

ENHANCING PROTECTION OF UNDERWATER HERITAGE ASSETS (Project 7146)



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Cover image: Bell from *SS Mendi*, a troop transport sunk in collision in fog with the Royal Mail steamer *SS Darro* on 2nd February 1917, off the Isle of Wight. *Mendi* sunk with the loss of 646 lives, most native South African troops. The wreck was identified in 1974 and heavily stripped of non-ferrous items by recreational divers. The Bell was not reported as recovered but in 2017 was passed anonymously by a diver to the BBC, fearing it would be lost on his death. The bell was returned to South Africa in 2018 by the Crown as a memorial to those troops lost.

(Picture Credit: Ms. Alison Kentuck)

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1. Executive Summary

Historic England holds the primary responsibility for the preservation of underwater heritage assets (UHA) in the English Inshore Marine Planning Area. Contemporary threats to UHA, whether protected by virtue of a specific legal designation or otherwise, are potentially increasing with the march of technology – enabling discovery of and access to UHA at an unprecedented level.

Effective protection of UHA must incorporate effective enforcement of the laws designed to that end – whether in the case of specifically focused heritage laws or those related to salvage or marine licensing. This project helps to identify areas where potential synergies in enforcement effort might exist. Further, it explores the limitations and obstacles to effective cross-party working and offers some solutions for overcoming them.

As well as extensive desk-based research, structured interviews were held with key individuals within the relevant organisations. Their insights and sharing of experience has been invaluable and provided an opportunity to confirm the reality of enhanced UHA enforcement opportunities and capabilities.

Arranged over five substantive chapters, the project considers the underpinning issues, the law, the capabilities of the principal actors (and others) offshore, their limitations in the context of UHA protection and finally some potential solutions. It concludes with a number of recommendations. As the end of Chapters 4, 5 and 6, there are short summaries of the key points for ease of reference.

Key Findings and Recommendations

Numerous public (and other) bodies with a significant range of primary responsibilities operate in the English Inshore Marine Planning Area. These bodies have a variety of enforcement powers, some of which are generic and available to more than one body.

More extensive use of collaborative working and of the generic powers could bring significant benefit in the context of UHA protection; and a coordinated intelligence gathering capability would provide the opportunity of focused and effective targeting of physical resources, the availability of which is not guaranteed in all cases.

The generic powers confer considerable potential. In particular the marine enforcement powers contained in the Policing and Crime Act 2017 alongside those available to marine enforcement officers (including IFCOs) in the Marine and Coastal Access Act 2009 offer significant possibilities. Powers to stop and search in particular have significant potential within the English Inshore Marine Planning Area (and beyond, although this report is concerned solely with the EIMPA).

The availability of physical resources on the water is also limited. Some bodies, by their very nature, have significant assets at their disposal in respect of their core statutory obligations. Others do not, although there is evidence of the expansion of

some bodies' resources and other examples of resource-sharing. Unmanned autonomous technology is in its infancy, has limited take up and should be expanded.

There is considerable scope to more effectively utilise existing structures in respect of intelligence to inform operational interventions. The National Maritime Information Centre (NMIC), for example, provides a real-time, round the clock oversight of the English Inshore Marine Planning Area (and beyond). As a multi-agency collaborative venture between a number of maritime stakeholder departments it is ideally placed strategically to coordinate information and tasking in respect of UHA.

Otherwise, the maritime presence of other bodies provides potential to develop protocols in respect of information gathering and incident reporting if actual enforcement intervention is not possible pursuant to that body's statutory powers

It has been discovered that a degree of cross-party joint working already exists but often on a local, 'ad hoc' basis. There is widespread institutional acceptance and even enthusiasm for further cross-party joint working. There are a number of very significant opportunities for cross-party joint working available to Historic England.

A commonly identified obstacle however has been the reported lack of understanding of the context, nature and cultural importance of UHA. Despite welcome contemporary policy developments, our respondents reported a general lack of appreciation of and easy access to information relating to the regulatory framework surrounding UHA, their location and the appropriate procedures/protocols to follow when in suspected cases of underwater heritage crime.

Developing a security protocol for each protected UHA, engaging with licenced teams and/or other local stakeholders to create a local sense of cultural value of the coastal community's cultural heritage also offers further enhancement of protection for UHA.

There is no national protocol for handling UHA crime. In particular this potentially leaves the Border Force and those Police Services with responsibility for a coastal environment at an operational disadvantage. Developing a unique 'tag' – which could also include a geographical marker (tag) on call-handling, navigational, intelligence systems - for recording underwater heritage crime would go some way to raising its profile, although it is noted that offences involving the Interference with Protected Wrecks and Protected Military Remains, as well as dealing in tainted cultural objects are already identified within Home Office Recording Standards.¹

The current link to purely financial value is not fit for purpose and the cultural loss context should be a material consideration in assigning operational priorities.

The perception that protection of UHA is constrained by very limited resources and physical marine presence is not entirely accurate. This research has found a change is occurring, with asset numbers increasing thanks to new Border Force patrol

¹ See for example, Crimes against Society ,available from, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/767782/count-crimes-society-dec-2018.pdf (last accessed February 2019)

vessels and planned increases in Royal Navy Fisheries Protection Squadron vessels.

There was a high and very encouraging degree of acceptance amongst interviewees of the government's current policy of increasing cross-party working, and an acceptance of the desirability of enhancing the protection of UHA's, even when their functions did not specifically encompass such protection.

Provided effective cross-party working can be achieved in respect of the protection of UHA then that protection can realistically be enhanced, possibly substantially, from the present level. Historic England would not have to establish a rationale for such enhancement, nor its desirability as these would by and large be a 'given'.²

Additional recommendations encompass:

Developing a training package for coastal Rural Crime Teams and BF staff specially but also make available to partner agencies and National Coastwatch Institution (NCI) as part of Continuing Professional Development or accredited training programme.³

Develop an electronic Common Enforcement Manual, (CEM) which can provide easy access to the substance of the regulatory framework (including marine licensing for which the MMO is responsible) and a pre-determined operational protocol for observation, investigation and communication with relevant organisations.

The concept of a CEM was regarded as an essential prerequisite of joint working arrangements by the organisations interviewed and was universally acclaimed. It is difficult, if not impossible, to stress the perceived importance of this by these organisations.

Increasing the understanding of both coastal Police Services and Border Force officers as to the cultural impact of crime directed at UHA and the value of the resulting cultural loss to society. This could be achieved as a component of an online training package and workshops or seminars.

² Maritime environment is covered in the Heritage Crime Memorandum of Understanding. Potentially the parties to the MoU could be expanded to include the Border Force and MCA etc. as additional signatories .

³ Historic England has commissioned a Handbook for the Prevention and Investigation of Heritage Crime (forthcoming 2020) which will include a chapter on crime in the maritime environment and will complement any proposed training, CPD or accreditation (Mark Harrison Pers.comm).

2. Introduction

2.1 Objectives and Parameters

The United Kingdom's (UK's) Underwater Cultural Heritage (UCH) is unusually extensive and diverse, with an archaeological record spanning millennia up to the 21st century⁴. While there is statutory protection for some of this UCH, the enforcement of such protection is somewhat challenging. Underwater Heritage Assets⁵ (UHA) are often situated in remote locations,⁶ far less populated by law enforcement agencies than the terrestrial environment. The marine archaeological and diving communities consequently play an important role in the detection and reporting of marine heritage crimes, but the location of many sites limits the potential for crimes to be detected. Furthermore, Historic England, which is responsible for the administration of such protection, lacks any marine or aerial assets and the regional coastal Police authorities, who are principally responsible for the investigation and prosecution of maritime heritage crime, either lack or have very limited marine and aerial assets. Consequently, there is little or no intelligence available as to the extent to which the statutory protection of UHA is breached, little deterrent effect present and the enforcement mechanism is inevitably retrospective and confined to post event terrestrial investigation. Remediation is unlikely and thus the impact to UHA will always be significant. Indeed, the lack of any marine or aerial assets focused even partly on the prevention and detection of maritime heritage crime has led to the perception within both the marine archaeological and the wider diving community that such statutory protection is relatively unattainable.

There is, however, a marine and aerial presence by other government departments and agencies, including the Border Force (BF), Royal Navy (RN) and Inshore Fisheries and Conservation Authorities (IFCA's), in the English Inshore Marine Planning Area. These operate under the specific legislative framework relating to their specific functions. The exact nature and quantity of this presence has not, to the authors' knowledge, ever been collated. Nor has, they believe, the potential for this presence ever been examined with a view to utilising it, presumably at a marginal cost to the public purse⁷, to enhance protection of the UHA in the English Inshore Marine Planning

⁴ See for example Bates, MR, Parfitt, S and Roberts, MB (1997) The chronology, palaeogeography and archaeological significance of the marine quaternary record of the West Sussex coastal plain, Southern England, U.K., *Quaternary Science Reviews*, 16(10), 1227-1252
[http://dx.doi.org/10.1016/S0277-3791\(96\)00119-9](http://dx.doi.org/10.1016/S0277-3791(96)00119-9) (last accessed October 2018)

⁵ A Heritage Asset can be defined as: 'a building, monument, site, place, area or landscape identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest. Heritage asset includes designated heritage assets and assets identified by the local planning authority (including local listing). See, National Planning Policy Framework (2012) Department for Communities and Local Government, London, pp. 52; and the UK Marine Policy Statement (2011) HM Government, NI Executive, Scottish Government, Welsh Assembly Government paragraph 2.6.6.1

⁶ See further <https://historicengland.org.uk/advice/heritage-at-risk/archaeology/protected-wreck-sites-at-risk/> (last accessed October 2018)

⁷ Marginal cost is assumed as these resources are already at sea and therefore any additional costs arising from detection and reporting of marine heritage crimes would be marginal as the running costs of the resources would be covered under their statutory duties

Area. While it is the case that the various legislative frameworks that these marine and aerial assets operate under limit their ability to directly enforce the legislative provisions relating to the protection of UHA, they will still permit their utilisation for the purposes of monitoring activity and providing evidence of possible infringements, as well as providing a highly visible and deterring presence.

If these existing marine and aerial assets can be utilised to some extent to enhance the protection of the UHA, albeit at a marginal cost, then there will be value added to government through a more effective utilisation of existing resources and a potential achievement of a more effective enforcement environment. This aligns with the current drive for government departments and agencies to work together, reducing the pressure on already limited resources. Examples of this cross-party working are already emerging, for example an analogous scheme non-specifically targeted towards the protection of UHA can be seen in the National Crime Agency (NCA), BF and National Police Chiefs' Council (NPCC) formerly the Association of Chief Police Officers' (ACPO) 'Project Kraken'. This is described as 'an initiative to increase vigilance along the UK's coastline and maritime environment'.⁸ It is principally targeted towards terrorism and serious and organised crime, and seeks to encourage the reporting of suspicious or unusual activity by the community of maritime users and stakeholders. Equally, activities undertaken by the BF and the Maritime and Coastguard Agency (MCA) represent a UK-wide view reflected in the UK Marine Policy Statement (UKMPS) for the generalised protection and enhancement of heritage assets.⁹

The identification of such resources and the scope for their utilisation would facilitate the drive for cross party working and the streamlining of limited resources. This is seen as an important step towards cost-effective working and sustainable use of government time and resources, which is especially important when considering the complexity of enforcement in the marine environment.¹⁰

This Project therefore seeks:

- to investigate what existing maritime and aerial resources utilised by government departments and agencies or their contractors are present in the English Inshore Marine Plan area
- to catalogue the legislative frameworks under which they operate

⁸ See further <http://www.nationalcrimeagency.gov.uk/publications/313-project-kraken-leaflet/file> (last accessed October 2018)

⁹ The UK Marine policy Statement, - available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69322/pb3654-marine-policy-statement-110316.pdf (last accessed October 2018)

¹⁰ See for example <http://www.recaap.org/Portals/0/docs/NMIC-information-booklet.pdf> ; and also the Defra led 'Pioneer' scheme – the latter having no overt connection to the historic environment, though indicative of the drive to closer cooperation, see for example <https://www.gov.uk/government/publications/defra-single-departmental-plan-2015-to-2020/single-departmental-plan-2015-to-2020> , and <https://www.gov.uk/government/groups/natural-capital-committee> (last accessed October 2018)

- to establish to the extent to which they could lawfully be utilised in part to facilitate the enforcement¹¹ of statutory protection for UHA's which are protected by legislation or otherwise
- to make recommendations, if appropriate, to implement enhanced protection of UHA's in the English Inshore Marine Planning Area.

2.2 Literature Review

In order to inform the context of the report a literature review is included which sets out in general terms the threats UHA and responses to those threats by reference to currently available literature. Specific and more detailed consideration to all of the areas highlighted in the review features throughout the remainder of the report. The literature review provides opportunity for additional research into a range of areas not elaborated here, given the specific focus of this study.

2.2.1 - Threats to Underwater Heritage Assets

The threats to UHA are manifold and reflect the ever widening range of uses to which the sea is being put. While for many, diving and its associated activities (such as mooring) are the main focus,¹² UHA are also impacted upon by a diverse range of activities including fishing, shipping, marine aggregate dredging, salvage activity and treasure hunting, oil and gas exploration and pipeline and cabling activity.

Hutchison suggests that as well as the straightforward threat of human impact, UHA are in addition threatened by a "*lack of awareness of [their] cultural potential and complacency about the size of the resource of underwater sites*".¹³ This is easy to understand when the National Monuments Record contains details of more than 40,000 marine sites in English Inshore Marine Planning Area, as opposed to Australia's 6,000 or Canada's 9,000.¹⁴ However, the "*greatest museum of human civilisation*"¹⁵ should not be taken for granted, nor explored and used up simply

¹¹ The term 'enforcement' is used here in its widest sense to encompass not just the detection and prosecution of maritime heritage crime but also the deterring thereof and the acquisition of evidence relating thereto

¹² See, for example, Edney, J, 'A Framework for Managing Diver Impacts on Historic Shipwrecks' (2016) *Journal of Maritime Archaeology* 11(3) 271

¹³ Hutchison, G, 'Threats to underwater heritage' (1996) *Marine Policy* 20(4) 287, 290

¹⁴ Roberts, P and Trow, S, *Taking to the Water: English Heritage's Initial Policy for the Management of Maritime Archaeology in England* (2002)

(www.divetheworld.com/library/marinearch/maritime_arch_policy.pdf (last accessed October 2018))

¹⁵ Scovazzi, T, 'Protection of the underwater cultural heritage' in Richard Caddell and Rhidian Thomas (eds.), *Shipping, Law and the Marine Environment in the 21st Century: Emerging challenges for the law of the sea — legal implications and liabilities*, (Lawtext Publishing, 2013), 293

because it can be,¹⁶ and so the protections given to it are important considerations for any society.

The general lack of awareness of the importance of UHA to society can impact the protection of UHA at all levels of involvement. At the very top level, Flatman argues (in relation to the United Kingdom, Portugal and the Netherlands) that “[t]he governments of each country are failing, at a most fundamental level, adequately to support the management of an irreplaceable part of their cultural heritage, a cultural heritage, moreover, that each seems happy to exploit at every turn but never to resource sufficiently”.¹⁷ While further ‘down’ the levels of involvement, in a recent study of diver perceptions of UHA in the south west of England, Sophie Scott found that a significant amount of divers felt that a “*lack of societal pressure is to blame for looting at wreck sites*”¹⁸ and that reduction of illegal looting will occur when and if it becomes much more socially unacceptable to loot UHA.

In addition to the social context affecting the protection of UHA, threats also exist in the form of economic factors, such as fluctuations in the market value of scrap metal. Innes McCartney has studied the wrecks of the Battle of Jutland found off the coast of Denmark and notes that some 65% of them “*bear the scars of commercial salvage activity*”, with a considerable number missing their propellers and/or condensers.¹⁹ As a result of surveys carried out in respect of the state of the ships between 2000 and 2016, McCartney has shown that a large amount of this illegal salvage activity was carried out between these two dates, being a timeframe which “*coincides with a period where there has been a sharp rise in the value of copper-based metals which has seen a metal theft crime wave on land as well as under the sea*”.²⁰ Similarly, it is alleged that entire WWII wrecks have disappeared from the bed of the South China Sea in recent years, as salvors seek to take advantage of the increasing demand in China for scrap metal.²¹

2.2.2 - Protection for Underwater Heritage Assets

In England, UHA situated in the English Inshore Marine Planning Area do not benefit from any blanket protection. However, certain assets are protected under the

¹⁶ Hutchison, 289

¹⁷ Flatman, J ‘Managing the marine cultural heritage: defining, accessing and managing the resource’ (2008) *International Journal of Nautical Archaeology* 37(2) 411, 412

¹⁸ Scott, S ‘Enhancing Protection of the Underwater Cultural Heritage in the Marine Environment’ (MSc Applied Marine Science, Plymouth University, 2017), 29

¹⁹ McCartney, I, ‘The Battle of Jutland’s Heritage Under Threat: Commercial Salvage on the shipwrecks as observed 2000 to 2016’ (2017) *The Mariner’s Mirror* 103:2, 196

²⁰ *Ibid.*, 203

²¹ Holmes, O, Ulmanu, M and Roberts, S ‘The world’s biggest grave robbery: Asia’s disappearing WWII Shipwrecks’ (*The Guardian*, 3 November 2017) https://www.theguardian.com/world/ng-interactive/2017/nov/03/worlds-biggest-grave-robbery-asias-disappearing-ww2-shipwrecks?CMP=Share_iOSApp_Other (last accessed October 2018)

Protection of Wrecks Act 1973 (“PWA”) (shipwrecked vessels) and the Protection of Military Remains Act 1986 (remains of aircraft and vessels on military service) (“PMRA”). The ability also exists for Historic England to protect certain assets by scheduling them as ancient monuments under the Ancient Monuments and Archaeological Areas Act 1979 (“AMAAA”), although at present, while there are eleven sites designated as scheduled monuments in English waters, these are all in intertidal or estuarine areas. There are no scheduled ancient monuments in the English Inshore Marine Planning Area below the low water mark, although several sites are currently being considered for scheduling.²²

In addition, UHA, specifically scheduled or otherwise, receive some protection through the marine licensing system provided for in the Marine and Coastal Access Act 2009. The marine licensing system is administered and controlled by the Marine Management Organisation (MMO) and so a detailed consideration of the enforcement of that system is outside of the scope of this literature review. It is however introduced in outline in Chapter 3, along with an explanation of the role of the Receiver of Wreck and the obligations stemming from the Merchant Shipping Act 1995 (MSA).

The protections given to UHA under PWA, PMRA and AMAAA are covered in detail in Chapter 3. The focus of this project is on both the enforcement of such designations in order to achieve the desired protection for the UHA in question, and on enhancing the protection of *all* UHA. It is widely acknowledged that in any sphere, “*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*”.²³ More specifically, for legislation that attempts to prohibit certain activities at certain sites (like PWA, PMRA and AMAAA), adequate surveillance of UHA sites and enforcement of the provisions of the law in respect of any breaches observed are necessary in order for that legislation to be effective.²⁴ Indeed, Kingsley suggests that control over heritage assets is “*directly proportional*” to matters including their visibility and the enforcement of legislation protecting them.²⁵

Enforcement of provisions protecting UHA is given a wide meaning in this report, to include not just the detection and prosecution of maritime heritage crime, but also the deterring thereof and the acquisition of evidence relating thereto. Given the geographical and technological factors that increase the burden of enforcement activity in the marine area (as explained below), deterrence and voluntary compliance

²² See Lowther, J, Parham, D and Williams, M, ‘All at Sea: When Duty Meets Austerity in Scheduling Monuments in English Waters’[2017] *Journal of Planning & Environment Law* 246 for a discussion on the policy of Historic England relating to scheduling UHA below the low water mark.

²³ Staniforth, M, ‘ Australian Approaches to Shared Heritage: Royal Navy Vessels in Australian waters’ (Shared Heritage: Joint Responsibilities in the Management of British Warship Wrecks Overseas, Wolverhampton, July 2008) <https://content.historicengland.org.uk/images-books/publications/management-of-british-warship-wrecks-overseas/shared-heritage-management-of-british-warship-wrecks-overseas.pdf/#page=75> (at pp23-35) (last accessed October 2018)

²⁴ Edney, 279

²⁵ Kingsley, SA, ‘Environmental Reviews and Case Studies: Impacts on Maritime Cultural Resources: Assessing the Invisible’ (2016) *Journal of Environmental Practice* 18(3) 184

with the legislative provisions must be a key aim for any enforcement regime.²⁶ The empirical study of Read *et al.* suggests that “*improved ease of enforcement can result in improved potential voluntary compliance... [by] acting as a deterrent, which would see lower numbers of breaches being observed*”.²⁷ Therefore it is hoped that improving the enforcement of legislative provisions protecting UHA in the English Inshore Marine Planning Area will deter further offences and encourage voluntary compliance with the legislation.

2.2.3 - Enforcement Provisions in the Acts

More detailed consideration of the legislative underpinning to the regimes in place to offer protection to UHA is provided in Chapter 3. In terms of a basic framing of the issues the report is presenting, a general overview of the legislation, solely in the context of enforcement, is considered below.

Protection of Wrecks Act 1973

As befits its origins as a Private Members Bill, the PWA is short and to the point, consisting of three substantive sections only. It contains no provisions or mechanisms for enforcement of the protections it enacts and as such benefits from no direct budget for enforcement. Previously, reliance for enforcement has been placed on the licensee for a site, assuming that such licensees will be able to and be motivated to monitor and protect ‘their’ site, at least during the main diving season.²⁸

This displacement of enforcement activity is not peculiar to England, indeed Edney notes that, in relation to the numerous World War II wrecks in Chuuk Lagoon in the Federated States of Micronesia, in the absence of adequate resources for enforcement of legislation to protect the wrecks (such as a prohibition on removing anything from the wrecks), “*responsibility for enforcement has by default become the responsibility of the licensed dive guides, who have no law enforcement authority or training*”.²⁹ However, any potential there may be of successful enforcement by such unofficial persons is dependent upon the understanding and acceptance of such an unofficial role by all parties involved. With regard to the English Inshore Marine Planning Area, the then, Chief Inspector Mark Harrison noted in an interview with the Nautical Archaeology Society (at the time on secondment with English Heritage to

²⁶ Edney , 279 and 282

²⁷ Read, AD, West, RJ (*et al.*), ‘Optimizing Voluntary Compliance in Marine Protected Areas: A comparison of recreational fisher and enforcement officer perspectives using multi-criteria analysis’ (2011) *Journal of Environmental Management* (92) 258

²⁸ Dromgoole, S ‘Military Remains on and around the Coast of the United Kingdom: Statutory Mechanisms of Protection’ (1996) *International Journal of Marine and Coastal Law* 11(1) 23, 27

²⁹ Edney, J ‘Impacts of recreational SCUBA diving on shipwrecks in Australia and the Pacific: A Review’ (2006) *Micronesian Journal of the Humanities and Social Sciences* 5(1/2) 201, 224

start the Heritage Crime Initiative)³⁰ that potential offences committed by divers were not being reported to the appropriate authorities by others in the diving community because those in the community didn't know who to report to and didn't believe that such reports would be taken seriously.³¹

The lack of specific provisions in the PWA setting out a mechanism for enforcement has been criticised for some time.³² However, with no appetite for legislative amendment apparent at present, the fix for the historical lack of enforcement of the PWA will have to be found in the practices of those bodies present in the marine area, rather than in Parliament. The detail of the Act is considered in Chapter 3.

Ancient Monuments and Archaeological Areas Act 1979

The AMAAA contains various enforcement provisions, such as a power for anyone authorised in writing by the Secretary of State to enter land for the purpose of inspecting a scheduled monument in order to ascertain whether works affecting it are being carried out in breach of the Act.³³ However, these enforcement provisions appear to be aimed at monuments situated and offences carried out on land. For example, the power to enter land to inspect a scheduled monument is of somewhat limited use in territorial waters given that the public have access to the sea under the public right of navigation. Similarly, the power given to the Secretary of State under section 10 of the Act to compulsorily acquire any scheduled monument in order to secure its preservation, is much more effective on land, where practical measures can be taken to exclude others from a site and thus provide protection to that site. Those that would seek to damage a scheduled monument on the foreshore or the bed of the sea cannot be so easily excluded. In 2010, Sussex Police issued a caution to a man that was making furniture from the timbers of the *Anne and Amsterdam*.

With regard to the five sites currently protected as scheduled monuments in intertidal or estuarine areas, these enforcement powers are similarly of less effect in areas where the monuments are covered by water, whether permanently or at various stages of the tides. As explained above, the public right of navigation means that anyone can navigate over tidal waters and so powers to enter 'land' or to acquire a monument in order to protect it are of diminished benefit when the public cannot be excluded from the monument in the first place. Partnerships have been developed in a number of

³⁰ Mark Harrison is now head of Heritage Crime and Policing Advice at Historic England

³¹ Berry, J, 'Heritage Crime' in Nautical Archaeology Society Newsletter, Summer 2011; quoting Chief Inspector Mark Harrison <https://www.nauticalarchaeologysociety.org/sites/default/files/u9/2011-3.pdf> (last accessed October 2018)

³² Halfin, S, 'The Legal Protection of Cultural Property in Britain: Past, Present & Future' (1995) *DePaul-LCA Journal of Art and Entertainment Law* 6(1) 1, 27

³³ Ancient Monuments and Archaeological Areas Act 1979, s 6(1)

areas by NCI and Heritage Watch in areas where there are wreck sites as it discussed further below in respect of the Salcombe site security policy.³⁴

Protection of Military Remains Act 1986

The PMRA contains powers for any “authorised person” to board and search any vessel in UK waters provided that such authorised person has reasonable grounds for believing that an offence under PMRA has been, is being or is going to be committed by those on board the vessel.³⁵ The authorised person is also given powers to seize anything on board the vessel that he or she has reasonable grounds for believing is either evidence of the offence or is necessary to seize in order to prevent it being concealed, lost, altered or destroyed.³⁶ To support the powers of boarding and seizure, obstructing an authorised person is made an offence,³⁷ and in addition the authorised person may “use such force as is reasonably necessary for the purpose of exercising any power conferred on him by this section and may do anything else reasonably necessary for that purpose, including ordering a vessel to stop”.³⁸ These are powerful provisions for enforcement, particularly when contrasted with the lack of any enforcement provisions in the PWA.³⁹

An authorised person is defined in PMRA as any person “authorised in writing by the Secretary of State to exercise the powers conferred by [section 6]... or a person of a description of persons so authorised”.⁴⁰ The administration and enforcement of PMRA is the responsibility of the Ministry of Defence. The administration of the Act is currently split between the Joint Casualty and Compassionate Centre (in relation to air crash sites) and Navy Command (in relation to sunken vessels). While the enforcement of the Act is the responsibility of the Ministry of Defence Police, however, there is no limit in the relevant section of PMRA as to who the Secretary of State may designate as an “authorised person”.

2.2.4 - Enforcement of Protections for UHA

The need for adequate enforcement of legislative protections benefiting UHA has been acknowledged for some time, with Fletcher-Tomenius *et al.* suggesting that “*in the absence of adequate resources devoted to [the] enforcement*” of legislation designed to protect historic wrecks, the provisions of such legislation are breached more than

³⁴ At p121.

³⁵ Protection of Military Remains Act 1986, ss 6(1) and 6(2)

³⁶ Protection of Military Remains Act 1986, s 6(3)

³⁷ Protection of Military Remains Act 1986, s 6(6)

³⁸ Protection of Military Remains Act 1986, s 6(4)

³⁹ Dromgoole, 33

⁴⁰ Protection of Military Remains Act 1986, s 6(8)

they are observed.⁴¹ While it is difficult to assess this statement on the basis that little data is available to confirm the comparative amount of breaches and observances, it is possible to locate some data on the numbers of prosecutions taken under the Acts, although much of this is either unpublished or grey literature.

This lack of enforcement was noted by, the then, Chief Inspector Mark Harrison more recently (on his secondment to English Heritage in 2010 to start the Heritage Crime Initiative) in an interview with the Nautical Archaeology Society; “*Until I joined English Heritage, the number of divers caught for diving and removing objects was negligible*”.⁴² Similarly, Bradley *et al.* in their report in 2012 on the extent of heritage crime in England commissioned by English Heritage,⁴³ note that while the definition of heritage crime they adopted for the study included crimes at marine sites, the report was unable to provide a full account of such crimes as there was “*severely limited evidence*” available:

“Marine heritage assets include protected wrecks and military remains (including designated war graves), plus other submerged archaeology. Considerable legal requirements and constraints affect marine and marine heritage, ranging from the broad Merchant Shipping Act 1995 to the specific Protection of Military Remains Act 1986. This legal context means that there are many potential offences, but the web search together with intelligence from English Heritage and other sources only identified 13 incidents altogether, and these related to just 7 sites in English territorial waters (nb. 1 related to a wreck designated as UK property but located in Danish territorial waters).

The offences identified included vandalism, tampering with a wreck, theft and illegal diving. Of these 13 incidents just 3 had resulted in formal warning or caution, although another 3 were still under investigation. There may be substantial under-reporting of heritage crime in the marine sector, but this is inevitably difficult to prove.”⁴⁴

More recently, Operation Birdie, the national campaign to prevent, investigate and Enforce Crime in the Maritime Environment has resulted in cases being prosecuted against 5 defendants, the details of which are discussed more fully in Chapter 6.

⁴¹ Fletcher-Tomenius, P, O’Keefe, P and Williams, M ‘Salvor in Possession: Friend or Foe to Marine Archaeology?’ (2000) *International Journal of Cultural Property* 9(2) 263, 298

⁴² Berry, NAS

⁴³ Bradley, D, Bradley, J (*et al*) , ‘The extent of crime and anti-social behaviour facing designated heritage assets: Final Report’ (March 2012) <https://historicensland.org.uk/advice/caring-for-heritage/heritage-crime/Concernedowners/> (last accessed October 2018)

⁴⁴ *Ibid.* 8-9

2.2.5 - The Problems for Enforcement

Geographical and Geospatial

Enforcement measures in relation to marine heritage crime are always going to be complicated. The UK territorial waters alone (not including the internal waters) encompasses an area that is almost half the size of the UK land mass.⁴⁵ The sheer size of the area in which heritage assets are located means that one of the main methods of effective enforcement and deterrent, namely, having a capable guardian of the assets,⁴⁶ is immediately made more difficult. Coupled with this, the vast majority of heritage assets in the inshore marine area are underwater and so hidden from 'plain sight'.⁴⁷ This makes potential offences much less obvious, which has negative implications for resource logistics and costs.⁴⁸

These negative implications arise not only as a result of the problem of awareness of any offences being carried out, but also the difficulty of obtaining adequate evidence of such offences in order to bring a successful prosecution. These difficulties can be illustrated by considering the example of the PWA. If a vessel is designated by the Secretary of State under section 1 of the Act, then it becomes an offence (for anyone not holding a licence from the Secretary of State) not only to remove any part of that vessel, but also to tamper with any part of it (for example by moving objects around on a vessel),⁴⁹ to dive around the vessel⁵⁰ or to deposit anything that might, if it fell on the wreck, damage the wreck or obstruct access to it.⁵¹ Apart from removing any part of a vessel (for which there will at least be a piece of physical evidence that remains after the offence has been committed), all of these offences are such that unless someone is caught in the act of committing such an offence, it can be very difficult to collate sufficient evidence upon which to base a prosecution.

Further, for some of these offences, the possibility of being 'caught in the act' is extremely low. For instance tampering with any part of a protected vessel is an offence. Not only does it risk damaging the protected vessel, but it jeopardises the information that subsequent archaeologists could recover from the site; "*the totality of the information is crucial and that is why archaeologists take pains to record the relationships and associations of structure and contents*".⁵² However, without official divers patrolling protected wrecks at all time (which is certainly beyond the resources

⁴⁵ Momber, G, 'Reflections on the Legal Standing of Underwater Archaeology in the UK' (2000) *Journal of the Society for Underwater Technology* 24(3) 115, 116

⁴⁶ Smith, RG, and Anderson, K, 'Understanding Non-compliance in the Marine Environment' No.275 in *Trends and Issues in crime and criminal justice* series, Australian Institute of Criminology (2004), 3

⁴⁷ McKinnon, JF, 'Memorialization, Graffiti and Artifact [sic] Movement: A Case Study of Cultural Impacts on WWII Underwater Cultural Heritage in the Commonwealth of the Northern Mariana Islands' (2015) *Journal of Maritime Archaeology* 10(1) 11, 12

⁴⁸ Edney, J, and Spenneman, DHR, 'Can artificial reefs reduce impacts on historic shipwrecks? The Management Dimension' (2015) *Journal of Maritime Archaeology* (10) 141, 151

⁴⁹ Protection of Wrecks Act 1973, Section 3(3)(a)

⁵⁰ Protection of Wrecks Act 1973, Section 3(3)(b)

⁵¹ Protection of Wrecks Act 1973, Section 3(3)(c)

⁵² Hutchinson, 288

of Historic England), it is very difficult to prove that any particular diver has tampered with any part of a vessel.

Such problems in collating sufficient evidence are not just restricted to the activity of divers. Similar problems attend the offences that can be caused by the activities of fishing boats, for example. Fishing using trawling or dredging methods can damage a vessel⁵³ and so give rise to an offence under section 3(3)(a) of PWA, and could also possibly give rise to an offence under section 3(3)(c) of PWA even if no damage is caused. However, proving that a particular boat caused particular damage to a particular protected wreck will be extremely difficult unless those on the boat can be 'caught red handed' in the act that causes the damage.

The evidential problem is also greater where archaeological records of UHA are lacking. While the salvage of certain items is largely obvious, such as propellers,⁵⁴ in general salvage activities can be difficult to assess without a comprehensive record of the intact state of the wreck. Indeed, McCartney notes that it is difficult to assess the full extent of what has been taken from the wrecks at the Battle of Jutland site, because proper records of the state of the wrecks only start from 2000 and such records "*have been aimed at recording what is present, not what may have been removed from the sites*".⁵⁵

Technological and Resource-Based

In addition to the geographical and geospatial factors affecting enforcement of marine heritage protections, technology and resources have a key impact as well. The widespread use of SCUBA equipment and the ever-growing recreational diving industry both mean that underwater heritage assets are accessible to far greater numbers of people than ever before.⁵⁶ This brings an increased risk of harm to UHA not only because increased accessibility makes the likelihood of someone that is willing to commit an offence visiting a particular asset greater, but also because the very fact of increased access to wrecks causes damage as a result of the corrosive effect of exhaled air bubbles from divers' breathing equipment.⁵⁷

Furthermore, the development of deep-water technology, in relation to both diving and remote controlled underwater vehicles, means that far greater depths of water are accessible to human activity, which results in a large number of heritage assets that were previously protected from human impact by their inaccessibility, becoming

⁵³ Firth, A., McAleese, L., Anderson, R., Smith, R., and Woodcock, T. 2013. Fishing and the Historic Environment. EH6204. Prepared for English Heritage, available from http://www.fjodr.com/uploads/3/4/3/0/34300844/eh6204_report_final_-_reduced.pdf (last accessed October 2018)

⁵⁴ McCartney, 200

⁵⁵ *Ibid.*

⁵⁶ Dimmock, K and Cummins, T 'History of scuba diving tourism' in Ghazali Musa and Kay Dimmock (eds.) *Scuba Diving Tourism* (Routledge, 2013) 14–28

⁵⁷ Edney, 277

available for human exploration and exploitation.⁵⁸ As Hutchison concludes, “[a]ccess to the oceans is now restricted by cost alone”.⁵⁹

Technological advances that threaten underwater heritage are not confined to the diving sector. Fishing with bottom-towed gear is well known to damage UHA.⁶⁰ Similarly, aggregate dredging activity is highly damaging to UHA.⁶¹ This variety of activities that have potential to lead to offences under the protecting legislation, means that enforcement activity needs to be targeted at a wider audience than just the diving community.

Technological advances increase both the threat to underwater heritage assets and the number of assets threatened, but on top of this, they also have resource implications. A lack of resources provided for heritage crime enforcement both in terms of people and equipment, leads both to a lack of adequate enforcement activity, but also to an inability to enforce protective legislation provisions where potential offenders have the technological advantage.⁶²

Cross-Party Working – a potential solution to the difficulty of enforcement?

This project seeks to investigate the possibility of cross-party working in relation to the enforcement of protections for UHA. While the police and Historic England have, respectively, limited marine or aerial assets to assist with enforcement of UHA protections, other bodies active in the English Inshore Marine Planning Area (such as the MCA, the MMO and the Royal Navy) do and the possibility for utilising their assets to aid in the enforcement of protections for UHA needs to be investigated.

In the general field of marine activity, there has been a growing focus on the efficiencies that can be achieved by joint-working and joint use of assets and data. For example, in each of the UK Overseas Territories involved in the Blue Belt Programme (a UK government project that provides £20million of funding over four years to improve the management and protection of the natural marine environment of seven UK Overseas Territories),⁶³ the project involves developing and implementing cost

⁵⁸ Parham, D and Williams, M ‘An Outline of the Threat to Underwater Cultural Heritage in International Waters’ Proceedings of JNAPC 21st Anniversary Seminar at the Society of Antiquaries London, 12 November 2010, 5-15 (5) (http://www.academia.edu/7742933/An_Outline_of_the_Nature_of_the_Threat_to_Underwater_Cultural_Heritage_in_International_Waters - last accessed 20 October 2017)

⁵⁹ Hutchison, 288

⁶⁰ Firth, A ‘UK Safeguarding of Underwater Cultural Heritage: Factual Background’ Briefing Paper for BA/Honor Frost Foundation Steering Committee on Underwater Cultural Heritage (March, 2014), 16

⁶¹ See for example the campaign to designate under PMRA the remains of at least 60 aircraft shot down in the Battle of Britain and many World War I and II wrecks in order to protect the Goodwin Sands area from sand dredging activity which will destroy the heritage assets - <https://www.bindmans.com/news/industrial-marine-dredging-operation-faces-legal-challenge-to-protect-war-h> (last accessed October 2018)

⁶² Smith and Anderson, 4

⁶³ Centre for Environment Fisheries & Aquaculture Science and Marine Management Organisation, *Introducing the Blue Belt Programme* (October 2017)

effective monitoring and enforcement strategies. In the Pitcairn Islands in 2017, this involved working in partnership with the New Zealand Royal Navy and the National Maritime Information Centre (NMIC) to deliver an aerial patrol over targeted areas in the Pitcairn Island Exclusive Economic Zone.⁶⁴ Similarly, in the majority of the territories involved, the programme undertook “*near real-time analysis of satellite data to build intelligence on Illegal, unreported and unregulated fishing, as a precursor to targeted enforcement*”.⁶⁵

The ideas of joint-working and joint use of assets have also received academic attention. In a study focusing on the use of data relating to UHA, Dellino-Musgrave and Guiden compared the National Record of the Historic Environment (maintained by Historic England) with the data set maintained by the UK Hydrographic Office in respect of UK waters. The comparison showed the extent of the inaccuracies and inconsistencies between the datasets and recommended joint working between the parties (such as by regular exchanges of information and reconciliation exercises) in order to improve the baseline data on UHA, which in turn will give decision-makers “*comprehensive, reliable and accessible data on which to base long-term planning, decision-making, and resource management*”.⁶⁶ Interestingly, the discrepancies in datasets were uncovered despite a level of existing cross-party collaboration in the field of hydrographic data. In 2009, the Department for Food, Environment and Rural Affairs came together to produce a Memorandum of Understanding on bathymetric survey data and data gathering that was aimed at increasing offshore survey efficiency for government organisations. Currently the parties include such organisations as the UK Hydrographic Office and Natural England, but Historic England are not a party to the MoU.⁶⁷

With regard to heritage protection the Heritage and Cultural Property Crime National Strategic Assessment lists the unlawful disturbance and salvage of maritime sites as a key threat. In addition, the inclusion of heritage assets in the Sentencing Council’s 2015 Theft Offences Definitive Guideline as aggravating factors; and the potential for their inclusion to be included in 2019 in the Arson and Criminal Damage Guidelines indicates progress at both ends of the enforcement process – tasking and proportionate, *harm-relevant* sentencing.⁶⁸

⁶⁴ *Ibid.*, 11

⁶⁵ *Ibid.*, 5 (see also 7, 9, 12 and 15)

⁶⁶ Dellino-Musgrave, V, and Guiden, N “Marine data, access, and interoperability: Two case studies of English national records’ (2013) *Conservation and Management of Archaeological Sites* 15(3-4) 298, 324

⁶⁷ Maritime and Coastguard Agency, ‘Share Hydrographic Data with Maritime and Coastguard Agency (MCA)’ (May, 2014) - <https://www.gov.uk/guidance/share-hydrographic-data-with-maritime-and-coastguard-agency-mca> (last accessed October 2018)

⁶⁸ NPCC Heritage and Cultural Property Crime Working Group, July 2017, available at <https://www.nationalruralcrimenetwork.net/content/uploads/2017/11/Heritage-and-Cultural-Property-Crime-National-Strategic-Assessment-2017-FINAL.pdf>, page 6. A broad definition of the historic environment is adopted which includes shipwrecks (p.7); See also, Sentencing Council, Theft Offences Definitive Guideline (2015) p 5, available at <https://www.sentencingcouncil.org.uk/wp-content/uploads/Theft-offences-definitive-guideline-Web.pdf> (last accessed February 2019)

This follows the earlier recognition that that joined-up practices are essential if we are to achieve effective protection of heritage assets: *“The historic environment and cultural property is vulnerable because assets are often located in isolated, sometimes rural localities or are displayed for the public to enjoy. Police officers cannot patrol every neighbourhood for every hour of every day. The delivery of intelligent and efficient law enforcement activity in financially challenging times must, therefore, include a focus on ‘collective efficacy’; law enforcement professionals working with local people and partner agencies to protect heritage assets from theft and damage to the historic environment.”*⁶⁹

Indeed, to a certain extent, cross-party working is already happening in relation to UHA. The Memorandum of Understanding on the Prevention, Investigation, Enforcement and Prosecution of Heritage Crime between Historic England, the Crown Prosecution Service, the Association of Chief Police Officers and certain Local Authorities⁷⁰ sets out the responsibilities of each of the parties in respect of protected marine wreck sites: *“The police in partnership with [Historic England] are responsible for the prevention and investigation of unauthorised activities in respect of wreck sites designated as ‘restricted areas’ as defined by the Protection of Wrecks Act 1973. The Receiver of Wreck will work in partnership with the police and [Historic England] where there has been a failure to report the finding of wreck under the Merchant Shipping Act 1995... The Crown Prosecution Service is responsible for prosecution of such crimes where there is sufficient evidence and it is in the public interest to do so. Participating Local Authorities where this affects their local government area will provide assistance and advice in any campaigns of prevention and, where their expertise is needed and resources allow, in the investigation and prosecution of such crimes.”*⁷¹ In addition, the responsibilities in respect of protected military remains is set out as follows: *“The police will in partnership with the Ministry of Defence take responsibility for the prevention and investigation of unauthorised activities in respect of crashed military aircraft and sunk or stranded military vessels which are within a protected place or controlled site.”*⁷²

Similarly, the stakeholder group ARCH (Alliance to Reduce Crime against Heritage), coordinated by Historic England, is a voluntary network of groups and organisations involved in heritage. *“The overriding objective of the group is to reduce the amount of crime that causes damage to, or interferes with, the enjoyment of heritage assets in England. Over two hundred groups and organisations have joined ARCH and in many cases these groups already meet and/or share information through a number already*

⁶⁹ Heritage and Cultural Property Crime National Policing Strategy from Association of Chief Police Officers 1.12.13, p. 5 - www.museumsassociation.org/download?id=1038797 (last accessed October 2018) National Strategic Threat Assessment for Heritage and Cultural Property Crime

⁷⁰ <https://historicengland.org.uk/advice/caring-for-heritage/heritage-crime/memorandum-of-understanding/> (last accessed October 2018)

⁷¹ *Ibid.*, 7

⁷² *Ibid.*

*established formal and informal 'networks'; this represents a valuable intelligence-gathering tool for law enforcement professionals.”*⁷³

However, cooperation with regard to intelligence is only of worth in relation to the protection of UHA if there is effective legislative enforcement and so this cross-party working needs to be expanded to encompass regulatory and other bodies who are active in the marine area and have assets, such as vessels and drones (limited to date to police forces – such as the Devon and Cornwall Constabulary’s UAV unit), that could assist in the detection of breaches and enforcement of the legislative provisions protecting UHA.

The need for cross-party working in the area of protection of UHA is not peculiar to England and has been recognised and implemented to some extent by other countries. For example, the wrecks of British World War II ships HMS Repulse and HMS Prince of Wales are both situated in Malaysian waters and designated as protected places under PMRA. The wrecks contain significant amounts of valuable metals and have been targeted by scrap metal scavengers. The Marine Department of Malaysia, like Historic England, has no vessels that it can use to patrol the area to deter such scavengers, but it has been reported that the Malaysian Coast Guard and Maritime Enforcement Agency has been instructed to provide assistance by patrolling the area in order to spot possible offences taking place and deter others from committing such offences.⁷⁴ Similar use of the coastguard appears to be taking place in French waters, with the head of the Historic England dive team noting that a vessel recently undertaking (legal) archaeological research in French waters was boarded by the French coastguard in order to check that those on board had all the necessary licences for their work and that no offences were taking place.⁷⁵

In England, the potential for such cross-party working was identified in a recent prosecution of salvors for recovering UCH without a Marine Licence (an offence under the MACCA). This enforcement operation, explored more fully later in the report, was a co-ordinated effort by the MMO, the body responsible for marine licensing in the UK marine area, the Royal Navy Fisheries Protection Squadron(RNFPS) and Historic England.⁷⁶

The RNFPS is itself also an example of successful cross-party working in the marine area. It is borne of an agreement between the Ministry of and the MMO in relation to

⁷³ Heritage and Cultural Property Crime National Policing Strategy from Association of Chief Police Officers 1.12.13, p.15 - www.museumsassociation.org/download?id=1038797 (last accessed October 2018)

⁷⁴ Ryall, J and Gunter, J ‘Celebrated British warships being stripped bare for scrap metal’ (The Telegraph, 25 October 2014) <http://www.telegraph.co.uk/news/worldnews/asia/malaysia/11187603/Celebrated-British-warships-being-stripped-bare-for-scrap-metal.html> (last accessed October 2018)

⁷⁵ Gane, T ‘Underwater Cultural Heritage Protection in the UK: the failure to commit to the future’ (Chartered Institute of Archaeologists Conference, Newcastle, April 2017)

⁷⁶ <https://www.gov.uk/government/news/man-found-guilty-of-marine-licensing-offences-relating-to-salvage-of-shipwreck> (last accessed October 2018)

the provision of marine enforcement services, such as fishery protection, by the RNFPS. In addition, since 2012/13 the RNFPS vessels have also been tasked with maritime counter terrorism, pollution control and counter-drug surveillance roles in addition to their main task of fishery protection.⁷⁷ Although it has been suggested that the three vessels allocated to the RNFPS are not sufficient to carry out the patrols necessary to fulfil these aims.⁷⁸

While some cross-party working has therefore been embraced in the English Inshore Marine Planning Area, the potential for much greater integration needs to be examined. The limited planning in the marine sector and the regulation that has informed it has suffered in the past from a sectoral approach that treats marine activities as discrete sectors and, in doing so, hinders inter-agency cooperation.⁷⁹

The preliminary step to breaking down these artificial barriers is to quantify the available marine regulatory assets and understand their potential for utilisation to identify potential breaches of the protective legislation and thus help Historic England, the Police and the Crown Prosecution Service to build the necessary evidence base to bring successful prosecutions in respect of such breaches.

⁷⁷ House of Commons Library Briefing Paper (CBP7669, 4 July 2017), *Brexit: What next for UK fisheries?* <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7669> (last accessed October 2018)

⁷⁸HL Deb 3 July 2017, c675 (<http://hansard.parliament.uk/Lords/2017-07-03/debates/4F5D13A1-7D52-43B4-852D-6ACEDCEEE23E/InshoreFisheries#contribution-BE372561-285C-470E-8FC2-C1392468151C>) (last accessed October 2018)

⁷⁹ Oxley, I 'Towards the integrated management of Scotland's cultural heritage: Examining historic shipwrecks as marine environmental resources' (2001) *World Archaeology* 32(3) 413, 416

3. THE STATUTORY FRAMEWORK FOR PROTECTION OF UNDERWATER HERITAGE ASSETS

In this part, a more detailed explanation of the specific provisions of law that may be utilised is provided. As noted in English Heritage's Project Report '*Marine Archaeology Legislation Project*',⁸⁰ the result of the incremental development of the salvage regime by case law over the centuries, much of it now enshrined in the International Convention on Salvage 1989,⁸¹ is that the law conferred upon divers and commercial operators offers considerable freedom to initiate the salvage of property in danger at sea, irrespective of its heritage worth. To temper this freedom a number of statutory reforms have been introduced, which constrain the liberties of a salvor and, in doing so, confer an element of protection upon the UHA.

3.1 The Protection of Wrecks Act 1973

The Protection of Wrecks Act 1973 (PWA) was passed as a direct consequence of the looting of wrecks of historical interest. Designation and licensing are the chosen mechanisms of control.⁸² The PWA authorises the Secretary of State⁸³ to designate as a restricted area the site of a vessel of *historical, archaeological or artistic importance*⁸⁴ lying wrecked in or on the seabed.⁸⁵ There is no further definition of these criteria in the PWA but non-statutory guidance has been issued.⁸⁶ In practice the age of vessels designated dates from possible 500 BC to the middle of the 20th. Century. As the title of the Act suggests the PWA is potentially restricted in its application due to the use of the term 'vessel'. The term is not defined in the PWA but the Merchant Shipping Act 1995 (MSA) defines the term as "... including any ship or boat or any other description of vessel used in navigation."⁸⁷ Clearly, this would encompass log boats and rafts but it is uncertain if flying boats or amphibious vehicles

⁸⁰ Published by English Heritage, March 2004 at <https://historicengland.org.uk/images-books/publications/marine-archaeology-legislation-project/> (last accessed October 2018)

⁸¹ Available from <http://treaties.fco.gov.uk/docs/pdf/1996/TS0093.pdf> (last accessed October 2018)

⁸² For a detailed account of the Act see 'Legal Protection of the Underwater Cultural Heritage' Dromgoole, S. (ed.) Kluwer Law International (1999) chp.12; Fletcher-Tomenius, P. & Williams, M. 'A Diving or Salvage Operation? ROV's & the Protection of Wrecks Act 1973', *International Maritime Law* (1999) Vol.6 (10) pp. 270-272

⁸³ For the purposes of the 1973 Act the term 'Secretary of State' now denotes, in England, the Secretary of State for Culture, Media and Sports, in Scotland the Scottish Ministers and in Wales the Welsh Assembly respectively

⁸⁴ Section 1(1)(b)

⁸⁵ s.1(1) ; The Act has, as its title suggests, no application to submerged landscapes.

⁸⁶ 'Ships and Boats: Prehistory to Present Selection Guide' Historic England (2012) <https://www.historicengland.org.uk/images-books/publications/dsg-ships-boats> (last accessed October 2018)

⁸⁷ S.255(1).

would be included. The remains of historic aircraft would undoubtedly be outside the definition, which is a significant omission,⁸⁸ as would flooded landscapes.

The objective of the PWA is to protect the restricted area itself from unauthorised interference and not merely the vessel or its contents. It is an offence, within a restricted area, to tamper with, damage or remove any object or part of the vessel or to carry out any diving or salvage operation.⁸⁹ Further operations within the area are then controlled by the issuing of licences, authorising only certain specified activities. The Secretary of State may grant a licence, subject to conditions or restrictions, to persons considered to be competent and properly equipped, for the carrying out of salvage operations in a manner appropriate to the importance of the wreck or associated objects.⁹⁰ In determining whether to designate a vessel and/or grant a licence authorising diving or salvage operations⁹¹ the Secretary of State will receive advice from the Historic England's Historic Wrecks Panel, which replaced the Advisory Committee on Historic Wreck Sites in 2011, in relation to England.⁹² The Panel advises staff on specialist issues of policy and practice related to complex, contentious and high profile wreck sites in UK territorial waters adjacent to England and in UK controlled waters adjacent to England and licensing in UK territorial waters adjacent to England, as appropriate.

A diving contractor has also been appointed, to visit both potential sites to advise on their condition and nature and to visit existing sites for the purpose of monitoring their condition and the activities of the licensee, if any.⁹³ Where a licence is granted, it will be subject to conditions or restrictions, appropriate to each individual site. In autumn 2015 the licensing process was amended to move from four different types of licence to just one, framed by conditions that are relevant to the proposed activities. This change does not alter the processes for approving and issuing licences but rather amends the type of licence issued to make it fit for purpose with current archaeological techniques and to reflect the broad range of reasons for which people seek to access protected wreck sites. The change also introduced the term 'Principal Licensee' who is the main licence holder and, usually, these conditions will normally require that all divers are listed in a schedule kept by the principal licensee, that activities are kept to those authorised on the licence, that intrusive activities are carried out under the direction of the approved archaeologist, that recovered artefacts are given immediate preservation treatment as approved by the archaeologist and that an annual report is submitted and records are deposited with the relevant heritage bodies. The present policy is that initially only certain limited activities on the site will be authorised, short of excavation and recovery.

⁸⁸ Aircraft do come within the meaning of 'wreck' for the purposes of the Merchant Shipping Act 1995 by virtue of the Aircraft (Wreck and Salvage) Order 1938 (S.R.&O 1938 No.136) and s.51 Civil Aviation Act 1949

⁸⁹ s.1(3)

⁹⁰ s.1(5)

⁹¹ The licence does not necessarily authorise activities that are intended to lead to a salvage award.

⁹² 'Accessing England's Protected Wreck Sites Guidance Notes for Divers and Archaeologists' Historic England (2010) p.3 <https://historicengland.org.uk/listing/what-is-designation/protected-wreck-sites/> (last accessed October 2018)

⁹³ Previously, the contract was held by the Archaeological Diving Unit at the University of St. Andrews. Since April 2003 it has been held by Wessex Archaeology.

Finally, a licence may be varied or revoked by the Secretary of State at any time upon not less than one week's notice.⁹⁴ However any such revocation would be subject to the constraints imposed by Administrative Law in that, e.g. the revocation should be reasonable, taking into account only material considerations and after the licensee has been consulted and been afforded an opportunity to make representations. A breach of any condition or restriction contained in the licence is treated as having been done without the authority of the licence, thereby making it a criminal offence.⁹⁵ Additionally, other consents, such as licences from the Crown Estate and the Marine Management Organisation (MMO) must be obtained. Where authorized, any recoveries of wreck must be reported to the Receiver of Wreck under the terms of the Merchant Shipping Act 1995.

3.2 The Ancient Monuments & Archaeological Areas Act 1979

The Ancient Monuments & Archaeological Areas Act 1979 (AMAAA) has seen limited application below Low Water until recent times.⁹⁶ In principle, the AMAAA has significant advantages over the PWA and it has been identified⁹⁷ as the one single piece of legislation having the greatest potential to satisfy the United Kingdom's obligations under the European Convention on the Protection of the Archaeological Heritage (revised).⁹⁸ The Act works by the *scheduling of monuments*.⁹⁹ The definition of a 'Monument'¹⁰⁰ encompasses, inter alia, buildings, structures or work, cave or excavation, vehicle, vessel, aircraft or other movable structure.¹⁰¹ The AMAAA is far more flexible in its possible application than the PWA and, in particular, can apply to flooded landscapes such as quarries, cave dwellings and fish traps,¹⁰² as well as aircraft and vehicles.¹⁰³

⁹⁴ S.1(5)(b)

⁹⁵ s.1(6)

⁹⁶ In 2001 Historic Scotland scheduled as monuments three battleships and four cruisers of the scuttled German High Seas Fleet in Scapa Flow (References AMH/9298 & AMH/9308 respectively). At the time of writing (March 2003) it is proposed to schedule the remains of eight sailing fishing vessels in Aberlady bay, Scotland (reference AMJ/7512/1/1). CADW scheduled the wreck of the *Louisa* in December 2001 but the vessel is now part of the reclaimed area of the Cardiff Bay project. At the time of writing (May 2018) Historic England is reviewing several applications for scheduling below the Low Water Mark, which it had previously rejected. See further Lowther, J Parham, D. & Williams, M. 'All at Sea: When Duty meets Austerity in Scheduling Monuments in English Waters' *Journal of Planning and Environmental Law* (3) 2017 pp.245-334

⁹⁷ Joint Nautical Archaeology Policy Committee, 'An Interim Report on The Valletta Convention & Heritage Law at Sea' (2003): University of Wolverhampton

⁹⁸ ETS no. 143. Hereafter 'the Valletta Convention'

⁹⁹ Under s.53 a monument situated in, on or under the seabed within the seaward limits of UK territorial waters may be scheduled

¹⁰⁰ Curiously although the title of the Act refers to 'Ancient' monuments there is no age limit and post 1945 structures have been scheduled

¹⁰¹ s.62(7)

¹⁰² For an account of the Act in so far as it may be applied to underwater archaeological remains see 'Legal Protection of the Underwater Cultural Heritage' Dromgoole, S. (ed.) Kluwer Law International (1999) chp.12

¹⁰³ Lowther et al

To be scheduled, the monument must be of '*national importance*'.¹⁰⁴ Once scheduled, it is an offence to, inter alia, demolish, destroy, alter or repair a monument without '*scheduled monument consent*', to damage a monument or use a metal detector therein without written consent.¹⁰⁵ In practice, such consent is rarely given, except for rescue excavations, and it is the practice of the heritage agencies to pursue a policy of preservation in situ, rather than encourage active investigation of monuments by excavation, which is seen as destructive. This principle is now enshrined as a cornerstone of the *Valletta Convention*.¹⁰⁶

In relation to '*sites*' comprising, or comprising the remains of, any vehicle, vessel, aircraft or other movable structure or part of it, the object cannot be scheduled "...*unless the situation of that object in that particular site is a matter of public interest*".¹⁰⁷ This provision is not easy to interpret. The limitation appears to arise because the purpose of the Act is to schedule significant *sites*, rather than simply to protect significant objects themselves. A narrow interpretation would suggest that a wreck of a vessel or aircraft could not be scheduled unless the fact that it came to rest in a particular location made its conservation a matter of public interest. Conversely, a liberal interpretation might allow one to take the view that the very presence of a significant wreck in a particular location makes that location of some historical or archaeological interest and therefore a matter of public interest. Clearly, the Act, being based upon the concept of the scheduling of *sites*, should not be concerned with the conservation of an object that is still capable of movement in accordance with its design. Thus, an aircraft that can still fly or a vessel that can still be navigated are inappropriate subjects for scheduling. However, where such an object has been incorporated into a site and is incapable of movement according to its design e.g. because it has crashed or been wrecked at a particular location, then scheduling may be appropriate. It may be that this is what the limitation is attempting to achieve. In any event it is desirable that this confusion is clarified by amendment of the provision in order to make its purpose explicit.

In terms of enhancing protection from unauthorised interference the AMAAA does have one significant drawback. Unlike the PWA, the AMAAA lacks the flexibility to restrict public access by diving upon maritime scheduled monuments, where such restriction would be appropriate in terms of heritage management. Scheduling per se does not create a public right of access to terrestrial monuments. Where a monument is under public ownership¹⁰⁸ the public have a right of access, but this right may be regulated or negated.¹⁰⁹ Although nominally these provisions apply underwater, in fact they sit very uneasily with the maritime legal framework. For example, the public would appear to enjoy a right to swim in tidal waters, unless specifically prohibited.¹¹⁰ On the basis that the courts would equate swimming with underwater diving, it would

¹⁰⁴ This term is undefined.

¹⁰⁵ s.2(1), 28(1) & 42(1); consent may be granted subject to conditions s.2(4).

¹⁰⁶ *European Convention on the Protection of the Archaeological Heritage (revised)* ETS no. 143.

¹⁰⁷ S.61(7)(c); (8)(a).

¹⁰⁸ I.e. in the ownership or guardianship of the Secretary of State, local authority or English Heritage.

¹⁰⁹ S.19(1), (2)(a07(b), (3).

¹¹⁰ Decided law provides no assistance on the question of whether there is a right to bathe in the sea. Since it is not expressly prohibited then, on the Common Law basis that that which is not expressly or impliedly prohibited is lawful, it would appear to be a residual right. It is probable that the public right of navigation is restricted to craft and does not extend to persons swimming.

appear that the public enjoy a right to access scheduled monuments in tidal waters, unless specifically otherwise prohibited. No underwater scheduled monuments are currently in the ownership or guardianship of the relevant Secretary of State and few, if any, are likely to become so. Thus the power to regulate or prohibit access cannot be utilised unless the monument in question is brought into such ownership or guardianship. This would involve a legal process, which would probably not be entered into lightly, as well as the possibility of the payment of compensation to the owner of a monument, e.g. a wreck, brought into such ownership or guardianship. Given this limitation, the use of the AMAAA underwater may be restricted to a few suitably robust sites of public interest and enforcement would be restricted not to excluding access but excluding damage and unauthorised recoveries.

3.3 The Protection of Military Remains Act 1986 ¹¹¹

In February 2001 the Ministry of Defence¹¹² published a 'Consultation Document',¹¹³ inviting interested parties to express their views on the protection of wrecked military vessels which had sunk with loss of life.¹¹⁴ This consultation exercise had been announced¹¹⁵ by Dr. Lewis Moonie¹¹⁶ in response to the growing public controversy over interference with last resting places associated with sunken military vessels¹¹⁷ and a concerted campaign by interested parties and ex-service associations to have such interference regulated under the Protection of Military Remains Act 1986 (PMRA).¹¹⁸ In November 2001 the MOD published its report on the consultation exercise and this document heralded a radical new policy for administration of the PMRA.¹¹⁹

¹¹¹ For a detailed account of the Act see '*Legal Protection of the Underwater Cultural Heritage*' Dromgoole, S. (ed.) Kluwer Law International (1999) chp.12

¹¹² Hereafter 'MOD'

¹¹³ "Military Maritime Graves and The Protection of Military Remains Act 1986: A Consultation Document"[February 2001] Ministry of Defence, Whitehall, London.

¹¹⁴ Ibid. p.6

¹¹⁵ See statement of Dr. Moonie on Maritime Graves House of Commons Written Answers 25 Jan. 2001 at www.parliament.uk (last accessed October 2018)

¹¹⁶ Under Secretary of State for Defence

¹¹⁷ See further '*Ripping Off The Dead*', *Diver*, May 1999; '*Divers raid seabed war graves for trinkets*', *The Independent*, 11/11/1999; '*Divers set to plunder battleship war graves*', *Sunday Telegraph* 27/11/2000; '*Wartime wrecks looted by Divers*' 3/12/2000 at www.telegraph.co.uk and '*The Depths of Dishonour*', *Western Daily Press*, 9/1/2001. Between 19th. October 1999 and 20th. April 2000 the MOD received 51 Parliamentary Questions relating to this issue; see further statement of Dr. Moonie, Parliamentary Under Secretary of State for Defence, 26th. June 2000, at www.parliament.uk cols.415W - 417W. (last accessed October 2018)

¹¹⁸ Which hitherto had not been utilised, except in relation to the remains of military aircraft. For a discussion of the genesis of this controversy and the law relating to the salvage of military remains see Williams, M., "War Graves" and Salvage: Murky Waters ?" *Journal of International Maritime Law* 7(5) pp. 151-158.

¹¹⁹ "Military Maritime Graves and the Protection of Military Remains Act 1986: Consultation Report" [November 2001] Ministry of Defence, Whitehall, London.

The primary objective of The PMRA is to prevent disturbance of military remains, irrespective of the presence of human remains or the cause of the loss.¹²⁰ It is wide ranging and has the potential to control many archaeological excavations. The regulatory framework of the PMRA works upon the concepts of '*Protected Places*', '*Controlled Sites*' and the prohibition of certain excavations.¹²¹

Protected Places are the remains of any aircraft which crashed in military service or of any vessel *designated* (by name, *not* location) which sunk or stranded in military service¹²² after 4th August 1914.¹²³ Although the vessels, as opposed to aircraft, need to be specifically designated by name, the location of each vessel need not be known, since it is the presence of the remains and their designation that makes the place protected and not knowledge of the location. If there is a belief or reasonable grounds for suspecting that a place is comprised of the remains of a military aircraft or designated vessel then it is an offence to conduct unlicensed diving or salvage operations to tamper with, damage, remove or unearth any remains or enter any hatch or other opening. Thus diving upon such remains is permitted, provided no tampering or removal of objects etc. occurs.¹²⁴

Controlled Sites are *designated* areas comprising the remains of a military aircraft or a vessel sunk or stranded in military service less than two hundred years ago.¹²⁵ It is an offence within a controlled site to tamper with, damage, move or unearth any remains, enter any hatch or opening or conduct diving, salvage or excavation operations for the purposes of investigating or recording the remains, unless authorised by licence.¹²⁶ Since unauthorised investigation is prohibited, it would seem that any unlicensed diving is prohibited on these sites.¹²⁷

Finally, the PMRA appears to prohibit any excavation in the United Kingdom if undertaken to discover whether the place comprises the remains of a military aircraft or vessel of any nationality, whenever the casualty took place, i.e. regardless of age.¹²⁸ This is a surprisingly wide provision and would appear to prohibit the archaeological

¹²⁰ A common misconception is that the 1986 Act is concerned solely or primarily with 'war graves'. It is not, but the habitual reference to maritime military remains as 'war graves' has led to a confused perception of the law. The term appears to be a corruption of the terminology used in the Royal Charter incorporating the Imperial War Graves Commission. Under the Charter the Commission is charged with "... caring for the graves of officers and men ... who ... have been, or may be, *buried* ..." and "... to make fit provision for the *burial* of officers and men ...". Predictably the legal advisers to the Commission have taken the view that it is not responsible for unrecovered human remains and that it is quite erroneous in law to refer to ships with unrecovered human remains as 'war graves', since they do not constitute a '*burial*' as such.

¹²¹ The Act applies to both United Kingdom and international waters but foreign vessels may only be designated within UK waters.

¹²² This would include support vessels of the Fleet Auxiliary and requisitioned vessels.

¹²³ The date hostilities commenced against Germany; see further s.1(2).

¹²⁴ Provided that the location of datums etc. did not constitute tampering within the meaning of the Act.

¹²⁵ s.1

¹²⁶ s.2(3)(a).

¹²⁷ The issue would turn upon whether the court interpreted 'investigation' to include mere visual inspection without physical contact.

¹²⁸ s.2(3)(c).

investigation of any possible military wreck, since one of the purposes of excavation would be to establish the identity of the remains.

The non-statutory criteria for determining designation are whether or not: ¹²⁹

- (a) lives were lost;
- (b) there is evidence of sustained disturbance or looting (and strength of evidence);
- (c) designation is likely to curb or put a stop to such disturbance or looting;
- (d) diving on the vessel or site attracts sustained and significant public criticism;
- (e) the vessel is of historical significance;

In terms of enforcement some several legal ambiguities exist, particularly in relation to *Controlled Sites*. These are:

- (a) In relation to those operations which are prohibited in *Controlled Sites*, the use of the term "... *diving or salvage operation* ..." poses a number of difficulties. The term 'diving operation' is neither defined by the PMRA nor by any other primary legislation and therefore carries its normal grammatical meaning.¹³⁰ Clearly, the expression would encompass submersion by a person using diving apparatus, as well as the use of a machine carrying persons, such as a manned submersible. What is not clear is whether it would also include the use of a Remotely Operated Vehicle (ROV) simply to locate a wreck and inspect it.¹³¹ Given that the purpose of the Act is to prohibit unauthorised exploration of maritime military remains, it would surely be open to the courts to take the view that the means of underwater observation, whether manned or not, is irrelevant and that the use of a robotic machine, where the operators remain above the surface constitutes a 'diving operation'. However, the PMRA renders a breach a *criminal* offence and it is a cardinal principle of statutory interpretation that penal statutes are construed strictly in favour of the individual.¹³² Consequently, the court may take a more forensic and restrictive approach to interpretation and consider that the use of remotely controlled machines *per se* does not amount to a diving operation.
- (b) An additional difficulty in relation to *Controlled Sites* arises from the fact that diving or salvage operations are prohibited "... *for the purpose of investigating or recording details of any remains...*".¹³³ The term '*investigating*' has been taken literally to mean simply visually examining a wreck.¹³⁴ Since this is an inevitable ingredient of all recreational and commercial diving operations,¹³⁵ this would amount to a prohibition of all diving operations within a *Controlled Site*

¹²⁹ "Military Maritime Graves and the Protection of Military Remains Act 1986: Consultation Report" op.cit. para.16 p.6.

¹³⁰ The expression is defined, for the purposes of the Diving At Work Regulations (S. I. 1997 No. 2776), as " ... a diving operation identified in the project plan ...". A search of Canadian, Australian, American and New Zealand legislation revealed no use or definition of the expression.

¹³¹ *Quare* could the use of a towed sonar device be a 'diving operation' within the meaning of the PMRA

¹³² See further *R. v. Cuthbetston* [1980] 3 W.L.R. 89 (H.L.)

¹³³ S.2(3)(a).

¹³⁴ See '*Legal Protection of the Underwater Cultural Heritage*' Dromgoole, S. (ed.) Kluwer Law International (1999) chp.12. Contextually, this would be the grammatical meaning.

¹³⁵ At least initially, preparatory to other operations.

without the authority of a licence. Certainly, the MOD has publicly adopted such an interpretation.¹³⁶ However, while this interpretation has merit, there are grounds for taking a more restrictive approach. If a total prohibition on all diving operations had been intended, there would be little point in specifying the purposes for which the diving operation was prohibited. The fact that the PMRA refers to such operations for specified purposes suggests that Parliament's intention was to allow diving operations for other, unspecified, purposes.¹³⁷ This conclusion is reinforced by the fact that, had a total prohibition been contemplated, then one envisages clear and unambiguous wording would have been utilised, comparable to that in the PWA, which talks of "...diving or salvage operations directed to the exploration of any wreck ...[or the use of] equipment constructed or adapted for any purpose of diving operations".¹³⁸ Moreover, if a total prohibition on diving within a *Controlled Site* is imposed by the PMRA, then no apparent purpose is served by the provision of the additional offence of taking part in a diving operation carried out for the purpose of tampering with, unearthing, removing etc. or entering military remains within the site. Simply executing a diving operation *per se* within the site, without this additional seabed activity, would constitute an offence. Consequently, it is arguable that '*investigation*', for the purpose of the PMRA, envisages activity which amounts to more than merely diving to visually examine military remains within a *Controlled Site*. Given that the objective of the legislation is to protect military remains from unauthorised interference, a purposive interpretation would be that diving operations are only prohibited if they are intended to, or are likely to, result in physical interference or entry into a wreck. Such an interpretation would then permit a purely visual examination, whether by a diver or by a Remotely Operated Vehicle (ROV), without the necessity for a licence.

- (c) This ambiguity is compounded when one also considers the meaning of '*salvage operation*'. A '*salvage operation*' is not defined in the PMRA. However, it is defined by the MSA as "... any act or activity undertaken to assist a vessel or any other property in danger in navigable waters ...".¹³⁹ Clearly the words "...any act or activity...", *per se*, would embrace the use of a ROV, but the qualification that, in order to be a salvage operation, the activity must be undertaken *to assist* a vessel in danger is problematic, in circumstances where there is no intention to ultimately recover the vessel or any part of it. While success is undoubtedly a precursor to entitlement to a salvage award, the conferment of a benefit upon the property in danger is not a pre-requisite of the status of a 'salvor'. Salvage by its very nature is speculative and the rendering of assistance, i.e. a salvage service, *per se*, without the attainment of success, will still amount to a salvage operation and make the operative a 'salvor'. This is well illustrated by the principle that a person engaged in work preparatory to recovery of a sunken vessel or its cargo will nevertheless be a salvor in law and have the possessory rights of a salvor in possession, notwithstanding that

¹³⁶ "Military Maritime Graves and the Protection of Military Remains Act 1986: Consultation Document" op.cit. para. 14 p.6.

¹³⁷ Any diving operation to secure safety or health or prevent serious damage to property is permissible under s.2 (6).

¹³⁸ S.1(3)(b).

¹³⁹ Sch. 11 Article 1(a).

actual recovery has yet to be effected.¹⁴⁰ As Brice stated,¹⁴¹ no exhaustive list of salvage services can be given, but it is clear that the locating of an endangered vessel, inspecting it and assessing its predicament can constitute a salvage service, where it is accompanied by an intention to effect recovery or, at least, such an intention is not excluded. Indeed the American courts have conferred the status of salvor in possession upon persons where location of a wreck and assessment of its condition have been undertaken by a ROV with a view to raising material from the wreck.¹⁴² Consequently, it is arguable that a person using a ROV to locate and survey a wreck would be conferring a salvage service and therefore would be engaging in a salvage operation. On the other hand, the absence of a firm intention to recover a vessel or any of its contents in the foreseeable future and the lack of proximity between survey and any eventual recovery may make it difficult for a court to regard merely locating and inspecting a vessel as a salvage service in the conventional sense and therefore a salvage operation, contrary to the PMRA.

3.4 The Marine and Coastal Access Act 2009: Marine Licensing

The introduction of the marine licensing regime under the Marine and Coastal Access Act 2009 (MACCA) was potentially the most significant legislative addition to the protection of UHA's since the PWA. In determining an application for a marine licence, the Marine Management Organisation (MMO)¹⁴³ must have regard to, inter alia, the need to protect the environment. For the purposes of marine licensing the environment includes "... any site (including any site comprising, or comprising the remains of, any vessel, aircraft or marine structure) which is of historic or archaeological interest."¹⁴⁴ While the expression 'historic or archaeological interest' is not defined in the Act itself, a definition has been provided for the Self Service Marine Licence process, which is discussed below. It is also important to note that this definition is wider than that used in the PWA and will encompass any site of historical or archaeological interest, including monuments and flooded landscapes.

Marine licensing has imposed considerable restraints upon the hitherto freedom to remove objects from the seabed, including the freedom of salvors to conduct salvage without prior authorisation, thereby affording a default position where in many circumstances UHA are protected from unauthorised disturbance and recovery without the necessity for designation or scheduling under the PWA, AMAAA or PMRA. However, it is important to recognise that not all disturbance and/or recovery in respect of UHA requires authorisation by a marine licence, but any large scale disturbance or recovery is almost certainly likely to require a marine licence, thereby affording a considerable degree of protection to UHA.

¹⁴⁰ *The Tubantia* [1924] P. 78.

¹⁴¹ Brice, G. *Maritime Law of Salvage* 3rd. ed. (1999) Sweet & Maxwell. London. at pp. 103-105.

¹⁴² *Colombus-America v. Unidentified Etc. Vessel* 1988 AMC 2957.

¹⁴³ The licensing authority for marine licences in English territorial waters in the Secretary of State (s.114(8)) but the Secretary of State has entered into an agreement for discharge of that function by the MMO under s. 14(1)).

¹⁴⁴ S.115(2). The MMO will consult Historic England in respect of potential impacts of the proposed activity upon UHA's.

Marine licensing functions by imposing a requirement for a marine licence for the carrying out of a '*licensable marine activity*'.¹⁴⁵ Where a marine licence is granted the authorised activity must be carried out in accordance with the licence. The Act then sets out thirteen licensable marine activities,¹⁴⁶ the activities which would be relevant to the protection of UHA being:

- To deposit any substance or object within the UK marine licensing area,¹⁴⁷ either in the sea or on or under the sea bed, from any vehicle, vessel, aircraft or marine structure, or any container floating in the sea;
- To deposit any substance or object anywhere in the sea or on or under the sea bed from a British vessel, British aircraft or British marine structure, or a container floating in the sea, if the deposit is controlled from a British vessel, British aircraft or British marine structure;
- To use a vehicle, vessel, aircraft, marine structure or floating container¹⁴⁸ to remove any substance or object from the sea bed within the UK marine licensing area;
- To carry out any form of dredging within the UK marine licensing area (whether or not involving the removal of any material from the sea or sea bed);¹⁴⁹

These criteria are extremely wide and would encompass many routine activities. To avoid excessive regulation or administrative burden two Statutory Orders provide approximately forty exemptions, obviating the need to apply for a marine licence provided any conditions imposed by these statutory exemptions are complied with.¹⁵⁰ In any attempt to mitigate this administrative tasking and reduce costs for applicants in respect of licensable activities which pose a low risk to the marine environment a system of self-servicing for marine licences has been introduced.¹⁵¹ In relation to UHA it is particularly noteworthy that the self-service activities includes any removal of "*discrete minor objects of archaeological or historic interest from the seabed*", described in the associated application.¹⁵² '*Minor objects*' are defined as discrete debris, while '*Archaeological or historic interest*' is defined as "*includes all traces of human existence having a cultural, historical or archaeological character such as sites, structures, buildings, artefacts and human remains, together with their archaeological and natural context vessels, aircraft, other vehicles or any part thereof, their cargo or other contents, together with their archaeological and natural context; and (iii) objects*

¹⁴⁵ S.65(1).

¹⁴⁶ S.66(1).

¹⁴⁷ The UK marine licensing area encompasses the UK marine area, i.e. the UK territorial sea, EEZ and Continental Shelf, with the exception of the Scottish Inshore Region; s.42(1), s.66(4)

¹⁴⁸ A floating container would include any buoyancy device, such as a diver's 'lifting bag', which when inflated provides positive buoyancy to lift objects underwater

¹⁴⁹ Dredging is defined as *including* the use of any device to move any material (whether or not suspended in water) from one part of the sea or sea bed to another part; s.66(2)(a)

¹⁵⁰ Marine Licensing (Exempted Activities) Order 2011 (S.I. 408/2011); Marine Licensing (Exempted Activities) Order 2013 (S.I. 526/2013)

¹⁵¹ <https://www.gov.uk/government/publications/self-service-marine-licensing> (last accessed October 2018). The fee for a self-service marine licence is £50.00, which is a considerable cost reduction.

¹⁵² <https://www.gov.uk/government/publications/self-service-marine-licensing/self-service-activities-table> (last accessed October 2018). The meaning of 'discrete' is somewhat unclear but presumably relates to what are termed by marine archaeologists disarticulated objects that have become detached from any structure or are free standing, such as items of cargo or personal possessions

of prehistoric character".¹⁵³ This is an extremely wide definition, which mirrors largely that contained in the UNESCO Convention on the Protection of Underwater Cultural Heritage 2001¹⁵⁴ and encompasses, through the marine licensing system, all UHA, in contrast to the more limited ambit of UHA protected by the PWA, AMAAA or PMRA.¹⁵⁵ The removal of such objects under a self-service marine licence is subject to the criteria and conditions, including a consent from Historic England or an approved methodology.¹⁵⁶

Finally MMO guidance states that a marine licence is not required to use a floating container, such as a lifting bag, to remove an object from the seabed where the object does not require a total lifting capacity greater than 100KG and the object to be removed has not been on the seabed for longer than 12 months. An example is given of a recently lost outboard motor or other objects the nature and condition of which indicate clearly that the item not been lost for a period of time in excess of 12 months. This guidance seems somewhat misleading, since it would be for the MMO to prove all elements of the criminal offence, including the fact that the object had been on the seabed beyond 12 months. The guidance appears to suggest that it is for the applicant to establish this or otherwise to obtain a marine licence. Quite what the basis of this exemption is is not clear. It is not statutory and appears therefore to be entirely administrative. However given that the activity may constitute a criminal offence without the obtaining of a marine licence, the exemption appears to be a policy decision not to enforce a legislative criminal provision for administrative or logistical reasons. Given the decision *in R (on the application of Pretty) v Director of Public Prosecutions*¹⁵⁷ the legitimacy of such a policy may be questionable.

3.5 The Salvage Regime

A 'salvage operation' is defined as "any act or activity undertaken to assist a vessel or any other property in danger ..." ¹⁵⁸ and entitlement to a salvage reward for "a useful result" is expressly conferred¹⁵⁹. The term 'property' appears to be extremely wide, but legal opinion is that, at its widest, it only encompasses maritime property, i.e. it is synonymous with 'wreck'¹⁶⁰ under the Merchant Shipping Act 1995 (MSA).

¹⁵³ Ibid

¹⁵⁴ See <http://www.unesco.org/new/en/culture/themes/underwater-cultural-heritage/2001-convention/> (last accessed October 2018)

¹⁵⁵ The definition is not without its problems, in that the expression '*cultural, historical or archaeological character*' remains undefined, especially in a chronological sense

¹⁵⁶ A template for such approval is available at <https://www.gov.uk/government/publications/self-service-marine-licensing> (last accessed October 2018)

¹⁵⁷ [2001] UKHL 61

¹⁵⁸ International Convention on Salvage 1989 Shed. 11, Article 1(a) <http://treaties.fco.gov.uk/docs/pdf/1996/TS0093.pdf> (accessed October 2018); a 'salvor' is not defined but presumably will be someone conducting a salvage operation.

¹⁵⁹ Article 12 *ibid*

¹⁶⁰ Defined as " *includes jetsam, flotsam, lagan and derelict found in or on the shores of the sea or any tidal water.*" (s.255(1)). In *Sir Henry Constable's Case* (1601) 5 Co. Rep. 106a *Jetsam* was defined as goods cast into the sea to lighten an endangered ship, the ship later sinking; *Flotsam* as goods left floating after a ship sinks and *Lagan* as goods cast into the sea with a buoy attached to mark their location for later recovery. A *derelict* is a vessel abandoned at sea by the master and crew,

Consequently the salvage regime has no application to archaeological material deriving from submerged landscapes. The MSA, through its incorporation of the International Convention on Salvage 1989 (ICS) into United Kingdom law, effected a welcome modernisation of salvage law¹⁶¹. However this modernisation related principally to commercial salvage. 'Voluntary' salvage (*ex contractu*), where the salvor does not act under a contractual obligation, the normal case in maritime archaeology, retained most of its essential characteristics. Much of the salvage relating to UHA is voluntary salvage, often undertaken by recreational divers or avocational archaeologists who are recreational divers. That said, voluntary salvage by commercial concerns can occur, usually associated with recovery of metal cargoes or gold or silver bullion and specie.

The traditional elements of voluntary salvage, a service provided *ex contractu*, which successfully recovers endangered property, are preserved by the ICS and this has significant implications for the underwater cultural heritage. Since there is no requirement for a contractual nexus, any person may initiate salvage of another's property, indeed an owner cannot unreasonably refuse such a service¹⁶². Such freedom is however constrained by the operation of the legislation protecting UHA and imposing the requirement for a marine licence for recovery of objects from the seabed other than by hand. These legislative provisions are considered below.

3.6 Merchant Shipping Act 1995 and Receiver of Wreck

Under section 236(1) MSA a person who takes possession of wreck in UK waters or brings it into those waters must give notice to the Receiver of Wreck (ROW).¹⁶³ That person, a salvor in law, will usually be entitled to a salvage award and the function of the ROW, an official of the Maritime and Coastguard Agency, is to reunite owner with their recovered property, subject to the payment of any salvage claimed. There is no statutory time limit for such reporting, though an administrative time limit of 28 days is adhered to by the ROW. It is an offence, without reasonable excuse, not to report the taking of possession of wreck¹⁶⁴ and such failure has been recently been the subject of a number of prosecution detailed in Chapter 5 below.

Most historic wreck remains unclaimed and it is in respect of such unclaimed wreck that effective changes in the administrative policy relating to the disposal of historic wreck have been introduced by the ROW. If no owner claims title to wreck within a

without hope of recovery (*The Aquila* 1 C. ROB. 38 (1798) per Sir W Scott at 40). Sunken vessels resting on or in the seabed, or their remains, will be a Derelict in law. The term 'wreck' also encompasses the both the remains of vessels, their equipment, cargo and apparel. Aircraft come within the meaning of 'wreck' for the purposes of the Merchant Shipping Act 1995 by virtue of the Aircraft (Wreck and Salvage) Order 1938 (S.R.&O 1938 No.136) and s.51 Civil Aviation Act 1949

¹⁶¹ The Convention is incorporated by s. 224 and the text of the Convention is contained in Schedule 11 to the MSA

¹⁶² Article 19 *ibid*; this is a reflection of the imperative which the public policy behind salvage placed upon returning endangered property to the main stream of commerce in society, thereby minimising society's economic dislocation

¹⁶³ Such reporting is effected by submission of a form known as a 'Droit'

¹⁶⁴ S.236(2)

statutory period of one year then the Crown is entitled to the unclaimed wreck,¹⁶⁵ unless the Crown has granted the right to such unclaimed wreck to a person.¹⁶⁶ The ROW obtains a market valuation and may then dispose of the property as thought appropriate; the salvage award being paid by the person or institution that acquires the material upon the basis of the valuation, together with any expenses of the ROW.¹⁶⁷ The salvor's interest is protected because the salvage paid by the acquiring institution is negotiated with the Receiver upon the basis of the valuation(s).¹⁶⁸ The public interest in archaeological material being disposed of as a single collection to a publicly accessible museum is facilitated by the ROW firstly offering the wreck to such an institution in the United Kingdom. If no institution in this country is prepared to acquire it, then it will be offered to similar institutions abroad. Finally, the material will only be disposed of by way of public auction or returning the wreck to the salvor in lieu of salvage if no suitable institution is prepared to acquire it.¹⁶⁹ In practice divers, as the salvors, often agree to the item in question being donated to a museum.

¹⁶⁵ S.241 & 24

¹⁶⁶ The Crown has granted the right of unclaimed wreck washed ashore to persons, often to those holding manorial titles

¹⁶⁷ Where wreck is disposed of to a publicly accessible collection the Receiver's fees are waived but any expenses incurred by the Receiver must be paid, since the Maritime and Coastguard Agency has no funding for conservation etc. and must recoup these costs

¹⁶⁸ In practice many finders waive their right to salvage in return for the material being disposed of to a museum

¹⁶⁹ A notable exception occurs where wreck, recovered outside UK territorial waters, is landed in the UK and remains unclaimed; the court in *The Lusitania* [1986] 1 Lloyd's Rep. 132. held that title to such wreck does not vest in the Crown and must be returned to the salvor

4. MARINE ENFORCEMENT RESOURCES

“In order for us to influence and intervene where necessary, we must carefully assess and prioritise the maritime risks and opportunities we face and allocate our resources accordingly”¹⁷⁰

4.1 Context and Maritime Presence

As has been noted, despite its raft of heritage responsibilities offshore, Historic England does not have a stand-alone marine enforcement presence. Heritage crime is not identified as *serious or organised crime* according to the National Crime Agency definition,¹⁷¹ however, the unlawful disturbance and salvage of maritime sites and metal theft are acknowledged as key priorities and subject to the involvement of organised criminality¹⁷² The seriousness of heritage crime may reflect the value (both cultural and/or financial) of the item; or be reflected in the fact that the impact of heritage crimes may have an irreversible nature.¹⁷³ These are circumstances that certainly apply to UHA, although interviews with the relevant police forces revealed that crimes against the person were significantly regarded as a key priority rather than crimes against property, including UHA. It may be that there is a differential appreciation of the policy drivers and the operational priorities manifested in the appreciation of the relevant Forces’ work in this area.

Whilst there are a number of broad-based heritage crime initiatives,¹⁷⁴ including Operation Birdie, the difficulties in realising their potential in the offshore environment are significant and challenging: location, accessibility and cost for example. A better response would be to co-ordinate the targeting of partnership intelligence and enforcement resources and capability. Such an approach resonates with the government’s Maritime Security Strategy, which notes that *‘in a climate of limited resources we must maximise the effect of our assets, focusing on integration and*

¹⁷⁰ Ministry of Defence, Department for Transport, Foreign & Commonwealth Office, and Home Office (2014) The UK National Strategy for Maritime Security, Cm8829 HMSO available from <https://www.gov.uk/government/publications/national-strategy-for-maritime-security> (last accessed October 2018)

¹⁷¹ See for example National Crime Agency (2018) National Strategic Assessment of Serious and Organised Crime 2018, available from <http://www.nationalcrimeagency.gov.uk/publications/905-national-strategic-assessment-for-soc-2018/file> (last accessed October 2018)

¹⁷² Association of Chief Police Officers, Heritage and Cultural Property Crime National Strategic Assessment 2017, available from <http://www.nationalruralcrimenetwork.net/content/uploads/2017/11/Heritage-and-Cultural-Property-Crime-National-Strategic-Assessment-2017-FINAL.pdf> (last accessed October 2018)

¹⁷³ Historic England (2017) Guidance for Sentences: Heritage Crime, available at <https://historicengland.org.uk/images-books/publications/heritage-crime-guidance-sentencers/heag054a-guidance-for-sentencers/> (last accessed October 2018)

¹⁷⁴ Heritage and Cultural Property Crime National Strategic Assessment 2017; and Historic England (2016) Heritage Crime: A Guide for Law Enforcement Officers, available from <https://historicengland.org.uk/images-books/publications/heritage-crime-guide-for-law-enforcement-officers/> (last accessed October 2018)

cooperation wherever possible'.¹⁷⁵ The Strategy draws on two key principles, integration and collaboration as being instrumental in the success of enforcement measures offshore. An assessment of the potential contribution that could be made by agencies with offshore capabilities is set out in the following sections.

4.2 Statutory Basis

Of the agencies with particular enforcement powers, the Maritime Security Strategy identifies the police, Border Force, the National Crime Agency (NCA) and the Royal Navy. For the purposes of this report, the NCA is not considered, because, as noted above, crimes against UHA are not part of its current strategic focus, beyond a tangential reference to metal theft. Other bodies with a presence on the water, though, such as Inshore Fisheries and Conservation Authorities, The Maritime and Coastguard Agency (MCA), the Marine Management Organisation (MMO) and the Ministry of Defence Police (MDP) are considered; along with the National Coastwatch (NCI) Institution, which although voluntary body with no statutory remit or enforcement powers or capability which may nonetheless facilitate more effective enforcement.

4.2.1 - Police

Structure Aims and Objectives

There is a geographical arrangement of police service provision in the UK. In England, the focus of this report, there are 39 distinct forces, as illustrated in figure 1 below. Whereas 18 forces have a significant coastline,¹⁷⁶ not all of them have a dedicated, specialist marine unit. Currently ten of the coastal forces declare as having operational capabilities offshore, although some of these specialised teams are pooled between more than one constabulary, and the range of equipment and capability varies considerably between forces.¹⁷⁷ The area-specific focus of the police means that each police force has its own senior management team, budgetary autonomy and operational priorities. The operational aspect is, however, somewhat centralised and coordinated by the Home Office, so that there is a degree of homogeneity in the way forces approach their policing function.¹⁷⁸

In respect of this report, the police are probably the enforcement body whose role and function has traditionally been the most appreciated by Historic England, although more recently a developing relationship has emerged between Historic England and other agencies including the Maritime and Coastguard Agency and the Marine Management Organisation. Outside of some broad consideration of their powers and

¹⁷⁵ The UK National Strategy for Maritime Security, paragraph 1.4

¹⁷⁶ The Gloucester and Metropolitan forces are limited to an estuarine presence.

¹⁷⁷ Northumbria, North Yorkshire, Humberside, Essex, Kent, Hampshire, Dorset and Devon and Cornwall, Merseyside and greater Manchester (specialist dive and marine unit)

¹⁷⁸ Jones, M and Stockdale, K, 'The Police', in Harding (et al) *An Introduction to Criminal Justice*, 2017, Sage, London, p.210.

a more detailed consideration of the contemporary extension of the operation of those powers in recent legislation, this section does not provide exhaustive detail as to their operational worth to Historic England as it is assumed that this worth is understood.

Figure 1: Map of police districts¹⁷⁹



Basic Enforcement Powers

The police have a primary function to maintain law and order. In order to facilitate this they are granted a number of powers, the majority of which are set out in statute. The Police and Criminal Evidence Act 1984 and the Police Act 1996 are the principal regulatory mechanisms as to the police's role and function. The specific detail of this

¹⁷⁹ Image courtesy of <http://www.countrysidewatch.org.uk/policeforces.asp> A higher resolution map is available from Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services, <https://www.justiceinspectors.gov.uk/hmicfrs/media/police-force-map.pdf> (last accessed October 2018)

legislation is vast and beyond the scope of this report,¹⁸⁰ however, with the detail stripped away, the basic powers afforded to a police officer include:

- the power to detain
- the power to stop and search people/vehicles
- various powers of entry
- the power to seize and retain property
- the power to arrest people with or without warrant for any offence
- the power to direct the behaviour of persons and vehicles on highways and in other public places

The police are the principal enforcement body for heritage offences, and a suite of offences that are not specifically heritage related, but may be aggravated by the fact that there is a lost or damaged heritage component to them. In this respect significant and valuable work has been undertaken around the development of Guidance for Sentencers in heritage crime cases¹⁸¹ and there are a number of instances where there have been successfully integrated working arrangements between police investigators and Historic England.¹⁸² The majority of these arrangements have been in respect of terrestrially based initiatives, such as: unlawful metal-detecting (night-hawking), metal theft, anti-social behaviour and vandalism at heritage sites and the like.¹⁸³ In response to the greater visibility of heritage crime as a result of these initiatives, the role of Heritage Crime Liaison Officer (HCLO) has been created for the various forces to coordinate effective responses to heritage crime.

On the basis of interviews with stakeholders, including Historic England and a number of police services, the HCLO role appears to be somewhat inconsistent. The issues identified by the research are considered in Chapters 5 and 6 of the report. Aside from a terrestrial setting, it is obviously a far more difficult enterprise for the HCLO to effectively police offshore as a result of the difficulties with access to potential crime scenes, evidence gathering and expertise in the nuances of the law that applies. Significantly, in the last year, the police have gained a suite of investigatory powers offshore to match those they have onshore. This important contemporary development in the law is examined below.

Maritime Enforcement Powers

The Policing and Crime Act 2017 (PACA) has significantly re shaped the enforcement powers of the police insofar as they relate to maritime activities. The long title of the Act notes one of the purposes of PACA is to extend the powers of the police in relation to maritime enforcement. Essentially, this means the augmentation of police powers to investigate offences committed on vessels operating at sea. The basic territorial

¹⁸⁰ Interested readers are directed to Rowe, W, *Introduction to Policing* (2nd. Ed), 2014, Sage London.

¹⁸¹ See for example, Historic England (2017) *Guidance for Sentencers: Heritage Crime*, available at <https://historicengland.org.uk/images-books/publications/heritage-crime-guidance-sentencers/heag054a-guidance-for-sentencers/> (last accessed October 2018)

¹⁸² See, for example, in this respect the NPCC's: *Heritage and Cultural Property Crime National Strategic Assessment*, 2017; *Heritage Crime, A Guide For Law Enforcement Officers*

¹⁸³ Although as noted previously Operation Birdie is the name given to a national campaign to prevent and enforce crime in the maritime environment, leading to successful prosecutions.

extent of the powers is confined to 12nm, broadly mapping onto the definition of English Inshore Marine Plan Area.

Part 4 PACA grants the police so called “*maritime enforcement powers*” for the purposes of “*preventing, detecting, investigating or prosecuting offences under the law of England and Wales*” in a maritime context.¹⁸⁴ This means that for certain, specified, categories of ship, enhanced powers are available to the police. The ships are defined in the following categories:

- a UK ship in territorial, foreign or international waters;
- a foreign ship in England and Wales waters, and international waters;
- a ship registered in a relevant territory;¹⁸⁵
- or a ship without nationality¹⁸⁶

While Part 4 PACA primarily applies to the police, s.84(3) extends the definition of *law enforcement officers* to include other officers (see for example the section on Border Force below).

The *maritime enforcement powers* are elaborated in ss.88-90. They include the powers to stop, board, divert and detain;¹⁸⁷ the power to search for evidence and obtain information;¹⁸⁸ and the power of arrest and seizure.¹⁸⁹ In each case the threshold necessary to trigger the use of the powers is that the law enforcement officer has reasonable grounds to suspect an offence is being or has been committed on a ship; that the ship was otherwise involved in the commission of a crime; or that there is evidence of the commission of an offence on a ship. In terms of a search, the officer may search the ship, persons on the ship and anything found on the ship – which may include the cargo.

Limits are imposed on the exercise of the powers in s.85. These primarily relate to issues of spatial and national jurisdiction and require the Secretary of State for the Home Office’s authorisation before the enforcement powers may be applied. The Secretary of State must authorise in circumstances where they are contemplated as being used on:

- UK ships in foreign waters - authority may only be granted if the state (which includes ‘relevant territories’) where the enforcement would take place consents
- a foreign flagged vessel in UK waters - unless the flag state has asked the UK intervene, or has authorised the UK to Act, or that the UN Convention on the Law of the Sea permits an intervention

Part 4 of the PACA applies primarily to England and Wales waters, but does enable to exercise of maritime enforcement powers following *hot pursuit* of vessels into Scottish waters

¹⁸⁴ Section 84(1) Policing and Crime Act 2017

¹⁸⁵ Defined in s.85(1) Policing and Crime Act 2017

¹⁸⁶ Defined in s.85(1) Policing and Crime Act 2017

¹⁸⁷ Section 88 Policing and Crime Act 2017

¹⁸⁸ Section 89 Policing and Crime Act 2017

¹⁸⁹ Section 90 Policing and Crime Act 2017

Table 1. below sets out the powers, their triggers and limitations.

Section	Power	Basic Trigger	Scope	Limits
88	Stop, board, divert and detain	Reasonable suspicion of commission of an offence under the laws of England and Wales	Stopping and boarding ship. Arrest and detention	Requirements for SoS authorisation if non UK ship or non-England and wales waters Requirements for SoS authorisation before ship can be taken to a port outside of the UK
89	Search and obtain information	Reasonable suspicion of commission of an offence under the laws of England and Wales	Search: ship, persons cargo and items on the ship Information: may require anyone on the ship to give information, may photograph, may require production of documents (including in electronic form)	Personal searches limited to outer clothing
90	Arrest and seizure	Reasonable suspicion of commission of an offence under the laws of England and Wales	Arrest: any person reasonably suspected of being guilty of the offence Seizure: anything which appears to be evidence of the offence	Any items which are legally privileged

Offences relating to UHA arising under the PWA and AMAA would clearly fall within the definition of an *offence in England and Wales*, enabling an enforcement response, as would the offences relating to marine licensing under MACCA. As is discussed in Chapters 5 and 6, offences related to the Merchant Shipping Act 1995 (MSA) relating to reporting of wreck finds to the Receiver of Wreck would also be included.¹⁹⁰

¹⁹⁰ Sections 236 and 245 Merchant Shipping Act 1995

Aside from the general application of the marine enforcement powers, s.93 creates offences should a person obstruct the police or fails to comply with a requirement in the performance of their functions under Part 4 PACA. The offence provides for the power of arrest without warrant¹⁹¹, with the penalty on conviction being a Magistrate's Court fine according to s93(4) PACA.

4.2.2 - Border Force

Structure Aims and Objectives

Border Force (BF) has significant assets in the English inshore marine area and as such is an important focus for any consideration of cross-party collaboration and working in the inshore area. It was established in 2008 as part of the (now defunct) UK Border Agency, which was created by the merger of the Border and Immigration Agency with those parts of HM Revenue & Customs responsible for border security. In 2012, against a background of criticism of UKBA and the discovery that it had acted without ministerial authority, the Home Secretary removed BF from the UK Border Agency and transferred it to the Home Office.¹⁹²

This history of BF means that, unlike the other agencies, bodies and organisations studied for this report, BF has no statutory basis and no constituting legislation. Instead of a separate entity, BF is an integral part of the Home Office.¹⁹³ Indeed, it is described by the government as “*a law enforcement command within the Home Office*”.¹⁹⁴ This structural identity means that there is no enabling legislation setting up the BF and setting out its powers and responsibilities. Instead, powers are given directly to the members of staff of BF as immigration officials and/or customs officials under various enactments (considered below).

Again, as it lacks enabling legislation, there are no statutory aims and/or objectives for BF. However, the Home Office has published “priorities” for BF, which are to:

- deter and prevent individuals and goods that would harm the national interests from entering the UK;
- facilitate the legitimate movement of individuals and trade to and from the UK;
- protect and collect customs revenues for trade crossing the border;
- provide excellent service to customers; and
- provide demonstrable effectiveness, efficiency and value for money.¹⁹⁵

¹⁹¹ Section 93(3) Policing and Crime Act 2017

¹⁹² National Audit Office, *The Border Force: Securing the Border* (The Stationery Office, 2013) - <https://www.nao.org.uk/report/border-force-securing-uk-border/> (last accessed October 2018)

¹⁹³ See Home Affairs Committee, Sixth Report of Session 2012-13, *The work of the Border Force*, HC 523, paragraph 2 <https://publications.parliament.uk/pa/cm201213/cmselect/cmhaff/523/52302.htm> (last accessed October 2018)

¹⁹⁴ <https://www.gov.uk/government/organisations/border-force/about> (last accessed October 2018)

¹⁹⁵ *Ibid.*

Protection of UHA does not fit into these priorities. Similarly, it does not fit within the remit of the responsibilities of the Home Office¹⁹⁶ (which is no surprise given that heritage protection falls within the remit of the Department for Digital, Culture, Media and Sport), although it could be aligned with one of the published priorities for the Home Office, being to “cut crime”.¹⁹⁷

Enforcement Powers

As noted BF itself has no powers or duties. Instead, the staff of BF (as immigration officials and/or customs officials) operate pursuant to powers granted by various enactments. These are outlined below, insofar as they are relevant to UHA.

Borders, Citizenship and Immigration Act 2009

Under this Act (the BCIA) functions of Her Majesty’s Revenue and Customs (HMRC) that are exercisable in relation to “general customs matters” are deemed to be exercisable also by the Secretary of State.¹⁹⁸ He or she may delegate such functions to immigration officers (or anyone else in BF or the Home Office) by designating such persons as general customs officials,¹⁹⁹ who are then answerable in respect of such functions to the Secretary of State (and not HMRC).

General customs matters are defined in the negative in the BCIA,²⁰⁰ but can be summarised as the non-revenue functions of HMRC. In the debate of the preceding Bill in the House of Lords, it was stated that the intention was for the customs role of immigration officers (then part of UK Border Agency, but now part of BF) to focus on “border-related matters, such as the importation and exportation of goods”.²⁰¹

Included in these non-revenue functions of HMRC are certain powers and responsibilities set out in the Customs and Excise Management Act 1979 (CEMA). Of particular interest in relation to UHA protection are the provisions of section 68(1) of the CEMA, which provides that:

“If any goods are—

(a) exported or shipped as stores; or

(b) brought to any place in the United Kingdom for the purpose of being exported or shipped as stores,

and the ***exportation or shipment is or would be contrary to any prohibition or restriction for the time being in force with respect to those goods under or by virtue of any enactment***, the goods shall be liable to forfeiture and the exporter or intending exporter of the goods and any agent of his concerned in

¹⁹⁶ <https://www.gov.uk/government/organisations/home-office/about> (last accessed October 2018)

¹⁹⁷ *Ibid.*

¹⁹⁸ Borders, Citizenship and Immigration Act 2009, section 1

¹⁹⁹ Borders, Citizenship and Immigration Act 2009, section 3(1)

²⁰⁰ Borders, Citizenship and Immigration Act 2009, section 1(2)

²⁰¹ See <https://publications.parliament.uk/pa/ld200809/ldbills/015/en/09015x--.htm> (last accessed October 2018)

the exportation or shipment or intended exportation or shipment shall each be liable on summary conviction to a penalty of three times the value of the goods or level 3 on the standard scale, whichever is the greater.” (**emphasis added**)

As well as the offence created by section 68(1) and set out above, section 68(2) of the CEMA provides that where a person is knowingly concerned in the export or shipment as stores of anything that would contravene section 68(1), then they are guilty of an offence which is subject to more severe penalties.

General customs officials have all the powers of HMRC officials and so, in relation to the export provisions above, they have the power under section 163(1) of the 2009 Act to stop and search any vessel where there are reasonable ground to suspect that it is or may be carrying any goods which are “*in the course of being unlawfully removed from or to any place*”,²⁰² which would include being unlawfully exported.

Application to UHA

Putting together the pieces of legislation detailed above, if the export of material recovered from an underwater heritage asset such as a wreck would be prohibited, then the provisions of the BCIA and the CEMA mean that BF officials would be empowered to take action.

The export of material recovered from a wreck in the English inshore area is prohibited in certain circumstances under both EU law and English law - as set out below. Before considering the relevant prohibitions, it must be noted that section 68(6) of the BCIA provides that there will be no offence committed under section 68(1) or (2) where the legislation prohibiting the export makes it an offence punishable by fine or other penalty. In other words, there is no double counting of offences and if something is punishable under the legislation that provides the prohibition, then there is no need to apply the BCIA.

1. Council Regulation (EC) No 116/2009 on the export of cultural goods (the “Regulation”)

The Regulation sets out limits on the export of certain “cultural goods” by requiring an export licence to be obtained prior to their export. Under Article 1, cultural goods are defined as those listed in Annex 1 of the Regulation. This list includes “*archaeological objects more than 100 years old which are the products of: - excavations on land or under water; - archaeological sites; - archaeological collections*”. There is no financial threshold applicable to this category of cultural goods and so no minimum value below which the regulation ceases to apply. This means that any material recovered from a wreck or other UHA in English waters would be cultural goods under the Regulation, provided that the object is more than 100 years old.

²⁰² Customs and Excise Management Act 1979, section 163(1)(b)

Under Article 2, the export of cultural goods outside of the EU requires an export licence (issued by the relevant member state). The relevant member state has authority to dispense with the requirement for a licence for archaeological objects that are of limited archaeological or scientific interest, are not a direct product of excavations, finds or archaeological sites within a member state, and whose presence on the market is lawful. However, as any material from UHA within English Inshore Marine Planning Area would be a direct product from a site within a member state, which would include territorial waters, this exception would not apply.

The Regulation does not make it an offence to export cultural goods without an Export Licence, instead leaving it to the various Member States to lay down appropriate penalties for infringements of the provisions of the Regulation.²⁰³ As such, section 68(6) BCIA will not apply and the export outside of the EU of relevant cultural goods without an Export Licence will be an offence under section 68(1) or (2) of the BCIA.

2. The Export of Objects of Cultural Interest (Control) Order 2003 (the “Order”)

Under English law, export licences are also required for the export of certain cultural goods. The Order requires any object of cultural interest that is over 50 years old to have an Export Licence for export to any country (including any EU country).

There is an Open General Export Licence which permits export without licence for certain objects below certain thresholds, but the threshold for archaeological material found in UK soil or UK territorial waters is zero and so any archaeological material of more than 50 years age going for export anywhere, will require an Export Licence (from the Arts Council England).²⁰⁴

The Order creates several offences (such as breaching the terms of an Export Licence or giving misleading or incorrect information when applying for a licence), but it does not make exporting relevant cultural goods without an Export Licence an offence. Therefore, again, section 68(6) of the BCIA is not triggered and so the export of cultural goods without an Export Licence in contravention of the Order will be an offence under section 68(1) or (2) of the BCIA.

The combined effect of the Regulation and the Order is that any material recovered from an UHA in English Inshore Marine Planning Area that is more than 50 years old cannot be exported to anywhere outside of the UK without an Export Licence. Furthermore, for objects more than 100 years old being exported outside of the EU, a European Export Licence will also be required before export is permitted. Thus the export or attempted export of any such material without the necessary licence(s) will be a breach of section 68(1) (and potentially section 68(2)) of the BCIA.

²⁰³ Council Regulation (EC) No 116/2009 on the export of cultural goods, Article 9.

²⁰⁴ See http://www.artscouncil.org.uk/sites/default/files/download-file/Guidance_for_exporters_2015_issue_3.pdf (last accessed October 2018).

As stated above, Export Licences are issued by the Arts Council for England on behalf of the Secretary of State. BF is responsible (under the BCIA and the Partnership Agreement between HMRC and the Home Office relating to the operation of customs controls by BF)²⁰⁵ for the enforcement of export controls.

BF therefore already has a role that permits some involvement in the protection of UHA. However, this role is extremely limited. The export restrictions set out above will only be of assistance in the protection of UHA when material is removed from wrecks (or other UHA) and exported to another country without an appropriate Export Licence. Removing the material itself is not an offence under any of the legislation set out above and neither is exporting it with the correct licence in place. Therefore the legislation is only likely to be of assistance with regard to the protection of UHA where BF becomes aware that material taken from UHA is being exported without a licence or being prepared for such exportation. Simply finding material taken from UHA on a vessel is unlikely to be sufficient evidence of an intention to export the material without the required licence(s).

Furthermore, and as noted above, removing the material itself is not an offence under any of the legislation set out above. Therefore any involvement of BF could only come at some point after the removal, at which point any damage to the UHA and the surrounding site will already have been done. In addition, any deterrent effect provided by BF's involvement would be to deter the export of material without an appropriate Export Licence and not to deter the act of taking the material from the UHA site. Thus the protection afforded to UHA sites by this involvement of BF is arguably limited.

Potential for Collaboration on Enforcement of UHA Protection

At present, the only direct statutory powers that BF has that could be of assistance to Historic England in the enforcement of protections for UHA are under the BCIA, as set out above.

However, its status as an integral part of the Home Office and its lack of enabling legislation mean that BF is not limited by statute with regard to the purpose for which it can use its assets. This explains the current assistance provided by BF to the Receiver of Wreck with regard to potentially illegal salvage activity taking place in English waters as discussed above.

The willingness to assist other government bodies and agencies shown by Border Force suggests that they may be amenable to an approach for assistance with enforcement of UHA protections. Indeed, such assistance would be in line with the commitment in the UK National Strategy for Maritime Security that the government “...will build the evidence base for greater flexibility, interoperability, cost-effectiveness and coherence in relation to maritime security. This will include identification of new or shared capability requirements and investigation of the feasibility and benefit of delivering common systems, equipment and platforms”.²⁰⁶

²⁰⁵ See <https://www.gov.uk/government/publications/partnership-agreement-between-hmrc-and-border-force> (last accessed October 2018)

²⁰⁶ UK National Strategy for Maritime Security (2014), p 41

The Powers of Border Force Officials

The assistance that BF officials would be able to offer in relation to the protection of UHA will depend upon their powers in relation to any vessels they come across. Simple monitoring of UHA sites considered at risk and persons of interest to Historic England would provide a certain level of deterrence (as official presence is likely to provide some discouragement of illegal activity).²⁰⁷ Nonetheless, to have a significant effect, both in terms of enforcement and deterrent, BF officials would need suitable powers to stop, board and search vessels of interest. However, the powers of BF officials are determined by the nature of legal protection that any particular underwater heritage asset benefits from.

The UK Marine Policy Statement²⁰⁸ (adopted under MACAA section 44) provides a certain level of protection for all UHA regardless of any designation under any of the protective Acts or otherwise. As explained earlier in this Report, it does so by obliging “*all public authorities taking authorisation or enforcement decisions that affect or might affect the UK marine area*” to take due consideration of all heritage assets and noting that “[t]he absence of designation for such assets does not necessarily indicate lower significance and the marine plan authority should consider them subject to the same policy principles as designated heritage assets”.²⁰⁹ However, while public authorities (such as BF and Historic England) are obliged to consider all heritage assets, the powers that BF officials have in relation to the protection of UHA will greatly depend upon whether such UHA benefit from the protection of one or more of PWA, AMAAA, PMRA and MACAA.

Marine Enforcement Powers

The PACA, s.84(1) sets out additional powers. It provides that a “*law enforcement officer*” may, exercise any of the “*maritime enforcement powers*” set out in the PACA in relation to vessels in English and Welsh territorial waters.²¹⁰ Taking each of the noted terms in turn;

- “Law enforcement officer” includes any designated customs official under Part 1 of the Borders, Citizenship and Immigration Act 2009.²¹¹
- “Maritime enforcement powers” are set out at section 84(1) of the PACA and consist of the following:

²⁰⁷ Russell G Smith and Katherine Anderson, ‘Understanding Non-compliance in the Marine Environment’ No. 275 in *Trends and Issues in crime and criminal justice* series, Australian Institute of Criminology (2004), 3 and 4

²⁰⁸ Department for Environment, Food and Rural Affairs, UK Marine Policy Statement (30 September 2011) <https://www.gov.uk/government/publications/uk-marine-policy-statement> (last accessed October 2018)

²⁰⁹ *Ibid.*, 4 and 22

²¹⁰ To be done for the purpose of preventing, detecting, investigating or prosecuting an offence under the law of England and Wales. It is also possible, although not relevant in the context of this project, to apply to some vessels in international waters (which includes within the UK’s Exclusive Economic Zone).

²¹¹ Policing and Crime Act 2017, section 84(3)

- The power to stop, board, divert and detain a vessel.²¹²
- The power to search a vessel and anyone or anything on that vessel and obtain information.²¹³
- Powers of arrest and seizure.²¹⁴

Therefore, BF customs officials have wide-ranging powers to stop and board vessels that they suspect may be involved in the commission of an offence under English law. This would include offences under s.1(3) of PWA offences under s.2(1) AMAAA , s.2(1) PMRA and s.85 MACAA.

In addition, offences under the MSA relating to reporting of wreck finds to the Receiver of Wreck would also be included. These include offences under sections 236, and 245 of the MSA. However, finders of wreck have up to 28 days to report their finds to the Receiver of Wreck, which then would necessitate satisfying an evidential burden such that the powers would not be used.

Limits on the Marine Enforcement Powers

Unless BF officials are able to satisfy themselves that they need to use the marine enforcement powers, they will be limited to monitoring sites and vessels. This means that for undesignated UHA there would be a requirement that activity either was in breach of an existing marine licence or is being carried on without a marine licence.

The use of any of the maritime enforcement powers in relation to a foreign vessel (or any vessel of the Isle of Man, the Channel Islands or any British overseas territory) in English and Welsh territorial waters requires the prior authorisation of the Secretary of State.²¹⁵ This authorisation can only be given where the foreign state has either requested or consented to the involvement of the UK authorities or where UNCLOS provides authorisation to UK officials to exercise the relevant powers.²¹⁶ This requirement will limit the effectiveness of BF officials, particularly in relation to foreign ships found within English waters.

4.2.3 - Inshore Fisheries Conservation Authorities

²¹² Policing and Crime Act 2017, section 88

²¹³ Policing and Crime Act 2017, section 89

²¹⁴ Policing and Crime Act 2017, section 90

²¹⁵ Policing and Crime Act 2017, section 85(3)

²¹⁶ Policing and Crime Act 2017, section 85(4)

Structure, Aims and Objectives

The ten regional Inshore Fisheries Conservation Authorities (IFCAs) cover the whole of the English coastline (see *figure 1*), established under the MACAA. In addition, the ten regional IFCAs have established a separate body known as the Association of Inshore Fisheries and Conservation Authorities (AIFCA), which represents the majority of the IFCAs' joint interests at a national level.

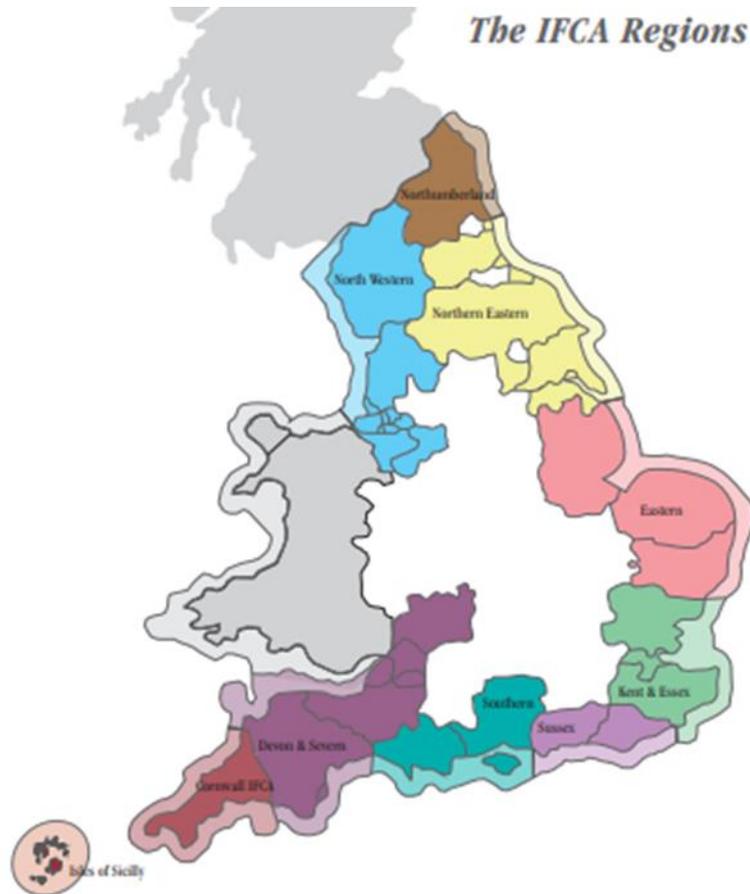


Figure 1: Map of IFCA districts²¹⁷

Structure: Statutory Framework

The Secretary of State (Defra) established the new Inshore Fisheries and Conservation districts (IFC districts),²¹⁸ each by separate Order in 2010.²¹⁹ The districts extend from coastal baselines out to six nautical miles (unless limited by non-English waters). For each of these districts, section 150 MACAA provides for the establishment of an IFCA. The statutory duty of each IFCA is to “*manage the exploitation of sea fisheries resources*” within its district.²²⁰ In its performance of that

²¹⁷ Association of IFCAs, 'The Inshore Fisheries and Conservation Authorities 2011-2015: Achievements and success in delivering fisheries and conservation management' (<http://www.association-ifca.org.uk/Upload/Reports/The%20IFCAs%202011-2015%20Achievements%20and%20Success%20Report.pdf> last accessed October 2018)

²¹⁸ Established pursuant to powers in s. 149 MACAA

²¹⁹ The Cornwall Inshore Fisheries and Conservation Order 2010, the Eastern Inshore Fisheries and Conservation Order 2010, etc.

²²⁰ Marine and Coastal Access Act 2009, s.153(1)

statutory duty, each IFCA must (*inter alia*) “seek to balance the social and economic benefits of exploiting the sea fisheries resources of the district with the need to protect the marine environment from, or promote its recovery from, the effects of such exploitation”.²²¹ The phrase “marine environment” is defined in MACAA as including “features of archaeological or historic interest in marine or coastal areas” and therefore includes all UHA, whether protected by any of the relevant Acts or not.²²²

The IFCAs therefore have a duty to consider the need to protect UHA, albeit that the duty is limited in two ways. Firstly, the IFCAs remit only extends to six nautical miles and so it does not cover a significant amount of the English Inshore Marine Planning Area. Secondly, the duty is to consider the need to protect UHA from the effects of exploitation of sea fisheries resources within the relevant district, in other words, a duty limited to considering the effects of fishing activities on UHA.

Each IFCA is run by a committee comprised of members of the local councils within the district, representatives from the Environment Agency, Natural England and the Marine Management Organisation (MMO), and persons appointed by the MMO. To be appointed by the MMO, a person must either be “acquainted with the needs and opinions of the fishing community of the district”, or have “knowledge of, or expertise in, marine environmental matters”, which includes UHA.²²³ At the time of writing this report, from the information publicly available from each of the IFCAs, it appears that only two (Devon and Severn and Sussex) have a member connected to UHA in some way.

Aims & Objectives: Vision, Success Criteria and High-Level Objectives

The vision for the new IFCAs was set by DEFRA, in conjunction with the previous Sea Fisheries Committees, prior to the establishment of the new IFCAs.²²⁴ Subsequently, five high-level objectives have been identified for the IFCAs,²²⁵ with success criteria identified for each objective. It is then up to the individual IFCAs to set their own working-level objectives in order to achieve these success criteria (they are set in each IFCA’s Annual Plan and then progress is reported in the corresponding Annual Report for the relevant year). The relationship and content of these criteria and objectives is shown at *fig. 2*.

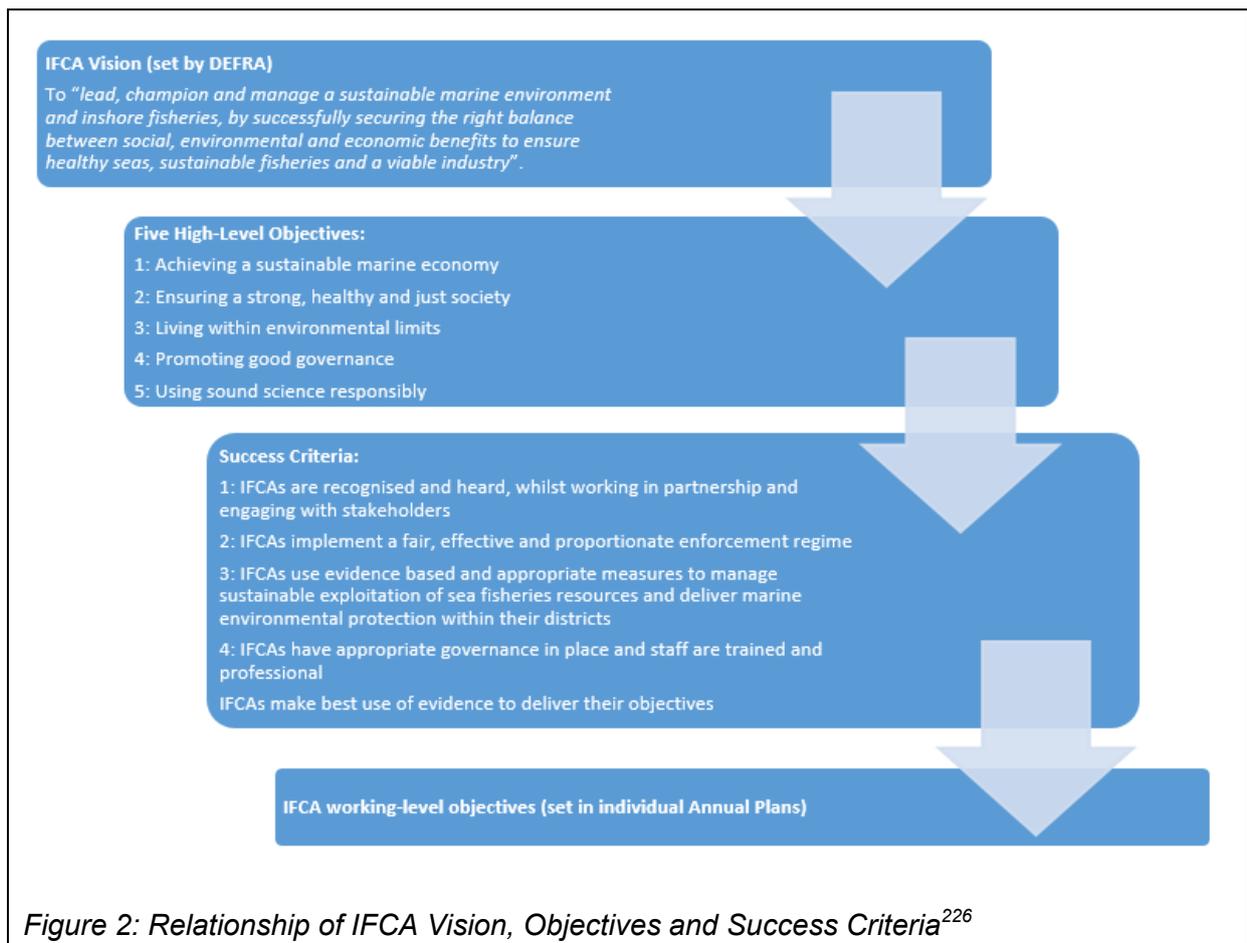
²²¹ Marine and Coastal Access Act 2009, s.153(2)(b)

²²² Marine and Coastal Access Act 2009, section 186(1)

²²³ Marine and Coastal Access Act 2009, section 151(2)

²²⁴ Lowther J and Rodwell, LD, ‘IFCAs: Stakeholder Perceptions of roles, and Legal Impact’ *Environmental Law Review* 115 (2013) pp11-26

²²⁵ There had been seven higher level objectives, but this was reduced to five in a review of the objectives in 2015 in order to bring them into line with the UK Marine Policy Statement, see AIFCA Annual Plan 2016/17 - <http://www.association-ifca.org.uk/Upload/Reports/A-IFCA%20Annual%20Plan%202016-17%20v3.pdf> (last accessed October 2018)



Success Criterion 1 is that "IFCAs are recognised and heard, balancing the economic needs of the fishery whilst working in partnership and engaging with stakeholders". One of the actions the AIFCA has identified to achieve this success criterion is to "engage with NGOs and other interest groups to promote the IFCA role and seek common visions and ways of working together".²²⁷ Similarly, the individual IFCAs all refer to collaborative working in satisfaction of this criterion. For example, the Annual Report of the Kent & Essex IFCA 2016-17 includes as an action "work through the National Inshore Marine Enforcement Group (NIMEG) to coordinate IFCA and partner organisation compliance activities".²²⁸ While the Annual Plan for the Devon & Severn IFCA for 2017-18 notes that "[a] joint national intelligence programme is being rolled out between the MMO and the IFCAs during the next twelve months to enable better

²²⁶ Vision statement, high-level objectives and success criteria all set out in the AIFCA's Annual Plan 2016/17 <http://www.association-ifca.org.uk/Upload/Reports/A-IFCA%20Annual%20Plan%202016-17%20v3.pdf> (last accessed October 2018)

²²⁷ AIFAC Annual Plan 2016/17 , 8

²²⁸ Kent & Essex IFCA, Annual Report 2016-17 (15 September 2017), 10 <https://www.kentandessex-ifca.gov.uk/about-us/corporate-publications/annual-report/> (last accessed October 2018)

*and safer sharing of intelligence between not only the two fisheries organisations but also other marine based partner organisations”.*²²⁹

This collaboration is rooted in the statutory duty placed on the IFCAs to “take such steps as [they consider] appropriate to co-operate with—... (c) any other public authority that exercises functions relating to— (i) the regulation of activities carried on in any part of the sea lying within that district, or (ii) enforcement in that part of the sea.”²³⁰ As the public bodies responsible for the management and enforcement of protections for UHA, both Historic England and other public bodies involved in joint working with it would fall within this section. This statutory duty to cooperate will not of course, of itself, oblige the IFCAs to take part in any form of joint-working between the themselves and Historic England on the enforcement of UHA protections. However, it provides a background requirement for cooperation and collaboration for each of the IFCAs. DEFRA’s initial guidance to the new IFCAs was for each IFCA to develop MOU with certain key partner organisations. As well as formal agreements recorded in Memoranda of Understanding, IFCAs work on a local level with a wide variety of partner bodies/agencies including, and as relevant to this project, the Police, HM Revenue and Customs and BF.²³¹

IFCA Statutory powers

Each IFCA is empowered by section 165 MACAA to appoint Inshore Fisheries and Conservation Officers (IFCOs) to undertake the IFCA’s management and enforcement activities. Their powers are considered below.

In addition to the powers granted to IFCOs, the IFCA itself is granted various powers relating to collaborative working. Of possible relevance to the protection of UHA is the power granted by s.173(1) MACAA to “enter into arrangements with another person or body for the provision by the [IFCA] of services that are required by the person or body in connection with the exercise of the person’s or body’s functions”. The section goes on to state that this power “includes” a power to enter into various arrangements in respect of shellfish fisheries created under the Sea Fisheries (Shellfish) Act 1967.²³² This qualification seems to suggest that the power might have been envisaged as a way for IFCAs to provide help to other parties in respect of fisheries, yet the wording “includes” means that other arrangements are not precluded. Indeed, the Annual

²²⁹ Devon & Severn IFCA, Annual Plan 2017-18 (2 November 2017), 12

(<http://www.devonandsevernifca.gov.uk/4a-role-function-and-management-of-the-authority/> (last accessed October 2018)

²³⁰ Marine and Coastal Access Act 2009, section 174

²³¹ Department for Environment, Food and Rural Affairs, *Inshore Fisheries and Conservation Authorities: Conduct and Operation 2010-2014* (2015) – Report presented to parliament pursuant to s183(1) MACAA 2009, 17 <http://www.association-ifca.org.uk/about-us/ifcas-conduct-and-operations-2010-2014> (last accessed October 2018)

²³² Marine and Coastal Access Act 2009, section 173(2)

Reports produced by each IFCA provide many examples of this power being used (see discussion below).

It should therefore be possible for an IFCA to use its power under s.173(1) to enter into an arrangement with Historic England and other public bodies regarding the enforcement of UHA obligations. It is important to note at this stage that s.173(3) provides that the terms of any arrangements made with other parties “may” include provision for payment for services by the party requesting the assistance of an IFCA. It is therefore possible that any such arrangement would involve a budget commitment on the part of Historic England, although it is arguable that the ability to charge for services provided in s.173(3) is more likely to be aimed at non-publicly funded parties requesting the assistance of an IFCA (such as the private owners of regulated shellfisheries).

IFCO Statutory Powers

As with any other parties active in the marine area, the benefit, in terms of the protection given to UHA, of any formal or informal arrangement with an IFCA will depend upon what powers the IFCA’s staff have in relation to third parties.

MACAA grants fairly wide enforcement powers to IFCOs, but there are several limits on the use of these powers which may present obstacles to any arrangement between Historic England and any IFCA in respect of the protection of UHA. IFCOs have the following “common enforcement powers”:²³³

1. Power to stop, board and inspect vessels and marine installations.²³⁴
2. Power to enter and inspect premises²³⁵ or vehicles.²³⁶
3. Powers of search and examination of persons, vessels, marine installation, premises and vehicles.²³⁷
4. Powers of seizure.²³⁸
5. Power to record evidence of offences by using any device for the purpose of taking visual images of anything in, on, attached to, forming part of, or controlled from (*inter alia*) any vessel or marine installation.²³⁹
6. Power to direct a vessel or marine installation to port where it is not reasonably practicable to exercise any of the above powers without doing so.²⁴⁰

²³³ Granted by Marine and Coastal Access Act 2009, section 166

²³⁴ Marine and Coastal Access Act 2009, section 246

²³⁵ Marine and Coastal Access Act 2009, section 247

²³⁶ Marine and Coastal Access Act 2009, section 248

²³⁷ Marine and Coastal Access Act 2009, section 250

²³⁸ Marine and Coastal Access Act 2009, sections 252 and 253

²³⁹ Marine and Coastal Access Act 2009, section 255

²⁴⁰ Marine and Coastal Access Act 2009, section 259

Limits on Powers of IFCOs

The above wide-ranging enforcement powers are limited in several key respects. Firstly, they are granted only for the purpose of enforcing the obligations set out at s.166(1) MACAA. These include various fisheries obligations, such as IFCA byelaws, MCZ designations etc., but are not wide enough to include any obligations under any of the UHA Acts, nor the marine licensing provisions of MACAA. The Secretary of State for the Environment, Food and Rural Affairs has the power, by order, to amend section 166(1). This power would enable the Secretary of State to add the obligations under the UHA Acts and the marine licensing provisions of MACAA to the list of obligations the enforcement of which IFCOs can use the common enforcement powers set out above for. However, it is by no means certain that the Secretary of State would be willing to make such an order. Aside from the general restrictions of time (and possibly budget), UHA protection is within the remit of the DCMS and not DEFRA and so may be considered a low priority for the Secretary of State for the Environment, Food and Rural affairs.

The other key limitation relevant to UHA protection in English territorial waters is that the powers granted to IFCOs can only be exercised in certain areas. An IFCO may only exercise any powers granted by MACAA:²⁴¹

1. Within the IFC district for which the IFCO has been appointed or in any adjoining district.
2. In any UK waters (apart from Scottish and Northern Irish), but only in relation to an offence committed (or which the IFCO reasonably believes has been committed) within the IFC district for which the IFCO has been appointed.

Given that the remit of the IFCA only extends to six nautical miles from coastal baselines (and not the full twelve nautical miles of the territorial waters), the limitations set out above mean that in practical terms, the powers granted to IFCOs are only of use in the near half of the English Inshore Marine Planning Area. This means that they would be unable to be of much assistance in relation to any UHA between six and twelve nautical miles from coastal baselines.

Cooperative and Collaborative Working

As explained above, IFCA place considerable importance on collaboration. Their set up involves collaboration between statutory bodies such as local councils, the MMO, Natural England and the Environment Agency, and those involved in fishing activities. This was summed-up in DEFRA's 2015 report to Parliament on the first four years of IFCA operation:²⁴²

²⁴¹ Marine and Coastal Access Act 2009, section 166(4)

²⁴² Department for Environment, Food and Rural Affairs, *Inshore Fisheries and Conservation Authorities: Conduct and Operation 2010-2014* (2015) – Report presented to parliament pursuant to

*IFCAs are local authorities for clearly defined Districts, yet they deliver local, national and international obligations. Joint working with other agencies at local and national level is essential... **All public bodies should make optimal, co-ordinated use of the assets and resources available to them, minimising the overall burden on taxpayers at national and local level. Joint use of resources between IFCAs and other agencies particularly the use of patrol vessels, is an established, albeit local, practice.** Cross-warranting exists between some IFCAs and other agencies and might usefully be rolled-out elsewhere. The IFCAs own Category 2 and Category 3 seagoing vessels capable of ranges out to sea up to 60 nautical miles. IFCAs already co-operate with neighbouring Authorities, EA, MMO, HM Revenue & Customs, Police, Environmental Health and Border Force personnel. Further opportunities should be explored and developed. (emphasis added)*

This passage shows the acceptance of (and indeed promotion of) cooperation and collaboration with a wide range of public bodies, not limited to those within the remit of DEFRA. More recently, in the position paper published by the AIFCA following the Brexit referendum, the IFCAs repeated their willingness to work with other bodies and agencies:

“IFCAs have demonstrated that effective partnerships and collaboration can be developed with statutory partners, NGO’s, academia and the fishing industry. Opportunities exist for the IFCAs as inshore managers to develop and expand these partnerships, playing a greater role in coordinating statutory enforcement, management research and monitoring duties in inshore waters, which could avoid unnecessary duplication of effort and prove considerably more cost-effective than existing practices.”²⁴³

Current Collaborative Working

Working in partnership with other bodies is a success criterion that each IFCA is required to plan for in its Annual Plan and report on in its Annual Report (see above for further details). Therefore it is not surprising to find many examples of the IFCAs working collaboratively. Indeed, the Southern IFCA and Sussex IFCA, for example, both host pages on their websites dedicated to working in partnership.²⁴⁴

s183(1) MACAA 2009 <http://www.association-ifca.org.uk/about-us/ifcas-conduct-and-operations-2010-2014> (last accessed 1/12/2017)

²⁴³ Association of IFCAs, ‘Opportunities for Inshore Fisheries Management and Marine Environment: Future Management in England’ (Post Brexit Referendum position paper) (7 March 2017) <http://www.association-ifca.org.uk/Upload/IFCA%20future-management-Final%20.pdf> – accessed 8/12/2007

²⁴⁴ <http://www.southern-ifca.gov.uk/partnership-working> (last accessed October 2018) and <http://www.sussex-ifca.gov.uk/partnerships> (last accessed October 2018)

All IFCAs work, to a greater or lesser extent, in cooperation with the MMO and the Environment Agency. As well as their close relationships with the MMO and the Environment Agency, the IFCAs all cooperate and collaborate with other bodies and agencies that are relevant to their district.

Potential for Future Collaborative Working in connection with UHA

The IFCAs are prime candidates for joint working with Historic England in relation to UHA. Although protection of UHA is not within the direct remit of the IFCAs to manage the coastal fisheries resources of England, it fits fairly happily²⁴⁵ into the wider remit of conserving the marine environment, which includes the historic and archaeological marine environment.

Alongside the level of formality of joint working, the level of assistance available needs to be considered. As noted above, without an Order from the Secretary of State, IFCOs cannot use their common enforcement powers in relation to enforcing UHA obligations under the various Acts, nor can they enforce any obligations under the MSA. Certain IFCOs are cross-warranted by the MMO (under s.235(1) of MACAA) for certain purposes and so may be able to use the common enforcement powers to enforce obligations relating to marine licensing in MACAA, but this will need to be checked on an IFCO by IFCO basis. Subject to any relevant MMO cross warrant, IFCOs will therefore be limited to observing sites and vessels and taking photographs from a distance.

However, the effectiveness of such non-intervening enforcement assistance should not be downplayed. As well as providing a deterrent effect simply by being present in a particular area, IFCOs should be able to gather important intelligence which can be provided to the police. The police enforcement responsibility is reactive: UHA is not a priority thus increased intelligence would justify their involvement – as perhaps with all such additional agency involvement. The opportunities for joint working are set out in Table 1 overleaf.

²⁴⁵ The qualification being that the IFCAs' remit is to protect the marine environment from the effects of fishing activities and so it could be argued that many of the activities that put UHA at risk (such as unauthorized recoveries) are not within the remit of the IFCAs

Table 1. Opportunities for joint working.

Joint Working Arrangement	Parties	Comments
<p>Memorandum of Understanding, Service Level Agreement or other formal arrangement (Authorised by s173 MACAA)</p>	<p>IFCA and Historic England</p>	<p>A formal arrangement with either the AIFCA (on behalf of each of the 10 IFCA's) or with one particular IFCA detailing the services the IFCA's are willing/able to provide to HE and any obligations/responsibilities on the part of HE.</p> <p>As the agency primarily responsible for enforcement of UHA obligations, it may be deemed appropriate to include the police in any formal arrangements with one or more IFCA's.</p> <p>MoUs are not agreements with legal force, but instead are statements of intent to work collaboratively. They are subject to agreement by the members of the IFCA Committee before they can be signed by the IFCA Chair and/or CEO.</p> <p>MoUs can be supplemented with ad hoc arrangements between HE and particular IFCA's in relation to particular issues of concern for HE (see below).</p>
<p>Ad hoc arrangements ('Cooperation' authorised by s174 MACAA)</p>	<p>As above</p>	<p>Ideal for particular sites of concern or areas in which vessels of concern are known to operate. Ad hoc approaches can be made to the relevant IFCA for assistance in monitoring such sites and areas during the course of the IFCA's own patrols.</p> <p>This could be backed up with a formal or informal agreement to share information on upcoming tasking on an agreed periodical basis (e.g. weekly or monthly) in order to enable HE to identify any areas likely to be of common interest.</p>

4.2.4 - The Marine Management Organisation

Structure, Aims and Objectives

The MMO was established under the MACAA. As a non-departmental public body, it works at arm's length from Government, but remains accountable to Ministers. The DEFRA is the main sponsor of the MMO and provides its Grant in Aid funding (see below),

As the Government's principal regulator in the UK Marine Area, the MMO is responsible for a wide range of matters relating to activities in the UK Marine Area. These include "*planning and licensing for marine construction, deposits and dredging that may have an environmental, economic or social impact*" and "*producing marine plans to include all marine activities, including those [it doesn't] directly regulate*".²⁴⁶

The MMO is the principal regulator in UK waters and "*is tasked with delivering the Government's vision for clean, healthy, safe, productive and biologically diverse oceans and seas*".²⁴⁷

Its statutory duty (under section 2, MACAA) is to exercise its functions so as to manage, regulate or control the activities carried on in UK waters "*with the objective of making a contribution to the achievement of sustainable development*"²⁴⁸ and taking into account all matters the MMO may consider appropriate, including evidence "*relating to the social, economic or environmental elements of sustainable development*".²⁴⁹ The UKMPS confirms that the historic environment (the policy term for UHA) is one of a number of elements that may have social, economic and/or environmental implications that a marine plan will need to consider (see below for further consideration of the UKMPS).²⁵⁰

As well as its statutory duties, the MMO is subject to a framework of governance documents, policies and plans. This framework is shown at *figure 1*. Each of the levels provides governance objectives and responsibilities for the MMO. The overarching statutory duty of the MMO under MACAA has been considered above.

Statutory Directions and Guidance

Under s.2(4) MACAA, the Secretary of State shall give guidance to the MMO as to how it should "seek to secure that the contribution to the achievement of sustainable development... is made". Furthermore, under sections 37 and 38 MACAA, the Secretary of State may give directions or guidance to the MMO on any other matter relating to its functions. As suggested by their titles, directions require compliance on

²⁴⁶ <https://www.gov.uk/government/organisations/marine-management-organisation/about> (last accessed October 2018)

²⁴⁷ *Ibid.*, 8

²⁴⁸ MACAA, section 2(1)(a)

²⁴⁹ MACAA, section 2(3)(b)

²⁵⁰ HM Government, Northern Ireland Executive, Scottish Government and Welsh Assembly Government, *UK Marine Policy Statement* (2011) <https://www.gov.uk/government/publications/uk-marine-policy-statement> (last accessed October 2018)

the part of the MMO, while guidance must be given regard by the MMO in carrying out its functions.

Draft guidance with regard to the MMO's contribution to sustainable development, as required by s.2(4) MACAA, was published by DEFRA in 2010.²⁵¹ As at the time of writing, no final guidance has been published by DEFRA or the MMO. The guidance is based around the five principles of sustainable development set out in the Government's Sustainable Development Strategy²⁵² and labelled, for the marine area, as the 'high level marine objectives'.²⁵³ These include "*ensuring a strong, healthy and just society*". In addition to the high level marine objectives, the draft guidance lists a set of additional principles that the MMO should have regard to when exercising its functions. Included in this list is "*participative working*", requiring the MMO to "*collaborate effectively with... Government, other authorities and regulators, and other stakeholders*".²⁵⁴

Elaborating on the requirement for "*participative working*", the draft guidance requires the MMO to "*work closely with a range of other organisations, not only to achieve its own outcomes but to assist others to achieve theirs and together to contribute to the achievement of sustainable development*".²⁵⁵ Included in the list of organisations to which this requirement applies is Historic England (then English Heritage).

The draft guidance is therefore broadly supportive of a collaboration with the MMO in respect of increasing the protection for UHA in English territorial waters.

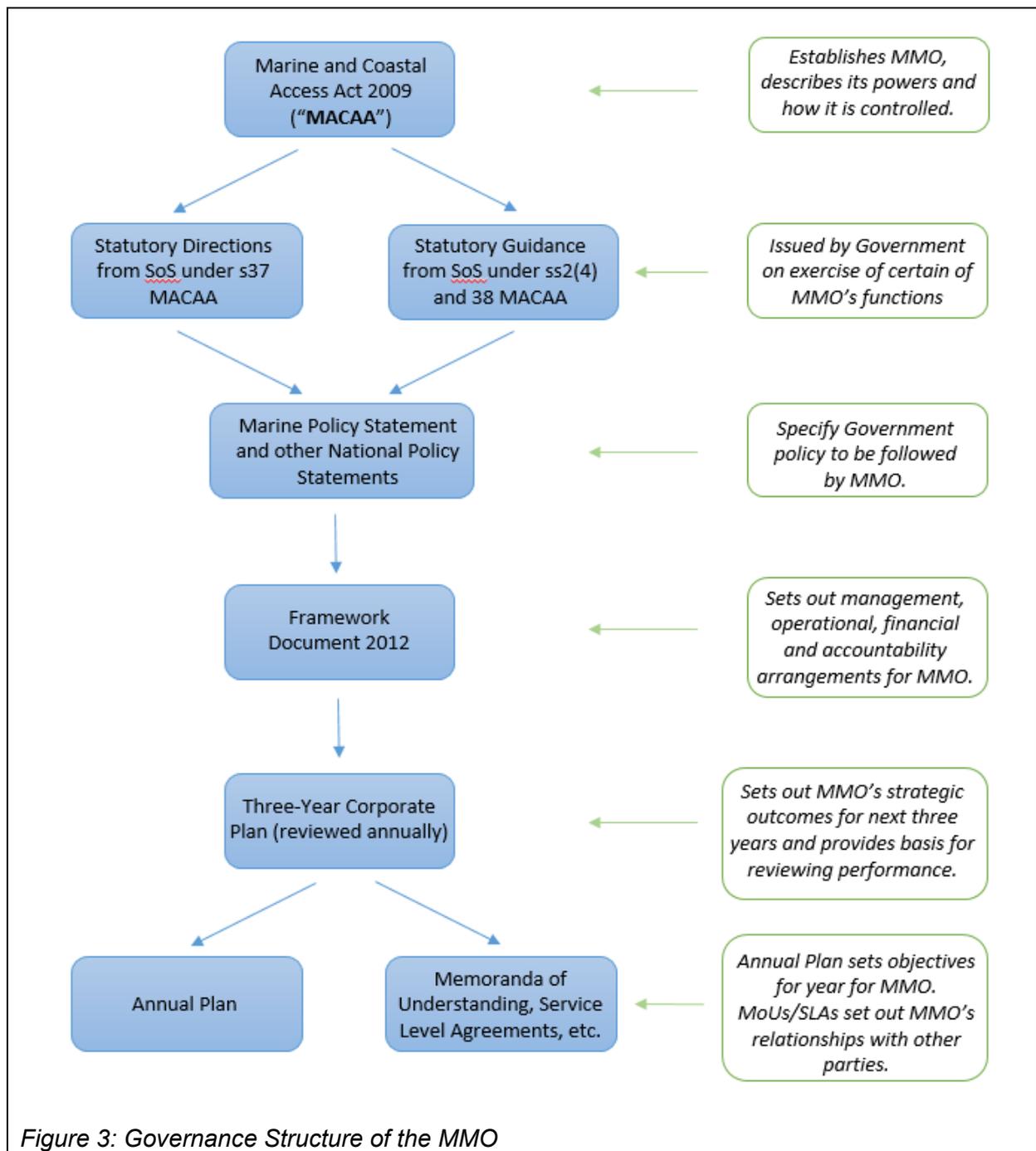
²⁵¹ DEFRA, *Draft statutory guidance to the Marine Management Organisation on its contribution to the achievement of sustainable development* (March 2010) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/243567/978010850903_2.pdf (last accessed October 2018)

²⁵² HM Government, *Securing the Future: The UK Government Sustainable Development Strategy* (March 2005)

²⁵³ Draft Statutory Guidance (n251), 3

²⁵⁴ *Ibid.*, 7

²⁵⁵ *Ibid.*, 8



The UKMPS and other national policy statements

The UKMPS provides a policy context for the MMO in its task of preparing its marine plans. In addition, it provides a framework for all public authorities that take decisions that could affect the marine environment. With regard to the latter, MACAA makes it a statutory duty on the part of all such public authorities to consider the UKMPS and any relevant marine plan when taking any decision that might affect the marine environment, including any authorisation or enforcement decisions.²⁵⁶ The MMO,

²⁵⁶ MACAA, section 58

Historic England and most other potential parties to joint working are public authorities under MACAA and are thus obliged to consider the UKMPS (and give reasons should they choose to depart from its guidance) when making decisions that may affect the marine environment.

As noted above, within the UKMPS, the historic environment is listed as one of the elements that may need to be considered by public authorities. In relation to the MMO's role, the MPS specifically provides that the MMO must take into account the "*significance of any identified heritage assets (or the potential for such assets to be discovered)*,"²⁵⁷ and *consider how they are managed*."²⁵⁸ Indeed, the UKMPS requires a presumption in favour of the conservation of designated UHA,²⁵⁹ as well as a recognition by all public authorities that the absence of a designation for any UHA "*does not necessarily indicate lower significance*" than designated assets.²⁶⁰ With regard to undesignated UHA, the MMO is required to "*consider them subject to the same policy principles*" as designated UHA, subject to advice from any relevant regulator and/or advisor (which would include Historic England).²⁶¹

As well as the UKMPS, the MMO must align its activities with National Policy Statements for matters such as ports, energy, renewable energy, gas and oil supply and nuclear power. These have not been reviewed, but are not anticipated to contain any matters relevant to collaboration with the MMO in respect of the protection of UHA.

Memoranda of Understanding, Service Level Agreements, etc.

The MMO has relationships with a wide variety of Government departments, many of the relationships being defined by a MOU.

A MOU between the MMO and Historic England (then English Heritage) was signed in 2010. Under it the parties agreed "*a coordinated approach to sustainable development and sustainable heritage in our seas and oceans, based on active engagement, shared information and effective marine planning and management by the MMO and [Historic England]*".²⁶² Although this document was entered into in connection with Historic England's role as a statutory consultee in respect of the historic environment, the MOU states that "[t]he MMO and [Historic England] will explore further opportunities to expand shared working and reduce duplication of effort. This aspect will be enhanced by exchanging information, collaborating on research, data and evidence gathering at national and local levels, sharing environmental issues and intelligence and pooling expertise and resources."²⁶³

²⁵⁷ The existence and/or location of many heritage assets are often unknown prior to investigation preceding development as part of an archaeological assessment.

²⁵⁸ UKMPS, paragraph 2.6.6.6

²⁵⁹ *Ibid.*, paragraph 2.6.6.8

²⁶⁰ *Ibid.*, 2.6.6.5

²⁶¹ *Ibid.*

²⁶² Memorandum of Understanding, Marine Management Organisation (1) English Heritage (2), 2010, paragraph 1)

<http://webarchive.nationalarchives.gov.uk/20140305092758/http://www.marinemanagement.org.uk/about/mous.htm> (last accessed October 2018)

²⁶³ *Ibid.*, paragraph 4.3

Furthermore, both parties committed to twice yearly meetings “*to review the shared wider strategic context of the environment in which they operate and actively explore opportunities for the improvement of joint working practices*”.²⁶⁴

The MOU therefore requires both the MMO and Historic England to consider how they could avoid duplication by adopting joint working practices. Set against this backdrop, an approach requesting assistance with the protection of UHA should be favourably considered.

Possibilities for Joint Working between Historic England and the MMO

Although the MMO itself has no marine assets, it contracts with the Ministry of Defence for the services of the Fisheries Protection Squadron of the Royal Navy (RNFPS) for a certain number of days per year in order to carry out patrolling and enforcement in UK waters. The main possibility for collaboration and joint working with the MMO is therefore in respect of the RNFPS.

There is no provision in MACAA enabling the MMO to take on the functions of another body (unlike in relation to the IFCAs, which are enabled by s.173 MACAA to enter into such arrangements). However, there is also no provision in MACAA preventing the MMO from collaborating with other public bodies in respect of activities in UK waters. Indeed, the MMO is required by the various parts of its governance framework to actively consider opportunities for such collaboration, as discussed above. As such, the MMO would be permitted under its statutory and governance framework to collaborate with Historic England by authorising the RNFPS to monitor sites and vessels of interest during its patrols and other activities for the MMO.

One of the synergies of the work of the MMO and Historic England’s attempts to increase protection for UHA is the intersection of UHA and Marine Conservation Zones (MCZs). A recent study, also carried out for Historic England, considered in detail how UHA and activities in connection with them can impact upon MCZs and the features for which such areas are designated.²⁶⁵ This study noted that while many historic environment activities are non-intrusive and generally temporary and of short duration,²⁶⁶ certain activities in respect of the historic environment pose a ‘significant’ risk to the favourable condition status of MCZs that such historic environment features are located within.²⁶⁷ In such instances, greater protection of UHA could therefore also achieve greater protection of any MCZ that such UHA intersects with.

The powers exercisable by the RNFPS

As noted in the section of this Report on the Royal Navy, the officers of the RNFPS have certain marine enforcement powers mainly as a result of their role as Marine

²⁶⁴ *Ibid.*, paragraph 6

²⁶⁵ Firth, A, Salmon, P and Snaith, E (2017) Historic Environment Projects and Activities in Marine Conservation Zones. Historic England Project Number 7364.

²⁶⁶ *Ibid.*, 28

²⁶⁷ *Ibid.*, Appendix C

Enforcement Officers under MACAA, but also under the Modern Slavery Act 2015 and the Immigration Act 1971 (as amended by the Immigration Act 2016). None of these powers are capable of use in respect of matters relating to UHA protection and so at present any involvement of the RNFPS in UHA protection will be limited to observing and collecting intelligence in respect of possible offences to pass to Historic England and the Police or Border Force. As discussed elsewhere in this Report, the presence of an official (and in this case, military) observer overseeing sites of interest to Historic England should also provide a certain level of deterrence.

Enforcement work separate from the Royal Navy Fisheries Protection Squadron

Although the RNFPS carries out the main element of enforcement work for the MMO, the MMO does carry out other enforcement work in collaboration with other bodies active in the marine area.

For example, collaboration on the part of the MMO and other parties in order to carry out marine enforcement work relate to matters that fall squarely within the MMO's remit (fisheries and marine licensing). Nonetheless, the MMO is clearly accustomed to joint working in order to achieve its enforcement objectives and this provides opportunities for Historic England to seek to involve the MMO in more general enforcement of UHA protections.

Further, an instance of boarding by a joint team of the MMO and the Kent Police (using a RIB belonging to Kent Police) in the summer of 2017 was reported to the research team by a diving contractor carrying out archaeological explorations on *The Rooswijk*, a Dutch vessel that sank in the Goodwin Sands area off the Kent coast in 1740.²⁶⁸ The two MMO Marine Enforcement Officers and the Police officer boarded the vessel and checked the paperwork of the contractor in order to ensure they had the necessary marine licence and project plan for the works being carried out (see figure 4).



Figure 4: Mark James, MSDS Marine and MMO/Kent Police boarding party

²⁶⁸ Personal Communication from Mark James of MSDS Marine (September 2017)

4.2.5 - The Ministry of Defence

The Ministry of Defence (MOD) currently has some involvement with the protection of UHA, both through the Ministry of Defence Police (MDP) and through the work of the RNFPS for the MMO. In addition, there is potential for further involvement both through the Royal Navy and the Queen's Harbour Master. Each is considered below.

4.2.6 - The Ministry of Defence Police



IMDP launch and rigid inflatable. (Image: © Crown Copyright 2017)

Overview

The Ministry of Defence Police (MDP) is a civilian police force, established under the Ministry of Defence Police Act 1987 (MDPA) and forming part of the MOD. It has significant marine assets, indeed, it describes itself as having the “*largest marine policing capability in the UK*”.²⁶⁹ The MDP acts primarily as a police force for the military, but since the Anti-Terrorist Crime and Security Act 2001, the MDP has also had the ability to exercise its police powers to assist other police forces, where such assistance has been requested.

²⁶⁹ Ministry of Defence Police, *Policing Plan 2017-18*
<https://www.gov.uk/government/publications/ministry-of-defence-police-policing-plan-2017-to-2018>
(last accessed October 2018)

Structure, Aims and Objectives

The MDP is a statutory police force that forms part of the civilian police. As the MDP is a UK-wide police force, it comprises both site-based units protecting key defence sites and also a range of specialist units that can be deployed around the country. The marine units form one part of these specialist units and are discussed in detail below.

In its military function, the MDP has three objectives:

- *“the protection of defence people, assets, information and estate;*
- *the secure and uninterrupted operation of the UK nuclear deterrent; and*
- *achieving success in overseas operations.”*²⁷⁰

In order to achieve these objectives, the MDP is required to maintain six “Core Capabilities”.²⁷¹ These include *“territorial policing and security”*,²⁷² and *“the provision of specialist civil policing support to Defence and other international policing commitments in support of UK Government policy”*.²⁷³

As noted above, in addition to its military function, the MDP may provide policing support to *“other Government Departments and customers”*.²⁷⁴ Although this support is required to be *“on a full repayment basis”*.²⁷⁵

The MDP is responsible for investigating and prosecuting offences under the PMRA 1986. This responsibility falls under the Core Capability of *“territorial policing and security”*.

The Marine Units of the MDP

The MDP has three marine units; Plymouth Devonport, Portsmouth and the Clyde. Each of these units is based at a Naval Base and their main task is *“to provide overt counter-terrorism policing to ensure the protection of HM Naval Bases, which includes undertaking high-profile armed patrolling of the waterfront”*.²⁷⁶ As might be expected, the MDP marine units have the largest number of marine vessels of any police force in the UK.²⁷⁷ As well as security patrolling, the officers of the marine units assist with wider fleet tasking such as escorting Naval warships and submarines in home waters and also providing additional security for special events such as the NATO Leaders’ Summit held in Cardiff in 2014.²⁷⁸ Additionally, it is the marine units that exercise the responsibility to enforce the PMRA 1986 in UK waters.

²⁷⁰ Ministry of Defence, ‘Guidance. MDP: Governance and Accountability’

²⁷¹ Ministry of Defence Police, *Policing Plan 2017-18*, 7

²⁷² Core Capability 2

²⁷³ Core Capability 5

²⁷⁴ Ministry of Defence Police, *Policing Plan 2017-18*, 7

²⁷⁵ *Ibid.*

²⁷⁶ <http://www.mod.police.uk/specialist/marine.html> -(last accessed October 2018)

²⁷⁷ Ministry of Defence, ‘Guidance: Ministry of Defence Police: Specialist Units’ (21 May 2014) <https://www.gov.uk/government/publications/mod-police-specialist-units/mod-police-specialist-units#marine-policing> – (last accessed October 2018)

²⁷⁸ *Ibid.* and <http://www.mod.police.uk/specialist/marine.html> - (last accessed October 2018)

When can MDP Powers be exercised?

Members of the MDP have the same powers and privileges as constables in the regular police forces of the UK, but these powers and privileges can only be used in certain places or for certain purposes or in relation to certain people.²⁷⁹ These restrictions are set out in Table 2 below. In addition to these restrictions, where the assistance of the MDP has been requested by a police force, the members of the MDP that provide such assistance will have the same powers and privileges as constables in the requesting police force, for the purposes of providing the assistance requested.²⁸⁰

²⁷⁹ Ministry of Defence Police Act 1987, section 2(1)

²⁸⁰ Ministry of Defence Police Act 1987, sections 2(3A) and (3B)

Area, Asset or Person in respect of which Powers can be used	Qualifications on use of Powers
Any person	Provided MDP member is in uniform or has documentary evidence of their status and has reasonable grounds: <ul style="list-style-type: none"> • to suspect that an offence has been, is being or will be committed; <u>and</u> • to believe that they need to use police powers to save life or prevent personal injury.
Land, vehicles, vessels, aircraft and hovercraft	(Subject to below) must be in possession, or under control of, or used for purposes of: <ul style="list-style-type: none"> • Secretary of State for Defence, Defence Council or any defence organisation. • Visiting forces. • Ordnance company and used for purposes of making ordnance for military purposes. • Dockyard contractor and used for purposes of providing services for military purposes.
	In relation to land only, need not satisfy above criteria if Secretary of State for Defence has agreed to provide services of MDP and published notice of this in the appropriate Gazette.
Crown property	None
International defence property	None
Ordnance property	None
Dockyard property	None
Ministry of Defence staff and visiting forces staff	None

Table 2: Restrictions on use of police powers by members of MDP

Section 2(4) MDPA provides that the powers of MDP members (as set out in Table 1 above) can be used in the UK's territorial waters.

UHA as a general class of assets would not come within any of the instances in which the MDP have jurisdiction. However, certain types of UHA individually might. Wrecked British military vessels and aircraft remain the property of the Ministry of Defence and so clearly fall within the class of property over which the MDP can exercise their police powers. The wrecks of military vessels and aircraft of other countries (and of commercial vessels and aircraft that perished on military service) and that are subject to controls under the PMRA could feasibly be described as "under the control of" the Ministry of Defence (on the basis that it is responsible for the administration and enforcement of PMRA) and so would be assets in respect of which the MDP could

exercise their police powers (provided such wrecks are within territorial waters). Certainly the MDP are responsible for investigating all potential offences under the PMRA and so it is logical that their police powers would extend to cover the assets protected by that Act.

What police powers could MDP members use?

The PACA gives to law enforcement officers (which includes all constables in England and Wales) certain maritime enforcement powers.²⁸¹ These maritime enforcement powers are considered in detail in the section of this Report on the Border Force. In brief they permit those authorised to use them to stop, board, divert, detain and search a vessel and anyone on that vessel for the purpose of preventing, detecting, investigating or prosecuting an offence under the law of England and Wales.

Subject to the limits set out in the 2017 Act, members of the MDP would be authorised to use the maritime enforcement powers within English and Welsh territorial waters in order to prevent, detect or investigate a potential offence under the PMRA.

Enforcement of the Protection of Military Remains Act 1986

The MDP have been responsible for enforcing the PMRA since it came into force. However, it was not until 2002 that any wrecked vessels were designated under the Act.²⁸² Prior to that, the Government had carried out a public consultation in respect of the Act and designations under it, acknowledging the difficulties of enforcement and seeking views on how enforcement could be improved.²⁸³ The Consultation Report published by the Ministry of Defence concluded that the respondents generally agreed that the PMRA 1986 was difficult to enforce, but that the majority of respondents felt that the act of designation should provide sufficient deterrent.²⁸⁴

Since that time, enforcement activity appears to have been carried out at a very low level,²⁸⁵ but there is some evidence of collaboration on the part of the MDP with other marine bodies in order to enforce the PMRA. In 2011, then Detective Chief Superintendent Stuart Mace declared (following a successful prosecution under PMRA of a diver for taking material from a protected wreck)²⁸⁶ that the MDP “... *act as the gatekeeper force for the investigation of offences under the Protection of Military Remains Act. Working with the Ministry of Defence, the Maritime and Coastguard*

²⁸¹ Policing and Crime Act 2017, section 84(1)

²⁸² The Protection of Military Remains Act 1986 (Designation of Vessels and Controlled Sites) Order 2002

²⁸³ Ministry of Defence, ‘The Military Maritime Graves & the Protection of Military Remains Act 1986: A consultation document by the Ministry of Defence’ (February 2001)

http://www.divetheworld.com/library/GovPapers/maritime_graves.pdf (last accessed October 2018)

²⁸⁴ Ministry of Defence, ‘Military Maritime Graves and the Protection of Military Remains Act 1986: Consultation Report (November 2001) <http://www.jnpsc.org.uk/PMRA%201986%20-%20Consultation%20Report%20by%20MoD%202001.pdf> (last accessed October 2018)

²⁸⁵ There was only one successful prosecution under the PMRA 1986 in the period of five years up to September 2013 (Hansard, 12 September 2013, col 796W -

<https://publications.parliament.uk/pa/cm201314/cmhansrd/cm131008/text/131008w0002.htm>

²⁸⁶ Navy News, ‘Diver fined for WW1 war grave theft’ (23 November 2011)

<https://navynews.co.uk/archive/news/item/2731> (last accessed October 2018)

*Agency and [Historic England] we aim to stop the illegal plundering of military wrecks in waters around the United Kingdom and prevent the disturbance of war graves”.*²⁸⁷

Potential for Joint-Working in respect of UHA Protection

At present, the MDP is responsible for enforcing the provisions of the PMRA, but has no responsibilities towards the wider class of UHA.

It might be possible to argue that UHA protection in general could fall within the MDP’s strategic objectives on the basis of its commitment to consider collaboration with other forces and to ensure the efficient and effective use of MDP resources (see discussion above). However, it is considered unlikely that the MDP would be willing to take on any extra responsibilities in regard to UHA not protected by the PMRA.

Firstly, the purpose behind the PMRA, as suggested by its name, was the protection of the remains of military personnel and others that perished whilst on military service. The reading of the bill preceding the PMRA confirms that heritage was not a consideration in relation to the Bill; the primary concern being “*to protect the sanctity of wrecks that contain human remains*”, with “*safety and security*” being secondary concerns.²⁸⁸ Therefore, although the Act does not require the presence of human remains before a vessel can be designated, the reason behind this is primarily to avoid the need to disturb any human remains in order to determine their existence, which would be required if their existence was a precondition of an offence.

In addition, the budget of the MDP has been substantially reduced in recent years, with the head of the Defence Police Federation²⁸⁹ suggesting that “*there’s nothing left to cut*” and that the latest reduction in the annual budget can only be met by reducing the numbers of officers.²⁹⁰ Set against this background, it is submitted that it will be difficult to get the MDP to agree to carry out work outside of their remit, such as patrolling heritage sites that are not designated under the PMRA.

For the reasons discussed above, it is therefore considered unlikely that the MDP will be able to assist Historic England with wider protection of UHA in English waters. However, there is scope for further collaboration between the two bodies in order to increase enforcement of the PMRA and thereby aim to increase the deterrent effect of the legislation. The budgetary constraints currently existing at the MDP mean that additional speculative patrols are unlikely to be within their capacity. However, it is suggested that intelligence that may flow from collaboration with other bodies as a result of this Report, where relevant to UHA designated under PMRA, could be fed to

²⁸⁷ Ministry of Defence, ‘War Grave Thief Convicted’ (Defence Policy & Business News, 22 November 2011)

²⁸⁸ HC Deb 31 January 1986, vol. 90, cols 1227-34

<http://hansard.millbanksystems.com/commons/1986/jan/31/protection-of-military-remains-bill> (last accessed October 2018)

²⁸⁹ The body that represents the members of the MDP

²⁹⁰ David Bond and Robert Wright, ‘UK defence secretary under pressure over military police cuts’ (*Financial Times*, London, 14 November 2017) <https://www.ft.com/content/bf70264a-c94d-11e7-ab18-7a9fb7d6163e> (last accessed October 2018)

the MDP in order to build a case for the use of MDP resources to provide active enforcement where intelligence suggests offences are likely to be taking place.

4.2.7 The Royal Navy

Overview

The Royal Navy forms part of the armed forces of the United Kingdom. In this Report, its role in three areas potentially relevant to UHA will be considered; the patrol ships of the surface fleet, the specialist Fisheries Protection Squadron and the United Kingdom Hydrographic Office.

Aims and Objectives of the Royal Navy

The Royal Navy is guided by a multitude of strategies and policy documents. At the top, sits the National Security Strategy and Strategic Defence and Security Review 2015 (SDSR),²⁹¹ which sets out the government's approach to national security for the period from 2015 to 2020. The SDSR and the UK National Strategy for Maritime Security 2014 (NSMS)²⁹² form the basis of the UK's strategy and policy with regard to security in the maritime zone. The NSMS adopts the two key principles of integration and collaboration in setting out a maritime strategy for the UK, stating that "*we will bring together the instruments of government, driving cooperation and efficiency; and we will work globally with allies and partners, including industry and the public, in pursuit of our mutual goals*".²⁹³

Sitting underneath the SDSR and the NSMS are a number of different strategy and policy documents that have some impact upon the Royal Navy. These are linked by the *Future Navy Vision* ("NV), a strategy published by the Royal Navy setting out its "*path towards the Royal Navy of 2025*".²⁹⁴ The FNV (part of the MoD's wider Strategy for Defence) sets out the three core roles of the Royal Navy:

1. Warfighting – conduct, or be ready to conduct, warfighting at sea and from the sea.
2. Maritime Security – protect the free, safe and lawful use of the sea where it is vital to UK prosperity and security.
3. International Engagement – Promote UK interests by developing international partnerships.²⁹⁵

²⁹¹ HM Government, *National Security Strategy and Strategic Defence and Security Review* (November 2015) <https://www.gov.uk/government/publications/national-security-strategy-and-strategic-defence-and-security-review-2015> (last accessed October 2018)

²⁹² HM Government, *The UK National Strategy for Maritime Security* (May 2014) <https://www.gov.uk/government/publications/national-strategy-for-maritime-security> (last accessed October 2018)

²⁹³ *Ibid.*, 10

²⁹⁴ Royal Navy, *Future Navy Vision: The Royal Navy Today, Tomorrow and Towards 2025* (undated)

²⁹⁵ *Ibid.*, 4

Maritime security is described as required in order to “*protect UK citizens, territory, and trade from terrorists, criminals, piracy, state sponsored insurgents and unlawful restrictions on freedom of navigation*”.²⁹⁶ The protection of the UHA of the United Kingdom from unlawful activity would come under the maintenance of maritime security.

Detail is added to the FNV’s high level strategic position in the Navy Command Plan. This has not been reviewed for this Report as it is a classified document.

Maritime security is upheld by the Royal Navy in a multitude of ways. Those possibly relevant to UHA protection are (i) the Royal Navy Fisheries Protection Squadron, (ii) the patrol ships of the surface fleet that are active in waters adjacent to the UK, and (iii) the UK Hydrographic Office function. Each of these will be considered in turn in this Report.

4.2.8 - The RN Fisheries Protection Squadron

Overview

As noted elsewhere in the report, the Royal Navy Fisheries Protection Squadron (RNFPS) has three River Class vessels active in British waters, which will increase to four once the replacement fleet for these vessels has been fully commissioned.²⁹⁷

The main function of the RNFPS is to enforce fisheries legislation and regulations within the United Kingdom’s Exclusive Economic Zone (EEZ). This is in pursuance of a MOU between the MMO and the Royal Navy, under which the RNFPS agrees to carry out enforcement work (pursuant to MACAA) on behalf of the MMO. The MMO pays an annual fee for these services.

A freedom of Information request reveals that for the period of three years from 2013, the MMO paid an annual charge of £2,000,000 for a total of 500 days service.²⁹⁸ In response to a previous Freedom of Information request, the Royal Navy confirmed that the annual charge to the MMO for the services of the FPS in 2010 was expected to be approximately £6,100,000.²⁹⁹ The considerable difference in the two figures is accounted for by the different levels of service provided during the two periods. Prior to 2013, the RNFPS was entirely focussed on fisheries protection work within the Exclusive Economic Zone of the United Kingdom,³⁰⁰ whereas in April 2013, it was agreed that the MMO would contract for a certain number of days’ service, and that outside of those agreed days, the RNFPS vessels could be used for other purposes.³⁰¹

²⁹⁶ *Ibid.*

²⁹⁷ <https://www.royalnavy.mod.uk/news-and-latest-activity/news/2017/august/31/170831-hms-forth> (last accessed October 2018)

²⁹⁸ <https://www.whatdotheyknow.com/request/157126/response/389275/attach/3/20130508%2011%2004%202013%20144907%20004%20Andrew%20U.pdf> (last accessed October 2018)

²⁹⁹ https://www.whatdotheyknow.com/request/fishery_protection_squadron (last accessed October 2018)

³⁰⁰ Except for HMS Clyde, which is a dedicated FPS vessel for the waters around the Falkland Islands

³⁰¹ Damian Carrington, ‘Admiral calls plan to police post-Brexit fishing waters ‘amazingly complacent’ (The Guardian, 3 July 2017) <https://www.theguardian.com/environment/2017/jul/03/admiral-calls-plan-to-police-post-brexit-fishing-waters-amazingly-complacent> (last accessed October 2018)

The decrease in the amount of time the RNFPS have available to carry out fisheries enforcement work is illustrated in the steady decline in the number of boardings carried out by RNFPS officers. 2016/17 saw the lowest annual number of boardings in 18 years, which represents a decrease of 84% since 1999/2000.³⁰²

The broader focus of the RNFPS has the potential to be both an opportunity for and a threat to the possibility of the RNFPS assisting Historic England and the Police in the protection of UHA. The Royal Navy are clear in their communications that the RNFPS are available for a wider range of work than just fisheries protection and enforcement. For example, in describing the RNFPS vessels, they state that “[t]hese versatile ships are able to operate with helicopters, and could be utilised in the maritime counter terrorism, counter-drug surveillance or pollution control role in addition to their core tasking of fishery protection”.³⁰³ Similarly, in a page dedicated to HMS Tyne, one of the RNFPS vessels, it is stated that “[HMS] Tyne has also been designed to carry out a number of other tasks including – but not limited to – environmental protection, search and rescue and maritime security”.³⁰⁴ This clear indication of a willingness to take on other work provides a potential opening for collaboration between Historic England and the Royal Navy with regard to UHA protection.

However, this willingness on the part of the Royal Navy must be set against the time limited nature of its fisheries protection and enforcement work since 2013. As noted above, the MMO are paying a significant sum of money for a fixed number of days service from the RNFPS. If the RNFPS were to collaborate with Historic England in some way in order to try and enhance the level of enforcement of protections for UHA, it is likely that this may need to be carried out during the MMO’s fixed allowance of days. During this period the vessels will already be in British waters, whereas outside of the fixed allowance the vessels may be deployed overseas; for example, in 2014/15 HMS Severn was deployed to the Caribbean for eight months in order to visit all of the British Overseas Territories there.³⁰⁵ Furthermore, the MOD appears to be planning further overseas deployments, noting on its website that the new vessels will be larger than the current River class vessels and as such “will be able to conduct all of the fishery protection and domestic security duties currently undertaken by the squadron but will now also provide far more capable platform for deploying overseas such as when Mersey provided support to migrant operations in the Mediterranean or Severn and Mersey on Atlantic Patrol North.”³⁰⁶ As such, if assistance from the RNFPS vessels is to be given it is possible therefore that the MMO may not look favourably upon any suggestion that may be perceived to involve watering down the level of

³⁰² Ministry of Defence, ‘Military Aid to Civil Authorities’ 2016/17 (15 June 2017) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/618864/Military_Aid_to_Civil_Authorities_2017.pdf (last accessed October 2018)

³⁰³ <https://www.royalnavy.mod.uk/news-and-latest-activity/operations/uk-home-waters/fishery-protection> (last accessed October 2018)

³⁰⁴ <https://www.royalnavy.mod.uk/our-organisation/the-fighting-arms/surface-fleet/patrol/river-class/hms-tyne> (last accessed October 2018)

³⁰⁵ <https://www.royalnavy.mod.uk/news-and-latest-activity/news/2015/july/17/150717-hms-severn-returns-from-eight-months-in-the-north-atlantic> (last accessed October 2018)

³⁰⁶ (<https://www.royalnavy.mod.uk/news-and-latest-activity/news/2017/august/31/170831-hms-forth> (last accessed October 2018))

service they receive from the RNFPS by adding extra responsibilities to the RNFPS' role.

General Powers

Commissioned officers of any of Her Majesty's ships³⁰⁷ are automatically designated Marine Enforcement Officers under MACAA.³⁰⁸ Table 3 shows the powers that flow from this designation and the purposes for which they can be used.

The structure of the grant of powers is that they are given for specific purposes. General UHA protection does not fall under any of these specific purposes. The powers given to enforce the marine licensing regime have the potential to be used to assist with UHA protection, but only where activities are taking place in respect of UHA that breach the terms of a marine licence or that are being done without a licence where one is required under the marine licensing regime. This by no means covers all activities done in respect of UHA.

If the marine licensing enforcement powers are available to MEOs, then under section 236 MACAA, they can be used in respect of any ship, whatever nationality, within the 'UK marine area'. For the purposes of MACAA this includes internal and territorial waters, the Exclusive Economic Zone, and any area of sea within the UK sector of the Continental Shelf.³⁰⁹

³⁰⁷ Officers with a royal commission (now signed by the Secretary of State for Defence) and starting at Sub-Lieutenant level

³⁰⁸ Marine and Coastal Access Act 2009, section 235

³⁰⁹ Marine and Coastal Access Act 2009, section 42

	Marine Licensing	Nature Conservation	Fisheries
Common Enforcement Powers Including <ul style="list-style-type: none"> • power to board and inspect vessels (s246) • search powers (s250) • powers of seizure (s252) • power to record evidence of offences (s255) • power to direct vessels to port (s259) 	✓	✓	✓
Extra Powers	Power to require information relating to substances and objects (s263)	None	<ul style="list-style-type: none"> • Power to inspect and seize objects at sea (s264) • Power to seize fish (s268) and fishing gear (s268) • Power to detain vessels in connection with court proceedings (s279) • Power to require production of equipment including vessel monitoring systems (s284)

Table 3: Powers of commissioned officers of the Fisheries Protection Squadron

Commissioned officers of the Royal Navy also have maritime enforcement powers under the Immigration Act 1971 (as amended by the Immigration Act 2016)³¹⁰ and the Modern Slavery Act 2015.³¹¹ Again, these powers are similarly given for limited purposes which do not have any application to UHA protection.

The general marine enforcement powers of the PACA (see sections on police and BF for detailed discussion) are not currently available to Naval officers (whether commissioned or otherwise) as they do not appear in the list of “law enforcement officers”.³¹² Section 84(3)(g) PACA provides that the Secretary of State can add one or more classes of people to the list of “law enforcement officers” by specifying so in

³¹⁰ Sections 28M and 28Q

³¹¹ Sections 35 and 39(1)

³¹² Policing and Crime Act 2017, section 84(3)

regulations. Therefore, it would be possible for commissioned officers of the Royal Navy to be granted the general marine enforcement powers set out in PACA, which would enable them, in certain circumstances (as discussed in the section on Border Force), to stop, board and search vessels in UK waters. However, it is submitted that the time and resources required to pass a statutory instrument may mean that this is not a practical option in order to achieve greater protection of UHA, though Historic England may wish to investigate, through DCMS, the possibility

Powers under the Protection of Military Remains Act 1986

Under section 6 PMRA, “authorised persons” are entitled to board and search vessels in UK waters and seize articles on board. In respect of British ships, the power to stop and board can be used where the authorised person has reasonable grounds for believing that an offence under PMRA is being, has been or is to be committed. However, in respect of non-British ships, the powers can only be used where the authorised person has reasonable grounds to believe such an offence is being committed at present.

PMRA defines an “authorised person” as “a person authorised in writing by the Secretary of State... or a person of a description of persons so authorised”.³¹³ Any authorisations made by the Secretary of State have not been published, however the MDP are responsible for investigating offences under the PMRA and so they have presumably been authorised. If commissioned officers of the Royal Navy have not also been authorised, then it would be possible for the Secretary of State to provide such written authorisation, which would then allow any patrol of the Royal Navy to use the enforcement powers granted by PMRA in respect of possible offences affecting designated military UHA.

Current and Future Joint Working on the Part of the RNFPS

As detailed above, the RNFPS is the contracted enforcement service for the MMO in respect of fisheries legislation and regulations. The RNFPS and the MMO therefore have an extremely close working relationship. This is built upon daily communication and sharing of data between the two organisations, with the MMO initiating the boarding process by highlighting areas and/or vessels of concern with the RNFPS.³¹⁴

In addition, the RNFPS also work with other bodies and organisations whilst at sea. For example, Lieutenant Commander George Storton, the Commanding Officer of HMS Mersey (one of the three River Class FPS vessels based in UK home waters) has commented that “[a]ll the squadron’s vessels are kept fully up to date of any regional issues. We recently worked with the Maritime Coastguard Agency Communications Centre at Fareham, where we assisted with a medical emergency after a gas cylinder exploded, injuring a fisherman”.³¹⁵ Indeed, Lt Commander Storton notes the unique position of the RNFPS vessels and their crew and the benefits this

³¹³ Protection of Military Remains Act 1983, section 6(8)

³¹⁴ Fishing News, ‘On Patrol with the Royal Navy’s Fisheries Protection Squadron’ (Fishing News, 1 September 2017) <http://fishingnews.co.uk/features/on-patrol-with-the-royal-navys-fisheries-protection-squadron/> (last accessed October 2018)

³¹⁵ *Ibid.*

can have for maritime security: “[w]ith HMS Mersey doing 320 days a year at sea, we see a lot happening around our coastline. For example, we know what is going on from a ferry crossing to a localised yacht race. By spending so much time at sea, patrolling our waters, we can understand the difference between what is normal and what is not normal.”³¹⁶

This knowledge of UK waters is something that Historic England could benefit from in order to increase the detection of offences under the various protective Acts taking place. If the RNFPS vessels are spending such significant amounts of time in UK home waters, then consideration could be given to whether the remit of their patrols could be extended to include UHA sites (or at least those sites of greatest concern as being at risk to Historic England). Depending on the locations of such sites, this could possibly be achievable without extending the actual patrols much themselves. After all, (as noted by one interviewee for this Report), an organisation might for its own purposes need to be in a particular area for a certain period of time, but it has to get there and to get back and “*people might be interested in what you can see whilst you’re getting to it.*”³¹⁷

The Patrol Ships of the Royal Navy Surface Fleet

As noted elsewhere in the Report, the Royal Navy has 14 inshore patrol boats available in the waters adjacent to the UK.³¹⁸ Each of the 14 vessels are affiliated to a University Royal Naval Unit (URNU)³¹⁹ and therefore based in locations spread around Great Britain. They are all part of the 1st Patrol Boat Squadron.

The primary role of these vessels is to provide training and maritime experience for University Royal Naval Unit students. These are students studying at a range of universities around the UK, who have chosen to study also with the Royal Navy on a part time basis during their evenings, weekends and university holidays. Whilst the students are not members of the Royal Navy, each of the vessels is commanded by a commissioned officer of the Royal Navy and crewed by a number of members of the Royal Navy.

It is unlikely that the vessels could be used for any purpose of assisting in the protection of UHA during the periods in which they are being used for URNU training. However, such training tends to take place only at weekends and during the Easter and summer university holiday periods,³²⁰ therefore there is a substantial period of time when the vessels are not used by the URNU. The Royal Navy website confirms that as well as providing training for the URNU students, the 14 vessels also “*provide*

³¹⁶ *Ibid.*

³¹⁷ IFCA Chief officer, pers. comm.

³¹⁸ Although they are not all continuously in UK waters, with vessels often being deployed to foreign waters – for example see <https://www.royalnavy.mod.uk/news-and-latest-activity/news/2017/april/26/170426-entire-1st-patrol-sqn-join-for-exercise> (last accessed October 2018)

³¹⁹ A Royal Navy training establishment connected to a university or a group of universities

³²⁰ <http://www.bristolurnu.org/training/sea-weekends/> (last accessed October 2018)

support to wider Fleet tasking and exercises around the UK and [European] waters".³²¹ It appears that this wider tasking is primarily still for training purposes. However, other activities such as community engagement events, activities where presence is needed in vicinities into which larger naval vessels cannot reach (such as PR events at ports) and "*security and maritime patrols*"³²² are all mentioned on the official web pages for each of the vessels

It is thus possible that those of the 14 patrol vessels that operate in English Inshore Marine Planning Area may be available during certain periods (predominantly weekdays outside of university periods) to assist with the protection of UHA in the English Inshore Marine Planning Area.

4.2.9 - The United Kingdom Hydrographic Office ("UKHO") and the Royal Navy Hydrographic Squadron

Structure and Relationship to the Ministry of Defence

The UKHO is a trading fund owned by the MOD set up to collect and supply hydrographic and geospatial data to both the Royal Navy and to merchant shipping in order to protect lives at sea.³²³ Historically, the UKHO function was an integral part of the Royal Navy, with the collection of survey data being carried out by Royal Navy commissioned vessels.

Today, while the UKHO function has been separated out from the Royal Navy somewhat into its current form, the surveying function is still carried out by the Royal Navy Hydrographic Squadron (supported by data collected by contract survey companies and other contractors and developers).³²⁴ The Hydrographic Squadron consists of five vessels; HMS Enterprise, Echo, Protector, Scott and Gleaner. Only HMS Gleaner (the smallest commissioned ship in the Royal Navy)³²⁵ is consistently active in UK waters, with the other, larger, vessels tending to be deployed on lengthy overseas surveying operations. HMS Gleaner is due to be decommissioned in December 2017, with its replacement due for commissioning in May 2018.³²⁶

Although a separate entity in law, as the UKHO has no sea-going vessels or aerial resources of its own, it has been considered in conjunction with the Royal Navy for the purposes of this Report.

³²¹ <https://www.royalnavy.mod.uk/the-equipment/ships/patrol-and-mine-hunters/fast-patrol-boats> (last accessed October 2018)

³²² <http://www.surnu.co.uk/hms-blazer.html> (last accessed October 2018)

³²³ www.gov.uk/government/organisations/uk-hydrographic-office (last accessed October 2018). See also The Hydrographic Trading Fund Order 1996, SI 1996/773

³²⁴ UK Hydrographic Office, 'The UKHO Archive' (2015) (<https://www.gov.uk/guidance/the-ukho-archive>) (last accessed October 2018)

³²⁵ <http://www.armedforces.co.uk/navy/listings/l0020.html> (last accessed October 2018)

³²⁶ Samuel Corby, 'Details released on HMS Gleaner replacement' (UK Defence Journal, 23 August 2017) - <https://ukdefencejournal.org.uk/details-released-on-hms-gleaner-replacement/> (last accessed October 2018)

Potential for Collaboration with regard to UHA

With only one vessel consistently in UK home waters, the Hydrographic Squadron is of limited interest with regard to joint working in order to increase the protection for UHA. Furthermore, that one vessel does not appear, from publicly available information, to undertake any security or maritime patrols, focusing instead entirely on surveying work both for the UKHO and also for the wider fleet of the Royal Navy (such as surveying the dredging works carried out in order to enable the new aircraft carrier to enter certain ports).³²⁷ The vessel has therefore not been considered further in respect of any potential joint working initiatives with the Royal Navy.

4.2.10 - Military Aid to Civil Authorities

Overview

If the Royal Navy, in any of the roles described above, is willing to help enforce UHA protections in English Inshore Planning Area, then it will be providing Military Aid to a Civil Authority (“MACA”). Often, MACA is given by way of military assistance at emergencies such as large scale flooding incidents. However, the MOD’s published policy on MACA notes that it can also include “[m]ilitary support... provided to civil law enforcement agencies, such as the police or Border Force, in the maintenance of law, order and public safety”.³²⁸ As such the work of the RNFPs in enforcing fisheries legislation and regulations for the MMO is an example of MACA.

Legal Basis

The legal basis for MACA depends upon the type of assistance being provided to the civil authority.³²⁹ Where military tasks are being carried out as a support for civil authorities and in addition to their capabilities, the legal basis for MACA is the Royal Prerogative. However, where the support provided is non-military and is provided instead of the civil authorities’ capabilities, MACA is actioned by a Defence Council Order made pursuant to the Emergency Powers Act 1964.

There is no set definition for ‘military tasks’, however the MOD’s guidance on MACA³³⁰ suggests that indicators that a task is a ‘military’ one “*can include where service personnel have been trained by the military, where service personnel undertake that work as their ‘day job’, and for work which traditionally has been seen as military work. This type of work is usually, but not exclusively, requested by law enforcement agencies, most commonly the police, the Border Force and Her Majesty’s (HM)*

³²⁷ *Ibid.*

³²⁸ Ministry of Defence, *Policy Paper: 2015 to 2020 government policy: Military Aid to the Civil Authorities for activities in the UK* (4 August 2016) <https://www.gov.uk/government/publications/2015-to-2020-government-policy-military-aid-to-the-civil-authorities-for-activities-in-the-uk/2015-to-2020-government-policy-military-aid-to-the-civil-authorities-for-activities-in-the-uk> (last accessed October 2018)

³²⁹ Ministry of Defence, *Joint Doctrine Publication 02 – UK Operations: the Defence Contribution to Resilience and Security* (Third Edition, February 2017), 32 <https://www.gov.uk/government/publications/operations-in-the-uk-a-joint-doctrine-publication> (last accessed October 2018)

³³⁰ Joint Doctrine Publication 02 – UK Operations: The Defence Contribution to Resilience and Security, Third Edition

*Revenue and Customs.*³³¹ It is arguable that law enforcement work in the territorial waters assisting the Police or Border Force could be described as a 'military' task, especially if it is carried out during military patrols.

Procedure & Cost Recovery

MACA is requested by the civil authority requiring assistance and must generally be authorised at ministerial level (except in the event of an emergency situation in which life is endangered). Unless the assistance is required as a result of an emergency situation, MACA will generally only be provided when the four principles set out by the Ministry of Defence are satisfied. These are that:

1. There is a definite need to act and the tasks the armed forces are being asked to perform are clear.
2. Other options, including mutual aid and commercial alternatives, have been discounted; and either
3. the civil authority lacks the necessary capability to fulfil the task and it is unreasonable or prohibitively expensive to expect it to develop one; or
4. the civil authority has all or some capability, but it may not be available immediately, or to the required scale, and the urgency of the task requires rapid external support from MOD.³³²

For UHA protection, HE and the Police or Border Force would need to satisfy principles 1, 2 and 3.

Most importantly however, is that MACA must be paid for by the civil authority or government department requesting the help. This is required as a result of the rules of HM Treasury that government departments must charge for services that do not form part of their funded tasks.³³³ The MoD charges full costs for non-emergency, planned and routine support to civil authorities, unless there is a military benefit that offsets the cost.³³⁴ Full cost recovery is presumably not an option for Historic England and/or the Police or Border Force, however, if naval vessels that are already out on patrol in the English Inshore Marine Planning Area were to be tasked with also keeping an eye on sites and vessels of interest with regard to UHA, then it is submitted that this would fall within the 'military benefit' exception and thus the cost recovery should be greatly reduced.

³³¹ *Ibid.*, 32-33

³³² *Ibid.*, 27-28

³³³ *Ibid.*, 36

³³⁴ *Ibid.*, 38

4.2.11 - Queen's Harbour Master: Plymouth and Portsmouth

Structure, Aims and Objectives

The Dockyard Ports of Plymouth and Portsmouth operate under the statutory control of the Queen's Harbour Master (QHM).³³⁵ There are differences between the Ports, in terms of geographic area, size, type and frequency of military and other traffic. Though focused on the operation and protection of Naval ports, the dockyard port areas tend to cover a significantly larger area. For example, the Dockyard port of Plymouth extends to one and a half miles south of Plymouth Sound breakwater and encompasses the extent of the tidal reach of the Rivers Tamar, Tavy and Lyhner. Similarly, the dockyard port of Portsmouth covers a much wider area than the Naval Base, as shown at Figure 5 below. In common however, is the aim to enable the optimum opportunities for the enjoyment of legitimate water-based activities. Both of the Port areas under the control of the QHMs host significant UHA.

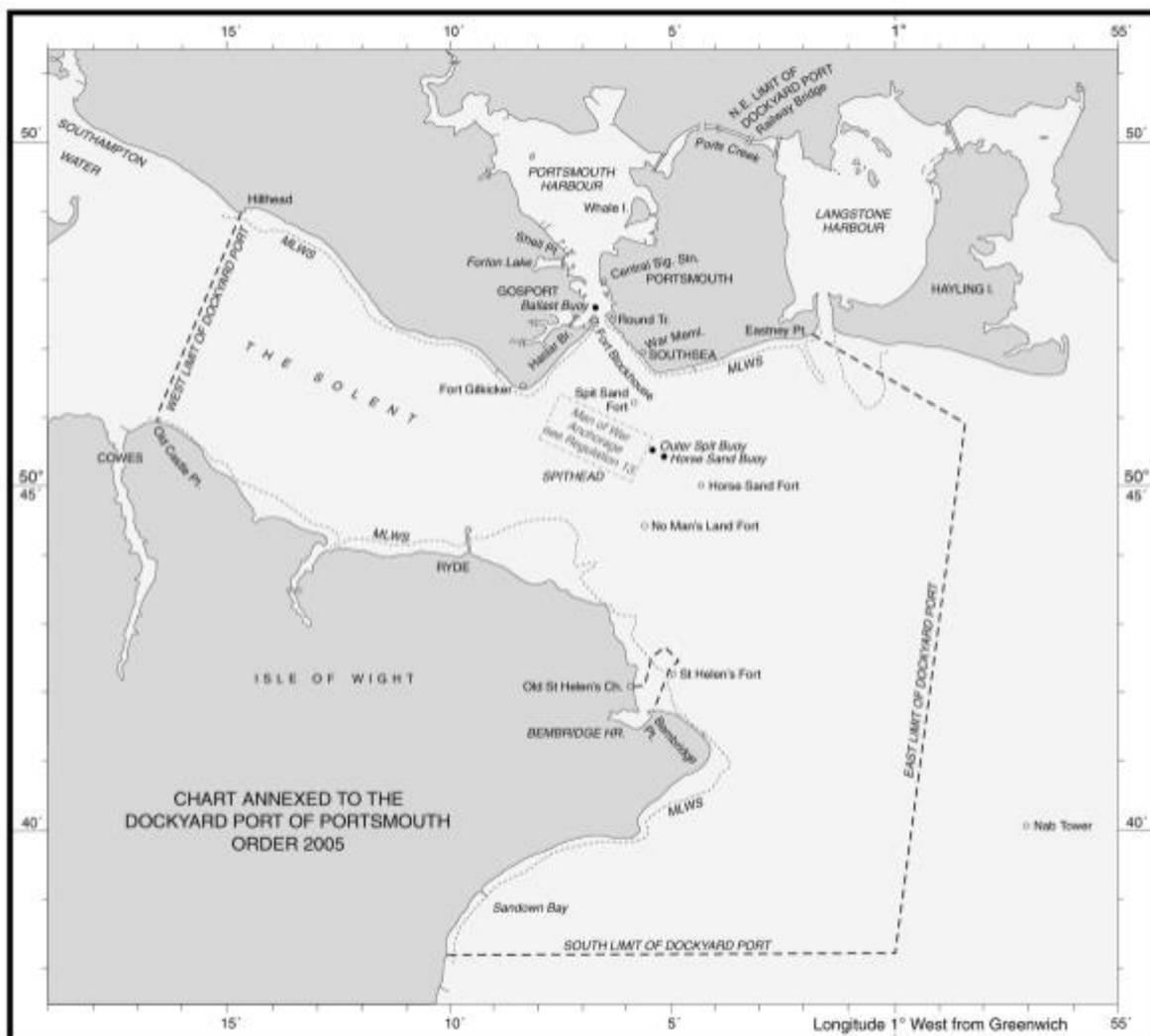


Figure 5: Chart annexed to the Dockyard Port of Portsmouth Order 2005 depicting the extent of the dockyard port area

³³⁵ One additional UK QHM is in post for the Clyde Dockyard Port, but is outside of the geographical focus of the report.

Powers Granted to QHM

The basic responsibility is to ensure safe and orderly passage and activity for all vessels within the waters of the Dockyard Port; and the protection of the port, the Royal Navy and its vessels and other government assets. The statutory purpose of the QHM is to “*superintend the execution of [the Dockyard Ports 1865 in], and otherwise to protect*” the dockyard port for which they are appointed.³³⁶ The QHM is therefore the *de facto* Harbour Authority for the area within their Dockyard Port. The QHM’s primary role as protector of the port leads to a principal responsibility to ensure the safe and orderly passage of all vessels and activities within it, both Naval and civilian. However, their statutory purpose is drafted broadly and gives a wide remit to QHMs, which is described by the Ministry of Defence as including “*the preservation of life, protecting the environment, property and the continuity of business whilst overseeing Ministry of Defence primacy*”.³³⁷ In practice, the QHM oversees the running of their port area and has responsibility for everything that happens within it, carrying out certain functions on behalf of the Commander of the Naval Base within their dockyard port area.³³⁸ The two QHMs draw their authority from specific legislation. Both are initially subject to the 1865 Act, and the, respectively The Dockyard Port of Plymouth Order 1999; and The Dockyard Port of Portsmouth Order 2005.³³⁹ The legislation does not contemplate heritage, although the 1865 Act empowers the QHM to remove wreck in the case of its being an obstruction to the port or its approaches.³⁴⁰

Powers

In order to carry out their statutory functions, QHMs are granted certain powers by the 1865 Act. These include powers to moor and unmoor vessels,³⁴¹ powers to search vessels for certain purposes,³⁴² and powers to remove wreck and unserviceable vessels.³⁴³ None of these powers can be used for heritage protection.

The marine enforcement powers contained in the PACA are granted to a wide range of individuals and classes of individual. Included in this are “port constables” within the meaning of section 7 Marine Navigation Act 2013 or section 16 Harbours Act 1964.³⁴⁴ QHMs do not appear to fall into either of these categories at present, but the 2013 Act makes reference to various Acts that permit the appointment of port constables by two justices of the peace. It is therefore possible for individual QHMs to be appointed as port constables and thereby given the ability to exercise the marine enforcement powers within their area.

³³⁶ Dockyard Ports Regulation Act 1865, section 4

³³⁷ <https://www.gov.uk/government/organisations/queens-harbour-master/about> (last accessed October 2018)

³³⁸ <https://www.gov.uk/government/groups/qhm-portsmouth> (last accessed October 2018)

³³⁹ The Dockyard Port of Plymouth Order 1999 (SI 1999/2029) and The Dockyard Port of Portsmouth Order 2005 (SI 20065/1470)

³⁴⁰ Dockyard Ports Regulation Act 1865, s.13.

³⁴¹ Dockyard Ports Regulation Act 1865, section 11

³⁴² Dockyard Ports Regulation Act 1865, section 12

³⁴³ Dockyard Ports Regulation Act 1865, sections 13 and 14

³⁴⁴ Policing and Crime Act 2017, section 84(3)(d)

Potential for Collaboration on Enforcement of UHA Protection

In the case of Plymouth, the Dockyard Port is part of and contains significant natural environmental and heritage assets, including PWA and PMRA, designated wrecks.³⁴⁵ QHM recognises heritage as part of its wider environmental remit and includes heritage considerations within the management plans for the area.³⁴⁶ The Portsmouth QHM area also has significant natural environmental designations within its area; and includes PWA sites – notably the *Mary Rose and HMS Invincible* – as well as considerable other designated and undesignated UHA both within and in close proximity to its area of influence.³⁴⁷ Although it is the location of a significant onshore heritage collection comprised in the Portsmouth Historic Dockyard, there is no overt heritage consideration in the broader regulatory remit.

Both Ports have means to report maritime issues of concern to an incident control centre: each has a dedicated telephone number and an online reporting form available.³⁴⁸ It is in this respect that QHM is able to offer collaborative potential. In both Ports, QHM, either personally or through the Port Conservancy Officer, has knowledge of the designated UHA in the area.³⁴⁹ The QHMs will be notified of any diving operations as or routine. As a point of contact to all regular water users QHM provides a hub for reporting of incidents or suspected non-legitimate interventions by those on the water.³⁵⁰ Where resources permit, the ability to task the MDP to investigate, or keep a watching brief, if reports are made represents a further opportunity to capitalise on existing functions for the benefit of UHA protection. A greater heritage presence, for example through the provision of links to Historic England's appropriate UHA online materials, or a general statement in respect of the presence of UHA in the curtilage of the Dockyard Ports, would represent a low-cost means by which to notify visitors to the site of the fact it is a recognised matter.

Limits on QHM Powers

The limits as exist are concerned with the fact that this is in essence an additional dimension to the basic statutory function of the QHM. In both Dockyard Ports, competing interests are regulated to the end of the safety of navigation, the safety of the Dockyards and the Navy.

³⁴⁵ Includes the *Coronation* (inshore and offshore), the *Cattewater* wreck and the nearby A7 submarine amongst others. See for example <https://historicengland.org.uk/advice/planning/consents/protected-wreck-sites/>; and the SHIPS project <http://www.promare.co.uk/ships/> (both last accessed October 2018)

³⁴⁶ See for example, <https://www.royalnavy.mod.uk/qhm/plymouth/port-information/environment> (last accessed October 2018)

³⁴⁷ A more recent discovery being *HM LCT 427*, see for example, <http://www.southseasubaqua.org.uk/diving-projects> (last accessed October 2018)

³⁴⁸ The Longroom at Plymouth, <https://www.royalnavy.mod.uk/qhm/plymouth/report-an-incident>; and Semaphore tower at Portsmouth <https://www.royalnavy.mod.uk/qhm/portsmouth/report-an-incident> (last accessed October 2018)

³⁴⁹ QHM/Port Conservancy Officers, pers.comm.

³⁵⁰ QHM/Port Conservancy Officers, pers.comm.

4.2.12 Maritime and Coastguard Agency

An Agency of the Department for Transport, the Maritime and Coastguard Agency (MCA) in the UK's Maritime Authority. It has a number of functions –such as being the safety regulator for UK flagged shipping, co-ordinating search and rescue at sea and on the coast and operating the automatic identification system (AIS) used by ships around the UK coastline.³⁵¹ It's remit includes pollution prevention and control and in terms of wreck the most important aspect lies within the powers and duties in respect of salvage that are discussed in Chapter 3.

The potential for, and contemporary examples of examples of, the MCA to assist in matters relating to UHA is well rehearsed in Chapters 3, 5 and 6, and so not elaborated further here.

4.2.13 - The National Maritime Information Centre

Structure, Aims and Objectives

Established in 2010 as an output of the Strategic Defence and Security Review the National Maritime Information Centre (NMIC) provides information across government departments on a range of activities in the maritime domain. The UK National Strategy for Maritime Security notes that it “*brings together information and intelligence provided by Border Force, the MCA, the police, Armed Forces, the MMO...*”, to provide the UK with “*unified situational awareness*” of the range of activities going on in UK and international waters.³⁵²

NMIC provides an information hub, which is then able to inform tasking decisions for enforcement authorities. Originally conceived to serve a basic security function, the role has grown to enable the protection of UK interests and assets to the extent of UK territorial jurisdiction and beyond. NMIC has input from the principal government departments, and their agencies with a maritime focus. The Department of Culture, Media and Sport is involved, but Historic England not so. NMIC is not directly responsible to any one government Ministry. It sits outside all of its sponsoring departments, nested within the National Maritime Security Committee. This mean that NMIC is funded across and between those ministries and agencies that take part. Many of the staff at NMIC are secondees from partner agencies.³⁵³

NMIC describes its mission in the following terms:

³⁵¹ See for example the MCA website <https://www.gov.uk/government/organisations/maritime-and-coastguard-agency> (last accessed October 2018)

³⁵² National Strategy for Maritime Security, p.22

³⁵³ See for example <https://publications.parliament.uk/pa/cm201213/cmselect/cmdfence/110/11008.htm> (last accessed October 2018)

“Citizens, business and government can enjoy the full benefits of a clean, safe, sustainable, secure and resilient maritime domain: working together, at home and globally with partners, to understand and address the risks... and to seize opportunities in the maritime domain to enhance the UK’s overall maritime development, safety, security and resilience.”³⁵⁴

Potential for Collaboration on Enforcement of UHA Protection

The shared expertise of the constituent members has been noted in evidence given to the Common’s Defence Select Committee. NMIC was described as *“a fantastic organisation [which] will enable us to provide a single picture for maritime activity, with input from numerous agencies. The principle of it is superb”*. Another contributor stated *“the principle is extremely sound in that what may in the normal pattern of life make perfect sense to my organisation will be of interest for a completely different reason to another”*.³⁵⁵ It is this latter comment in particular that suggests NMIC’s potential in the case of UHA. In terms of securing UK assets, the loss of UHA constitutes a loss to the nation, and the monetary value of certain of the higher end prosecutions for salvage activity –aside from irreplaceable cultural loss - pushes it into the territory of serious crime that should merit intervention. The ability of Historic England to feed into the NMIC ‘family’ would enable better coordination in this regard. NMIC’s ability to track vessel movements, to GIS map features of interest and to flag vessels if interest are all of potentially significant assistance to means by which UHA protection might be enhanced. The information is a two-way flow, with NMIC receiving and disseminating the information from and to its contributing departments.

Limits

NMIC’s role is necessarily limited to information gathering and sharing. It may use that information to task resource to suspicious activity, for example around known UHA. In that respect, it is possibly of more use to those UHA that are the subject of existing designation. Alternatively, patterns of behaviour, such as dimming of AIS, or the same ships entering into the same areas might be suggestive of illicit salvage. The principal limitation on NMIC’s assistance to Historic England, at the time of writing, would seem to be the fact that Historic England is not fully engaged.

4.2.14 - National Coastwatch Institution

Structure Aims and Objectives

Established in 1994, the National Coastwatch Institution (NCI) is a registered charity overseen by the Charities Commission. It was originally set up as a means to gap-fill the loss of Coastguard lookout stations along the coast. Essentially focused on maritime safety, and specifically that of saving lives around the coast the NCI provides

³⁵⁴ National Maritime Information Centre, *Information Guide* 2011, available from <http://www.nautinstlondon.co.uk/nautinstlondon/wp-content/uploads/2012/12/NMIC-information-booklet.pdf> (last accessed October 2018)

³⁵⁵ Ibid, at paragraph 105

reassurance to water users noting that “*Wherever there is an NCI station a watchkeeper will be looking out for danger and ensuring your safety on the water*”.³⁵⁶ With 41 stations located around the English coast (there are a further 8 in Wales) equipped with telescopes, radar, charts and telecommunications equipment, the NCI is clearly able to live up to its claim to be the ‘Eyes along the Coast’.

The NCI has a safety of life at sea focus, and is well linked in with the MCA so as to be of benefit and to fit within the national search and rescue structure.³⁵⁷ In that regard, there is no direct link to heritage protection. Volunteers, though, have used their skills in incident monitoring and management to perform useful reporting functions in respect of UHA. Interviews with QHM/Port Conservancy Officers, MDP and coastal police services have all indicated contact with NCI stations where there has been knowledge of the presence of nearby UHA. In all cases passed onto the report authors, the UHA were the subject of a designation and the fact of local knowledge was a key advantage in the ability to appreciate what was there and the likely legitimacy of the visit by a surface vessel to the site.

The technical capability of the service coupled with the local knowledge and maritime passion of the volunteers is a potentially significant resource were HE to be able to provide some further technical support or information to enable better reporting. NCI provided in excess of 262,400 hours of coastal surveillance in 2017 with no public funding.³⁵⁸ In that same year, the casualty analysis breakdowns show that around 12 incidents were for illegal/anti-social activity, but there is no additional breakdown as to type. It is notable that there is no heritage category for reporting however.³⁵⁹ There is certainly an inshore potential for NCI as an eyes and ears asset for the early discovery of unwanted interventions.³⁶⁰

4.2.15 - Environment Agency

Structure Aims and Objectives

The Environment Agency (EA) is a non-departmental public body sponsored by DEFRA. It was created by the Environment Act 1995 through a merger of the National Rivers Authority, waste regulation authorities and Her Majesty’s inspectorate of Pollution.³⁶¹ The EA was effective from April 1996. So far as is relevant to the project, the EA has powers in respect of certain fisheries – specifically related to migratory

³⁵⁶ See for example <https://www.nci.org.uk/content/our-work> (last accessed October 2018)

³⁵⁷ As to which, see the Strategic Overview of Search and Rescue in the United Kingdom of Great Britain and Northern Ireland, 2017, UK Search and Rescue, available from https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/593127/mca_uksar.pdf (last accessed October 2018)

³⁵⁸ <https://www.nci.org.uk/> (last accessed October 2017)

³⁵⁹ NCI Incident Analysis 2017, available from https://www.nci.org.uk/files/incident_analysis_sheet_-_2017v3.pdf (last accessed October 2018)

³⁶⁰ It is understood that work is underway to integrate NCI within the Heritage Watch scheme (Mark Harrison, *pers comm.*)

³⁶¹ Environment Act 1995, s2(1), and Schedule 1

fish, bathing, and general coastal, water quality and flood defences and coastal erosion.

Enforcement Powers the EA's powers of enforcement arise under a number of measures, which are not particularly relevant in the context of UHA, and not explored here; and is governed by the Regulator's Code.³⁶² This notes at 4.2 that "*When the law allows, regulators should agree secure mechanisms to share information with each other about businesses and other bodies they regulate, to help target resources and activities and minimise duplication.*" There is a difference in regulatory approach, perhaps between the EA and Historic England in terms of focus, but the clear steer towards information sharing where possible has potential.

Potential for collaboration on Enforcement of UHA Protection The EA's main potential would be appear to be limited to that of a reporting, information gathering body. The EA's limited on-water presence does, though, offer some capability.

4.2.15 - Natural England

Structure Aims and Objectives

As with the EA above, Natural England (NE) is a non-departmental public body under the sponsorship of DEFRA. It was established by the Natural Environment and Rural Communities Act 2006,³⁶³ by merging, along with their powers, the Countryside Agency, English Nature and the Rural Development Service. NE is tasked with a general purpose to "*to ensure that the natural environment is conserved, enhanced and managed for the benefit of present and future generations, thereby contributing to sustainable development*".³⁶⁴ According to NE's Corporate Plan, delivering on this purpose necessitates working closely "*with other agencies such as the Environment Agency, Marine Management Organisation, the Forestry Commission and English Heritage to achieve better outcomes for people and the environment, to improve efficiency in our operations*".³⁶⁵ Although the specific focus is the natural environment, the general purpose is elaborate to include, "*conserving and enhancing the landscape*".³⁶⁶ In 2010, NE's functional sphere of operation was extended by MACAA to include, "*where the context requires, the territorial sea adjacent to England*".³⁶⁷ NE does not own any sea-going vessels and contracts the use when necessary. There is thus not systematic on water presence, although NE conducts numerous coastal and shore-based assessments in order to fulfil their statutory objectives.

³⁶² BIS, The Regulators Code (2014), available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf (last accessed October 2018)

³⁶³ Natural Environment and Rural Communities Act 2006, s.1

³⁶⁴ Natural Environment and Rural Communities Act 2006, s.2(1)

³⁶⁵ Natural England Corporate Plan 2014-2019, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/300746/ne-corporate-plan-2014-2019.pdf (last accessed October 2018)

³⁶⁶ Natural Environment and Rural Communities Act 2006, s.2(1)(b)

³⁶⁷ Natural Environment and Rural Communities Act 2006, s.1(3), as amended by the Marine and Coastal Access Act pursuant to s. 311(2)

Enforcement Powers

The enforcement powers available to NE are conferred on wildlife officers and contained within the Wildlife and Countryside Act 1981 (as amended). There is a specific focus on the natural environment, and in conjunction with the Habitats Regulations³⁶⁸ offences are created around the disturbance or destruction of protected features of habitats and of fauna and flora. The habitats regulations as well as the MCZ obligations may necessitate investigation offshore, which would then trigger the enforcement powers.

Potential for collaboration on Enforcement of UHA Protection

So far as is relevant to the focus in this report, NE's priorities promoting nature conservation and protecting biodiversity in a marine context, where those responsibilities align spatially with the English Inshore Marine Planning Area are potentially where any enforcement synergies could exist. Work in respect of the relationship between UHA and features protected through the designation of Marine Conservation Zones (MCZ) identified the potential for overlapping issues in designation and potential impacts.³⁶⁹ Given the commitment to inter-agency working, a corollary of the relationship building in circumstances where UHA and MCZ features coexist might enable additional monitoring of a UHA site. Interventions in foreshore situations might also enable, at least, a reporting function from NE to Historic England where appropriate.

³⁶⁸ The Conservation of Habitats and Species Regulations 2017 (SI 2017:1012)

³⁶⁹ Firth, A. Salmon, P. and Snaith, E. (2017) Historic Environment Projects and Activities in Marine Conservation Zones. Project Number 7364, available from <https://www.nauticalarchaeologysociety.org/sites/default/files/u13/HE%20MCZ%20Main%20Report%20FINAL.pdf> (last accessed October 2018)

Chapter summary

The key points extracted from Chapter 4 are summarised below:

- Numerous public (and other) bodies with a significant range of primary responsibilities operate in the English Inshore Marine Planning Area.
- In order to further their powers and duties, these bodies are granted a variety of enforcement powers. These are necessarily different and limited depending on the issue to be regulated, although there are examples of generic enforcement powers available to certain bodies.
- The wider use of collaborative working and use of the generic powers could bring significant benefit in the context of UHA protection; and a coordinated intelligence gathering capability would provide the opportunity of focused and effective targeting of physical resources.
- Regardless of the 'legal' enforcement capability and resource, the availability of physical resources (sea-going, airborne or autonomous) is not always guaranteed.

Resources

- **Legal Resources:**
 - The range of powers is significant. The *marine enforcement powers* contained in the Policing and Crime Act 2017 along with those available to marine enforcement officers (including IFCOs) in the Marine and Coastal Access Act 2009 offer interdiction potential.
 - The Home Office Police Services, MDP, BF, IFCOs and the RNFPS have the greatest range of direct legal powers to intervene in respect of criminal activity offshore.
 - Other than the Home Office Police Services, the remaining organisations shown above have the potential to use their powers beyond their specific areas of concern and for the protection of UHA in some circumstances.
 - Powers to stop and search in particular have significant potential within the English Inshore Marine Planning Area (and beyond, although this report is concerned solely with the EIMPA).
 - Greater awareness of the extent of the powers available, and their triggers might prove useful to some agencies.
- **Physical resources:**
 - Availability of physical resources on the water is also limited. Some bodies, by their very nature, have significant assets at their disposal in respect of their core statutory obligations. Other do not.

- Not all English Home Office coastal police forces have a marine unit. There are, though, examples where more than one constabulary has access to a specific marine unit.
 - Both BF and the Royal Navy are expanding their presence offshore.
 - Airborne resources are both costly and limited. None of the contributors indicated their use in UHA settings.
 - The availability and use of drones and/or other unmanned autonomous resources is very limited at present.
 - While consideration of any changes to the provision of physical resources in the English Marine Inshore Planning Area consequent on the UK's potential exit from the European Union in 2019 was not part of the project focus, it was noted by some interviewees as suggesting at a change of role and addition of sea-going capability.
- **Information and intelligence resources:**
 - The NMIC provides a real-time, round the clock oversight of the English Inshore Marine Planning Area (and beyond). As a multi-agency collaborative venture between a number of stakeholder departments it is ideally placed strategically to coordinate information and tasking in respect of UHA
 - Of the many other bodies on the water, the potential exists to develop protocols in respect of information gathering and incident reporting if actually enforcement intervention is not possible pursuant to that body's statutory powers
 - The National CoastWatch Institution offers a considerable opportunity to provide local oversight of near-shore UHA.

5. PROBLEMS OF ENFORCEMENT

“ ... in terms of maritime heritage crime, a lot of it happens underwater. So you could say that even if you came over a protected site, that you weren't actually diving on it, you were over there and you drifted. So because so much of what goes on is unseen, it's just not visible, then it is very difficult to prove ... you don't know what was going on under the water, you only have a snapshot of what was going on above it.”³⁷⁰

It is beyond dispute that the enforcement of any regulatory regime in the marine environment poses challenges that are unique to that environment and far more onerous than those presented in the terrestrial environment. The challenges posed in enforcing the statutory regimes protecting UHA are additionally challenging, even for the marine environment. The reasons for this are manifold, some being obvious, whilst others are less so. In the following sections the specific challenges of protecting UHA are examined in the context of potential cross-party working.

5.1 UHA Specific Challenges

Physical Environment

Perhaps the most obvious challenges arise from the physical marine environment. UHA are located not only in a sparsely populated marine environment but they are also underwater, making observation and monitoring very difficult. Added to this, human presence in the English marine environment is very seasonal, in particular the recreational boating and diving seasons are relatively short, usually lasting from April to the end of September. Thus even where sites have licensed teams assigned to them or are protectively 'adopted' by divers,³⁷¹ human presence, including diving presence, is very limited. To this can also be added the fact that such human presence is not evenly spread within that environment. Some areas of the coast and territorial waters tend not be visited or transited by marine users and are often backed by a rural, sparsely populated coastal hinterland. This compounds the difficulties considerably.

The Nature of Diving Activity and a Fragmented Regulatory Framework

While some unauthorised activities on land, for example vandalism, metal theft and even metal detecting, might be relatively easy to spot, it is extremely difficult, by

³⁷⁰ Marine and Coastguard Agency official, pers. comm.

³⁷¹ As under the Nautical Archaeology Society's 'Adopt a Wreck' Scheme <https://www.nauticalarchaeologysociety.org/content/adopt-wreck-scheme>

uninformed observation alone, to discern whether or not an underwater activity constitutes a heritage crime. Although the presence of divers is usually denoted by the presence of a surface craft supporting the diving operations, once the divers have descended it is impossible to observe exactly where they are diving or what specific activity is occurring. Even more difficulty is imposed by the fact that some designated or scheduled UHA's have authorisations issued for visiting, survey or intrusive activity with recoveries. Additionally, undesignated UHA can be subject to lawful salvage by recovery of artefacts by hand, without requiring authorisation under the marine licensing system. Consequently, the fragmented and complex regulatory framework complicates protection of UHA and limits the understanding of this framework by professional maritime agencies and the Police,³⁷² yet alone the general public. Even where the mode of recovery of objects from the bottom of the seabed requires authorisation it is not possible to readily ascertain if such authorisation exists. Consequently, at present, the input into the protection of UHA's by the Police, maritime agencies present at sea, diving groups or the general public is thus very limited in potential.³⁷³

'Rescue from the Deep' – A Cultural Mindset

The removal of lead from a church roof, or artefacts from within a church or museum would be instantly condemned as a heritage crime by the majority of the public. However there appears to be a cultural mindset that material lost at sea should be recovered, sometimes irrespective of an economic value or any functional need.³⁷⁴ Various motivations appear to be at play here. In part, for divers, there is a technical challenge in recovering a historic artefact intact, or relatively intact. This adds a new challenge and dimension to diving for those for whom *'look, don't touch'* is no longer a sufficiently fulfilling experience. Souvenir hunting, comparable to the taking of souvenirs from terrestrial tourist heritage destinations, is also a factor, as is a public association with recovery of treasure from the seabed. The latter seems quite cemented in the public psyche and can probably be traced back to the recovery of Spanish silver from the *Nuestra Senora de la Concepcion* by William Phips in 1687.³⁷⁵ Subsequent recoveries of bullion cargoes, both historical and contemporary, have continued to feed this very strong association in the public mind between diving and treasure recovery.³⁷⁶

³⁷² Even when such understanding is sought it is difficult to access the regulatory framework due to its fragmented nature

³⁷³ This is a problem shared for example with IFCA's in areas where some types of netting for sea fish resources is permitted. Members of the public are unable to discern between lawful and unlawful netting

³⁷⁴ ProMare, SHIPS Project, Peter Holt (*pers comm.*)

³⁷⁵ See further Earle, P. *'The Treasure of the Concepcion. The Wreck of the Almiranta'* (1980) Viking Press New York

³⁷⁶ For the latest manifestation of which see <http://britanniasgold.com/> (last accessed October 2018)

Sometimes the public stereotype of divers and gold is justified. c.400 gold coins ranging in date between 1106 and 1635 with Marrakech as the dominant mint were recovered from the Salcombe Cannon site by the South West Maritime Archaeological Group (SWMAG). However, the 'real' treasure of the find is that the British Museum had only approx. eight coins of the type found and that the Arabic script (no images) records the family history of the rulers of the area and therefore contributes to the cultural history of the period. Now in the British Museum and forming part of the 546 artefacts collection of the 'Salcombe Cannons Site' raised by SWMAG



These factors may be further reinforced by what is a tradition originating in early history of diving. From the earliest days of hard hat diving in the early 19th century the salvage divers have had a tradition of gathering, displaying and selling, artefacts recovered.³⁷⁷ Such was and remains the public fascination with such recoveries from the seabed that entire museums are devoted to such material, as are auctions thereof.³⁷⁸ Clearly this fascination with the recovery of what are, often, unremarkable items which on land would probably be regarded as disposable refuse, remains strong in the public's mind. With the emergence of recreational SCUBA diving in the 1950's this tradition was evidently carried over and became a significant threat to underwater cultural heritage.

All these factors created a cultural mindset, both within the general public and the recreational diving community, which instinctively drives recovery of items from the seabed and in which there is no recognition of the principle or benefits of in situ preservation. For an illustration as to how deeply this cultural mindset is embedded within the public psyche one only has to look at the relatively recent events surrounding

³⁷⁷ See further Bevan, J, 'The First Treasure Divers' (2010) Aqua Press Essex. For a later, 20th century illustration of this culture see Grosset, H. 'Down to the Ships in the Sea' (1953) Hutchinson & Co. London

³⁷⁸ See for example <http://museum.maritimearchaeologytrust.org/> and <https://www.shipwreckcharlestown.com/> and <http://www.numa.net/2017/06/nanking-cargo-riches-from-the-orient/> (last accessed October 2018)

the grounding of the timber cargo of the *Kodima*³⁷⁹ and of the bulk container vessel the *Napoli*.³⁸⁰ Both instances saw considerable numbers of the public gathering to recover items of cargo, sometimes at considerable physical risk to themselves, the economic value of which probably did not warrant the time and effort expended and certainly not the risks taken. What occurred was more an expression of cultural values than exploitation of an economic opportunity. With the creation of a single Receiver of Wreck for the United Kingdom as an official of the Marine & Coastguard Agency (MCA) in 1992, a concerted drive was made by the Agency to educate the recreational diving community as to the merits of in situ preservation and to raise awareness of the obligation to report recoveries of wreck. From the late 1990's significant resources, led by the United Kingdom's diving organisations, the ROW and the Joint Nautical Archaeology Policy Committee (JNAPC), were devoted to a public education campaign to educate divers to 'Take only photographs, leave only bubbles' and to report any recoveries to the Receiver of Wreck.³⁸¹

While there is compelling evidence that these educational initiatives have substantially changed attitudes within the diving community, it is unclear as to what extent they remain alive. There is anecdotal evidence that in some regions of England they remain, albeit as a minority view, within the diving community. Concern has risen that resources for the continuation of these educational initiatives are no longer available, so its continuation has been scaled back and that such educational efforts need to be refreshed and resourced again to forestall a resurgence of such activities.³⁸² Furthermore, concern has been expressed by MCA officials that parallel, non-statutory, voluntary reporting schemes for the recovery of wreck and other heritage material are confusing the public,³⁸³ who may not realise that they are also legally obliged to report wreck recoveries to the ROW. Clearly these officials would prefer that such voluntary avenues did not exist.

³⁷⁹ *The Kodima* grounded in Whitsand Bay, South Cornwall in 2001. Much of her cargo of cheap timber washed overboard before the ship was pulled clear and local persons went to extraordinary efforts to bring what was timber of little monetary value up cliff faces. See further: <http://www.looe.org/kodima.html> (last accessed October 2018).

³⁸⁰ The container ship *Napoli* was deliberately beached off Branscombe, South Devon in 2007. Multiple containers came ashore and hundreds of persons descended upon the beach, breaking open sealed containers and causing public disturbance. See further https://en.wikipedia.org/wiki/MSC_Napoli#Beached_at_Lyme_Bay (last accessed October 2018) and 'Salvage, Pollution or Looting: The Stranding of the *Napoli's* Cargo' Glover, M. Lowther, J. & Williams, M.V *Journal of International Maritime Law* (2009) 15(1) pp. 65-98.

³⁸¹ The initiative was entitled 'Respect Our Wrecks' and received wide support from heritage organisations, agencies and government departments. It published leaflets such as 'Underwater Finds' and 'Underwater Finds Guidance for Divers' and continues online <https://www.bsac.com/advice-and-support/respect-our-wrecks/respect-our-wrecks-policy/> (last accessed October 2018).

³⁸² The view was echoed in interviews that such educational initiatives highlighted issues for a while, then funding diminishes or stops, so the next 'generation' of users come through without that educational information. Continuity of funding is regarded as essential by these interviewees.

³⁸³ Although not expressly identified it is reasonable to assume the reference made was to the Portable Antiquities Scheme <https://finds.org.uk/>, the Marine Antiquities Scheme <https://marinefinds.org.uk/> and the Fishing Industry Protocol for Archaeological Discoveries <https://fipad.org/> (last accessed October 2018).

5.2 Enforcement Challenges

Coastal Police Services



Picture Credit: Hampshire Constabulary – one of the craft from the marine unit on Patrol

While management of UHA in the English Inshore Marine Planning Area is the responsibility of Historic England, investigation and prosecution of offences under the PWA and AMAAA is, as noted above, the responsibility of the relevant coastal Police Service.³⁸⁴ The problem of protecting UHA for these coastal Police Services are manifold. The challenges of protecting UHA due to the physical environment have already been noted above. It is also a given that protection cannot be pro-active in terms of 'standing patrols' to any large extent or indeed at all in the future, due to lack of resources. Rather the gathering of intelligence, protection, investigation and prosecution has to be predominantly preventative, reactive, and intelligence led. Even then a lack of resources, training and perceived priority are significant constraints.

Half of the coastal Police Services interviewed lack a dedicated marine unit and those that do have a very limited capacity. Noticeable exceptions to this are the Hampshire & Isle of Wight Constabulary, who proactively patrol, were aware of protected UHA's and conduct educational outreach to local sailing and diving clubs; and Kent Police,, who also proactively patrol. To a large extent, the former's educational and outreach activities appear to be the initiative of a single officer who is interested in heritage and in any event due to funding constraints the Unit was scheduled to be disbanded in

³⁸⁴ Enforcement relating to Marine Licensing is the responsibility of the Marine Management Organisation, while enforcement under the Protection of Military Remains Act 1986 is the responsibility of the MOD Police.

March 2019 although intervention by the Hampshire PCC averted this loss. In the case of the Kent Police, although several members had a degree of knowledge of the regulatory frameworks surrounding UHA, this was not felt to be sufficiently developed and the Force does not appear to conduct educational outreach. Elsewhere Police capacity for protecting UHA was significantly more limited.³⁸⁵

Of the Police Services interviewed none reported having a designated Heritage Crime Liaison Officer (HCLO) as such. This seems to be a label that does not actually exist on the ground despite what we had previously heard. All the services were covering this role with one or more Rural Crime team members within that team taking responsibility for heritage crime but the tasking was covered by the rural team as a whole rather than a designated person with the job title of 'HCLO'.³⁸⁶ This seems to be an approach that is working, although it appears that there is insufficient development of specialist knowledge and awareness of the regulatory framework for UHA. Undoubtedly this is a reflection of Policing priorities and a lack of sufficient specific training, coupled with the fact that since the responsibility for crime against UHA is relatively new to the remit of Rural Crime teams it means they are still finding their feet in this respect. In all cases, with the exception of the Hampshire & Isle of Wight officer, all members of the Rural Crime Team interviewed readily conceded a lack of specific knowledge of the regulatory framework surrounding UHA's, were not aware of any specific training on the matter³⁸⁷ and felt that if they or colleagues were confronted by a UCH issue, they have to seek basic information about that regulatory framework and whom to contact for help other than Historic England. This last point was underlined during the course of the Project when, following an interview with the Project's authors, one coastal Police Force subsequently contacted the Project team seeking information relating to the regulatory framework for UHA, as a potential offence relating to UHA's had been brought to their attention and the Force was struggling to access that information.

An easily accessible source of such information and of the location of UHA in a policing area was felt to be highly desirable but presently lacking, and a potential obstacle to effective protection. In turn there was also a clear perception that this lack of UCH awareness led to a perceived lack of priority concerning UCH crime. In particular the absence of a perceived monetary value was felt to result in an assignment of a low priority to marine or terrestrial heritage crime. Crimes against terrestrial property frequently have a tangible economic loss ascribed to them and it was felt that Police Services were accustomed to that and were more comfortable when that was present, whereas UCH crime frequently, though not necessarily, involves material where economic values are low but cultural values, especially in terms of cultural information, can be high. As one Police officer put it "*The key to making it more of a priority is providing the context – what is the impact on the community?*". Set in the context of

³⁸⁵ The position in respect of education and outreach is fluid and under development, Mark Harrison (*pers comm.*)

³⁸⁶ Although this format is utilised in a range of crime types e.g, Wildlife Crime and so should perhaps be viewed as a positive, Mark Harrison (*pers comm.*)

³⁸⁷ Basic training on heritage crime in general has been provided by Historic England, in particular, HE has provided training to over 9,000 practitioners and community activists, with officers from Kent and Essex being particularly knowledgeable. Mark Harrison (*pers comm.*)

the National Strategic Assessment, this is perhaps indicative of the highlighted dissonance between the operational realities and the policy imperatives identified in the Assessment.

In effect a lack of training, contextual cultural awareness and resulting perception of low priority becomes a negative feedback loop. This is illustrated by the fact that there was very little or no awareness of the existence and potential of NMIC within the Rural Crime teams, although Police Forces are 'plugged' into NMIC, and no specific crime prevention is undertaken for UCA crime, with the noticeable exception of Hampshire & Isle of Wight Constabulary, despite the fact that Police Community Support Officers (PCSO's) have a specific crime prevention role. At least two Police Officers identified the potential for PCSO's in coastal forces to conduct an educational and crime prevention initiative with local diving and other recreational water user clubs, dive shops and charter boat skippers but conceded that they were unaware of such an use of this available resource.

A '*strumenti con immanicatura a cannone*' from Salcombe 'B' Bronze Age Wreck Site. This class is peculiar to Sicilian late prehistory. The first secure Bronze Age object of Mediterranean origin to be found in North West Europe, its monetary value is probably very low, but as secure evidence of pan European trade in the Bronze Age its cultural value to present society is extremely high.



The problem appears to be compounded by the fact that there is no unique 'tag' within the crime recording system specifically for heritage crime per se, so that it is difficult to quantify the extent of the problem and the societal impact and to justify the expenditure of resources in relation to it. Additionally if heritage crime had a specific tag assigned to it then sentencing could be harsher as heritage crime carries harsher penalties. In turn this would potentially result in a higher priorities being assigned to heritage crime as a more serious offence and perhaps greater resourcing would be provided. Interestingly MCA officials made the same point, ascribing a lack of importance attached to UCH crime by the Police to a lack of economic loss being involved, which in turn resulted in a perception of low priority and disinclination to prosecute offences involving UHA. Conversely, the MMO appears to be very aware of

loss of cultural value where marine licensing offences have occurred and several prosecutions have featured this aspect.³⁸⁸

While it appears that a change in mind-set within the wider Police Service would be beneficial, since the knowledge of underwater heritage crime is very limited, the overriding impression gathered is that the will of the Rural Crime teams to engage with the issues in respect of such crime is increasing as they are interested now that it is within their remit and Historic England has made valiant efforts in terms of Police liaison. However, these teams still appear to lack specific training and ease of access to specialised information and available resources, so that they tend to operate in something of a vacuum apart from contact with Historic England. While it would be entirely unrealistic not to acknowledge the restraints imposed by current public funding upon the service levels that the Police can provide and how this relates to operational Policing priorities,³⁸⁹ there are clearly adjustments and initiatives that could be undertaken within existing resources at little additional cost. These are discussed in more detail in the subsequent section.



17th Century Clay Pipe from the Salcombe Cannons site, exhibiting a number of rare or unique features, provisionally dated to 1635-54 (Davey, 2003). Only a few other similar items of the period exist. The mouthpiece end is missing and a small chip is out of the bowl. Again, low monetary but high cultural value.

³⁸⁸ See further: <https://www.gov.uk/government/news/man-found-guilty-of-marine-licensing-offences-relating-to-salvage-of-shipwreck> ; <http://thepipeline.info/blog/2018/06/23/wreck-divers-jailed-for-theft-from-protected-wreck-of-wwi-hms-hermes/> ; <https://www.gov.uk/government/news/master-and-owner-charged-for-illegal-salvage-of-sunken-vessel> ; <https://www.bbc.co.uk/news/uk-england-kent-27426100> (last accessed October 2018).

³⁸⁹ Currently these priorities were stated to be offences against persons, not property, which are considered to be high risk and high harm. Examples given included were child abuse and exploitation, modern slavery and people trafficking and counter terrorism.

Ministry of Defence Police

Although the Ministry of Defence Police (MDP) has a large marine fleet of launches and rigid inflatables, its potential is limited by the relatively small geographical location of these units, presently being restricted to the three Naval Bases at Plymouth Devonport, Portsmouth and the Clyde. However since all three locations have important UHA's located within their harbour boundaries the potential of the MDP to enhance protection of UHA's is not insignificant.

It is not surprising that the constraints facing the utilisation of the MDP for such enhancement mirror those in relation to coastal Police Forces. While the MDP continues to have a relatively large waterborne presence, a similar lack of familiarity with the regulatory framework surrounding UHA exists, as does a lack of provision for training or ease of access to information concerning location of UHA and potential 'escalation' routes and communication points. Interestingly, a basic guide to the regulatory framework concerning fisheries is available to MDP officers afloat, which suggests that a degree of cross-party working is already underway and clearly MDP have no reservations about such working, subject to the customary caveats concerning operational priorities and resource implications. MDP reported no aerial assets and informed the authors that if such were needed that they would approach the drone unit of the relevant Home Office force.



(Image © Crown Copyright 2017)

Border Force



CPV NIMROD

Border Force's fleet of Coastal Patrol Vessels (CPV's) engage with the local maritime public and act as a highly visible deterrent to those who would engage in criminality at sea.

(Picture credit: Cdr. Mark Pester)

Of all the 'sister' agencies Border Force (BF) appears to have the greatest potential for enhancing protection of UHA at sea, due to its extensive maritime capability, extent of its presence at sea, which, as one officer put it, leads to an appreciation of local situational awareness and what is "*normal at sea*". These capabilities, combined with the fact that, as noted above, BF has marine enforcement powers under the Policing and Crime Act 2017 (PACA) that can be exercised at sea in respect of protected UHA under the PWA, AMAAA and PMRA does more than put 'eyes and ears' on the water.³⁹⁰ This has the potential to directly enhance protection of UHA in English waters. Moreover, BF has a strong cross party working institutional ethos, already working closely with the MCA, the MMO and IFCA's, as well as having a Memorandum of Understanding (MOU) with National Coastwatch Institution (NCI). Joint working

³⁹⁰ These marine enforcement powers can be exercised by virtue of s.84 Policing and Crime Act 2017. When interviewed BF officials were unaware of the full implications of s.84 and were under the impression that BF officers could only observe and gather evidence. Clearly s.84 empowers direct intervention where a BF officer suspects a criminal offence is being committed under the PWA and AMAAA.

therefore is clearly a strong ethos within BF. Nevertheless there are legal and resource limitations presently facing the utilisation of BF for enhancing the protection of UHA's.

Unless BF officers are able to satisfy themselves that they need to use the marine enforcement powers in order to prevent, detect, investigate or prosecute an offence, they will be limited to monitoring sites and vessels and, where possible, taking photos from afar. This means that for those UHA not protected under the PWA, AMAA or PMRA, the marine enforcement powers detailed above will only be available to BF officials where the damaging activity suspected by Historic England and/or BF officials is either in breach of an existing marine licence or is being carried on without a marine licence where one should be in place, or is in potential breach of the provisions of the Merchant Shipping Act 1995 (MSA) because it is suspected that no report to the Receiver of Wreck has been or will be made of any material recovered from any unprotected UHA site.

Further limits on BF officers' powers under the PACA are the Flag State of any vessel it encounters and the area of waters in which such a vessel is encountered. These are summarised at Figure 1 below. While the maritime enforcement powers are available to BF officers without any prior authority in relation to UK vessels (and vessels with no flag state) within English and Welsh territorial waters, the prior authorisation of the Secretary of State for the use of any of the maritime enforcement powers in relation to a foreign vessel (or any vessel of the Isle of Man, the Channel Islands or any British overseas territory) in English and Welsh territorial waters is required.³⁹¹ This authorisation can only be given where the foreign state has either requested or consented to the involvement of the UK authorities or where the Law of the Sea Convention (LOSC) provides authorisation to UK officials to exercise the relevant powers.³⁹² This requirement will limit the effectiveness of BF officials, particularly in relation to foreign ships found within English waters. Given that the protection of UHA would be a marginal activity for BF, it is open to question whether they will want to commit the resources and time to acquiring prior authorisation from the Home Office and, further, whether the Home Office will be willing to do the same where the consent of the Flag State is required. In addition, the prior authorisation of the Secretary of State is also needed where the maritime enforcement powers are to be used in respect of a UK ship in foreign waters. Such authorisation will only be given where the relevant foreign state has consented to the use of the powers. This limit on the maritime enforcement powers in the main will fall outside the scope of this Report, which is focused on matters within the English Inshore Marine Planning Area. However, this limitation may be important to note in instances where any UHA is sited or vessel is encountered close to the edge of English territorial waters. If the vessel is in fact stopped outside of territorial waters then prior authorisation might be needed in the limited instances where England's territorial waters border foreign waters (such as in

³⁹¹ S.85(3) PACA.

³⁹² S.85(4) PACA.

the English Channel and by the Isle of Man, which is treated as a foreign state for the purposes of the 2017 Act).³⁹³

Additionally there are also problems facing the utilisation of BF for enhancing the protection of UHA that relate to logistical deficiencies. As with the coastal Police Forces there is no training provided as to the context of UCH nor the regulatory framework surrounding it. Sites designated under the PWA are marked on Admiralty charts, but the information is just one aspect amongst many other features, which does not make it readily accessible. Nor are BF made aware of any undesignated or unscheduled UHA that are of particular interest, unless specific information or tasking relating to unauthorised activities on such sites comes through the MCA or the MMO via NMIC and JMOCC. In many ways these deficiencies mirror those highlighted with coastal Police Forces and their Rural Crime teams. However, notwithstanding these problems, the utilisation of BF's marine capability to enhance protection of UHA has significant and, as yet, untapped potential.

³⁹³ As are the Channel Islands and British Overseas Territories (s.95(1) Policing and Crime Act 2017)

. Marine Enforcement Powers

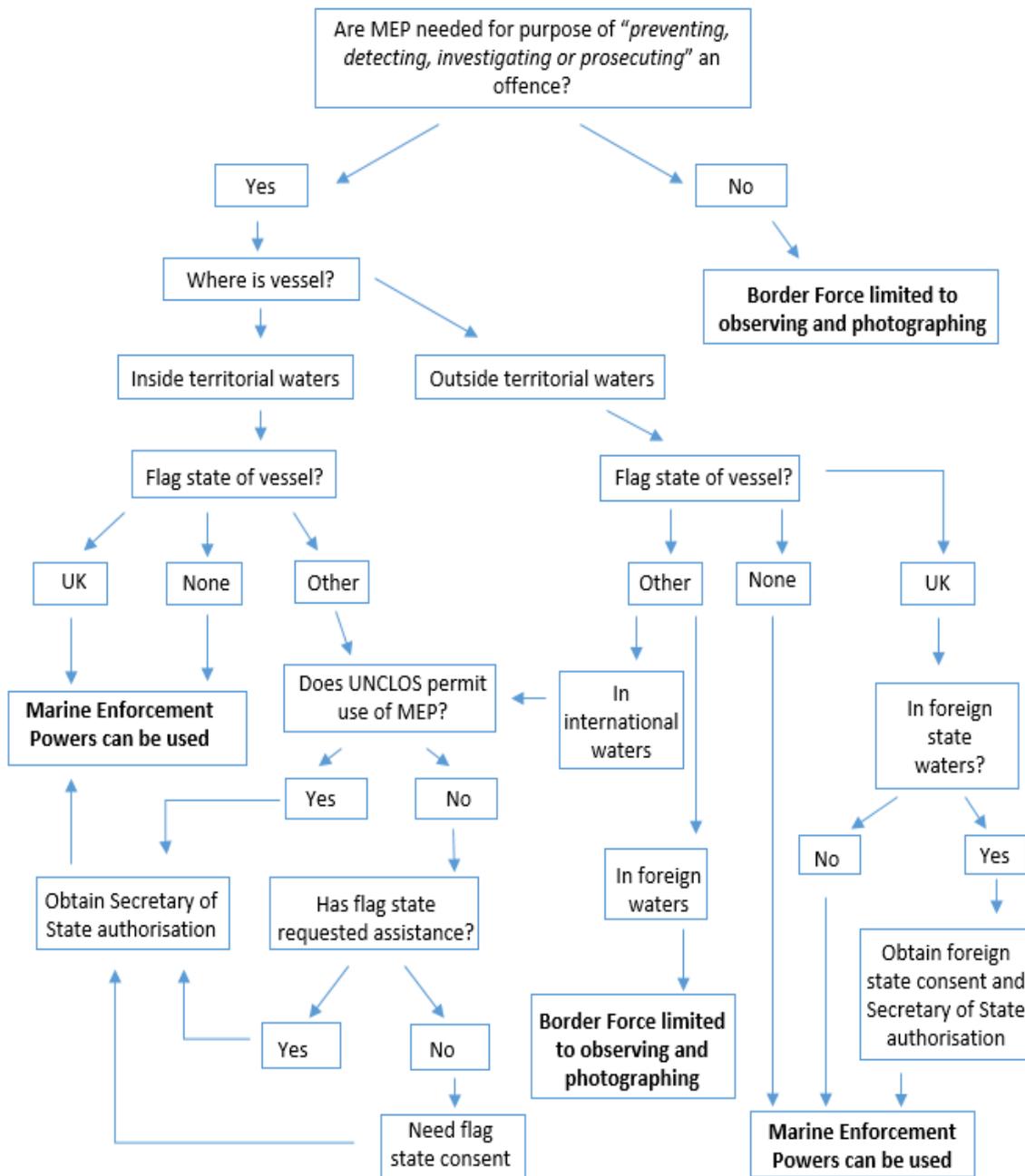


Figure 1

Inshore Fisheries & Conservation Authorities

Devon & Severn IFCA Enforcement Officer Dan Cresswell undertaking a routine patrol in Plymouth Sound. This is one of several patrol vessels operated by Devon & Severn IFCA and in Autumn 2018 the Authority took delivery of a large RIB patrol vessel with enhanced 'standoff' infra-red surveillance capability. In future this surveillance capacity may be augmented by the use of Unmanned Aerial Vehicles .



At the time of writing, Inshore Fisheries & Conservation Authorities (IFCA's) possessed approximately 34 Category 2 or 3 boats, which are regularly used to patrol within their statutory Districts. This marine presence, together with a statutory duty under s.174 MACCA to co-operate with any public authority regulating activities in the sea within an IFCA District, and an existing facility for being tasked via NMIC and JMOCC, offers significant potential for enhancing the protection of UHA. After BF, IFCA's offer the second largest potential for enhancing protection of UHA at sea.

This potential is not as great as that of BF, since IFCA officers lack marine enforcement powers under the PACA that BF officers possess and an IFCA District only extends seaward out to 6 nautical miles from the Baseline, which covers only half of the 12 nautical mile seaward extent of English Inshore Marine Planning Area Historic England operates. This means that IFCA officers could only observe, acting as 'eyes and ears on the water'³⁹⁴ within half of the seaward distance of territorial waters.³⁹⁵ Furthermore, other current limitations are present, which mirror those noted in respect of coastal Police Forces and BF. While IFCA's are regularly tasked through NMIC and JMOCC for co-operative tasks, such as observation on vessels of interest to the MMO in respect of marine licensing offences, it appears that Historic England does not fully avail itself of NMIC's resources and no tasking comes through JMOCC to IFCA's upon behalf of Historic England. Additionally, there is no training provided to IFCA officers in relation to the context of UCH nor the regulatory framework surrounding it and, while sites designated under the PWA are marked on Admiralty charts, the information is just one aspect amongst many other features, which does not make it readily

³⁹⁴ A view endorsed to the authors by the Association of Inshore Fisheries and Conservation Authorities (AIFCA).

³⁹⁵ Though with the formulation of a new UK Fisheries policy post Brexit it is possible that the inshore remit of IFCA's will be extended to encompass all UK territorial waters, i.e. up to 12 nautical miles off shore.

accessible. Consequently, the presence of protected sites under the PWA is neither readily accessible to IFCA officers nor is it highlighted to them. Also IFCA's are not made aware of any undesignated or unscheduled UHA that are of particular interest. The intelligence gathering capacity of IFCA's, which given the local nature of their knowledge and work within specific Districts, is considerable, does not therefore appear to be currently utilised by Historic England or DCMS. Each IFCA also possesses a website, which is heavily utilised by both commercial and recreational sea users and could be a valuable outlet for both disseminating information and receiving it. Given the government's policy drive to greater cross departmental and cross agency working this must represent a considerable opportunity to enhance protection of UHA, at least out to 6 nautical miles. This would not be without challenges and some interviewees felt that what they termed as the 'silo approach' typical of regulatory frameworks meant that any cross party working could be potentially constrained by a lack of inter-departmental communication between DEFRA (the IFCA's' parent department) and DCMS (Historic England's parent Department). However, it was observed that the current 'line from the Treasury' was for innovation, rather than any increase in resources, and the principle of 'better together' could facilitate cross-party working in enhancing protection for UHA provided that issues of inter-departmental communication could be overcome and such cross-party working was incentivised.

Marine Management Organisation (MMO)

As detailed previously Historic England has inherited a MOU with the MMO and it appears that a close working relationship exists, with Historic England acting as statutory adviser to the MMO in relation to UCA. Historic England frequently provides advice relating to marine licence applications and has acted in an expert witness capacity in relation to the recent prosecutions the MMO has conducted in respect of marine licensing offences committed on unprotected UHA's. In many ways the working relationship between Historic England and the MMO appears to be the closest of all the current working relationships. That said, inevitably it is not without some limitations which the MMO felt could be improved upon. Intelligence sharing was felt to be capable of improvement, as was real time electronic monitoring of vessels' proximity in respect of UHA. In this respect there was considered to be potential in developing an intelligence network. The MMO also questioned the extent to which Historic England had in-house intelligence analysis capability, as it appeared uncertain whether Historic England did. Additionally it is felt that awareness raising for MMO staff in respect of UHA's could be beneficial. In many ways the working relationship between Historic England and the MMO is a template for other working relationships and while aspects requiring improvement can be identified the relationship appears to be relatively problem free.

Royal Navy Fisheries Protection Squadron (RNFPS)



With a planned increasing sea presence from new vessels being commissioned, the RNFPS would seem to offer considerable potential for enhancing protection for UHA. Unfortunately foreign water commitments are likely to result in only three vessels being available to patrol UK waters. Additionally where these vessels concentrate within UK waters will be dictated by fisheries intelligence, seasonal fishing patterns and the types of fishing vessels being utilised. These parameters are likely to result in significant logistical restraints upon the ability of the RNFPS to enhance such protection.

However, post Brexit UK fisheries policy may deliver extra RNFPS resources and within these limitations the RNFPS offers potential for cross party working, akin to that presently conducted by the RNFPS with the MMO in relation to fisheries and, to a lesser extent, marine licensing. Indeed the Squadron's very existence is due to the need for such working and there is an expressed willingness and interest in doing so in terms of UHA. As with the coastal Police Forces and BF, the present constraints are centred upon a lack of knowledge of the context and regulatory framework surrounding UHA³⁹⁶ and a lack of clarity concerning appropriate procedures for reporting potential infringements, other than those related to marine licensing. Tasking of RNFPS vessels also comes through the MMO, not NMIC, though there appears to be an 'understanding' these assets can be tasked in other activities. Nevertheless how

³⁹⁶ Though interestingly the point was made that RN personnel have a higher than normal appreciation of the value of cultural heritage since heritage forms a core value of their training through RN history.

intelligence led protection and enforcement would be tasked to RNFPS vessels may need to be clarified and standardised.

NMIC

Along with the utilisation of BF's marine enforcement powers the involvement of NMIC is the most effective step that could be taken to enhance protection of UHA. Currently some logistical and communicative difficulties present themselves but these seem surmountable without any undue difficulty. NMIC confirmed that Historic England is not engaged with it and interviews with the Rural Crime teams of coastal Police Forces revealed few were aware of the role of NMIC or its potential in terms of marine heritage crime. Conversely BF is. NMIC has no database of protected UHA or unprotected ones and once again the issue of attaching a monetary worth to UHA was highlighted by NMIC, in that it would be helpful in providing justification for NMIC to engage in the enhancing of their protection. While such attachment is feasible, it may be more beneficial also to highlight the cultural value of UHA, which can often exceed that of monetary value, and the impact upon society of the loss of such cultural assets other than in monetary terms. This difficulty of regulatory systems affording priority, or even engagement, on the basis of monetary values is obviously a traditional method for evaluating operational priorities but it can be especially inappropriate for cultural heritage and is an issue which Historic England may well wish to consider in future when devising its engagement with NMIC, BF and Police Rural Crime Teams.

Maritime & Coastguard Agency and Receiver of Wreck



On 15th May 2014 two Kent divers, David Knight and Edward Hussey were convicted of not declaring multiple wreck recoveries to the Receiver of Wreck contrary to s.236 & s.237 Merchant Shipping Act A 1995. The MCA estimated the value of the undeclared recoveries at approximately £250,000.

The Receiver of Wreck (ROW) is an official of the Maritime and Coastguard Agency (MCA), which has its own enforcement capabilities and brings its own prosecutions under the MSA. The MCA enforcement team and the ROW already work with the Heritage Agencies, the MMO, and coastal Police Forces and especially closely with NMIC and BF. Consequently, MCA officials appear reasonably satisfied with the present cross party co-operation in respect of heritage crime relating to wrecks.

As noted previously, some concern was expressed over the apparent lack of understanding of coastal Police Forces in respect of the context of heritage crime and the potential impact upon society, which could not always be quantified in monetary terms, as well as the availability of voluntary parallel reporting schemes for recoveries from UHA, which were felt to be confusing to the public. The absence of Webcams in harbours was also felt to be an unfortunate omission, but otherwise no problems, other than those inherent in enforcing the regulatory framework surrounding UHA were identified and no new pathways for developing cross party working were identified.



Copper 'Bun' Ingots and Tin 'Plano-convex' ingots from the Salcombe 'C' Bronze Age Site c. 1000-850BC. Copper and Tin are the two materials alloyed together to make bronze tools. These ingots do not visually appear to be very impressive or significant and would have little monetary value, but the Salcombe wreck provided the first secure evidence of a flourishing pan European Bronze Age metal trade, so they effectively wrote a new chapter in the Bronze Age history of the UK. Relatively low in monetary value in today's society but culturally highly important in that they provided the first secure confirmation that European trading was taking place along the south coast of Britain. The ingots are all now in the British Museum and form part of the 390 artefacts Bronze Age collection from the Salcombe Bronze Age sites raised by SWMAG to date.

National Coastwatch Institution

The National Coastwatch Institution (NCI), on an ad hoc local basis, often monitors diving activity on sites, especially where the presence of UHA is brought to the individual station's attention.³⁹⁷ However, there is no institutionalised system for making such arrangements, nor does there appear to be any formal arrangement between Historic England and the NCI for bringing such sites to the NCI's attention, sharing intelligence between Historic England and the NCI or a MOU between the two organisations. The potential of the NCI to monitor activity on UHA is constrained by the fact that there are areas where there is no NCI station and many protected UHA are not buoyed as such, making exact position fixing of diving activity difficult, which in turns limits the evidentiary value of such monitoring. Within these constrains though

³⁹⁷ Such a site are the designated sites off Prawle Point, Salcombe in Devon, where the licenced diving group, the South West Maritime Archaeology Group, has entered into a site security arrangement with Prawle Pont NCI and Falmouth Coastguard. This is discussed further below.

the NCI could be a valuable resource for enhancing the protection of UHA if this potential was to be developed.

Environment Agency and Natural England

The Environment Agency (EA) and Natural England (NE) appear to offer very limited opportunities for cross-party working to enhance protection of UHA, principally due to their limited marine presence and capabilities.

The EA is currently limited to small coastal vessels and 3 to 5 larger coastal vessels. These are quite specific in their location, engaged in water bathing quality monitoring and do not venture far offshore, sea based patrols no longer being conducted by the Agency. It is doubtful that EA has any UHA awareness or knowledge of the regulatory framework surrounding UHA's. From the EA's perspective such awareness raising or training would have to be minimally invasive in terms of staff time and while EA staff could act as eyes and ears on the foreshore and, to a limited geographical extent, at sea the costs would have to be equally minimal to the Agency. All in all the opportunities for cross party working with the EA would seem very limited.

Similar considerations apply to NE. NE has no sea going capability of its own and there is little awareness of UHA or the regulatory framework surrounding them. However, NE does have a presence on the coastal fringe and foreshore and protection is very much an organisational ethos, so some capacity exists for information sharing, with NE staff acting as 'eyes and ears', provided some training could be provided in relation to UHA and the regulatory framework with minimal impact upon staff resources.

Chapter summary

The key points extracted from Chapter 5 are summarised below:

- A degree of cross-party working already exists but often on a local, '*ad hoc*' basis.
- There is widespread institutional acceptance and even enthusiasm for further cross-party joint working.
- There are a number of very significant opportunities for cross-party working available to Historic England.

Problems

- Parties with the potential to be involved in cross-party joint working lack an understanding of the context, nature and cultural importance of UHA.
- These parties also lack easy access to information relating to the regulatory framework surrounding UHA, their location and the appropriate procedures/protocols to follow when in suspected cases of underwater heritage crime.
- There is no national protocol for handling UHA crime. In particular this potentially leaves Marine Police Units and Border Force officers at an operational disadvantage.
- As a result of the above, a focus upon financial values when assessing the seriousness of offences and no unique 'tag' for recording underwater heritage crime it is perceived as a low priority.
- It appears insufficient advantage is being taken of the potential for crime prevention and reporting by use of stakeholders Volunteer Police Officers and PSCO's.
- These issues are a constraint and require addressing as a prerequisite to further joint working.
- While Police marine assets are declining those of Border Force and RNFPS are increasing.
- The Police and Crime Act 2017, with its conferment of marine enforcement powers upon Border Force officers, represents a highly significant potential enhancement to the protection of UHA.

6. Solutions

Enhancing protection for UHAs requires a multifaceted approach to build on the work already being undertaken by Historic England and others. Through this project, interviews have been conducted with representatives from a range of agencies and organisations whose work covers the marine environment (Table 1, Annex 1). The aim of these has been to determine what is currently being done and to identify ways in which protection could be enhanced at minimal cost through awareness raising and making better use of resources already in place.

Some agencies/organisations are already involved in such work, and the ability of each organisation to engage varies depending on their remit and on the water presence as in Chapter 4. Some agencies, for example BF and the RNFPS have the ability to formally investigate vessels suspected of illegal activity through stop and search, whereas others such as the IFCA and NE would have to take a more passive approach limited to intelligence gathering. All, however, have the potential to make valuable contributions to observation of activity and enhancing protection of UHAs. In order for this potential to be realised, awareness needs to be increased; if those working at sea have an understanding of what constitutes illegal activity and where protected sites are located then they have a far greater chance of investigating it or at least identifying and reporting it through the correct channels.

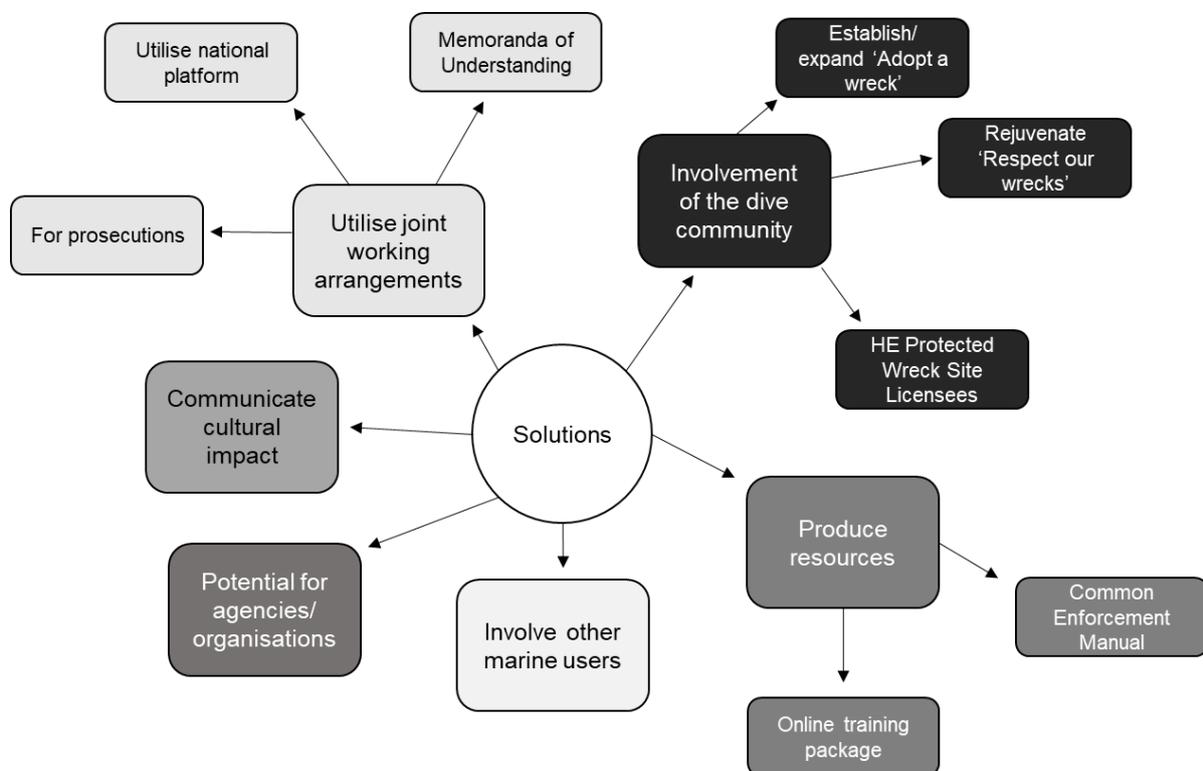


Figure 1: The suggested solution to enhancing protection for UHAs is multifaceted

It would appear that substantial will exists for making small changes to existing working practises to encompass more of a role for the protection of UHAs, particularly through joint working and intelligence gathering. This comes with the proviso that additional training and resources be made available such that the information required is clearly outlined as well as how and to whom it should be reported. If this can be achieved it should provide Historic England with a network for enforcement, intelligence gathering, reporting and enhancing protection of UHAs.

*Table 1: Joint working arrangements currently in place for all agencies/organisations interviewed and their future potential for engaging in the protection of UHAs. * NB. All expressed ability and willingness to help on the provision that adequate training and resources (e.g. Common Enforcement Manual (CEM)), (see Chapter 5) be provided to them. Assessment of level of awareness has been made through questions asked to staff interviewed.*

Agency/Organisation	Joint working arrangements	Level of awareness of UHAs	Potential*
Border Force (BF)	MMO, IFCAs, ROW, NCI Tasking & information sharing through NMIC	<ul style="list-style-type: none"> - Low - Not a formal part of their remit 	<ul style="list-style-type: none"> - Eyes & ears. - Could check and talk to vessels of interest – information gathering & photography - Act as a deterrent by their very presence - Marine enforcement powers
Environment Agency (EA)	MMO, IFCAs, MOD Police, Police Forces, Defra	<ul style="list-style-type: none"> - Low - Not a formal part of their remit and they are unlikely to interact with them through their daily tasks 	<ul style="list-style-type: none"> - Eyes & ears (limited scope as limited remit and water based assets)
Inshore Fisheries & Conservation Authorities (IFCAs) (including Association of IFCAs)	Other IFCAs, AIFCA, Chief Officers Group, MMO (Joint intelligence system), EA, NE, Police Tasking & Information sharing through NMIC via IFCA Enforcement Group	<ul style="list-style-type: none"> - Low - Not a formal part of their remit - Potential for some interaction due to fishing activity around wreck sites and artefacts being recovered from fishing gear 	<ul style="list-style-type: none"> - Eyes & ears - Joint intelligence system run with MMO enables logging of UHA activity
Marine Management Organisation (MMO)	BF, IFCAs, RNFPS, Police Tasking & information sharing through NMIC & JMOCC	<ul style="list-style-type: none"> - Medium - Dependent on role of staff. Those in the regional offices may have more awareness due to licencing 	<ul style="list-style-type: none"> - Eyes & Ears (regional offices already involved due to licencing) - Able to investigate where required - Have been involved in some successful prosecutions under MACAA 2009
Maritime & Coastguard Agency (MCA)	ROW, MMO, Police, HE (others as required through prosecutions) Tasking & information sharing through NMIC	<ul style="list-style-type: none"> - High - UHA protection and investigation of crime relating to UHAs within their remit 	<ul style="list-style-type: none"> - Already heavily involved as protection of UHAs falls within their remit - Supportive of ideas e.g. Online training, CEM

Agency/Organisation	Joint working arrangements	Level of awareness of UHAs	Potential*
Ministry of Defence Police (MDP)	RN, QHM, Home Office (if requested), BF, Police. Some connection to NMIC but no direct communication channel	<ul style="list-style-type: none"> - Low - No specific knowledge as not a formal part of their remit. - Some reports of following up leads from e.g. QHM and NCI in the past 	<ul style="list-style-type: none"> - Eyes & ears - Able to assist, enforce and take on monitoring and reporting - Marine enforcement powers
MSDS Marine	HE, Marine Consultancies, various project partners	<ul style="list-style-type: none"> - High - As an archaeological consultancy all their work relates to heritage 	<ul style="list-style-type: none"> - Eyes & ears - Research e.g. Site monitoring, protective markings³⁹⁸
National Coastwatch Institute (NCI)	HM Coastguard, BF, HE, Protected Wreck Licensees,	<ul style="list-style-type: none"> - Medium - Variation between watch stations due to location of protected wreck sites - Basic understanding heightened when protected sites are in proximity. - Some close working with HE licensees 	<ul style="list-style-type: none"> - Eyes & ears (can be requested to report sightings of vessels of interest)
National Maritime Information Centre (NMIC)	All government agencies (all government owned vessels are coordinated/feed into the information portals)	<ul style="list-style-type: none"> - Medium 	<ul style="list-style-type: none"> - Act as a central hub for UHA intelligence gathering/information sharing - Incorporate UHAs into daily operational brief - Geofencing for protected sites to monitor vessel interaction
Natural England (NE)	EA, IFCAs, Cefas. Others on a site by site basis e.g. local councils	<ul style="list-style-type: none"> - Low - Not a formal part of their remit and they are unlikely to interact with them through their daily tasks 	<ul style="list-style-type: none"> - Eyes & ears (limited to intertidal and occasional boat based fieldwork)

³⁹⁸ The Protective Markings project is under development by MSDS Marine who are working to develop unique identifiers to mark protected wreck sites. The technology will mean that any diver who has touched the site and any artefacts removed from it will be marked with the identifier ensuring traceability and a proven link to aid prosecution (MSDS Marine, *pers. comm.*).

Agency/Organisation	Joint working arrangements	Level of awareness of UHAs	Potential*
Police Forces	Other Police Forces, BF, MMO, HE, RN, local organisations	<ul style="list-style-type: none"> - Medium - Variation between and throughout Forces depending on instance of crime - Awareness is increasing as now a formal part of the remit of Rural Teams 	<ul style="list-style-type: none"> - PCSOs able to be proactive in crime prevention - Control room increase recognition of UHA crime as heritage and log appropriately - Marine enforcement powers
QHM Plymouth & Portsmouth	Good working relationship with other water users/regulators IFCA's, MDP, NCI, RN	<ul style="list-style-type: none"> - Medium - No CPD but awareness of wrecks within their waters. Port Conservancy Officers more aware 	<ul style="list-style-type: none"> - Eyes & ears - Conduit for information between different water users/regulators - Tasking of above
Receiver of Wreck (ROW)	MCA, MMO, Police, HE (others as required through prosecutions) Tasking & information sharing through NMIC	<ul style="list-style-type: none"> - High - UHA protection and investigation of crime relating to UHAs within their remit 	<ul style="list-style-type: none"> - Already heavily involved as protection of UHAs falls within their remit - Supportive of ideas e.g. Online training, CEM
Royal Navy Fisheries Protection Squadron (RNFPS)	MMO, RN, BF Tasking through MMO or JMOCC	<ul style="list-style-type: none"> - Medium - Some instances of investigation where fishing vessels have been engaged in salvage - General awareness of the importance of UHAs due to Naval history 	<ul style="list-style-type: none"> - Eyes & ears. Potential to routinely record all sightings of vessels at/near wreck sites - Intelligence gathering - Ability to board and search any vessels engaged in salvage operations

6.1 Utilising Joint Working Arrangements

The majority of agencies working in the marine environment are already engaged in joint working (Table 1), primarily due to the need to share resources and minimise expenditure.³⁹⁹ Some agencies e.g. MMO and MCA rely on joint working for access to the water as they have no waterborne assets themselves,⁴⁰⁰ but the majority have some waterborne assets and are therefore at sea (often on a daily basis). The main value in joint working would almost certainly come via increasing awareness and intelligence gathering through provision of additional eyes on the sea. Working with these agencies/organisations and therefore capitalising on the resources already present would provide a cost effective method for enhancing protection for UHAs.

In most cases pre-existing joint working arrangements do not have a UHA component, but these arrangements provide a platform and lines of communication which could be utilised. Historic England has already established working relationships with many of the agencies/organisations interviewed, but it could be beneficial to formalise these arrangements and build on them further through making use of MOUs.

There are some agencies whose involvement would have even greater value due to their remit and powers. The RNFPS for example has under MACCA the power to board all vessels, rather than only fishing vessels, meaning that they would be able to stop and search if required. The same applies for BF whose remit, although focussed on incidents relating to the Immigration Act 2017 and the Modern Slavery Act 2015 also have the ability to directly enforce protection of UHAs under the PWA and AMAAA Acts due to the marine enforcement powers given to them under the PACA.⁴⁰¹

6.2 Memoranda of Understanding

Whilst not legally binding, MOUs do carry a degree of weight and mutual respect, formalising the relationship that exists between organisations, and this may provide a catalyst for the inclusion of heritage concerns into the working of agencies on a more visible basis. An MOU already exists between Historic England and the MMO⁴⁰² and it is suggested that this best practise should be expanded upon to encourage and engage agencies and organisations in the work of Historic England. In some instances there is pre-existing legal basis for these MOUs, for example with IFCAs through s.174 MACAA and BF through s.84 PACA.

MOUs could be drawn up between Historic England and all agencies/organisations mentioned here (Table 1) and this would give additional weight and formality to the process of protecting UHAs. By increasing the capacity for reporting through

³⁹⁹ For example, the MMO, IFCAs and EA have cross warranting powers through the MCAA 2009 and often share patrols (EA/IFCA *pers. comm.*)

⁴⁰⁰ MMO officers conduct fisheries patrols from Police vessels

⁴⁰¹ S.84

⁴⁰² The MMO also have MOUs relating to heritage with MCA and MoD (this relates to sustainable development and sustainable heritage)

formalising existing relationships in this manner it is more likely that were illegal activity occurring it would be reported through the correct channels.⁴⁰³

6.3 Use of an Existing National Platform

It is suggested that Historic England considers the value of NMIC as a central platform to utilise further the joint working arrangements already in place in the marine environment and expand them to encompass heritage protection. NMIC coordinates intelligence gathering and information sharing, providing a national platform which many agencies are already part of (Table 1) and through which joint working is facilitated, primarily for maritime safety and security. This could be capitalised on⁴⁰⁴ to encompass intelligence relating to UHA, providing a central point through which information could be passed to Historic England and other relevant bodies and through which tasking could be requested. Agencies such as BF view NMIC as an essential component of cross party working, proving its worth and potential for added value here.⁴⁰⁵ NMIC representatives suggested that intelligence relating to UHAs become part of their daily operational brief such that information would then be gathered systematically and routinely and reported back to Historic England.⁴⁰⁶ There would also be the possibility of establishing a database entry of protected UHA assets;⁴⁰⁷ an idea that has been supported by IFCAs, BF, Police Forces and the RNFPS as a useful resource. Furthermore, NMIC hold a list of vessels and individuals of interest compiled by the MCA/ROW which provides an additional useful resource.⁴⁰⁸

NMIC use the CAMTES platform and geofencing, which permits easy identification of any vessel through AIS which has entered a determined perimeter around a feature. This could therefore be used around protected wreck sites (and indeed already is for the HMS Victory 1744 and HMS Warrior) to afford additional protection. Vessels are able to dim their AIS to avoid detection however, which may mean they can enter such sites unnoticed, but the process of dimming it is in itself likely to draw attention as in the case of Friendship Offshore BV.⁴⁰⁹

Establishing this kind of relationship with NMIC would provide a gateway for Historic England to engage with a range of agencies and a channel for communication and awareness raising, increasing the likelihood of suspicious/illegal activity relating to UHAs being recognised and properly addressed. It is proposed that use of NMIC

⁴⁰³ With time this approach could be expanded to include those likely to be spending time at sea e.g. divers, fishermen, charter boat operators, yachtsmen

⁴⁰⁴ It was suggested by NMIC representatives that the best way to do this would be through DCMS as a relationship already exists in this respect for subsea cabling. Alternatively, BF representatives suggested tying heritage enforcement into Project Kraken as they would consider it to be an indication of criminality

⁴⁰⁵ Border Force, *pers. comm*

⁴⁰⁶ NMIC, *pers. comm*

⁴⁰⁷ NMIC, *pers. comm*

⁴⁰⁸ MCA/ROW, *pers. comm.*

⁴⁰⁹ The vessel's master Walter Bakker admitted he did not have the necessary marine licence for the salvage of approximately £90,000 of copper and steel and that he had dimmed his AIS to avoid detection.

would allow a clear structure and process to be followed and would likely come at marginal cost.⁴¹⁰

6.4 Prosecutions

Joint working has already proved to be especially valuable to assist prosecutions, with agencies such as the MCA, MMO, Police Forces and Historic England coming together to develop cases. In particular there have been three landmark cases which have set a precedent not only for how joint working between agencies can result in successful prosecutions, but also for showing that illegal salvage can and will be prosecuted (Boxes 1-3).

Box 1: David Knight & Edward Huzzey (prosecuted July 2014)

The case of Knight & Huzzey was a result of successful joint working between agencies including the ROW, MCA, Kent Police, HE and the MMO and was a landmark case, being the first time that prosecution had been brought against divers for failing to declare their recoveries of wreck under the Merchant Shipping Act 1995. They had failed to report any of their recoveries of wreck to ROW since they began salvaging in 2001, with artefacts in their possession taken from nine wrecks over a 13 year period and including eight bronze cannon, three propellers from German submarines, lead and tin ingots and other artefacts worth a total of more than £250,000. When they did report to ROW they were denied salvage.

The prosecution was led by the MCA. The defendants were ordered to pay costs of £25,000. Knight was fined £7,000 and Huzzey £6,500. Following the prosecution Knight applied for salvage rights for some of the artefacts, including the bronze cannon and ingots. This was denied.

Box 2: Vincent Woolsgrove (prosecuted September 2015)

The case of Woolsgrove can be seen as another landmark prosecution and key example of successful joint working between the MCA, ROW, Kent & Essex Police and Historic England. Woolsgrove initially filed a Report of Wreck and Salvage form with ROW in 2011 claiming the salvage of 3 cannon found outside UK territorial waters, to the north-east of North Foreland. ROW subsequently investigated and despite some doubts, did not have enough evidence to challenge the claim and awarded title to the cannon to Woolsgrove. The cannon were sold to an American collector. Renewed investigations were conducted by the MCA/ROW following fresh intelligence and the discovery of a further 61 undeclared artefacts. Upon further consultation and the involvement of the Dutch Maritime Police, Dutch historians and the FBI it was confirmed that the cannon were from the Anglo-Dutch wars and their full history was traced from manufacture to being lost on the seabed. They had been aboard two Dutch vessels which were captured by the English, at which point the cannon were stored at the Royal Armoury and then issued to the HMS London which sank in 1665 on its way out to sea at Southend. The MCA and ROW were therefore able to prove that the cannon had been recovered from the Thames, and therefore had sufficient grounds for prosecution under the Merchant Shipping Act 1995.

⁴¹⁰ Where investigation is required and assets are already at sea it is expected that there would be no associated costs for tasking, with costs only incurred where vessels were tasked specifically to put to sea to investigate intelligence received

The defendant was charged with fraudulent misrepresentation contrary to s. 2 Fraud Act 2006 and 61 TICs (taken into consideration) contrary to s.236 of the Merchant Shipping Act 1995. He served a 2 year custodial sentence, was fined £51,000 under the Proceeds of Crime Act 2002 and ordered to pay £35,000 costs. The investigating team were awarded the Attorney General Prosecutors' Convention Team of the Year award following the conclusion of the case, and their success set a precedent for future joint working, sending a clear message that prosecutions can and will take place.

Box 3: Nigel Ingram & John Blight (prosecuted June 2018)

The case of Ingram and Blight began after they were spotted in the waters near to the site of HMS Hermes in the Dover Strait. Following investigation of the site and searches of their homes, Ingram and Blight were accused of failing to declare over 100 artefacts taken from the wreck of HMS Hermes, which sunk after being torpedoed by a German submarine in October 1914 with the loss of 44 lives. The artefacts were estimated to be worth £150,000. The investigative partners in this case were MCA, Kent Police, Essex Police, MMO, Historic England and ROW.

The defendants were charged with fraudulent misrepresentation under s.2 Fraud Act 2006. Blight was charged with 4 counts of fraud and awarded a custodial sentence of 3.5 years and Ingram with 5 counts of fraud and awarded a custodial sentence of 4 years.

In all three cases, namely those of *David Knight & Edward Huzzey* (Box 1), *Vincent Woolsgrove* (Box 2), and *Nigel Ingram & John Blight* (Box 3) joint working was utilised to develop the case for the prosecution and to uncover the history of the artefacts.

6.5 Provision of Resources to Support Joint Working

In order for agencies/organisations to become more involved in the protection of UHA it is essential that awareness be raised so that their staff have a basic understanding. In most agencies/organisations there appear to be some individuals with at least a basic level of understanding of heritage in the marine environment (Table 1), but the majority of employees lack knowledge due to the 'out of sight, out of mind' nature of the problem and because they do not have to deal with UHA as part of their daily tasks. The interviews conducted here identified that whilst there was willingness to become more involved, this came with the caveat that training and information would need to be provided so that agencies/organisations could understand the type of information required and the steps to be taken to report it.

It is therefore suggested that resources be developed in order to provide training and support in this manner. This could be achieved through the development of an online training package complemented with a Common Enforcement Manual which could be kept to hand and aboard vessels for quick reference when dealing with a situation. Further steps could also be taken, such as collating a database recoding all known incidents of activities directed at UHA such that emerging patterns and consistent activity can be highlighted and awareness raised.

6.6 Development of an Online Training Package

The training provided to date by Historic England has been most beneficial in providing a background understanding of heritage crime for those who have taken part, but it is suggested that more in depth training is required relating specifically to UHA, their importance, the laws governing their protection and what can be done to enhance this. This appears to be desirable for the agencies working in the marine environment, and could form part of their ongoing CPD programs.⁴¹¹ In addition, rather than providing workshops and training days it is suggested that this training be provided as an online training package. With the budget limitations faced by all agencies/organisations this is thought to be a much more cost effective solution; training large numbers of staff rather than individuals attending a training day and sharing their knowledge.

Training should cover aspects such as:

- The regulatory framework surrounding UHA
- The importance of UHA (stressing their cultural value)
- The location of designated and scheduled sites
- The role of the MMO regarding licencing
- The role of ROW
- What could be done to enhance protection (tailored to be specific for each agency/organisation)
- The steps to take if intelligence is received or vessels are sighted conducting suspected illegal activity

Such a training package could take the form of online tutorials, videos, podcasts and multiple choice assessment questions to prove learning. As part of the training package it is suggested that an easily accessible reference system be provided such that more information is available to those that need it.

Training is of particular importance for the coastal Police Forces and BF. Currently many forces are expanding their work on heritage, but to date the majority have been focussed on land based heritage crime, in particular crimes such as nighthawking. It appears that few Police officers are aware of the laws surrounding UHA, the location of protected wreck sites or the seriousness of the cultural impact that crime can have, primarily as they have never dealt with crime related to UHA. It is important that their understanding is increased such that they are better placed to recognise and respond to crime relating to UHA. In addition, training is also required for personnel working in the control room. They have the responsibility for logging crimes correctly, and often heritage crime is not recognised and does not receive the correct tag. This is of key importance as if correctly tagged then it will be passed to the appropriate team (usually the Rural Team) and if prosecuted will carry a harsher penalty.

⁴¹¹ RNFPS stated that they run training courses for boarding officers and were happy to incorporate some UHA training within this

Given the potential offered by BF's ability to utilise Marine Enforcement Powers at sea under the PACA, a similar imperative for training exists for BF officers. It is envisaged that the training package could be exploited by both coastal Police Forces and BF, thereby securing economy of resources.

6.7 Develop a Common Enforcement Manual

To complement the online training package it is proposed that a Common Enforcement Manual (CEM) be written to provide a document which can be referred to in the event of an incident relating to UHA crime. The interviews revealed that agencies/organisations would need to have information to hand in an easily accessible format such that when incidents occur they can quickly determine the action required. All interviewees unanimously expressed a very high degree of interest in the idea of a CEM and the level of support for taking this forward into the development of a document was very high. The CEM should therefore be available to all agencies/organisations whose remit covers the marine environment, to be kept aboard any vessels working at sea.

The suggested content for the manual reflects the training package, namely:

- The regulatory framework surrounding UHA
- Maps of Protected Wreck sites and Scheduled Monuments⁴¹²
- Step by step guidance on what to do if a crime is suspected or observed (this would benefit from becoming a national protocol for UHA crime)
- Contact details for key individuals such as the ROW, Police Forces, Historic England
- Information about the cultural and economic impacts of UHA crime
- Information about the process of prosecution and sentencing.
- Asset register: A dedicated database giving details of protected assets (designated wrecks, scheduled monuments and any unprotected UHA of particular interest / importance). This would need to be dedicated so it is both quickly accessible and easy to digest

The provision of a map of protected wreck sites⁴¹³ is essential to ensure that their locations are known and any suspicious activity is correctly recognised. It is suggested that if possible these maps should be electronic and able to be added as a layer to the chart plotter of vessels at sea for quick reference when on the water, and also provided as pdf documents. Whilst maps of protected sites are available on the Historic England website, few individuals were aware of this, and inclusion of this information with the CEM was requested by those interviewed.

Pending the creation of a working relationship with NMIC, this document could be made available through their network to the relevant agencies/organisations.

⁴¹² NMIC suggest this could be provided via UKHO as a KLM file

⁴¹³ The RNFPS already have this information (for protected, scheduled and unprotected wreck sites) available on their plotters. Suggest the expansion of this to other agencies/organisations

6.8 Communication of the Impact of UHA Crime

The awareness of the cultural impact that UHA crime can have is generally considered to be low across those working in the marine environment, especially with regard to the cultural value of artefacts and sites. The cultural value is, however, of great importance, as outlined in Chapter 5 and it is recommended that it is a focus when promoting the importance of UHA protection.

When a case comes to court, it is often the financial value of the artefacts which shapes the scale of the impact of the crime as it is easier to communicate the implications of the theft to the jury,⁴¹⁴ but this may result in the cultural value of some items being neglected. HE have provided impact statements for the ROW to form part of cases being prosecuted relating to UHA and these have proved to be powerful in the outcome of the cases.⁴¹⁵ It is recommended that this forms best practice for all cases going forward in the hope that with time the courts give a higher appreciation to the cultural impact of such crimes and less focus on the financial value of artefacts is required.

A further consideration is that it is not always possible to place a financial value on an item, and where reliance is on monetary value this makes it difficult to communicate the true impact. For example, U Boat propellers will have a high cultural value, but rarely come up for sale meaning that when they do they are very difficult to value financially. In one such case investigated by the ROW the intrinsic value placed on a recovered propeller was approximately £5000, but the scarcity of such items meant that no accurate value could be determined as sale at auction would likely result in the item being sold for far more than its intrinsic value.⁴¹⁶

Despite these examples, the report on the sentencing of Ingram & Blight who recovered but failed to declare artefacts worth £150,000 from the wreck of HMS Hermes (see Box 1) stated that *'Their failure to declare the metal in order to sell it on for profit not only meant that they were guilty of fraud but also resulted in irreparable damage to sites of historical importance'* (Crown Prosecution Service, 2018) providing a good starting point for cultural impact to be expanded upon.

The coastal Police Forces and BF in particular may benefit from an increased understanding and focus on cultural value. Historically the focus of the impact of crime has been financial and the mindset across much of the Force is such that cultural value is not really considered, hence there is a lack of importance ascribed to the seriousness of the crime where there is a lack of economic loss as discussed in Chapter 5. With increasing focus on cultural impact, perhaps achieved through the materials delivered in the suggested online training package, this may be addressed and would be expected to have positive implications for sentencing. With time it is hoped that the penalties associated with heritage crime may themselves act as a deterrent.

⁴¹⁴ MCA/ROW, *pers. comm*

⁴¹⁵ MCA/ROW, *pers. comm*

⁴¹⁶ MCA/ROW, *pers. comm*

6.9 Potential for Agency/Organisations to be Involved

Whilst the above solutions provide discussion of ideas that would be suitable to implement whilst working with all agencies/organisations in the marine environment the interviews also identified the potential for each agency/organisation to become involved and some specific solutions that they could (and appeared keen to) implement within their own working practices. These are outlined below (and see Table 1).

Border Force

As noted in Chapter 5, BF appears to have the greatest potential for enhancing protection of UHA at sea, due to its extensive maritime capability, extent of presence at sea, which, as one officer put it, leads to an appreciation of local situational awareness and what is “*normal at sea*”. These capabilities, combined with the fact that BF has marine enforcement powers under PACA that can be directly exercised at sea in respect of designated or scheduled UHA under the PWA and AMAAA⁴¹⁷ does more than put ‘eyes and ears’ on the water.⁴¹⁸ This has the potential to directly enhance protection of UHA in The English Inshore Marine Planning Area, though the marine enforcement powers could only be used to stop a vessel and search it on the basis of reasonable suspicion. BF is also able to act as eyes and ears and can gather intelligence but only if there is cause for concern. Due to the standing and reputation of BF it is thought that they could act as a deterrent just by their presence. BF also have an arrangement for information sharing with NCI whose volunteers are asked to look and listen and share their observations with BF but they are requested not to approach anyone.

Environment Agency

The scope of the EA is limited due to their basic statutory remit, their close shore/coastline focus and restricted asset base. They could however, act as eyes and ears and do have some on the water presence whilst conducting tasks such as fisheries protection work or sampling for bathing water quality.

IFCAs

The IFCAs have regular contact with fishers, recreational fishers and divers all of whom may need a permit to carry out their activities in an IFCA district. Information regarding permitting is accessed through the IFCA website which offers opportunity to Historic England to engage with the IFCAs to develop some information relating to

⁴¹⁷ And Protected Places or Controlled Sites under the Protection of Military Remains Act 1986.

⁴¹⁸ These marine enforcement powers can be exercised by virtue of s.84 Policing and Crime Act 2017. When interviewed BF officials were unaware of the full implications of s.84 and were under the impression that BF officers could only observe and gather evidence. Clearly s.84 empowers direct intervention where a BF officer suspects a criminal offence is being committed under the 1973 and 1979 Acts.

UHAs to sit on their websites.⁴¹⁹ This could include details of the steps to take if artefacts are removed from the marine environment, and what to do if illegal activity is expected or observed by individuals whilst on the water.

MMO

The regional offices of the MMO are already involved to some extent with protecting UHA as they deal with licensing for removal of items from the seabed. They have also been involved with some of the successful prosecutions through joint working with other organisations such as the Police Forces, Historic England, ROW/MCA. The MMO do not have their own on the water assets but do regularly task vessels from others such as the Police to conduct routine fisheries patrols. They can and do therefore, act as eyes and ears on the water. The licensing aspect though, as has been discussed elsewhere in the report is a useful backstop provision for the protection of currently undesignated/ or scheduled UHA.

MCA/ROW

The MCA/ROW are already heavily involved in the protection of UHAs through their remit. No further solutions were identified, but their representatives were supportive of the provision of training and a CEM so that other marine users knew how and who to report incidents of UHA crime to.

MDP

Potential exists for the MDP to facilitate protection and this could be valuable due to their 24 hour waterborne presence. Their ability to respond is however constrained by the specific nature of the force and their tasking which centres on maintaining security around the dockyard and vessels therein. They have a list of priorities which can permit a more generalised policing function, but their military tasking will always take precedence. The MDP can provide eyes and ears on the water, and where possible do assist others as necessary. Were an incident to arise where UHA crime interfaces with security concerns, or with their role in protecting MOD property (to include PMRA sites) they would be able to respond directly as this would be within their remit.

MSDS Marine

MSDS Marine is an archaeological consultancy and are therefore heavily involved in the protection of UHA through its daily work. It can provide eyes and ears on the water whilst conducting survey work and also have a high level of awareness and understanding of sites. It also carries out research projects such as the protective markings project which may prove very valuable both as a deterrent and to aid

⁴¹⁹ This suggestion was made by IFCA representatives during the interviews

prosecution of any offences committed.⁴²⁰ It is expected that other consultancies involved in archaeological work would be similarly placed.

NCI

The volunteers at the NCI are well placed to act as eyes and ears for intelligence gathering. NCI works closely with the MCA and has connections to BF and they are already involved with observing vessels of interest. The limitations that exist on their abilities relate to the distance they can see from their watch stations, with only wrecks within their view able to be observed. There are some good examples of joint working for protection of sites however, such as the Salcombe Cannon Site. It is suggested that this good practice be expanded to other watch station and awareness be raised of protected (and unprotected) sites within their view.

NE

Similarly to the EA, the scope for NE is limited due to their remit. They also have no on the water assets themselves. They do however, contract other organisations to do boat based survey work for them and would usually have a member of their staff aboard these vessels. They also do intertidal survey work, hence both provide opportunities for them to act as eyes on the water.

Police Force

Currently, heritage crime is low priority for the coastal police forces as their priorities lie with crimes against the person rather than crimes against property. To date, heritage makes up a very small proportion of their work, with heritage in the marine realm not something that the majority of coastal forces have any experience of. All forces now have heritage within their remit however, most commonly within their Rural Team and this has meant that in many cases policies are under development. This provides an opportunity for Historic England to assist, and to help shape these policies where appropriate through joint working with each force. It may also be beneficial if these were streamlined and nationalised where possible to develop a nationwide protocol for dealing with UHA crime. This could then be adopted by all coastal Forces and adapted as necessary providing standardisation in approach across the Force.

In some instances, joint working was occurring between the Forces and organisations involved in heritage protection on land. Kent police, for example, have a Heritage Watch Group which works with local communities to raise awareness of heritage crime and encourage reporting of suspicious activity. Currently this has not been extended into the marine environment, but this is something that they would be keen to investigate.⁴²¹ North Yorkshire Police also have an established land based heritage

⁴²⁰ As detailed in footnote 1 above

⁴²¹ Kent Police (*pers. comm.*) Intended to raise the idea at their next meeting

network, including organisations such as York Heritage Watch, York Diocese and York Museums Trust giving the foundations for expansion into the marine realm.

The role of Police Community Support Officers (PCSOs) includes the prevention of crime. PCSOs may therefore be able to work pro-actively and engage with water users including dive clubs, shops and charter boats to increase public awareness of UHA and their cultural importance. This type of work may also be carried out by volunteers as in Cleveland where a team of volunteers work under a retired officer to monitor heritage

QHM Plymouth & Portsmouth

QHM are uniquely placed within their respective harbours to provide eyes and ears and a central hub for the passage of information between marine users.⁴²² In terms of salvage, this would be passed on to the RN Salvage Unit. Both Plymouth and Portsmouth QHM areas have protected wrecks sited within them, hence they would be well placed to gather intelligence and report any suspicious activity relating to these sites.

RNFPS

The RNFPS are able to act as eyes and ears whilst on the water, and do already gather intelligence where salvage operations involve fishing vessels. They would be able to log observations of any vessels operating near/at wreck sites as part of their daily work and gather intelligence as required. The RNFPS also have the ability to board and search any vessel engaged in salvage operations, under the provisions of MACCA.

Involvement of the dive community

The dive community are key stakeholders for Historic England and a good working relationship has already been established with many individuals and clubs, especially those that are licensees for their Protected Wreck Sites. Protected sites have some additional protection afforded by the efforts of their licensees, but unprotected sites do not currently have formal surveys completed routinely and may therefore suffer from being more 'out of sight, out of mind' and consequently potentially more vulnerable to illegal salvage. Through involvement of the dive community through initiatives such as 'Adopt a wreck' and 'Respect our Wrecks' however, it is suggested that there could be scope for some increased protection through increased access to the sites and increased awareness of those diving at them.

⁴²² This conduit works both ways, with marine users also reporting to QHM. For example, in Plymouth cable thefts were reported by divers in the QHM's area due to the close relationship established with marine users

Historic England Protected Wreck Site Licensees

Historic England's Licensees provide an invaluable resource for enhancing protection of England's Protected Wreck Sites. These individuals act as voluntary custodians for a site and are responsible for conducting surveys and investigations into the site and its history. The joint working arrangements can go further than partnership with Historic England however, with the Salcombe Cannon and Moor Sand Sites providing a best practice example. The Licensee for this site is a member of the South West Maritime Archaeology Group who have developed a Site Security document outlining the history of the site, its importance and clear guidance for the steps to take should illegal diving activity be suspected at the site. Primarily the point of contact is the licensee who then has responsibility for contacting the relevant bodies, all of whom have received a copy of the document and are aware of the procedure. At this site, one of the key partners is the NCI Prawle Point watch station which is situated on the cliffs above, providing a valuable observation point and potential deterrent for anyone visiting during daylight hours. The watch station has been involved in reporting unauthorised activity to the licensee in the past, proving the value of their approach to protection.⁴²³

It is suggested that this best practice should become a mandatory element of the role of the licensee, ensuring that all local partners are engaged with the site and aware of the procedure should an incident occur.

The key components of such documents should be:

- Introduction to the site and its management
- Introduction & details of the Licensee and their team
- Details of site security arrangements (e.g. VHS channel for Coastguard/local Harbour Master/NCI watch station)
- Protocol for authorised dive vessels
- Steps to take if unauthorised activity IS suspected including information required and phone numbers for points of contact
- Useful contact details (e.g. team members, local police, Harbour Master, NCI watch station, HE)

Licensees may also benefit from receipt of a checklist of actions to take and contact details to use in the event of suspicious activity taking place which they can share with their volunteers as a quick reference guide.

Expansion of 'Adopt a Wreck'

The NAS 'Adopt a wreck' scheme could provide a method by which dive clubs monitor selected UHA which are not protected. Since this would be voluntary, no remuneration would be required and it would therefore only require an administrative function from Historic England. Furthermore, it would serve as outreach and education for the dive community and would play a useful role in monitoring the condition of wreck sites, in effect acting as a neighbourhood watch. Recognition of the input of such volunteers would, however, be highly desirable and could be achieved by undertaking such things

⁴²³ NCI, *pers. comm.*

as annual awards for volunteer input, a regular newsletter and an annual meeting in a similar vein to that arranged for the Association of Protected Wrecks Licensees.

Diver trails

HE has enjoyed a significant degree of success with its innovative programme of diver trails. Consideration should be given to expanding this programme on suitably robust sites to unprotected UHA. This would both fulfil an educational objective, instil a sense of ownership within the diving community as well as providing an economic benefit to coastal communities.⁴²⁴

Refreshment of 'Respect our Wrecks'

In addition to the 'Adopt a Wreck' scheme, it would be beneficial to strengthen and refresh the 'Respect our Wrecks' scheme, a partnership developed by the British Sub Aqua Club (BSAC), the Professional Association of Diving Instructors (PADI) and the Sub Aqua Association (SAA) working alongside JNAPC and ROW to update it and adjust it for the digital age. The scheme is based on the signing of an MOU by the partner organisations to implement best practice in matters of wreck (Box 4).

Box 4: Respect our Wrecks Policy

1. **Respect war graves.** Many wrecks are also war graves. Treat them with the respect you would give a churchyard
2. **Respect the wreck environment.** Many wrecks make great habitats for marine life. Treat them with the care you would give to coral reefs
3. **Respect the future.** Explore wrecks, where allowed, but don't damage or disturb them. Take photos rather than souvenirs, so that our wrecks remain for future divers to see
4. **Respect our history.** Many wrecks have an important history and hold clues to our maritime past. If you find anything, report it to the Receiver of Wreck, who will pass on such information to archaeological experts
5. **Respect yourself.** Make sure that you are appropriately trained for safe wreck diving
6. **Respect your family and friends.** Some wrecks contain dangerous cargoes or live munitions. Don't disturb them or bring them ashore
7. **Respect the law.** Know and respect maritime laws - and avoid a criminal record

© BSAC

Some suggested steps to take in order to strengthen and refresh this scheme include:

- Revisit and update the materials provided under the scheme
- Engage with dive organisations, dive shops, charter diving boat organisations and skippers to re-awaken interest in the scheme and highlight it as part of their work
- Publicise any enforcement successes arising from the scheme

⁴²⁴ *HMS Coronation*, Nautical Archaeology Society (2013), The Local Economic Value of a Protected Wreck, available from <http://www.nauticalarchaeologysociety.org/content/local-economic-benefit-protected-wreck> (last accessed October 2018); see also James, A (2018) Review of the Virtual Dive Trails Scheme (7374): a big splash or a damp squib? Historic England, available from <https://historicengland.org.uk/content/docs/get-involved/dive-trails-review-pdf/> (last accessed October 2018)

- Strengthen the connection between the ‘Adopt a Wreck’ and ‘Respect our Wrecks’ schemes

Involvement of other marine users

Whilst this project has not focussed on other marine users such as commercial and recreational fishers, yachtsmen, water sports enthusiasts etc. there would be benefit to increasing engagement with these sectors through outreach and education. This is already a focus of the work of Historic England, who have developed successful partnerships with other organisations resulting in projects such as the Marine Antiquities Scheme (MAS)⁴²⁵ and the Coastal and Intertidal Zone Archaeology Network (CITiZAN)⁴²⁶ which focus not only on protected but also unprotected and unscheduled sites. Projects of this nature will also form a key ongoing part of the solution to enhancing protection for UHA through increasing awareness of the cultural value of sites.

The ROW expressed concern that as there are numerous reporting channels in existence it is hard for individuals to know which to use, and often if they have reported through an unofficial channel they do not then want to report again to the ROW. It was suggested that consideration be given to strengthening the reporting by streamlining so that there were less channels but making these official channels so that reporting goes to the ROW would be beneficial. In addition to this it was suggested that Historic England consider establishing a 24 hour phone line for reporting. The majority of recreational diving takes place outside office hours and it is thought that individuals are less likely to report if they have to wait until the start of the working week than if they could contact someone immediately they see suspicious activity.

Fishers

Although not able to do more than observation and information gathering, fishers provide an additional source of eyes and ears on the water which could be utilised. Fishers have a very good local knowledge of their fishing grounds and with some guidance could be involved in information gathering especially at protected wreck sites if they were to observe anything whilst fishing. Currently some fishers report antiquities that come up in their fishing gear, but the majority would either throw them back or keep them but not be aware of the need to report finds to the ROW. IFCA websites could provide a location for information in this regard (as above).

⁴²⁵ Encourages the recording of archaeological and historical objects that are found by marine users in the waters of England and Wales <https://marinefinds.org.uk/> (last accessed October 2018)

⁴²⁶ Promotes a standardised survey and monitoring methodology which can be used by volunteers to record, monitor and promote the importance of coastal and intertidal archaeological sites around the English coastline, including shipwrecks <https://citizan.org.uk/> (last accessed October 2018)

Chapter summary

The key points extracted from Chapter 6 are summarised below:

- Enhancing protection for UHA requires a multifaceted approach to build on the work already underway with Historic England and others.
- It would appear that substantial goodwill exists for making small changes to existing working practices to encompass a greater role for the protection of UHA, particularly through joint working and intelligence gathering. This comes with the proviso that additional training is made available and clear reporting protocols developed.

Solutions

- **Joint working:** the main value in joint working would almost certainly come through increasing awareness and intelligence gathering through the presence of additional eyes on the sea. This could be achieved through the development of MOUs between Historic England and partner agencies/organisations; utilisation of pre-existing joint working arrangements in the marine environment through use of a central platform such as NMIC; and continuing to support joint working for prosecutions of illegal salvage activity.
- **Provision of resources:** the interviews conducted identified that whilst there was willingness to become more involved, there was a caveat that training and information would need to be provided so that agencies/organisations could understand the type of information required and the steps to be taken to report it. This could be achieved through the development of an online training programme and a Common Enforcement Manual (a document to be referred to in the event of an incident relating to UHA crime – comparison was drawn to the information made available in respect of fisheries). The interviews revealed that agencies/organisations would need to have information to hand in an easily accessible format such that when incidents occur they can quickly determine the action required.
- **Communication of the impact of UHA crime:** the awareness of the cultural impact of UHA crime is generally considered to be low across those working in the marine environment, especially with regard to the cultural value of artefacts and sites. The cultural value is, however, of great importance and it is recommended that it is a focus when promoting the importance of UHA protection. It may be of particular value to the coastal police forces and BF to establish a mechanism for ascribing equivalence of cultural loss and monetary value as indicators of the seriousness of crime relating to UHA. Were this to be addressed it is assumed it would have positive implications for enforcement effort as well as sentencing.
- **Potential for agencies/organisations to be involved:** all organisations have the potential to provide eyes and ears on the sea, but some have additional potential. Most notably this applies to BF due to their marine enforcement powers, physical capability and reputation - perhaps meaning that they act as a deterrent by their very presence. The expansion of heritage awareness within the coastal police forces should also increase their inclination and ability to react to heritage crime. There may also be scope for Police Community Support Officers to work pro-actively and

engage with individuals to increase public awareness of UHA and their cultural importance.

- **Involvement of the dive community:** the dive community are key stakeholders for Historic England and a good working relationship has been established with many individuals and clubs, especially those that are licencees for their Protected Wreck Sites. Benefit may also come from an expansion of the NAS 'Adopt a Wreck' scheme and a *refresh* of 'Respect our Wrecks' both of which may provide additional protection for unprotected sites.
- **Involvement of other marine users:** whilst this project has not focussed on other marine users such as commercial and recreational fishers, yachtsmen, water sports enthusiasts etc. there would be benefit to increasing engagement with these sectors through outreach and education. This will form a key ongoing part of the solution to enhancing protection for UHA through increasing awareness of the cultural value of sites.

7 Conclusions and Recommendations

7.1 Conclusions

Within the marine archaeological community, and one suspects within Historic England, the perception in relation to the protection of UHA is one of very limited resources and physical marine presence, both of which are presently declining due to continued financial constraints. This was certainly the perception of the authors at the commencement of the project. In fact, this perception is not entirely accurate. While the quantum of marine assets present at sea is changing, especially with the decline of some coastal police marine units, it is actually increasing, with the advent of new BF patrol vessels and new RNFPS vessels commissioning in the near future. Additionally the numbers of IFCA patrol vessels are stable or increasing.

With the UK projected to become a more independent coastal State post its exit from the European Union this trend of increasing marine enforcement assets may continue. The overall conclusion therefore is that, provided effective cross-party working can be achieved in respect of the protection of UHA then that protection can realistically be enhanced, possibly substantially, from the present level. Moreover, the introduction of new technologies, such as Aerial Unmanned Vehicles (AUVs) will further facilitate such enhancement.⁴²⁷ This enhancement will require the commitment of some resource, but, while any such costing of this is beyond the parameters of this project, the authors anticipate that this cost will be relatively low and the benefits potentially securable will be very cost effective for Historic England. These conclusions are reached for the following reasons.

The interview process established that there is a high degree of acceptance of the government's current policy of increased cross-party working. Indeed this was seen as inevitable, desirable and many of the organisations interviewed are already engaging in such working practices, to a greater or lesser extent. The principle of such working is thus accepted, not controversial and perceived as expanding across the public marine sphere.

Interviewees universally also expressed an acceptance of the desirability of enhancing the protection of UHA, even when their functions did not encompass such protection. While one would never anticipate hostility to such an aspiration it is a truism that, compared to terrestrial heritage, the problems for maritime archaeology of public access, increased costs of investigation, excavation and conservation have led to a far lower public profile for the heritage presented by UHA. The highly innovative work of Historic England, using methodologies such as Diver Trails and Virtual Reality have done much to address this but an element of 'out of sight, out of mind' continues to present a problem for the public profile of maritime archaeology and UHA. Yet, despite

⁴²⁷ At present the concept of UAVs being introduced for marine law enforcement is at a scoping stage. A national project by DEFRA is presently due to complete this scoping stage in late November 2018 and the project is being closely watched by maritime agencies. Within the next decade it is anticipated that this technology will add a substantial enhancement to marine enforcement in all spheres.

this, there was a ready, indeed often enthusiastic acceptance of the potential role other organisations could play in enhancing the protection of UHA. Given the relatively lower public profile of maritime archaeology and the fact that such cross – party working would, even at its most basic level, inevitably involve marginal costs and additional tasking for these organisations, this was not a reaction that the authors had anticipated. It may be that the organisations interviewed all had a maritime function of some description and/or a law enforcement function, directly or indirectly, but the overall impression was of a '*Society of the Sea*' acknowledging genuine societal interest in protecting its own unique heritage. Inevitably this leads to the very encouraging conclusion that generally Historic England would not have to establish a rationale for such enhancement, nor its desirability, that these would by and large be a 'given' and that it is the implementation of such cross-party working that now predominantly confronts it.

While these conclusions are in themselves extremely encouraging, the authors do not wish to understate the scale of the challenge faced by Historic England in achieving this implementation. Although the importance of protecting UHA, and also enhancing that protection, it was recognised by the interviewees it was also recognised that this importance is not presently reflected in the current operational protocols, procedures and priorities of the organisations. The challenges facing Historic England therefore in securing any enhancement of protection for UHA principally relates to problems of logistics, especially those of communications, access to and collation of information, training and procedures. In effect, meeting these challenges amounts to prerequisites for securing the enhancement of protection for UHA. These problems are considered in more detail in Section 5 above and the Recommendations set out below are designed to address these prerequisites.

7.2 Recommendations

There is a degree of overlap with certain of these recommendations; however, they are presented within distinct sections with broad themes in order to reflect their essential character.

1. Utilise Cross Party Working Arrangements and create new Arrangements

- Since existing joint working arrangements provide a platform that Historic England can exploit, new joint working arrangements could be implemented with the organisations identified in this report.
- These existing and new joint working arrangements can facilitate the protection of UHA by the creation of Memoranda of Understanding.
- Historic England should consider further utilising NMIC as an existing national platform, through DCMS, to create or enhance joint working arrangements and the co-ordination of intelligence relating to underwater heritage crime.
- Monitor the progress of the national project by DEFRA on the potential use of UAVs for marine enforcement and, if appropriate, engage with it.

2. Provide Resources to Facilitate Joint Working

- Consideration should be given to the development of an intelligence network on underwater heritage crime with provision of a dedicated number to report suspected maritime heritage crime, including anonymously. This system could be utilised by both organisations involved in cross party working and public stakeholders.
- Develop, possibly through NMIC, a system of collating information received as to activities directed at UHA so emerging patterns and consistent activity can be highlighted.
- Address what is an almost universally accepted lack of knowledge amongst staff of other marine organisations as to the context, importance and regulatory structure surrounding UHA.
- This could be achieved by developing a training package for coastal Rural Crime Teams, Border Force, MDP and IFCA staff specially but also make available to sister agencies and NCI, as part of Continuing Professional Development (CPD).

- This package would include the regulatory framework, an understanding of the nature & extent of UHA and the importance in terms of not just economic value but cultural value and hence scale of loss
- Such a CPD Training Package should be online to minimise resource implications for other agencies and ensure maximum, cost-effective exposure within those organisations. It would reduce the need to commit resources to staff physically attending courses at specified times and would have a one-off set-up cost.
- Develop an electronic Common Enforcement Manual, (CEM), similar to that deployed for fisheries by the RNFPS, which can provide easy access to the substance of the regulatory framework (including marine licensing for which the MMO is responsible) and a pre-determined operational protocol for observation, investigation and communication with relevant organisations. The concept of a CEM was regarded as an essential prerequisite for joint working arrangements by the organisations interviewed and drew universal support. It is difficult, if not impossible, to stress the perceived importance of this by these organisations.
- Develop an easily accessed and dedicated UHA register, including information on the location of UHA, that can be accessed both afloat and ashore, incorporating protected UHA and, if technically feasible, unprotected UHA or at least any deemed to be at risk. The extraction of such information from existing websites was regarded as too cumbersome and slow by other organisations. A dedicated and easily accessible electronic database is regarded as a prerequisite of effective joint working.
- Increase the understanding of all parties involved in joint working and in particular, that of coastal Police Forces, Border Force and MDP officers as to the cultural impact of crime directed at UHA and the value of the resulting cultural loss to society. This could be achieved as a component of an online training package and workshops or seminars.
- A national protocol for UCH crime as a component of a Common Enforcement Manual and to assist joint working with other marine agencies, establishing what actions to take and who to contact when the Police or other agencies encounter suspected UCH crime.
- Engage with DCMS and Home Office to develop a nationwide reporting protocol on UCH crime, which could address the perception that it is a low value regulatory crime with negligible impact in terms of societal impact and loss of cultural information. This could augment the Heritage and Cultural Crime National Strategic Assessment.

3. Increase the Understanding of and Engagement with Stakeholders

- Develop a security protocol for each protected UHA, engaging with licenced teams and/or other local stakeholders to create a sense of cultural value in local coastal communities. In particular inshore fishers could provide valuable 'eyes and ears' on the water, especially in areas less well frequented by recreational divers.
- The UK diving community's access to unprotected UHA, presents the most difficult challenges for protective action. Historic England should consider providing support for an expansion of the NAS's 'Adopt a Wreck' scheme or support or establish similar schemes. Archaeological records are lacking for many sites. A comprehensive record of the intact state of the wreck would be useful to determine evidence necessary for prosecution.
 - As an adjunct to the above Historic England should provide further support for a public education initiative, though JNAPC and in conjunction with the ROW and the Diving Organisations, refreshing the 'Respect Our Wrecks' initiative and adjusting it to the digital age and providing fresh guidance to divers, other sea users and coastal walkers.
 - Further, Historic England should consider developing a network of voluntary marine archaeologists who could provide a limited amount of advice and guidance to diving groups. Such a scheme would not seek to replace the role of the nominated archaeologist on protected sites but provide basic guidance and information in relation to unprotected UHA.
- Develop coastal Heritage Watch Groups or Schemes, which would complement the above, and engage more closely with NCI.
- Develop a communications strategy which highlights successful prosecutions and also increases public understanding of the impact of underwater cultural heritage crime. In particular Historic England should seek to increase the understanding of all parties to joint working arrangements, stakeholders and the public as to the cultural impact of crime directed at UHA and the extent of the resulting cultural loss to society.
- The websites of other organisations involved in joint working arrangements could be utilised as additional platforms for engagement with stakeholders.
- Facilitate public reporting of suspicious activity and crime directed at UHA by provision of a dedicated number to report suspected maritime heritage crime, including anonymously.
- Consider engaging with coastal Police Forces to develop a maritime heritage crime prevention programme utilising the crime prevention role of PSCO's.

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The Shipwreck Centre & Maritime Museum –

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Annex

List of agencies/organisations from which individuals were interviewed for this project

Association of IFCAs

Border Force

Cleveland Constabulary

Cornwall IFCA

Devon & Cornwall Constabulary

Devon & Severn IFCA

Environment Agency

Hampshire Constabulary

Historic England

Isles of Scilly IFCA

Kent Police

Marine Management Organisation

Maritime & Coastguard Agency

Ministry of Defence Police

MSDS Marine

National Coastwatch Institute

National Maritime Information Centre

Natural England

North Yorkshire Police

Office of the Queen's Harbour Master Plymouth

Office of the Queen's Harbour Master Portsmouth

Royal Navy Fisheries Protection Squadron

Receiver of Wreck

Suffolk Constabulary

