

HERITAGE POLICY
..Safeguarding the Built Heritage



POLICY

Conserving the
Underwater Heritage

Historic Scotland Operational Policy Paper

PAPER

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CONSERVING THE UNDERWATER HERITAGE

Published by Historic Scotland
Longmore House
Salisbury Place
Edinburgh
EH9 1SH

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ISBN 1 900168 75 8

Queries and comments about the operational policy paper should be sent to
The Ancient Monuments Division of Historic Scotland

Cover illustration: Side scan sonar (Klein System 2000) image of wreck of the SMS *Kronprinz Wilhelm* (Konig Class Battleship, 190m long, 25,388 tons, launched 1914), scuttled at 1.15pm on the 21st June 1919 as part of the German High Seas Fleet in Scapa Flow, Orkney.

Image courtesy of: Centre for Environmental Resource Management (Heriot-Watt University), Image Analysis Research Group (Heriot-Watt University), Peter Runciman (Klein Associates), Don Mackay (Hydro Products), Stan Moroney & Alan Cameron (GSE Rentals, Aberdeen).

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PREAMBLE

The underwater heritage subsumes the physical evidence (both direct and indirect) for the human past which survives underwater. Such evidence may exist beneath fresh, or inland, waters or beneath salt, or marine, waters. It may be visible on the bed of the water body or sea, or buried beneath sediment. Archaeological sites may consist of the remains of vessels (and, more rarely, aircraft) and items dropped or lost overboard from them, the remains of structures which were originally built wholly or partly underwater, such as fishtraps and crannogs and also the remains of human activity which originally took place on dry or marshy land which has since been inundated, either by water levels rising relative to land or by marine or fluvial erosion. In some cases evidence of archaeological value may be obtainable from deposits which are otherwise non-archaeological, for example by analysis of botanical or chemical remains in stratified sediments. In addition, there are many coastal buildings which are listed because of their historic and/or architectural importance and which have portions of their structure permanently below water, for example piers and bridges.

This policy paper is directed at several audiences:

- ❖ Historic Scotland's own staff, advisors and associates, for information, guidance and to foster discussion
- ❖ Those working in Scottish archaeology and building conservation who may be unfamiliar with underwater issues
- ❖ Archaeologists and others working underwater who are uncertain of Historic Scotland's position in respect of their particular interest area
- ❖ Those in the development and planning community who are already aware of the standards expected for terrestrial archaeology
- ❖ Professional and sport divers who have an interest in archaeology, or simply wish to know how conservation policies may affect their activities.

The responsibilities of the Secretary of State for Scotland in the conservation of the underwater heritage passed on 1 July 1999 to Scottish Ministers, under the terms of the Scotland Act 1998.

HISTORIC SCOTLAND'S REMIT

Historic Scotland carries out the responsibilities of Scottish Ministers with regard to archaeological and built heritage matters, which extend offshore to the limit of territorial waters (currently 12 miles). There are three relevant pieces of legislation from which direct responsibilities arise: the Ancient Monuments and Archaeological Areas Act 1979, the Protection of Wrecks Act 1973 and the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997. Historic Scotland also advises other government departments in respect of matters not primarily treated as heritage issues, for example the Merchant Shipping Act 1995 (salvage and historic artefacts from marine sites) and the Protection of Military Remains Act 1986 (military/naval vessel and aircraft wrecks and human remains therein), as well as development policies or specific developments controlled by other Departments.

Historic Scotland may also advise other bodies on matters with a marine perspective, for example local authorities over general Planning matters, and the Coast Protection Act 1947, or the Scottish Environmental Protection Agency over the provisions of the Environment Act 1994. Marine matters also come within the scope of the Scottish Natural Heritage / Historic Scotland Joint Statement of Understanding.

1. The Ancient Monuments and Archaeological Areas Act 1979 gives powers to schedule monuments on the bed of territorial seas (normally taken as the 12 mile limit), and specifically mentions vehicles, vessels and aircraft in the definition of monuments in section 61(7). As regards sites below freshwater, these are implicitly covered, on the principle that the beds of rivers and lakes are simply land covered by water. When a monument is scheduled, prior written consent is required for works which might demolish, damage, alter or add to it. Note that section 2 (2)(c) specifically requires scheduled monument consent for works resulting in the flooding of land in, on or under which there is a scheduled ancient monument.

The full powers of the 1979 Act are extended to offshore monuments only when these are scheduled (under section 53). However, the power to fund archaeological investigations (section 45) is not so limited. This Act excludes from scheduling (under section 61(8)(b) any site which is already protected under the Protection of Wrecks Act 1973.

2. The Protection of Wrecks Act 1973 gives powers to declare wrecks and the sites of wrecks protected areas. The effect of this is to require a written licence for any diving activity (even simple visual inspection) within a protected area, normally defined as a radius about a point, defined by latitude and longitude, which is the most accurate available location for the given wreck. In addition, the Act conveys very limited financial powers, restricted to the administration of designation and licensing, the inspection of designated sites and candidates for designation, and the erection of marking and warning notices and publication of the fact of protected status. It does not, however, contain investigation funding provisions equivalent to those in sections 24 or 45 of the Ancient Monuments and Archaeological Areas Act 1979.

The Advisory Committee on Historic Wreck Sites, presently administered and funded by the Department of Culture, Media and Sport on behalf of the 4 Home Countries, gives advice on designations and related matters. [Note that DCMS have proposed amending legislation to enable English Heritage to play a full role in maritime matters, and to take on a UK-wide role in running ACHWS and the UK diving inspection contract: at present EH is restricted to matters down to the low water mark, and within England only.]

3. The Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997 contains the bulk of built heritage conservation planning law for Scotland, although the main legislation, consolidated as the Town and Country Planning (Scotland) Act 1997 is also relevant. Amongst many other matters, the first-named Act requires Scottish Ministers to compile a list of buildings of architectural or historic importance, and provides the framework by which significant changes to such buildings are controlled. It also provides for the designation of conservation areas, within which certain categories of change are controlled, even although some individual buildings may not be listed. The scope of the Act stops at low water mark. It is thus not possible for a building or structure to be listed if it is always under the sea, but it is possible for structures which are sometimes or partly below the sea to be listed.

AIMS

Historic Scotland, in performing all of its responsibilities, will aim to afford the underwater heritage no less careful consideration than its terrestrial equivalent. This means it must aim to:

- ❖ develop a protection regime which is effective in securing the long-term future of the most important underwater sites, including securing them against inadvertent or deliberate damage or destruction
- ❖ pursue the beneficial management of key underwater sites which are under threat of degradation or complete loss
- ❖ pursue a regime where archaeological or architectural data are recovered when sites cannot be saved
- ❖ encourage the publication of information about all of these activities and, where appropriate, publish such material at its own hand.

OBJECTIVES AND POLICIES TO ACHIEVE THEM

OBJECTIVE 1

- ❖ Develop a protection regime which is effective in securing the long-term future of the most important underwater sites, including securing them against inadvertent or deliberate damage or destruction.

POLICY 1.1

Liaise closely with, and encourage, the Royal Commission on the Ancient and Historical Monuments of Scotland in its efforts to create a maritime section for the National Monuments Record, and encourage local authority archaeologists to add similar material to their own Sites and Monuments Records. Encourage survey of sites and seabed areas to contribute additional data. From this growing database, develop a methodology for assessing the importance (in archaeological, architectural, historical, industrial and technological terms) of maritime sites.

POLICY 1.2

Using the existing databases, ensure that sites under fresh water (in rivers, lochs and reservoirs) are included in any consideration of the relative importance of sites, for example for scheduling programmes.

POLICY 1.3

Seek to expand the protection of the most important sites using available means. The Protection of Wrecks Act 1973 will be used where the primary objective is to control access to known sites so that legitimate archaeological investigations are not jeopardised by interference. The Ancient Monument and Archaeological Areas Act 1979 will be used where known wrecks or other underwater sites are established diver attractions providing local economic benefits or where the 1973 Act would for other reasons be restrictive in a manner counter-productive to the long-term well-being of the site. In general, listing under the Planning Acts is unlikely to be pursued in a marine context except for coast-edge structures.

POLICY 1.4

Seek to ensure that all protected sites are inspected on a regular basis, either through the arrangements currently operated jointly with England, Wales and Northern Ireland for designated wrecks or by local arrangements for other sites.

POLICY 1.5

Encourage police, Procurators Fiscal and other authorities to regard unauthorised interference with protected or scheduled underwater sites as a serious matter, and support properly evidenced prosecutions where offences are committed.

POLICY 1.6

Pursue removal of anomalies from relevant legislation, and in general support moves to achieve parity of protective legislation between terrestrial and underwater archaeology.

POLICY 1.7

Pursue recognition of the importance of protecting the underwater archaeological resource, where possible building upon the success of terrestrial based approaches. Support education, publicity, development of codes of practice and input to the policies of other agencies influential in sectoral offshore development control, aiming towards formal recognition of archaeological and historical potential alongside any consideration of the natural environment.

OBJECTIVE 2

- ❖ Pursue the beneficial management of key underwater sites which are under threat of degradation or loss.

POLICY 2.1

Encourage, and where appropriate support, practical research into the processes of underwater site and structural degradation and investigations into methods of control.

POLICY 2.2

Seek to promote management of the underwater resource as a whole, to the same standards as on land, through a combination of publicity, education and input to policy formulation.

OBJECTIVE 3

- ❖ Make or encourage others to make arrangements for recovering archaeological data, to the best possible standards, when sites cannot be saved

POLICY 3.1

Pursue consideration of maritime heritage rescue needs on an equal footing with terrestrial sites, through contacts with developers and developers' associations where the threat to sites is a result of economic activity or through Historic Scotland's own financial provisions where threats are natural or of unattributable human origin.

POLICY 3.2

Encourage planning authorities, when considering development proposals, to remember inshore needs for archaeological assessment and mitigation, and similarly encourage sectoral development control agencies for offshore developments. [Note, local planning authority powers generally stop at low-water mark or at harbour mouths, and beyond this development is controlled by specific agencies, e.g. Department of Trade and Industry for oil exploration.]

POLICY 3.3

Assist as appropriate in the development of skills, methodologies and safe methods of working for archaeological contractors and researchers.

POLICY 3.4

Wherever possible, apply established standards of archaeological practice, as specified in relevant, published HS Operational Policy and Procedure Papers, and encourage others to do so, to bring the treatment of underwater archaeology into line with the terrestrial position.

OBJECTIVE 4

- ❖ Encourage the publication of information about all of these activities, and where appropriate publish such material at its own hand.

POLICY 4.1

Commencing by publishing this operational policy paper, encourage debate about the issues, within the wider archaeological and built heritage conservation community, within the planning and development community, within the fishing and fish-farming industries and within sport and professional diving circles.

POLICY 4.2

Encourage authors of all publications relating to underwater archaeology to address the aims and objectives set out above, and to identify general lessons from specific projects.

POLICY 4.3

Endeavour to ensure publication and proper archiving of all material arising from pursuit of our stated objectives and policies.

SUM

SUMMARY OF OBJECTIVES AND POLICIES

Historic Scotland's policy towards underwater archaeology is straightforward in principle:

- ❖ Underwater sites and terrestrial archaeological sites, areas and buildings which have underwater elements, or policy issues arising from our interest in these, should be afforded equal status in our activities, in particular in the areas of protection, management, training, archaeological fieldwork and research.
- ❖ In promoting interest in and appreciation of Scotland's archaeological and built heritage, Historic Scotland will encourage others to operate similar principles of parity.

While this document sets out the proposed operational policy, there are practical difficulties in implementation, largely because of the relative "invisibility" of underwater sites and the generally higher costs of conducting work under water. However, there are initiatives that are helping the maritime sector to "catch up". Historic Scotland is already funding training for those who already dive for other purposes and the training of archaeologists in diving might be encouraged within the profession. Archaeologists should be urged to consider the coastal and offshore zone in their work and Historic Scotland is already involved in coastal fora and their important work in focusing on the management of all aspects of the coastal zone. Effective action on the development control front requires the establishment of an effective database of sites and wrecks, and we are playing our part with others in providing this important tool.

Summary

ALLIED POLICIES

- ❖ Archaeological Policies
- ❖ Scheduling Policies
- ❖ Monument Management Policies
- ❖ Coastal archaeology
- ❖ Memorandum of Guidance on Listed Buildings.

ALLIED POLICIES