



Marine Historic Environment Workshop

Report of workshop held 7th March 2008

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1 Executive summary

This workshop explored opportunities for the future management of the marine historic environment in the context of the current legislative and policy developments; specifically the draft Scottish Historic Environment Policy (SHEP) on the Marine Historic Environment, currently available for consultation, as well as a series of strategic themes relating to the proposed Scottish Marine Bill. Key points arising from the workshop included: a welcoming of the holistic approach taken; a welcoming of the broader perspective proposed for designating assets; the need to designate based on national importance; the need for active management of undesignated assets; the lack of data being a significant challenge and need for strategic survey; the importance of education and awareness; the lack of resource in local authorities to properly support this area; the possible application of the system of Treasure Trove to the marine environment.

2 Introduction

The convener of the BEFS Marine Historic Environment Taskforce Dan Atkinson welcomed everyone to the workshop. The workshop has been convened as there are currently significant opportunities to influence the future management of Scotland's marine historic environment. Robin Turner, Head of Archaeology at the National Trust for Scotland, outlined current legislative and policy developments. The previous administration's Advisory Group on Marine and Coastal Strategy (AGMACS) and the current administration's Sustainable Seas Taskforce have been advising on the need for wide ranging marine legislation, through discussion of issues such as Licensing; Nature Conservation; Marine Spatial Planning; the work of a Marine Management Organisation; and Data. There have been a number of discussion papers, a parliamentary inquiry into the marine environment in the winter of 2006-07, to which BEFS submitted written evidence, and a workshop run by Historic Scotland in the summer of 2007. This activity has fed into the drafting of the Scottish Historic Environment Policy (SHEP) on the Marine Historic Environment which was launched for consultation on 5th March 2008.

In terms of current legislative developments, there is what may be perceived as an anomalous situation in that the current Heritage Protection White Paper in England includes proposals for the marine historic environment (*capable* of being enacted in Scotland), while the UK Marine Bill (expected in April/May 2008) does not. Consultation on proposals for a Scottish Marine Bill is expected in summer 2008. Within BEFS, a Marine Historic Environment Taskforce has been established to co-ordinate input into these strategic developments. The workshop will consider the various issues relating to both policy developments, especially via the SHEP, and provide opportunities to influence the forthcoming legislation.

3 Scottish Historic Environment Policy (SHEP) on the Marine Historic Environment

Gordon Barclay, Head of National Policy at Historic Scotland, explained the policy context for the current Scottish Historic Environment Policy (SHEP) consultation on the Marine Historic Environment. The development of the suite of SHEP documents arose following the review of Historic Scotland in 2004-5 which recommended the development of an Executive-endorsed policy statement on the historic environment. SHEP 1 on the Historic Environment provides the framework for all subsequent SHEPs, which focus in on particular elements of the historic environment. SHEPs have been developed on Scheduling, the Scheduled Monument Consent process, Listing, the Listed Building Consent process, Properties in Care, and Gardens and Designed Landscapes. There is a forthcoming consultation on Battlefields. The objective is to provide transparent policy statements on the historic environment.

Until last year Scotland was still looking to the developing UK legislation as a means for securing better protection of the marine historic environment. However, Scottish Ministers have decided to legislate on this devolved matter in the Scottish Parliament, as part of a proposed Scottish Marine Bill, as this provides an opportunity to adopt a more joined up approach in the management of the seas. In addition to inviting views on Scottish Ministers' draft policies for the marine historic environment, the marine SHEP was is to be used to provide additional opportunities for the public to comment on the legislative proposals.

The work of the Sustainable Seas Taskforce in Scotland (and its predecessor AGMACS) has focussed attention on the marine environment and provides the context for considering how the marine historic environment can best be incorporated within the wider elements of a proposed Scottish Marine Bill.

Philip Robertson, Senior Inspector at Historic Scotland, presented the content of the SHEP consultation paper on the Marine Historic Environment. Key points raised in the presentation were as follows:

- Techniques for investigating historic sites in the marine environment are in their infancy and while attention tends to focus on wreck sites, a key element of the draft SHEP is a broadening awareness of the marine historic environment resource – the intention being to develop proposals for legislation with scope to cover sites other than shipwrecks.
- Since 2001, the UK has been party to the Valetta Convention, which places a responsibility on Scottish Ministers to care for the historic environment *including that which lies in the marine environment*, up to twelve nautical miles from the shore. The Department of Culture, Media and Sport (DCMS), has responsibility for the 'Scottish zone' ie waters around the coast of Scotland from 12 to 200 nautical miles.
- Responses to the DCMS-led, UK-wide consultation *Protecting the marine historic environment – making the system work better*, published in 2004, played a key role in moving the debate on this subject forward.

- There are problems with existing legislation below low water – these include policing. This has shown to be the case at the Scapa Flow wrecks which are scheduled under the Ancient Monuments and Archaeological Areas Act 1979. Challenging the recovery of loose materials from the seabed at this site has proved difficult, as has been the defence of ignorance.
- With the exception of marine aquaculture development, there is currently no comprehensive marine planning system – management of change in the marine context has largely been based on a best practice approach. AGMACS recommended that a Scottish Marine Bill should enable legislation that would balance competing interests.
- The draft SHEP builds on Historic Scotland's *Policy for Conserving the Underwater Heritage* (1999). The aim is to adapt the scheduling criteria used on land for the designation of marine historic assets.
- Another key issue relates to the criterion 'national importance'. The consultation covers the question of how to treat the wrecks of ships that had a transitory association with Scotland by the fact that they sank in Scottish waters.
- A key characteristic of managing the marine historic environment resource is the need to treat inclusion/accessibility issues in the widest sense.
- The aim is to introduce more effective legislation to a wider range of sites. It is not the intention to increase the number of designated sites dramatically, and to minimise burdensome licensing where at all possible.
- The SHEP explores a number of key questions, the discussion on which will inform the work of the Sustainable Seas Taskforce and subsequent consultation on the wider elements of a Scottish Marine Bill.

Chris Pater, Marine Planner at English Heritage, gave a brief update on the current state of play with legislative developments south of the border. There are two bills covering protection of features in the marine environment; the Department for Environment and Rural Affairs' (DEFRA) Marine Bill for the natural environment, and the Department of Culture, Media and Sport's (DCMS) Heritage Protection Bill for historic environment assets such as prehistoric archaeology and shipwreck. The overall intention is that management of the marine historic environment resource will be improved in the following key ways through the Marine Bill:

- Reform of parts of the marine development licensing system (e.g. Food and Environment Protection Act 1985), with possible delivery of this through a Marine Management Organisation (MMO).
- Introduction of a marine planning system to be administered by a MMO.
- Marine Conservation Zones to provide protection for habitats and species not already protected under EU measures.

- Some reform of the roles and responsibilities of Sea Fishery Committees that operate in the England and Welsh areas of the UK Territorial Sea to 6nm offshore.

Both bills are due to be published shortly. It is anticipated that the draft Heritage Protection Bill will continue to follow the same principles as have been conveyed in the white paper, ie significant reform of the system.

The following questions were raised with the introductory speakers:

- Q How would nationally important marine areas work?
AGMACS found that there is no protection of species/habitats not meeting specific criteria. It was noted that there is a proposal for NIMAs (Nationally Important Marine Areas) – this is something that Scottish Environment LINK is working on (see www.savescottishseas.org). It was suggested that marine historic environment areas could be dealt with in a similar way.
- Q How would management of the 12 – 200 nautical miles zone work?
Currently there is uncertainty over the scope of a Marine Management Organisation and the levels at which this would operate – the key point here being the UK and Scottish level remits. It was noted that Richard Lochhead, Cabinet Secretary for Rural Affairs and the Environment, has expressed the hope that nature conservation and planning will be devolved in this zone; the historic environment could be too.
- Q How will the SHEP (as a Government policy statement) relate to the forthcoming Act?
It may be that part of the SHEP will be lost once the Act comes into effect. The SHEP is currently playing an important role in developing awareness and shaping the issues.
- Q It was observed that the setting of sites is a real issue, particularly when it comes to managing sites. Poor definition of boundaries of assets in the marine context is a key challenge.

4 Legislative issues – break out discussion

The break out session considered issues that may be addressed through changes in legislation.

4.1 Criteria for designation

- The broader scope of the definition at 5.2a was welcomed. It was agreed that the term ‘national importance’ was better than ‘special’. It was suggested that the definition should retain some flexibility and therefore reference to animal bones etc might be removed.

- It was concluded that the term 'national' was appropriate and could accommodate the issue of ships of other nationality having transitory associations. It was felt that 'context' and 'association' were key values.
- *HS comment:* it is the intention that sites of international importance can be accommodated within the scope of the designation criteria.
- The possibility of regional and local criteria was raised. It was strongly felt that sites of non-national significance (therefore undesignated) must be actively managed.
- It was suggested that 'setting' should be given equal weight as that afforded to the asset itself.
- The phrase 'believed to be' could be amended to 'based on good scientific evidence'.

4.2 Defining assets

- Areas as assets: it was recognised that assets such as submerged cultural landscapes will cover large areas and the precise boundaries may not be fully understood. A degree of sensitivity will need to be applied, and reporting protocols developed. With sea level rise, the area of submerged landscapes will increase.
- Precisely locating assets, and especially moveable assets, in the marine context is particularly problematic.
- *HS comment:* it is anticipated that the tendency will be not to designate assets that move. The broader definition will enable large areas to be encompassed.
- Designation will rely on applying good data, which for the most part is not available; this is a key problem. It will be necessary to be able to prove the importance of designated assets. As research enables better understanding of the resource, particularly in relation to areas submerged land, this problem should reduce.
- Defining setting of wreck sites is a challenge which needs to be addressed to enable proper application of development control processes. It was queried as to whether setting should have the same status as the wreck/asset itself.
- Designation in the context of threat, and provision of interim protection, was raised as a key issue.

4.3 Number of designated assets

- The SHEP suggests an increase in the number of designated sites by perhaps fifteen over the next ten years, representing a doubling of designated assets.

- *HS comment:* This number has been provided for illustrative purposes only (otherwise HS would have been asked what numbers were envisaged). It is likely that sites will be designated because there is a perceived risk and because designation can add value, not just because they meet criteria.
- Concern was expressed over threat being the trigger to designate.
- Participants agreed that the proposed doubling of designated sites was quite conservative and that this level should not be applied as a ceiling or constraint.

4.4 Management and enforcement at designated sites

- Participants suggested that there should be a presumption in favour of preservation 'in situ' at designated sites.
- *HS comment:* active monitoring will be required at designated sites and a site would not be designated until it had been seen.
- It was anticipated that monitoring processes would need to be more vigorous than on land.
- It was noted that the current lack of policing of licenses undermines the licensing process.
- Better educational material is required for divers, the police and Procurator Fiscal to ensure improved awareness of the legislation. There is significant potential to build better relationships with the diving community, providing for example better support to dive boat owners (however Historic Scotland is currently limited in capacity).
- It was suggested that the coastguard may be better equipped to enforce the legislation, perhaps in direct consultation with expertise in Historic Scotland.
- A more joined up approach in licensing may be appropriate. This could involve engaging with other bodies in enforcing licenses at sites.
- *HS comment:* there is huge potential to build relationships in the marine sector, for example with the Marine Fisheries Organisation. The process of working towards the Marine Bill has created very positive interaction.
- Currently, the lack of promotion of data does little to discourage the 'defence of ignorance' argument in relation scheduled sites.
- It was noted that enforcement is a problem in the terrestrial environment too and there is a need to be realistic. It was suggested that the proposals will not stop treasure hunting – the question was posed as to whether the proposals give greater protection to the historic asset or the finder.
- Penalties need to provide sufficient deterrent.
- *HS comment:* HS will be looking at penalties. The class of penalty would be set in primary legislation (a complex process). It would be possible to raise the category especially to reflect financial benefit created by infringement.

- It was queried as to how large areas could be designated – whether these could be ‘dovetailed’ with planning systems already in place.

4.5 Management of undesignated assets

- As for the terrestrial environment, protection of undesignated assets remains a key issue. It was noted that Marine Spatial Planning may offer a route for consideration of undesignated assets. It may be that wider licensing could be adopted. Participants felt that designation should not be the only form of positive management.
- *HS comment:* the proposals for marine planning and seabed consent licensing are intended to afford better management of undesignated sites.

4.6 Mechanisms for reporting finds

- In terms of obligation to report discoveries, participants advocated that the Treasure Trove system works well on land and could be extended to the marine environment, in particular in relation to non-wreck items not covered by the Merchant Shipping Act. All discoveries are reported regardless of what they are made of, and mechanisms for reporting finds are well defined and clearly understood.
- *HS comment:* There is some ambiguity over the application of Treasure Trove below the Mean Low Water Mark – this is currently being investigated. It may be that common law can be applied. It was noted that the Crown owns the sea bed.
- *Discovery and Excavation in Scotland* extends to the marine environment.
- Data collation would need to be adequately resourced.

4.7 Responsibility for the 12-200nm zone

- It was felt that assets in the 12-200 nautical miles zone should be managed at the Scottish level, although this may be impractical. It was acknowledged that while most assets will be within 12 nautical miles, there are examples from Norway and Holland of assets in the 12-200nm zone.
- It was noted that the Scottish Fisheries Protection Agency is likely to have responsibility for nature conservation to 200 nautical miles.
- It was noted that the UN International Convention on the Law of the Sea 1982 (UNCLOS) could afford powers to exercise a measure of control over underwater cultural heritage removed from the 12-24 mile zone, but does not do so as the UK Government has not declared a contiguous zone for the purposes of articles 33 and 303(2) of UNCLOS.

4.8 Relating to other pieces of legislation and management structures

- Overlapping legislation between the Mean High Water Mark and the Mean Low Water Mark: there is a need for clarification on how this will be managed.

- Under current proposals there may be confusion with new legislation running alongside the Merchant Shipping Act 1995, which covers, amongst other things, the ownership of 'wreck'. This is unavoidable as Scottish Ministers do not have jurisdiction over the Merchant Shipping Act 1995.
- Marine Spatial Planning/Marine Planning: Unclear how these would relate to terrestrial development control mechanisms.
- The relationship between Integrated Coastal Zone Management (ICZM) and the operation of the MMO was queried.
- It was noted that concern has been expressed in the Sustainable Seas Taskforce that bringing issues and interests together at sea will 'harden' the boundary at the foreshore.
- *HS comment:* The current UK Advisory Committee on Historic Wreck Sites could have a wider remit with wider issues.
- *HS comment:* Historic Scotland has not yet considered in detail a link with the proposed Nationally Important Marine Areas (NIMAs).
- Salvage laws have not been addressed in this consultation. *HS comment:* the UK Government has jurisdiction for this with the Merchant Shipping Act 1995 transposing the International Convention on Salvage 1989 into United Kingdom law.

5 Policy issues – break out discussion

5.1 Marine Management Organisation (MMO)

- The structure of an MMO was discussed. It was queried how this would relate to the operation of The Crown Estate. It was agreed that some form of 'secretariat' would provide the best platform on which to operate; it was stressed that good awareness at all levels would be key to effective planning and management of the marine historic resource.
- One preferred solution would be for expertise to be located regionally, as part of the MMO, comprising perhaps three staff posts. The Northern Irish model employing three university based maritime specialists was presented as a possible model. An alternative would be for expertise to remain within Historic Scotland. A virtual organisation was also mentioned as a possibility that could adapt to future needs.
- Boundaries could relate to those used for natural environment, for example building on river basin management planning.
- A key point is that local authority staff will need the dedicated support (both in terms of time and expertise) of a maritime archaeologist. There is insufficient resource to support proper management of the historic environment at local authority level as it stands, and staff resource in authorities fluctuates.

- Reference was made to practice in Northern Ireland where three posts at Coleraine University provide expert support in terms of site visits and recording. It was noted that Scotland has lost the main university department dealing with this at St Andrew's University.
- Linkages with existing bodies will still be necessary.

5.2 Local Authorities and Resources

- Information and education will be crucial, on various levels.
- It is unlikely that local authority staff will have the expertise required to manage the additional responsibilities associated with the proposals in the SHEP and forthcoming legislation. It was noted that the required expertise will vary across local authority areas. It is likely that local authority staff will look to the MMO for expertise.
- Councillors as well as officers will need to be briefed and updated on developments in this area. It was noted that skills in local authorities are being addressed as part of the wider activity in Planning Reform.
- Mechanisms will need to be put in place to deal with managing information on the marine resource. There will be resource implications in terms of analysing data sets and disseminating the information necessary to allow the MMO to function effectively.
- There is a need to learn and draw on good practice from other countries – especially on matters relating to planning context.
- Reference was made to Rapid Coastal Zone Assessment; comprising rapid survey and identification of key areas, which is being undertaken in England (in relation to the Aggregate Levy Sustainable Development Fund and Flood Risk Management aspects). 30% of the Scottish coastline has been surveyed by the SCAPE Trust as part of Historic Scotland's coastal zone assessment surveys, but much of this information remains to be entered into the RCAHMS database.
- Single Outcome Agreements (Scottish Government/Local Authorities): there could be a marine component to the indicator on the historic environment.
- It was highlighted that a more visionary approach, outcome focused, will be needed in order to deliver the aspirations of SHEP 1.

5.3 Data

- Lack of data is fundamental problem.
- Some assessment work has been carried out in the areas previously proposed as potential coastal and marine National Parks.
- It was felt that assessment of potential areas is a good starting point, but a lot of the data is inaccurate. There is a need to prioritise the use of existing data and examine sites of greatest potential to find landscapes.

- Sea level change – there is a need to disseminate and verify data on submerged/drowned landscapes.
- Reference was made to BP and experience in Norway where survey work has been undertaken effectively. It should be an objective to secure access to information derived in oil and gas exploration.
- It was suggested that taking a strategic, area based approach is preferable to looking for particular sites. This should complement a more reactive approach where survey work is undertaken as a condition of planning consent. The RCAHMS would have the expertise to adopt the strategic approach.
- It was queried as to which organisation would have responsibility for managing the data. Locating and collating existing data, and checking quality, may be part of the role of the new MMO. There is a need for metadata.
- Reference was made to the relatively new Marine Data Information Partnership which has been working to pull data together. This has been operating as a facilitator for access to data, however it is due to change into Marine Environment Data Information Network (MEDIN) and to broaden the range of Data Archive Centres (DACs). It has been hampered by the fact that the approach taken has not been long term, but rather driven on a project basis.
- *HS comment:* Scottish Government has agreed a significant contribution over three years to MEDIN on behalf of the public sector in Scotland, on condition that agencies with marine responsibilities sign up to its principles. Data sharing is clearly in everyone's interests and there is a lot of data out there. But even developing capacity to extract historic environment information from existing datasets is likely to require additional capacity.

5.4 Marine Spatial Planning

- It is anticipated that input into the MSP process will be hampered by the lack of data. It was felt important to feed into the MSP process at the Scottish rather than UK level. It was felt that the holistic view being taken in Scotland is very positive.
- It was agreed that it would still be possible under this process to target areas of higher significance. It was agreed that MSP should certainly include nationally important sites and also consideration of undesignated assets (as on land).

6 Plenary

Key points from workshop raised in plenary discussion were as follows:

- The holistic approach to the marine environment is very welcome.
- Criteria for national significance – the broader perspective is welcome.

- Lack of data is key challenge in defining the location and extent of assets – a strategic approach to survey work is required.
- Application of the system of Treasure Trove in the marine context would be welcomed.
- Policing – need for realism and importance of education.
- Lack of expertise in local authorities to manage the marine historic environment is a key challenge.
- There are lessons to be learnt from the rest of the UK – many tools are there and communication and networks will be crucial in achieving positive outcomes for the marine historic environment.
- The BEFS Marine Historic Environment Taskforce will be taking forward the issues and themes raised in today’s workshop.

7 Acknowledgements

The workshop was supported by Historic Scotland and arranged and facilitated by the Built Environment Forum Scotland’s Marine Historic Environment Taskforce. The workshop was held at the offices of the Royal Institution of Chartered Surveyors in Scotland, 9 Manor Place, Edinburgh.

8 Participants

The workshop was attended by individuals from the following organisations:

Archaeological Diving Unit Surveys
 Association of Local Government Archaeological Officers in Scotland
 British Sub Aqua Club
 Caroline Wickham-Jones, Consultant
 Council for Scottish Archaeology
 English Heritage
 Highland Council
 Institute of Field Archaeologists, Scottish Group
 International Journal of Nautical Archaeology
 National Museum of Scotland
 National Trust for Scotland
 Pritchard Diving Services
 RCAHMS
 SCAPE Trust
 Scottish Environment Link
 Society of Antiquaries of Scotland
 University of Dundee