funding for the Nautical Archaeology Society Training Programme (Underwood, 2008). The principal aim of the programme was to raise awareness among recreational divers to the threat to the heritage and to reduce souvenir hunting prevalent at the time. The programme was not the only initiative pursued from the early 90's. A succession of informative leaflets, posters, booklets, *wreck amnesty* (coordinated by the Maritime and Coastguard Agency in 2001) together kept the issues about threats, responsibilities and where to get help alive among the diving community. An important component was the inclusion of representatives of the UK's main diving organisations onto archaeological policy committees, such as the JNAPC and on the Advisory Committee on Historic Wreck Sites (ACHWS). A combination of these initiatives and the dialogue between stakeholders helped to foster a better understanding of the issues and improve relationships. Today it is generally recognised that the diving community is much better informed about the importance of the underwater cultural heritage and their responsibilities to it. In return, the archaeological community is also more aware of the needs of the recreational diving industry, a distinct improvement on the situation 10 years ago. Other countries, such as the USA have faced similar situations and have adopted similar, if not identical mechanisms.

TRAINING & PUBLIC PARTICIPATION - NAUTICAL ARCHAEOLOGY SOCIETY'S EXPERIENCE

Although NAS' Programme courses continue to raise awareness, the emphasis has shifted to developing skills for use on archaeological projects and building partnerships with stakeholder groups. The multi-level structure of the programme provides opportunities for basic to intermediate level training in a range of specialist skills aimed at producing competent field-workers. Most of the initial training is provided by NAS' own staff and its in-

housed trained tutors, but particularly for the more advance levels of training, partnerships have been formed with many archaeological bodies.

The programme has also been adapted to suit the specific requirements of a growing number of international heritage agencies and organisations, where it has been used to raise awareness and provide training for a range of groups, including archaeologists, students, police and other enforcement agencies, policy makers and regulators, as well as for recreational divers and non-diving stakeholder groups. The programme has become an international standard for training, recognised by UNESCO.

PROJECTS FOR VOLUNTEERS

A fundamental principle of all archaeology projects should be that they fulfil acceptable standards, a principle that should not be sacrificed because a project includes volunteers. Projects should also aim to generate results that can be added to historic inventories and records. Appropriate training such as provided by the NAS Programme should be used to hep ensure that minimum levels of competency are achieved.

The Nautical Archaeology Society has developed a series of public participation initiatives, *Diving with a Purpose*, *Dive into History*, *Adopt a Wreck*, *Big Anchor Project*, *Wreckmap*, etc. to complement the programme. The main themes are: to utilise the training obtained during NAS courses; encourage participation in the preservation of the cultural heritage; contribute information to historic environment records; develop a sense of public ownership and disseminate project results.



Figure 1: Volunteers helping to record sites as part of a community involvement project in Forton Lake (near Portsmouth, Hampshire, UK). Courtesy Nautical Archaeology Society

There are a number of ways of getting involved that are not limited to archaeological issues, conducting site surveys, including photographic & video recording, biological surveys, historical studies; diver trails; site guides; web sites, DVDs / Newsletters, public presentations and exhibitions.



Figure 2: All age groups can participate in NAS' Big Anchor project. Courtesy Nautical Archaeology Society

ADOPT A WRECK

One such initiative that encapsulates these principles is the *Adopt a Wreck* scheme. The aims of this project are to encourage volunteer teams to conduct base-line surveys and to subsequently monitor changes to their adopted site. The project has been supported by the UK's main recreational diving agencies, the Maritime and Coastguard Agency and recently by the UK's Heritage Lottery fund. Currently there are some 85 sites registered under the scheme, mostly in the UK. In order to provide some incentive to the teams, the Society has created an annual award presented to the group that best fulfils the awards criteria, which include, research, site survey, and the dissemination of results.

PROJECT DIRECTION

Some level of direction on volunteer projects by a trained archaeologist is desirable. NAS' approach has been to provide various levels of support, dependent on the availability of resources. Ideally a member of staff has acted as the principle investigator, or on other occasions secured the services of a trained archaeologist to take on the role. Where either of these options has not been possible, informal support has been provided by office staff. An outstanding example of this combination is *SOMAP*, Sound of Mull Archaeology Project, the results of which have recently been published. (Robertson, 2008).

EDUCATION THROUGH ACCESS AND PARTICIPATION – NORTH AMERICA

In the 1960' and 70's the stripping of artefacts from wrecks in the Great Lakes had become so serious that even the most committed *wreckers* admitted that the activities threatened the future of recreational diving in Michigan (Halsey, 1985). Admittedly recreational divers have been responsible for the recovery of souvenirs from wrecks, but more positively they have also discovered many (archaeological) sites that have subsequently been protected by heritage legislation. For example, of the UK's 60 or so sites designated under the Protection of Wrecks Act 1973, over 50% of them were discovered by recreational divers, or avocational archaeological groups. (ACHWS 2006 /7) Overseas the situation is much the same, with the HMS *Swift*, subject of one of the seminar's case studies, being discovered by recreational divers in 1982. (Elkin et al, 2007)

It can be reasonably concluded from this that raising awareness to the archaeological importance of underwater sites, particularly among recreational divers, should lead to more sites being reported and subsequently given some measure of legal and possibly even physical protection. In addition recreational divers are likely to generally have a greater respect for wrecks and consequently less of an impact. Along with this, it should also be made clear that by reporting stakeholders will not automatically be excluded from subsequently enjoying the heritage, unless of course the specific fragility of the site means that access should be restricted.

THUNDER BAY NATIONAL MARINE SANCTUARY, USA

A public education programme can include a range of initiatives spanning all age groups, such as: archaeological site and research centre open days, displays, exhibitions, heritage trails, site visits, posters, leaflets, internet, classroom or other media based education programmes, as well as projects for volunteers. The National Oceanic and Atmospheric Administration have embraced many of them in their network of Sanctuaries.

NOAA's approach (NOAA, 2006) has been to include all age groups and provide them with an array of opportunities, as well as including the public in the management of the Sanctuaries. Thunder Bay, Alpena, Michigan is one of 14 Sanctuaries which was specifically established, building on its status as a state underwater preserve, to protect a nationally significant collection of shipwrecks spanning over a century of Great Lakes' shipping history. It is the first to lie within State territory, covers 448 square miles of water, 116 miles of shore and includes more than 100 shipwrecks.

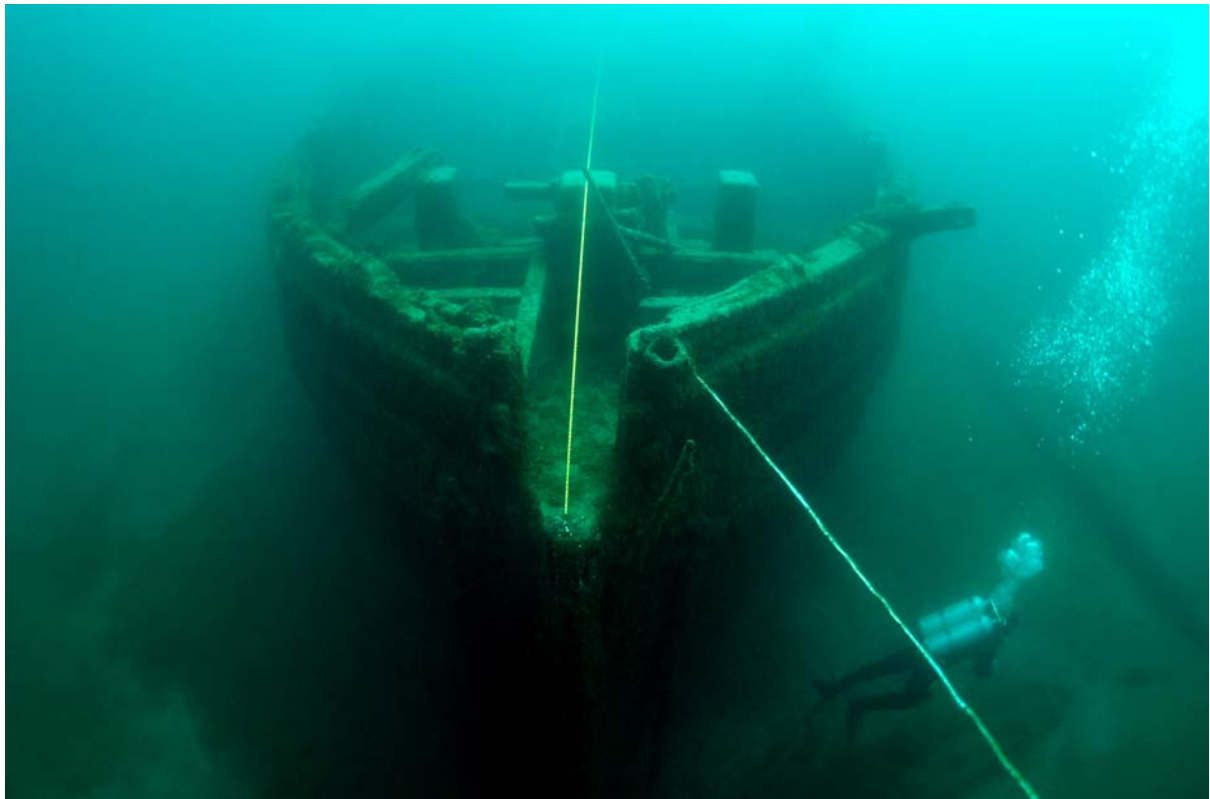


Figure 3: The wreck of the sailing ship EB Allen, one of Thunder Bay's popular dive sites. Courtesy: Thunder Bay National Marine Sanctuary.

An important feature of the subsequent success of the Thunder Bay Sanctuary is that it has served as a catalyst in rejuvenating part of the town's river frontage from declining industrial usage to growing tourism and provided new local employment.

MANAGEMENT

The sanctuary has a management plan with the responsibility for implementation, being shared by state and federal administrations supported by a Sanctuary Advisory Council. The formation of the Advisory Council was in recognition that “the involvement of communities and the development of a stewardship ethic as vitally important to successfully protecting sanctuary resources.” (NOAA, 2008) Thunder Bay’s council consists of members drawn from across the local community, including education, research, fishing, diving, tourism, cultural, economic development, and the community at large. The council serves several related functions, raising community concerns with the Sanctuary administrators; being an effective conduit for information from the Sanctuary to constituency groups, as well organising a network of voluntary support for staff.

FACILITIES

One of the challenges for the sanctuary staff has been to present the shipwrecks to the non-diving public as well as for the recreational diver. The sanctuary building houses the exhibition, auditorium, classrooms, complete with audio-visual facilities, conservation laboratory, which is viewable by the public, store rooms for diving equipment, accommodation for visiting groups, as well as the administration services. There is also an extensive maritime archive in Alpena’s public library which can be used by researchers.

The main exhibition that focuses on the diverse history of the lakes has recently received its centrepiece, a partial re-construction of a lake sailing vessel. Innovatively, part of the new display is a shipwreck that aims to reflect the underwater environment of the heritage, which is beyond the reach of the majority of the community. Above the representation of the wreck site there is a series of clear plastic tubes that allows visitors to simulate the underwater experience. The *wreck* will also be used for training courses utilising NAS’ Training Programme (outlined above to provide the skills required by volunteers to help archaeologists with their work, as well as continuing to raise awareness to the threats, human and natural, to the Sanctuary’s fragile resource. Beyond the building there is a heritage trail that follows the waterfront identifying features of local maritime industry.



Figure 4: Thunder Bay's centre-piece is a reconstruction of a lake sailing vessel, part of which is constructed to represent a wreck site. Courtesy: Thunder Bay National Marine Sanctuary.



Figure 5: Alpena is part of the Great Lakes Maritime Heritage Trail.

For recreational divers, some of the wreck sites have been buoyed, with interpretive dive slates produced to help improve the divers' experience. Sites in shallow water enable access for snorkelers, kayakers and potentially glass bottomed vessels.



Figure 6: Shallow water sites can be viewed by snorkelers, kayakers and through glass bottomed boats. Courtesy: Thunder Bay National Marine Sanctuary.

MEASURING SUCCESS

Although it is often difficult to measure the success of public archaeology initiatives, in the case of Thunder Bay there are some clear signs of very positive progress. Noting the original opposition to the establishment of the sanctuary there is now broad local and political support for the extension of the sanctuary area to cover around 3722 square miles of water and 226 miles of shoreline, including nearly 300 shipwrecks. And at local level an Alpena school ice-hockey team has re-named themselves the *Thunder Bay wrecks*, a reflection of the town's growing awareness of the town's maritime heritage.



Figure 7: Alpena school hockey team has named themselves the Thunder Bay Wrecks. Courtesy: Thunder Bay National Marine Sanctuary.

WARSHIPS: SPECIAL CONSIDERATIONS

Although neither of the issues identified are unique to warships they are particularly relevant to them, the first is the potential of the presence of human remains and the second is the dangers associated with munitions.

HUMAN REMAINS

Although all human remains wherever they are found deserve the same level of respect, those associated with national conflict and sacrifice, tend to raise public sensitivities with war graves being treated with reverence. The public's respect for the casualties of war and conflict remains high, their memory being consciously maintained by survivor's organisations and family. Commemorations of sites in the sea, extend to wreath laying ceremonies over the site of a particular wreck, while some include the placing of flags or plaques on the site itself, such as on the HMS *Royal Oak*, torpedoed while at anchor in Scapa Flow in 1939, with the loss of 800 of her crew. There are also events that commemorate the loss of military vessels during peacetime, such as on the submarine M2, lost in an accident off the Dorset coast in 1932.

This public sensitivity came into sharp focus in 2002, when following a high profile public campaign the government used for the first time, the Protection of Military Remains Act 1986, to protect military vessels, noting that all military aircraft are automatically protected. Currently there are more than 50 vessels and submarines protected, with those designated as Controlled Sites, being off limits to all activities, except under the specific terms of a licence. The majority of sites are designated as *Protected Places*, which allows for the continuation of recreational diving, but on a strictly *'look but don't touch'* basis.

The recent designations under the legislation (May 2008) include for the first time the merchant vessels *Storra* and *Atlantinc Conveyor*, lost while under military control. This is a significant development that is likely to lead to an increasing number of merchant vessels being designated, in-line with the government's commitment to a rolling programme of protection using the 1986 legislation.

MUNITIONS

The second characteristic is munitions, specifically the associated dangers of handling them. Evidence of the widespread recovery of munitions was revealed during the Maritime & Coastguard Agency's *Wreck Amnesty* (2001). 3500 individual items of ordnance were declared, representing 10% of the total number of artefacts reported. Incidentally more munitions were declared having been recovered from merchant vessels than from warships, illustrating the point that munitions are an issue that extends beyond warships.

As the presence and possible recovery of ordnance from numerous military and other sites remains, particularly from the two world wars, it is prudent for the relevant authorities to ensure that stakeholders who may come into contact with such items are informed of the potential dangers. Although this issue could be argued to have little to do with archaeology, the interest in and study of military craft, aircraft and merchant vessels carrying military cargoes is popular.

WARSHIPS - PUBLIC AWARENESS AND EDUCATION

English Heritage's information booklet, *Military aircraft crash sites: Archaeological Guidance* on their significance and future management. (English Heritage, 2002) includes information relating to the possible presence of ordnance and human remains. As this information is not the prime focus of the booklet, or is particularly highlighted there would seem to be a need for the competent authorities to produce clear and separate guidance on the possibility of finding human remains and the very real dangers associated with the handling of ordnance.

FINAL COMMENTS

There can be little doubt that by raising awareness and securing the support of the public can result in the better protection of archaeological sites. Their advocacy can be extremely effective, which is no better illustrated than the pressure placed on the UK government of the need to protect war graves and also in the rescue of the *Newport Boat*, a fifteenth century merchant vessel found during the construction of the *Riverfront* theatre in Newport.

While the Protection of Military Remains Act is not designed for archaeological purposes it has had the impact of protecting some sites and in raising public awareness to the fact that sites are under threat and in need of protection. In the case of the *Newport Boat* it is debatable whether archaeologists would have been successful in saving the ship without the very vocal and strong local public support.

There are a wide range of public outreach and educational initiatives that can be developed, as identified in NOAA's National Marine Sanctuary Programme. There are other notable examples, that have proven to be effective in raising awareness and getting the public involved, such as *Florida's Public Archaeology Network*, *Michigan's network of underwater preserves*, as well as the various NAS training and project initiatives. Common to the more successful initiatives is the integration of the public into the decision making process, in order to develop and reinforce a strong sense of public custodianship of the heritage.

It is therefore incumbent on the discipline to take advantage of the interest that the public shows in the subject, to inform and include them wherever practicable and to form a strong partnership to protect, appreciate and continue to enjoy all forms of heritage, underwater or otherwise. The challenge remains to balance the enjoyment of the heritage for current and future generations with its preservation and protection.

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