

**THE MILITARY MARITIME GRAVES & THE
PROTECTION OF MILITARY REMAINS ACT 1986:
A CONSULTATION DOCUMENT BY THE MINISTRY OF DEFENCE**

Foreword

by Dr Lewis Moonie, Under Secretary of State for Defence

I am determined to do all that practicably can be done to offer protection of wrecked military vessels. These are sensitive matters and it is best to move forward wherever possible with the agreement of all parties. Therefore, I am delighted to invite those groups and individuals with an interest in the future protection of wrecked military vessels for their views as part of this public consultation process.

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1. Aim

1.1. The aim of this consultation paper is to invite views on the protection of wrecked military vessels which sank with the loss of human life. Comments are sought from interested parties to help inform and assist future MoD action.

2. Consultation

2.1. Many Government Departments have an interest in this issue. Accordingly the consultation paper was distributed initially to other Government Departments and Agencies for comment. It is now to be circulated to survivors' associations, diving associations, boat owners' associations, Friends of War Memorials, and others with an interest in the issue. Any recipient is welcome to copy it to others so that the MoD may have the benefit of all possible views on this subject.

2.2. Interest in this public consultation document has already proved wide and varied. Many organisations have expressed a wish to seek the views of their membership prior to providing a co-ordinated response. To enable these interests, along with those of individuals, to be represented to the MoD, it is intended to offer a period of three months for the submission of responses. A further period of up to three months will be given for consideration of responses received, prior to an announcement of finding. Instructions regarding replying to this paper are given in para. 16.1 and also in the covering letter.

2.3. A distribution list is appended as Schedule 1 to this paper.

3. The Issue

3.1. There is increasing public and Parliamentary concern that wrecked military vessels, which sank with the loss of human life, are being disturbed by the activities of recreational divers and other sea users. The Government is being asked to take steps to stop this interference. Some views have also been expressed that all military maritime graves of all nations in all conflicts should be fully protected.

4. Background

4.1. No central list is held which identifies all vessels lost in military service. A list of vessels lost in UK territorial waters would need to include Allied and enemy military vessels as well as ships that had been co-opted into military service. Some 11,000 British and Allied vessels, including those taken up from trade, were lost in the two World Wars. To date, some 264 HM Ships that have sunk within UK coastal waters have been charted, with another 58 uncharted.

4.2. The Protection of Military Remains Act 1986 (PMRA) has not hitherto been applied to wrecked military vessels. It had appeared to the MoD that the mere existence of the PMRA was proving an adequate deterrent to both commercial salvage organisations and the relatively small numbers of recreational divers. But the increased popularity of recreational diving, along with technical advances in diving and navigational equipment, has meant that it is possible for divers and other sea users to visit more wreck sites and to do so more frequently than was previously possible.

4.3. The activities of a minority of these divers and other sea users in the vicinity of military maritime graves has stimulated intense debate and given rise to much criticism. In response MoD together with the Maritime & Coastguard Agency and those involved with recreational diving have introduced an educational campaign and other initiatives to promote safe and responsible diving. The recreational Diving Associations have also introduced a “Respect our Wrecks” initiative, and a diving Code of Practice which gives guidance on the best practices whilst diving in the vicinity of wrecked vessels, and advocates the “Look but don’t Touch” principle.

4.4. MoD recognises the positive response to these initiatives, and the contribution and the responsible actions of the majority of divers in, for example, locating, identifying and reporting previously unknown wrecks.

4.5. MoD will continue to encourage and support the current educational campaign by the diving organisations and, in particular, their Code of Practice; whilst also continuing with initiatives to publicise its own guidance on the protection of wrecked military vessels. Separately, MoD is pursuing through international agreement wider protection measures for military maritime graves.

5. Political Background/Ministerial Statement

5.1. In a recent Parliamentary statement (*Hansard, Official Report, 1 November 2000, column 246*), Dr Lewis Moonie, the Parliamentary Under-Secretary of State, Ministry of Defence:

- acknowledged that the subject of the protection of wrecked military vessels which are the last resting place of the ships' companies was a matter of increasing concern to a number of groups and individuals
- paid tribute to the survivors' associations and others who campaign to bring this issue to the notice of the interested authorities
- stated unequivocally that the Government shared the widely held view that war graves should remain undisturbed and protected so far as is practicable
- paid tribute to the diving associations and the responsible and positive action that they are taking to educate their members about wreck protection
- believed that education is the most effective mechanism by which wreck sites can be offered the best protection, but it may not be sufficient
- believed that moral authority rests with the survivors
- believed more consideration was required.

5.2. A copy of the full text is attached at Schedule 2 to this paper.

6. The Protection of Military Remains Act 1986

6.1. The following summary of the relevant provisions of the PMRA is meant to assist the general understanding of this subject. It is recommended that recipients read the full text of the Act.

7. Controlled sites

(i) *Designation*

7.1. The Secretary of State for Defence can make a statutory instrument designating as a controlled site any area in UK or international waters which appears to him to contain a place comprising the remains of a vessel which appears to him to have sunk or been stranded while in military service.

7.2. Less than 200 years must have elapsed since the sinking or stranding.

7.3. If the vessel sank or was stranded whilst in the service of another country's armed forces, the remains of the vessel must be in UK waters.

(ii) *Prohibited activities*

7.4. Where the remains of a vessel are in a place which is part of a controlled site, a person, e.g. a diver or other sea user, is prohibited from:

- (a) tampering with, damaging, moving, removing or unearthing the remains;
- (b) entering any hatch or other opening in the remains;
- (c) causing or permitting another to do any of these things.

A person who does any of these prohibited acts is guilty of a criminal offence regardless of his state of mind.

7.5. In addition, “diving operations” are prohibited if they are carried out at a controlled site “for the purpose of investigating or recording details” of the remains of the vessel. (“Excavation” and “salvage” operations are similarly prohibited.) Where a person “knowingly” takes part in, or causes or permits another person to take part in, the carrying out of any such operation, he commits a criminal offence. Similarly, if he knowingly uses, or causes or permits another person to use, equipment in connection with the carrying out of any such operation, he commits an offence.

7.6. A person who commits one of the offences mentioned above,

- (a) if convicted by a magistrates’ court, can be fined up to £5,000, and
- (b) if convicted by the Crown Court, can be fined such amount as the court thinks appropriate. (There is no specific limit to the amount of the fine which could be imposed, but the fine should be within the offender’s capacity to pay).

7.7. Where any prohibited act or operation referred to above occurs in international waters, no offence is committed unless the act is committed either on board a British controlled ship or (essentially) by a British citizen.

8. Protected places

(i) *Designation*

8.1. The Secretary of State for Defence can make a statutory instrument designating any vessel, whether or not its last resting-place is known, which appears to him to have sunk or been stranded while in military service.

8.2. The sinking or stranding must have occurred on or after 4th August 1914.

8.3. If the vessel was sunk or stranded whilst in the service of another country’s armed forces, the remains of the vessel must be in UK waters, otherwise it cannot be designated.

8.4. A place which comprises the remains of a designated vessel and which lies in UK or international waters is known as a protected place.

(ii) *Prohibited activities*

8.5. Where the remains of a designated vessel are the reason for a site being a protected place, a person (e.g., a diver or other sea user) is prohibited from doing any of the things mentioned in para 7.4(a)-(c) above in relation to those remains. If he does any of those prohibited acts he is guilty of an offence if, when he did the act in question, he believed or had reasonable grounds for suspecting that the place comprised the remains of a vessel which had been sunk or stranded whilst in military service. Contrast the position here with the position in the case of a controlled site: paragraph 7.4 above refers.

8.6. In addition, in relation to any vessel within a protected place, “activities” are prohibited if they are carried out for the purpose of doing something that constitutes, or is likely to involve, one of the things mentioned in paragraph 7.4(a)-(c) above. (“Excavation” and “salvage” operations are similarly prohibited.) A criminal offence is committed if a person “knowingly” takes part in, or causes or permits another person to take part in, the carrying out of any such operation. Similarly, if he knowingly uses, or causes or permits another person to use, equipment in connection with the carrying out of any such operation, he commits an offence.

8.7. A person who commits one of the offences mentioned above is liable, on conviction by a magistrates’ court or the Crown Court, to the penalties set out in paragraph 7.5 above.

8.8. Where any prohibited act or operation referred to above occurs in international waters, no offence is committed unless the act is committed either on board a British controlled ship or (essentially) by a British citizen.

9. Power to License

9.1. The extent of diving or other activity permitted at controlled sites or protected places will be governed by any licensing regime that is applied and conditions applied to licences in individual cases. The PMRA allows or requires the following with regard to licensing:

- (a) The Secretary of State for Defence may grant a licence “authorising the doing of such things as are described (whether generally or specifically) in the licence for the purpose of enabling those things to be done without the commission of any offence”.

- (b) A licence may be granted to a particular person, to persons of a particular description or to persons generally, and may contain conditions.
- (c) In the case of a controlled site only, a licence may be contained in the statutory instrument designating the controlled site.
- (d) Where a licence (other than one contained in a statutory instrument designating a controlled site) is granted, the Secretary of State must either:
 - (i) send a copy of the licence to the licensee, or
 - (ii) publish it in such manner as he considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.

9.2. A person who, for the purpose of obtaining a licence from the Secretary of State, knowingly or recklessly makes a statement or furnishes a document which is false in a material particular is guilty of an offence. On conviction by a magistrates' court or the Crown Court, he will be liable to the penalties set out in paragraph 7.5 above.

Discussion

10. Criteria for designation

10.1. The MoD determines requests and candidates for designation under the PMRA on the merits of each individual case. In determining whether or not a particular vessel or site should be designated, the matters to which consideration is given include the following:

- (a) whether or not human remains are known or likely to be present;
- (b) whether or not there is evidence of sustained disturbance and looting (and the strength of such evidence);
- (c) whether or not designation is likely to curb or put a stop to such disturbance and looting; and
- (d) whether or not diving on the vessel or site attracts sustained and significant public criticism or approval;

Designation where these criteria are not met is unlikely unless some other compelling reason for designation exists.

Comments on these criteria, including their appropriateness to vessels lying in international waters, are invited.

11. Form of Designation

11.1. Paragraphs 7.1-7.3 & 8.1-8.4 explained that vessels or controlled sites can be designated under the PMRA. The principal issue that this paper seeks to address is the interference with wrecked military vessels by divers, salvors and other sea users. Paragraphs 7.4-7.5 & 8.5-8.6 explain that a diver or other sea user who tampers with a vessel in a controlled site commits an offence regardless of his state of mind, whereas a diver or other user of the sea who tampers with a designated vessel only commits an offence if it can be proved that he believed or had reasonable grounds for suspecting that the place comprised the remains of a vessel that had been sunk or stranded whilst in

military service. Therefore, where the site of a vessel is known, MoD's initial view is that designating the site as a controlled site is preferable to designating the vessel itself because it would be easier to prove an offence in relation to a controlled site.

Comments on this view are invited.

12. Licensing

12.1. Paragraph 9.1 described the power to licence. Granting licenses which permit significant recreational diving or other activity but prohibit unauthorised interference, intrusion or salvage at a site could provide the protection sought by those who have written to the MoD, without restricting genuine recreational diving or other activity.

12.2. With regard to controlled sites, it may be that a general licence, contained within the statutory instrument designating the controlled site or published separately, is the most practical way to permit recreational diving and other activities. Such a licence could impose conditions preventing interference with any remains. The licence may be in favour of, for example, organisations or groups that meet relevant criteria.

12.3. There may be exceptional cases where the Secretary of State for Defence will be minded to grant a licence allowing the unearthing or removal of parts of a wreck, for example if there are good archaeological reasons to allow an investigation.

Comments are requested on the activities (if any) which should or should not be licenced, and the persons/organisations (if any) to whom or in whose favour licences should be granted

Comments are also requested on whether or not there are any circumstances in which intrusive diving should be allowed. For example, should archaeological investigations of older vessels be allowed?

13. Problems of Enforcement

13.1. Wrecked British military vessels remain the property of the MoD regardless of their current location or condition. Ownership is not lost with the passing of time. The Ministry of Defence Police or the Civil Police Authorities will be requested to investigate where evidence exists that an offence has been committed in respect of MoD property (the offences that may be committed in respect of MoD property are not confined to ones under the PMRA. For example, a person found in possession of property from a wrecked military vessel may be guilty of offences under the Theft Act 1968. Or he may be guilty of an offence under the merchant shipping legislation, which requires those who find or take possession of wreck in UK waters to declare it to the Receiver of Wreck). Moreover, a person authorised in writing by the Secretary of State, who has reasonable grounds for believing that an offence under the PMRA

- (a) is being committed on board a non-British controlled vessel in UK waters, or
- (b) is being, has been, or is to be committed on board a British controlled vessel in UK or international waters,

may board that vessel and seize anything which he has reasonable grounds for believing to be evidence of an offence. Anyone who intentionally obstructs him in the exercise of these powers is guilty of an offence, which may be tried by magistrates and punished by a fine of up to £1,000.

13.2. Despite these powers, however, obtaining evidence to prove that an offence has been committed on a military wreck in UK or international waters some miles off shore and several metres below the surface, where visibility could be very limited, may be extremely difficult. This difficulty is likely to be exacerbated if a significant number of wrecks and controlled sites are designated, owing to limited resources.

Comments are invited on how the Secretary of State might seek to 'enforce' designations of vessels and controlled sites in (a) UK waters and (b) international waters.

14. Other Sea Users

14.1. In designating any vessel or controlled site, it will be necessary to have regard to the legitimate interests of fishermen and other sea users to ensure that designation does not inadvertently render any reasonable, non-diving activity unlawful.

For example, it is arguable that, without a licence, a trawlerman whose nets become entangled with, or boatmen who drop anchor on, a vessel in a controlled site would be committing an offence.

Comments are invited on any other issues or concerns that consultees may have.

15. Proposal

15.1. Subject to the results of this consultation exercise, MoD intends as a minimum to:

- (a) assert rights of ownership over our wrecked military vessels;
- (b) encourage and support the diving organisations' current educational campaign, and in particular, their Code of Practice and "Respect a Wreck" initiatives;
- (c) publicise its own guidance on the protection of wrecked military vessels;
- (d) determine requests and candidates for designation as controlled sites under the PMRA on a case by case basis, as described in paragraph 32;
- (e) participate in associated initiatives by other government departments or non-governmental organisations; and,
- (f) support international protection of wrecked vessels under the UNESCO Draft Convention.

16. Responses

16.1. You should send your views and comments to:

Wreck Protection: Consultation
Ministry of Defence
Room 6384
Main Building
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London SW1A 2HB

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