



Heritage Partnership Agreements for Undesignated (Marine) Sites: A Pilot Study

Interim Report



ENGLISH HERITAGE

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1. Introduction

The Hampshire and Wight Trust for Maritime Archaeology (HWTMA) has been commissioned by English Heritage (EH) to provide a practical approach to the implementation of Heritage Partnership Agreements (HPAs) on undesignated marine sites. Partnership agreements are seen as a generic term for any form of non-statutory management agreement between the owner of a heritage asset, or group of assets, and the statutory authorities (see English Heritage 2011a). Research on the benefits of HPAs has already been undertaken and includes a recommendation for the introduction of statutory management agreements (see DCMS and EH 2005). Importantly, the National Heritage Protection Plan directly addresses heritage partnership agreements (HPA) and model management plans (English Heritage 2011b: 31-32). However, there is a gap in the understanding of how HPAs work in practice especially in the marine environment. By seeking to develop methodologies for HPAs for undesignated marine sites, this project is directly addressing national priorities while filling a gap in our present understanding regarding site management. More importantly, the proposed work is, in the long term, contributing to developing a more streamlined management of marine sites that are not being protected and/or managed under the current system (see English Heritage 2011a: 6).

This present document represents an additional reporting stage to those outlined in the original Project Design and has come about because of the findings and conclusions of Tasks 3, 5, 6 and 8. These tasks have respectively entailed reviews of related literature, legal ownership of shipwreck/non-shipwreck material and a review of any required legal changes. These themes are covered, before opportunity is taken for some general discussion of undesignated HPAs, based on the findings of these tasks. A provisional outline proposal of potential HPAs for undesignated marine sites is then offered.

As such, the document represents an opportunity for discussion of the issues raised, the clarification of certain points and the revision of material prior to the formulation of HPA methodologies. It was felt preferable to conduct such consultation between HWTMA and EH at this early stage, rather than at a later date. It is recognised that all areas of the project and especially **Section 7** of this report, would benefit from a developed and considered consultation process. Other items, such as the review of the Adopt-a-Wreck scheme (Task 4) and the Solent Marine Heritage Assessment (Task 9-12) will be included in Product Number P1 as originally outlined in the Project Design.

2. Legal Context of HPAs for Undesignated Marine Sites

The following section briefly discusses the legal context of the application of HPA to undesignated marine sites. In accordance with the project design, this offers a conclusion regarding any legal changes that may be required. Seabed/Site ownership has been specifically covered in Section 3, so the primary focus of this section is the extent to which EH has legal jurisdiction/remit over undesignated marine assets and whether or not any legal changes need to be made to facilitate this.

2.1 LEGAL REMIT OF ENGLISH HERITAGE

The National Heritage Act 1983 (NHA) establishes English Heritage (originally termed the 'Historic Buildings and Monuments Commission for England') as the body responsible for securing the preservation, enhancement, public enjoyment and enhancement of knowledge of ancient monuments and historic buildings located within England (Section 32 & 33). Within the act, an *ancient monument* is simply defined (33(8)) as 'any structure, work or site (including any site comprising the remains of, any vehicle, vessel, aircraft or other movable structure or part thereof), garden or area which in the Commission's opinion is of historic, architectural, traditional, artistic or archaeological interest.' A revision to the NHA in 2002 extended the remit of English Heritage to include ancient monuments located with English territorial waters and the subsequent revised NHA makes no distinction between terrestrial or marine locations. On this basis, English Heritage has a clear legal remit to manage any ancient monuments located within the inter-tidal and marine zone of England. As the NHA makes clear (33(2)(f), revised 2002), this may include carrying out work, or defraying the costs of others it deems suitable to carry out work, on an ancient monument.

A similar definition of an ancient monument is offered by the Ancient Monuments and Archaeological Areas Act 1979 (AMAAA) (section 61(7)). Importantly, the AMAAA notes (61(12)) that an ancient monument can refer to a 'scheduled ancient monument' in addition to 'any other monument which in the opinion of the Secretary of State is of public interest by reason of the historic, traditional, artistic or archaeological interest attaching to it.' The clear implication of this is that EH has a remit which covers *all* ancient monuments, not just those which are included on the list of scheduled monuments. In other words, a heritage asset does not have to be listed, scheduled, designated, etc, for EH to have a clear remit to act in the public interest for the long-term sustainability of the asset in question.

Summary

With the above in mind, there seems to be no requirement for any legal changes in order for EH to implement HPAs on undesignated sites located in the marine zone, provided that such sites are addressed through the provisions set out in the AMAAA and the NHA. As a result of this, the implementation of such HPAs would take place on the same terms as those allowable for terrestrial sites. This would mark a clear break from previous management strategies which have utilised legislation set out under the Protection of Wrecks Act 1973 (PWA). Unlike the AMAAA/NHA the PWA requires that sites must be designated before any work can take place under an EH remit, furthermore, it can only be applied to shipwreck sites and excludes the management of submerged landscapes. With this in mind, it could be concluded that the provision of site management, via HPAs, represents a clear step towards the integration of the management of terrestrial sites with their marine counterparts; the much heralded 'seamless approach'.

3. Legal Ownership of Sites Located in the Marine Zone

Ownership of underwater cultural heritage (UCH) is obviously relevant for the development of HPAs for undesignated marine sites and the following section offers a brief review of the current situation within England. To this end, an overview of the legal ownership of the actual seabed or foreshore itself is offered (**Section 3.1**). Building upon this, cultural heritage located upon, or under the seabed, can be divided into two main groups; material derived from shipwrecks or shipwrecks themselves (**Section 3.2**), or material that was deposited prior to the various inundations that have occurred during the Pleistocene and Holocene (**Section 3.3**). Both of these have a different legal position due to their different origins and method of deposition and these differences are discussed and outlined.

3.1. OWNERSHIP OF THE SEABED

The seabed of the UK, between the mean low water mark and the 12 nautical mile territorial limit, is owned almost entirely by the Crown Estate (CE) (CE 2011: 3). In addition, the CE also owns around half of the UK's foreshore (mean low water mark to mean high water mark), tidal beds and estuaries (CE 2011: 3). The CE has the right to issue leases and licenses for these areas for a range of activity including; moorings, aggregate extraction and wind farm developments. In addition to the CE, some areas of the seabed are owned by private individuals or institutions. For example, the tidal bed of the River Beaulieu in Hampshire is owned by the Beaulieu Estate, rather than the CE as a result of a medieval grant of the land, including the areas below the low water mark.¹

Similarly, while a large portion of the inter-tidal zone (the foreshore) is also owned by the CE, a large proportion of it is owned by individuals or institutions. For example, large sections of the River Hamble in Hampshire are owned by Hamble Parish Council, having purchased the foreshore from Winchester College (another private owner) in 1939.² The entire seabed and its associated foreshore in England is therefore under the ownership of either the CE, or in some cases a private individual or institution. As with fully terrestrial land, the ownership of the coastal and marine zone has implications for the UCH located within it, and this is now discussed.

3.2 OWNERSHIP OF SHIPWRECK MATERIAL

Under the Merchant Shipping Act 1995 (MSA), all material which is derived from a shipwreck or which has been lost/thrown overboard from a ship must be declared to the Receiver of Wreck (RoW) if that material is raised from the seabed, retrieved from the surface of the sea, or found on the foreshore. The RoW will place a notice of the declaration and attempt to establish the owner of the wreck material. For example, the company or individual that owned the vessel at the time of sinking, or the original owner of the cargo. Any owner has one year to establish their ownership of the wreck material. If this is not done, then ownership of the wreck lies with the Crown, or in some cases to a person or organisation that have been granted rights of wreck in a particular area, for example the Duchy of Cornwall in Cornwall. (JNAPC 2006: 6).

In a great number of cases where wreck material is of archaeological interest, it is impossible to establish ownership of the wreck material. Either because insufficient information is known about the vessel from which it came, or because the owners of the vessel have no descendants, or a descendent company, which might be entitled to claim ownership. In this case, ownership passes to the Crown and the RoW may dispose of the archaeological wreck material, for example by giving or selling the wreck material (depending on its value) to a local museum (JNAPC 2006: 7). Any proceeds from such a sale are given to the original finder. In some cases, the wreck material is simply granted to the finder, in lieu of a salvage payment. Under section 240 (1,a) of the MSA, the RoW may dispose of any material that is valued at under £5000 *at any time* and does not need to wait for one year to elapse.

Within England's territorial waters, a number of shipwrecks exist which can be clearly identified as being owned by the UK government, for example vessels of the Royal Navy lost in UK territorial waters. The RoW estimates that around 15% of the material declared in 2008 is definitely or likely to be owned by the UK Government (Satchell 2012: 70). While such vessels may be placed under the umbrella ownership of the UK Government, in reality, their management is subject to a number of different departments. For example, the Ministry of Defence is responsible for Naval vessels and

¹ <http://www.beaulieuriver.com/about/river-history>

² http://www.hamblepc.org.uk/past_history.html

military aircraft sites, particularly those which may be covered by the Protection of Military Remains Act 1986.

Other wrecks that remain *in-situ* on the seabed may also be the property of a clearly defined owner, other than the UK Government, or the original owner of the vessel at the time of its sinking. One such example is the remains of the *Grace Dieu*, located in the River Hamble and dating to the 15th century. This vessel is a Designated Protected Wreck, but is legally owned by the University of Southampton. Similarly, the remains of HMS *Velox*, a World War One period destroyer located in the eastern Solent, was sold by the MOD to a salvage company after the vessel sank in 1915. The vessel was subsequently sold to another salvage company in 1970. The latter company, if it remained in operation, would retain legal ownership of the seabed remains of HMS *Velox* in addition to any material raised from the site.

3.3 OWNERSHIP OF NON-SHIPWRECK MATERIAL

The reporting of recovered material under the MSA (above) only applies to material that originates from a wreck, including flotsam, jetsam, lagan and derelict. As such, items that have not originated from a shipwreck are not covered by the MSA (Satchell 2012: 67-8); for example artefacts related to submerged prehistoric landscapes which were deposited prior to marine inundation. Legally, such material belongs to the CE, but there is no regulation of the recovery of such material (Satchell 2012: 67-8). However, where material remains *in-situ* it may be considered that the CE is the legal owner of the material and the site that it represents. The position of the CE in regard to archaeological remains is that recovered remains should be deposited with a public museum (Satchell 2012: 68).

Where areas of the seabed are licensed by the CE for aggregate extraction, the license includes the ownership of any UCH material that is dredged up and is categorised as non-wreck material. The British Marine Aggregate Producers Association (BMAPA) have published a protocol of best practice (BMAPA 2003) for dealing with archaeological finds which BMAPA members have signed up to. However, while the protocol means that the level of reporting of archaeological finds has increased, the ownership still remains with the aggregate company and the disposal of finds is not included within the protocol. Consequently, concerns have been expressed at the number of potentially important finds from UK waters, including England, which are not being made available for public access (Satchell 2012: 37, 40-41). In a similar vein, artefacts which are not subject to the MSA and which are recovered as a result of fishing activity remain in the possession of the fisherman that has recovered them. An excellent example of the latter is the large collection of flint artefacts recovered from the floor of the western Solent by the fisherman Michael White (see Momber *et al.* 2011: fig. vi).

In the context of the present project, the ownership status of artefacts that have been removed from the seabed is potentially of less relevance than the ownership of the site itself; artefacts that have been removed, either deliberately or accidentally, are not going to play a part in an on-going HPA for undesignated marine sites. The only exception to this might be if the HPA itself includes the raising of artefacts as part of any survey or excavation. In general, it should therefore be assumed that archaeological sites located in the marine zone and containing non-wreck material fall under the ownership of the seabed owner, who in most cases is the Crown Estate.

3.4 SUMMARY OF OWNERSHIP CONSIDERATIONS

It is clear that there are a number of different types of ownership that the present project is concerned with. At a broad level, ownership of the seabed falls mainly into the hands of the Crown Estate. This ownership is completed through a number of private individuals or institutions who own defined areas of seabed. A similar situation exists for the foreshore (inter-tidal) zone, where the Crown Estate owns a large percentage and the remainder is in other ownership. In general terms, cultural heritage that is discovered in this zone and which is classified as 'non-wreck material' becomes the property of the landowner, whoever that might be. This is much the case as with terrestrial archaeology, although a notable exception is that the Treasure Act does not apply below the low water mark. However, there are some exceptions to this position, outlined above, relating to fishing and licensed areas of the marine zone. In those cases, artefacts recovered during fishing or through aggregate extraction become the property of the finder/recoverer.

Material which is classified as 'wreck material' has a very different ownership status. In this case, the landowner does not have rights to the material. Instead, ownership of such material remains with the original individual, company or institution that owned the vessel at the time of its sinking. For the purpose of salvage, the vessel remains may be sold by the original owner, to a new owner. In which

case the latter would retain legal ownership of the seabed remains and/or material salvaged from them. If these owners no longer exist, then ownership passes to the Crown (the accepted terminology for the UK Government). Additionally, a number of classes of vessel exist, such as naval vessels, which are automatically owned by the UK Government. By way of illustration of these varying degrees of ownership, **table 3.1** lists a number of different site types and ownership possibilities.

In the context of the present project, the seabed owner, in-situ material owner and if applicable, the owner of any raised material should all be party to any HPA that is drawn up and/or implemented.

Site Type	Seabed Owner	In-Situ Material Owner	Raised Material Owner
Submerged Landscape A	Crown Estate/Private	Crown Estate/Private	Crown Estate/Private Salvor if raised as a result of fishing or dredging
Submerged Landscape B	Crown Estate	Seabed Licensee	Seabed Licensee Salvor if raised as a result of fishing or dredging
Shipwreck A	Crown Estate/Private	Original Vessel Owner	Original Vessel Owner*
Shipwreck B	Crown Estate/Private	MOD (Royal Navy)	MOD
Shipwreck C	Crown Estate/Private	Secondary Owner	Secondary Owner*
*if a vessel owner no longer exists, or cannot be established, then ownership passes to the Crown			

Table 3.1. The ownership status of the seabed and seabed material for a range of site types and ownership scenarios.

4. Review of Relevant Current Agreement Regimes

The following section reviews the literature and nature of a series of existing management agreement regimes relating to the natural and historic environment, identified in the Project Design. In each case only information relevant to the proposed HPAs for undesignated marine sites is considered before any findings are presented. This section should serve to provide an idea of similar schemes to that proposed for HPAs for undesignated marine sites, how such schemes have operated and how successful they have been.

4.1 SITES OF SPECIAL SCIENTIFIC INTEREST (SSSIs)

The basic requirements appertaining to the management of SSSIs are outlined by Natural England (NE) and set out the relationship between the owner/occupier of the SSSI and Natural England, who are the government's advisors for nature conservation (NE 2012a). SSSIs cover 8.1% of England's land surface (NE 2012a: 4), illustrating the importance of providing them with an effective management system. Management of SSSIs is facilitated through NE who visit sites roughly every seven years, allowing the assessment of the nature of the site and the factors influencing its condition, allowing sites to be categorised in six ways, ranging from destroyed to favourable (NE 2012a: 5). NE's current objective is for 50% of sites to be classified as favourable by 2020. Part of the site assessment identifies the specific features of the site that are considered special, e.g. vegetation, geology, wildlife, etc, and management is then focused towards ensuring that those features are maintained and the condition of the site improved where possible (NE 2012a: 6).

Emphasis is placed on the owner/occupier designing a Management Scheme, in conjunction with advice from NE, that is most appropriate for a specific site and which takes account of the natural features of the site and its land uses (NE 2012a: 6). It should be noted that such management schemes are voluntary. Only when an SSSI requires active management to improve it, and such a regime cannot be reached on a voluntary basis, are formal legal measures taken (NE 2012a: 6). Such measures may result in a Management Agreement, which may include financial payment. If such an agreement is refused, then NE has the power to issue a Management Notice, requiring specific work to be done. If the notice is ignored, then NE has the power to carry out the work and recover the costs from the offender (NE 2012a: 10).

Notification documents contain site specific information about what kind of works on the site-type would require consent (NE 2012a: 7). If work requiring consent is intended to be done, then notification in writing must be given to NE, the work may then be approved, modified or refused (NE 2012a: 7). If consent for work is not given, the work cannot legally be carried out. NE also highlights the fact that public bodies have a duty to preserve SSSIs. Notification must be given regarding any work that might damage the special features of a SSSI, whether the work is inside or outside the site boundary (NE 2012a: 9).

Summary

The management of SSSIs between owners/occupiers and NE is a tiered system. This ranges from voluntary schemes and more formal legal agreements through to enforceable notices and the power to undertake works on a unilateral basis. The default management position is one of proactive cooperation with the landowner/occupier, with a view to improve the nature of the SSSI over the course of the management period. The ethos of such a system is attractive, however, it is based on a relationship between the statutory body and the owner/occupier, rather than the user of the site. The latter are simply required to adhere to rules, as set out by law. It should also be noted that Natural England's power in regard to SSSIs stems from the designated nature of the site itself. NE has no such power over non-SSSI land, except in some circumstances where it borders an SSSI.

4.2 WORLD HERITAGE SITES³

The World Heritage Convention was adopted by the General Conference of UNESCO in 1972 and retains at its heart the conservation of nature and the preservation of cultural sites. It recognises that some sites, either natural or cultural, contained within a national territory are of such significance that they must be preserved on behalf of the entire international community. Sites may be put forward by a signatory state for inscription on the World Heritage List, they are then assessed against ten criteria, of which they must meet one to be accepted. Following inscription, World Heritage Sites are then subject to regular reporting by the owning state to outline the state of conservation of the site and the

³ All general information relating to World Heritage Sites is derived from whc.unesco.org

protection measures that may have been put in place. Reporting takes place on a six year cycle and allows the World Heritage Committee to decide on the necessity of adopting specific measures in order to mitigate recurring problems.

In recent years the status of World Heritage Site has become something of a bargaining chip. Threats to de-list sites, and the associated loss of national kudos, can result in infrastructure projects, such as road building schemes, being altered to take into account the location of a World Heritage Site. This has a clear benefit for the conservation of a site, but is very much a reactive process when seen on a global scale. At a national level, World Heritage sites must be provided with a management plan, to meet UNESCO's requirements, and developed with the intention of conserving and enhancing the nature of the sites in question. As an example, the management plan for the site of Stonehenge operates on a ten year basis with the primary aim of protecting the monuments and their landscape, while taking account of other interests such as farming, tourism, research, etc (EH 2010). At this level, the management of sites is far more proactive, with specific aims being set out and achieved over the course of a cycle.

Summary

World Heritage Site status confers a responsibility on a national government and its cultural/natural heritage agencies to develop highly site specific management plans. These can be extremely proactive in seeking ways to enhance a site and its surroundings, or they may simply be concerned with preserving the status quo. Each management plan is likely to be geared to the exact requirements of the site in question, the international status of such sites implying that it is worth spending the resources required to do this. By implication, sites which achieve World Heritage Status are already likely to be highly managed within an individual country, this is certainly the case in the UK where World Heritage Sites are already subject to national statutory protection because of the high level of natural or cultural significance. In this regard, World Heritage Status is simply a way of conferring an extra layer of importance/status to an individual site that may already be considered to be of considerable significance.

4.3 ENVIRONMENTAL STEWARDSHIP

The Environmental Stewardship scheme is a government scheme, managed by Natural England (NE) that is open to farmers, land managers and tenants in England. It allows for financial reward, in return for good stewardship of the land and management of it to improve the quality of the environment (NE 2011: 3). The management of over 70% of England's agricultural land is now informed by an environmental agreement, comprising 57,000 agreements (NE 2011: 3). Such agreements are divided into entry level agreements for lowland and upland areas, organic agreements and higher level agreements for targeted, specific areas or those containing high priority features (NE 2011: 4). In each case, land owners/managers/tenants are provided with a range of management options for which they are rewarded with points. These might be for protecting stone walls or maintaining traditional hedges. Once a certain threshold is reached, then the farm may be accepted into whichever level of stewardship is applicable and an annual payment is received equal to the number of points attained. The scheme also makes allowances for the historic environment, for example through reward for taking areas containing archaeological remains out of cultivation, or for maintaining historic/traditional buildings to a certain standard.

Although not covered in the literature, it is clear that the Environmental Stewardship scheme provides Natural England with an effective scheme for influencing the management of farmland which would not normally come under their jurisdiction. An obvious advantage is the ability of NE to change the weighting of options available to potential stewards as top-down management priorities change. The wide range of options available also means that it is possible to tailor management schemes to suit individual stewards. The scheme is voluntary, but it is incentivised by the financial reward which is forthcoming as a result of good stewardship and which is lost if stewardship standards fall below the required level.

Summary

The Environmental Stewardship programme is clearly a successful scheme that has allowed NE to engage large areas of England's agricultural land in a voluntary management program. The scheme is flexible, forward looking in nature and incentivised through financial reward. It offers a potential model for undesignated marine sites because it represents a way to influence the management of land that is not necessarily protected through statutory instrument, for example in the manner of a SSSI.

4.4 MARINE STEWARDSHIP PROGRAMME

Established by the Crown Estate (CE) in 1999, the Marine Stewardship Programme aims to support community initiatives that enhance the existing management of the marine elements of the CE. This includes large areas of the foreshore in the UK and the seabed as far as the 12 mile territorial waters limit. The CE provides funding for projects that it deems to be capable of enhancing five key areas; accessibility, awareness, biodiversity, environment and management. These broad terms encompass a variety of possibilities; from improving public access through installing/improving slipways, moorings, etc, to cleaning beaches or creating best practice guides.

The CE has discontinued a formal application process for community projects and instead initiates and develops projects themselves; a result of an increased desire to be proactive in the management of the estate. Although they are still open to original proposals, the internal initiation of projects is intended to save resources on the part of the stakeholder through avoiding developing ideas that are in fact not feasible. Projects can be one-off schemes, or last for up to three years. At the outset of a project a series of 'milestones' are established to guide the project through its various phases. Successful projects must provide written summaries and photographs to demonstrate the success of the scheme.

Summary

The marine stewardship programme represents the CE initiative to place some of the emphasis for managing the seabed and foreshore under its ownership in the hands of the users and stakeholders. In contrast to NE's environmental stewardship scheme, there are no predetermined tasks or aims, other than the five general priority areas. Such an approach allows projects to be extremely wide ranging in their focus, but also reduces the extent to which actions are carried out in a consistent way.

4.5 LISTED BUILDINGS

A review of the management guidelines for listed buildings (EH 2003) was commissioned to investigate the application of management guidelines to listed buildings and the extent to which the system in place since 1995 is effective as a means to drive cultural heritage management through listed building legislation. Listed Building Consent is required for any proposed works to a listed building if the works would affect the character of the building as one of special architectural or historic interest (EH 2003: 21). In this regard the need for consent is only in the 'opinion' of the statutory authority (EH 2003: 21-22) and this is seen as contrasting unfavourably with the situation for Scheduled Monuments (below) where consent is required for 'any' works and is therefore more rigorous and definitive in outlining when consent is required, in comparison to the regime for listed building (EH 2003: 15). In this regard a major finding (EH 2003: 3) of the report is that the statutory powers required to grant consent are both clear and lodged with local authorities as well as national authorities, allowing the local authority to implement and manage the management agreement.

The report has a positive overall view of the process of management agreements, highlighting (EH 2003: 2) the opinion that management guidelines or agreements can promote 'constructive, on-going dialogue and mutual trust and understanding between building owners and the statutory authorities'. The potential of management agreements to streamline the process of consent required to make alterations or conduct maintenance on listed buildings is clear. In the context of the present project it is also clear that such work is likely to be quite different to the type of activity that may be carried out on a historic wreck site by interested non-statutory groups/individuals. The latter are more likely to be concerned with surveying, researching or simply visiting a site, rather than maintaining the outward appearance of it through restorative building maintenance. In contrast surveying, photographing or visiting a listed building is unlikely to require consent. A requirement for clear guidelines on preparing management agreements is emphasised to ensure that they can be put in place consistently and with the minimum of resource expenditure.

Summary

Listed building consent is only required for certain works conducted on a listed building. When this consent is required is a subjective matter, which inhibits the process of authorising consent itself, either through management agreements or other means. The use of management agreements are seen as an effective way to streamline the processes of granting consent for work on a heritage asset, while having the potential to improve levels of trust and cooperation between managers and owners/interested parties. Within the provision of management agreements for listed buildings it has been noted that there is a need to improve the extent to which management is active and informed, with an eye to the future as well as the present.

4.6 SCHEDULED MONUMENTS

The primary statutory protection that is currently in use for the majority of archaeological remains located in the terrestrial areas of England is set out in the Ancient Monuments and Archaeological Areas Act 1979 (AMAAA). Section 17 of this act provides for the Secretary of State (now represented by English Heritage), or local authority, to enter into an agreement with the occupier of land, or other interested party, upon which a Scheduled Monument is located. The purpose of such agreements are to allow for elements of site management such as the maintenance and upkeep of the monument, the provision of public information, restriction of use or payment for work required by the agreement.

In this regard, Section 17 represents the first attempt, of relevance to the present project, to facilitate the maintenance, if not the management, of heritage assets, by private individuals on behalf of the public and at the expense of the public. Significantly, the agreements outlined in Section 17 of the AMAAA do not allow for archaeological work, either survey or excavation, to be undertaken on the site. The agreement is expressly concerned with providing a mechanism to allow monuments with structural elements to be maintained. Additionally, actual consent (and related issues) for any work to be carried out on a Scheduled Monument is contained in Section 3 and 4 of the AMAAA. Section 17 is therefore concerned with the mechanism for an agreement over who will conduct any work and does not give them permission to conduct the work, a caveat expressly set out in Section 17(8).

With specific regard to monuments located in the marine zone, Section 17 of the AMAAA was revised, along with the National Heritage Act 1983, under the 2002 National Heritage Act to encompass the territorial waters of England. This allowed agreements created under Section 17 to include Scheduled Monuments located in England's territorial waters, as well as those located in purely terrestrial contexts.

Summary

In the context of the present project the AMAAA provides a long-standing example of a formal attempt to provide for the management of heritage assets through agreements between public institutions and private individuals. As framed by the AMAAA, such agreements are concerned with the on-going maintenance and upkeep of scheduled monuments and not in conducting archaeological work or research on such sites. Revision of the AMAAA by the National Heritage Act 2002 allows for the formation of agreements relating to Scheduled Monuments located in territorial waters. Section 17 agreements may be put in place by national bodies, such as English Heritage, or local authorities.

5. Current Policy Documents related to HPAs

In addition to the existing similar agreements discussed in Section 4, a number of policy documents relating directly to heritage assets have also been selected for review because of their relevance to the present project. In each case only information relevant to the proposed HPAs for undesignated marine sites is considered before any findings are presented. The purpose of this section is to provide a background within heritage management and the marine zone in particular, against which the development of undesignated HPAs can be contextualised.

5.1 HERITAGE PROTECTION REVIEW: INTRODUCING HPAs (ENGLISH HERITAGE 2005)

The Heritage Protection Review undertaken by the Department for Culture Media and Sport recommended the introduction of statutory management agreements (EH 2005: 1), now known as HPAs. Such agreements were visualised as representing an alternative management regime to the system of consent (EH 2005: 1), utilised in conjunction with various legislative acts, for example the AMAAA. The introduction of HPAs is noted (EH 2005: 2-3) as having the potential to offer a better understanding of the risk and significance of assets, offering a better way to understand management interests while offering partnership between stakeholders, eliminating the need for close regulation when dealing with certain categories of change and offering a means to make the medium/long-term management of heritage assets more positive and proactive, rather than reactive.

The document goes on to outline, in broad terms the basic principles of HPAs and the general type of sites that such agreements could be applied to (EH 2005: 3-5). There is nothing to suggest that marine sites should be explicitly included or excluded from such a system. The document also establishes some important basic features of HPAs, notably that they should last for a period of five years before they are reviewed/renewed (EH 2005: 6) and that they should be site-specific, rather than generalised, in nature (EH 2005: 5). The implications of a breach to the HPA are also explored and it is clearly set out that a breach is deemed to have occurred when procedures set out in the HPA are not followed (EH 2005: 6). In which case, the normal consent system, set out by the legislative mechanism relevant to the asset in question, becomes applicable. In this circumstance, enforcement may be applied by the local planning authority as normal, including prosecution, if this is deemed necessary. The implication of this section to the present study is that an HPA for an undesignated site would not be associated with any risk of penalty in the case of action being taken which lay outside of the HPA.

Finally, the document offers a number of questions for discussion as a means to further inform upon the development of HPAs (EH 2005: 7). These relate to the proposed timescale of five years, the type of asset identified as being suitable for HPAs, the suitability of the guidelines offered and whether or not the use of HPAs will actually lead to a more proactive management system.

Summary

The document serves as a useful opening point of reference for the present discussion of HPAs. The basic features, aims and purpose of them are outlined, but some of the future questions relating to them are also identified. It is clear throughout that the paper is very much concerned with the use of HPAs for heritage assets that are afforded statutory protection through scheduling, designation, listing, etc. In particular, the document highlights the fact that for an HPA relating to an undesignated site, there would be no legal facility to deter the heritage partner from acting in contravention to the agreement.

5.2 NATIONAL HERITAGE PROTECTION PLAN (NHPP) (ENGLISH HERITAGE 2011B; 2011C)

Provision for HPAs is included in the recently published NHPP (EH, 2011b: 32) and further details are provided under the Activity Plan for *Measure 5. Responses: Protection of Significance* (EH, 2011c). The latter document provides more specific details on how HPAs fit into the wider provision of heritage management through Section 5B1; *Heritage Partnership Agreements and Model Management Plans* (EH, 2011c: 10-11). The context of this notes the importance of developing consistent structures and principles for HPAs and management plans (EH, 2011c: 10).

A methodology is set out in section 5B1.1 for the *Development and promotion of guidance, training and pilots from Heritage Partnership Agreements* (EH, 2011c: 10), and it is perhaps notable that within this no distinction is made between heritage assets located in the terrestrial or marine zones. This may be taken to mean that the future provision of HPAs will adopt a truly seamless approach, recognising no difference in requirements, resulting from a terrestrial or maritime context. This

methodology includes refinements to the existing guidance on the provision of HPAs as well as the development of 16-20 pilot HPAs per year. It is stated that these will be tested on a range of site types and it is therefore envisaged that this will include sites located in the marine zone.

Two further sections, 5B1.2 and 5B1.3, provide methodologies for the development/expansion of management agreements relating to Protected Shipwrecks and Scheduled Monuments respectively. The former deals with the scoping and implementation of Protected Wreck Management Agreements (PWMA), while the latter provides limited funds to develop and expand the use of Section 17 Management Agreements for Scheduled Monuments. The obvious implication of this is that in the future HPAs will be utilised mainly on undesignated sites, whether they be terrestrial or marine; an implication perhaps confirmed by the title of the present project. This outcome seems especially likely in the marine zone, where there are only a tiny number of Protected/Scheduled/Designated sites, when compared to the terrestrial zone.⁴

The three-pronged approach, as set out by the NHPP may be considered a little further in the context of the present review. Namely that it may result, either intentionally or unintentionally, in a two-tier system for the provision of the management of sites and the involvement of the public in this management. This must be considered of greater concern for marine sites, simply because far fewer marine sites in England have been provided with statutory protection, when compared to terrestrial sites. A situation may therefore arise where a marine site, such as a shipwreck, is served by an active and effective HPA, perhaps facilitated through a local group, but that the site still has no statutory protection. At the very least such protection recognises the significance of the site itself, but it also recognises the efforts of the groups to manage the site via the HPA. As noted above, such a situation is unlikely to occur with a terrestrial site because a much greater magnitude of sites are offered statutory protection.

Section 5A1.1 (EH, 2011c: 3) of the NHPP notes the requirement for the designation of sites to be far more *strategic* in the future, rather than the *responsive* approach recognised as being used currently. Despite this, no mention is made of the discrepancy between the number of terrestrial sites afforded statutory protection, when compared to marine sites, and the need to address this clear imbalance in the protection of England's historic assets. On the one hand, this may be seen as evidence of a continuation of the 'seamless approach' to the management of marine/terrestrial heritage; neither terrestrial or marine sites are singled out for special treatment. Alternatively, given the specific prominence given to coastal/maritime heritage in other areas of the NHPP (e.g. Section 2D2, 3A1, 3A2, 4A3 & 4H1) it may be seen as a continuation of the current imbalance in the provision of statutory protection.

Summary

The NHPP contains clear provision for the development and application of HPAs. This provision encompasses the development of pilot HPAs as well as the refinement of existing guidance. It should be noted that the same overall section of the NHPP provides for the separate development of management plans for Protected Shipwrecks and Scheduled Monuments. This has the effect of muddying the water when it comes to assessing the extent of statutory protection extended to heritage assets which are the subject of HPAs.

5.3 HERITAGE PARTNERSHIP AGREEMENTS: ENGLISH HERITAGE GUIDANCE FOR STAFF (ENGLISH HERITAGE 2011A)

Guidance produced by English Heritage for internal staff and external partners in relation to the development of HPAs. The document contains a background to the legislation and policy surrounding HPAs (EH 2011a: part 1) before offering a guide to the processes required to draw up and implement an HPA (EH 2011a: part 2). The latter subject builds upon much of the material outlined previously (EH 2005), for example the duration of an individual HPA, as well as offering specific guidance on aspects such as consultation, first meetings, signing off, etc. This should ensure that HPAs are broadly consistent across the entire historic environment that EH manages, while allowing for some inevitable differences as a result of different site types. At present, some of the language in Part 2 is a little unspecific, for example 'The HPA could be formed of four elements' (EH 2011a: 10), while in reality it might be more useful if it set out with more certainty exactly what an average HPA should be expected to contain. Certainly, when it comes to engaging stakeholders as partners for HPAs, a document will be required that sets out what is involved and what may be expected with a bit more

⁴ The National Heritage List for England contains 19,759 Scheduled Monuments and 47 Protected Shipwrecks.

certainty. An obvious caveat is that the document under review here is a general guidance note only. In this regard the document provides much of the structure by which HPAs may be instigated in the future.

As noted above, Part 1 details the legislative and policy background to HPAs, setting out what the main aim of HPAs are and what kind of benefits that should produce for stakeholders and heritage managers alike. It is clearly stated (EH 2011a: 4), that HPAs are intended to provide greater certainty over defined activities which might normally require statutory consent and to streamline the process of giving consent to repeated activity or work. This implies that heritage assets under an HPA will themselves be designated and the document offers the view that HPAs are particularly appropriate for designated assets such as listed buildings or scheduled monuments, as well as other designated assets; World Heritage Sites, Historic Parks and Gardens, etc. In the context of the present project, the guidance goes on to note that undesignated assets may be included and that this may be a short-term option instead of designation. Finally, the guidance notes (EH 2011a: 6) that HPAs offer a more flexible approach, presumably than the present system, to the management of the marine historic environment. In particular, the ability to offer streamlined management, a reduction in individual licence applications and a more holistic approach to individual, complex sites are all cited.

Summary

The guidance document produced by EH offers a great deal of clarity regarding the contents of HPAs, how they might be structured and how a timetable of inception, implementation, review and renewal might operate. This is certainly welcome within the context of the present project. It also reinforces the view from other sources that two of the primary aims of HPAs should be to streamline consent and to increase the proactive management of sites while making such management more individually tailored to the needs of specific sites. It is also clear that the provision of HPAs for undesignated sites is less straightforward than for designated ones because of the lack of statutory protection for such sites. Consequently, there is no obvious deterrent to breaches of the HPA because the site is not subject to statutory controls that derive from designation and the consent system.

5.4 MARINE LICENSING

The Marine and Coastal Access Act 2009 (MCAA) established the authority of the Marine Management Organisation (MMO) to manage all planning activities relating the marine environment. Such activity ranges from the construction of offshore infrastructure projects (e.g. windfarms), through aggregate extraction to fishing and non-recreational diving. The MMO has issued guidance on a series of scenarios which have implications for activities that are likely to take place as part of an archaeological diving project; excavation, use of an airlift, retrieval of artefacts, etc. This guidance may be summarised⁵ as follows;

- The removal of objects from the seabed to a boat by hand, by a non-tethered/non-surface supply diver, *does not* require a licence. If the diver is tethered, or using surface supply then a licence is required.
- The removal of objects from the seabed to a boat using a winch, hoist, etc, that is attached to a boat *does* require a licence.
- The movement of sediment by hand, for example through hand-fanning, *does not* require a license.
- Any activity which uses a mechanical device to remove sediment and deposit it elsewhere, defined as dredging (MMO 2011: 5-6), *does* require a license. This would include the use of airlifts and water dredges.

Within the scope of the present project, MMO licensing requirement have implications for the application of HPAs to sites within the marine zone. Notably that for some types of activity that might be desirable as part of an HPA; for example targeted excavation for the purpose of research, or the recovery of large artefacts, such as cannons, to enable conservation, may require licensing from the MMO. This may have the effect of limiting such activity due to the requirement of applying for a licence (and paying a licence fee) each time such an activity was required. This would clearly be directly at odds with the purpose of HPAs in streamlining the consent process and reducing licence applications (EH 2011a: 6). One possible solution may be liaison between EH and the MMO in order to secure a blanket exemption for 'archaeological activities' (as defined by EH) providing such

⁵ Based on information provided by the Marine Management Organisation (www.marinemangement.org.uk/licensing/marine/activities.htm), and the Nautical Archaeology Society (NAS) (www.nauticalarchaeologysociety.org/guidance_regulations.php)

activities are subsequently monitored by EH. Such monitoring would take place under the HPA system in any case and may provide an additional incentive for the take-up of HPAs through avoiding the repeated application for licences and associated bureaucracy in relation to certain specified work. Such a blanket exemption would also be beneficial for other related activities, for example the management of Protected Wreck Sites.

Summary

The marine licensing system introduced through the MCAA provides a potential hindrance to the inception of HPAs for undesignated marine sites because of the requirement for certain archaeological activities to be licensed as part of a system which lies outside, and is independent of, heritage management systems. This has the potential to result in archaeological activity being dictated by a desire to avoid and/or circumventing the licensing system, rather than as a result of site specific needs and requirements, as originally envisaged by HPA outlines (see EH 2005: 5). To ensure the success of HPAs for undesignated marine sites, it is necessary to discuss with EH the potential need to come to an agreement with the MMO for a blanket exemption for archaeological activities.

5.5 DESIGNATION SELECTION GUIDE: SHIPS AND BOATS (ENGLISH HERITAGE 2012)

English Heritage's *Designation Selection Guides* have the stated purpose of explaining their approach to designation. The guide for ships and boats (EH 2012) deals with all vessels from prehistory through to the modern period and outlines all of the possible ways in which a ship or boat could be protected or managed. This includes management tools designed explicitly for heritage assets, such as the AMAAA or PWA (EH 2012: 8-11), as well as those designed for natural assets, such as SSSIs (EH 2012: 13). Non statutory mechanisms, such as the National Register of Historic Ships, are also introduced and explained (EH 2012: 11-12). In this regard, the document provides an extremely valuable overview of the plethora of ways in which a ship or boat, deemed to be a significant heritage asset, could be protected and sustained for future generations. Given the focus of the present project on the application of HPAs to undesignated assets, the contents of the selection guide have clear potential implications for what is designated and what remains undesignated. Finally, and importantly, the point is made that the ships and boats under discussion encompass all types of vessel, in all types of environment, ranging from fully terrestrial, through the inter-tidal to the marine zone as far as the territorial limit (EH 2012: 3).

Additionally, the selection guide clearly sets out the circumstances in which a ship or boat may be afforded statutory protection under the various legislative tools available. In the case of listing, it is made clear that in the majority of cases this is not a suitable approach and that the number of listed ships and boats is likely to remain confined to the existing examples, such as the *Cutty Sark*, which have entered the terrestrial planning process (EH 2012: 8). The explanation of the application of the AMAAA to allow for the scheduling of ships and boats is then outlined, including identification of some of the limited number of examples or vessels that have already been scheduled. The selection guide clearly states that 'such designations are likely to remain the exception' and that vessels located in terrestrial contexts, deemed to be of significance may be dealt with through the planning system, including preservation *in situ*, or recovery (EH 2012: 9). The implication is that such vessels will not be scheduled. The areas of consideration for the scheduling of vessels, such as *Period*, *Rarity*, etc, are then listed and explained. Oddly, this excludes two criteria; *Fragility/Vulnerability* and *Diversity*, which are listed by DCMS (2010: annex 1) in their explanation of the selection of historic assets for scheduling. These criteria are instead included in the section covering Protected Wreck Sites where it is stated that they are *additional* to those used for the AMAAA (EH 2012: 11). Little else is added regarding the application of the PWA, except to reinforce the point that only 46 vessels are designated within English waters out of the 3,266 vessels for which a period and location is known (EH 2012: 7).

The final portion of the selection guide provides useful information on the other statutory and non-statutory mechanisms that may also provide protection for ships and boats. This is valuable from the perspective of knowing what other legislation may potentially affect the management of an individual site. However, such measures are clearly designed for natural, rather than cultural heritage and as such they cannot be expected to afford the same level of protection that fully developed cultural heritage protection legislation and management can offer. Finally, figure 19 offers a useful diagrammatic view of how the main legislative tools discussed (listing, scheduling and designation) overlap with regard to ships and boats located in the terrestrial zone above high water, the inter-tidal zone and the marine zone below low water. It is graphically clear that the only statutory tool that will

provide a seamless approach to the sustained management of ships and boats is that of scheduling as Ancient Monuments via the AMAAA.

Summary

The designation selection guide for ships and boats raises a number of important issues. It emphasises the need to treat all ships and boats equally as potentially valuable cultural heritage assets, regardless of their location; obviously in keeping with a desire for a 'seamless approach'. The statistic is also highlighted that a very small proportion (1.4%) of ships and boats out of the total of located and dated sites within England, are actually afforded a specific statutory protection and management framework. This obviously provides scope for the strategic expansion of the number of sites that are afforded protection, in line with Section 5A1.1 of the NHPP (EH, 2011c: 3). The selection guide also clearly illustrates the fact that the AMAAA is the only piece of heritage legislation that can afford ships and boats a uniform level of protection, regardless of their location. Despite the seemingly clear message that ships and boats are important, that not many of them are protected and that the AMAAA can afford uniform protection of sites, the selection guide clearly states that there are unlikely to be any more designations under the AMAAA. The closing statement of the document highlights the need to make the best use all forms of available protection and avoid administrative duplication (EH 2012: 14). Yet the selection guide actually does little to explain how this will be done in the future and how a position of parity between the protection and management of maritime and non-maritime cultural heritage will be achieved in England.

5.6 ENTERPRISE AND REGULATORY REFORM BILL⁶ (EXPECTED TO BE PASSED INTO LAW IN APRIL 2013)

The Enterprise and Regulatory Reform Bill (ERRB) is concerned with making provision for a wide range of often disparate areas of UK life. These range from provision for a green investment bank, aspects of employment law, the abolition of the Competition Commission and the Office of Fair Trading, changes to copyright law and payment to company directors. Also included are revisions to existing heritage legislation related to listed buildings (Section 51, referring to Schedule 16). In the context of the present project, this includes legislation relating to the formulation of HPAs. It is this section which will be addressed here.

Schedule 16 of the ERRB relates to Heritage Planning Regulation. Paragraphs 1-8 deal with amendments to existing acts in order to rationalise parts of the terrestrial planning process. Paragraph 9 sets out amendments to the Planning (Listed Buildings and Conservation Areas) Act 1990 with specific reference to the insertion of HPAs into Section 9 of that Act. This section (9a) primarily sets out who an HPA may be initiated by, drawn up between and what any HPA may specify can be done to a listed building. This is helpful for establishing some of the likely partners in any HPAs used in the marine zone, although much of it is concerned with allowing partners to more effectively carry out work within the confines of consent requirements. Section 9b sets out a number of supplemental considerations which are extremely valuable in stating some of the key aspects of what any HPA must contain; length of agreement, provision for review, termination and variation, etc.

Section 2 of this report suggested that EH has an existing legal remit to direct or initiate work on scheduled ancient monuments, whether or not they are designated, under the AMAAA. Consequently, amendment of the AMAAA in the manner of the Planning Act contained in the ERRB is probably not required. However, in the interests of maintaining a consistent approach to HPA across all areas of the heritage environment it would clearly be of use to adopt some of the guidance contained in the ERRB for the purposes of establishing HPAs for ancient monuments.

⁶ For full details see <http://services.parliament.uk/bills/2012-13/enterpriseandregulatoryreform.html>

6. Discussion

A number of questions were identified in the project design, based upon the expected review of management schemes/agreements and legal ownership subsequently undertaken above. These are now discussed in turn as a way to structure discussion on the development of undesignated HPAs and any considerations, problems, requirements, etc, that may be highlighted at this early stage.

6.1 WHAT ARE THE ADVANTAGES AND DISADVANTAGES ALREADY IDENTIFIED AS PART OF UNDESIGNATED LAND-BASED HPAs?

There are no HPAs currently in use for undesignated terrestrial *historic* assets (Lucy Oldnall (EH), pers.com.). Consequently, this question will be addressed by considering undesignated terrestrial *natural* assets that are subject to management agreements, in particular the Environment Stewardship (ES) scheme operated by Natural England (NE).

The ES scheme has a number of clearly identifiable advantages in providing a potential way to manage undesignated marine historic assets. These can be summarised as follows;

- **Flexibility.** The scheme is flexible for the partner, offering a number of different actions that can be implemented to improve the area of land within the scheme. The partner can pick and choose which actions they implement. Implementation of key desirable actions is ensured through the provision of a set of 'Priority Options'.
- **Proactive.** The ES scheme allows NE to set out the range of work they require. This can be varied/changed over time in conjunction with alterations to strategic management targets or requirements. For example, NE has had a recent focus on increasing the uptake of 'Priority Options' (NE 2012b: 5).
- **Incentivised Engagement.** Voluntary engagement can be enhanced if participation is incentivised. This is achieved in the ES scheme through financial reward once a certain quantity of work has been carried out. Obviously work must be carried out to a certain standard, set by NE. It also allows for the costs incurred by the steward to be defrayed in a standardised way.

A number of potential disadvantages of such a scheme may also be postulated;

- **Legal Protection.** The undesignated nature of the site dictates that the work of the steward has no statutory protection and any completed work could be subsequently undone or compromised with no consequences.
- **Negative Consequences.** Interference of sites in any fashion has the potential to degrade them, rather than improve them, if work is done incorrectly or badly.

6.2 HAVE SUCH HPAs HAD A POSITIVE AND/OR NEGATIVE IMPACT?

As with question 1 above, this question is considered with reference to the Natural England ES scheme. Although difficult to quantify, due to a lack of readily available statistics, the ES schemes, building upon previous, similar schemes, appears to have had a positive impact. Around 70% of England's agricultural land is now under some form of management scheme through an environment agreement and over 57,000 agreements have been implemented in reaching this level. This clearly signals that through the ES scheme, NE has greatly developed its capacity to influence how agricultural land is managed and considered by the people who own and occupy it. The advantages outlined above also indicate that within this system, NE has been able to implement a proactive approach to setting out the type of work that its stewards have chosen to undertake. Overall, the ES scheme must be seen to have had a positive impact.

6.3 HOW DOES THIS CORRELATE AND/OR COMPARE TO THE MARINE ENVIRONMENT?

Undesignated cultural heritage assets located in the marine zone have an obvious potential to benefit from the inception and application of some form of HPA. At present, many sites are visited by the public on a regular basis; often as places of general interest for sports divers, sometimes in order to conduct archaeological work (either vocational or a-vocational) and occasionally for the purpose of salvage and looting for commercial gain. Except in a few cases where sites are extremely fragile, almost all sites would benefit from the close involvement of a heritage partner to facilitate an increase in the understanding of the site and to allow regular monitoring. The ability of a heritage agency, in this case EH, to dictate the type of work that such partners undertake has the potential to allow a standard of work to be applied to sites across England. Furthermore, EH would have the ability to

change the type of work included in HPAs as strategic management needs change, or new ones are identified.

Schemes such as the ES scheme are financially incentivised, usually offering payment once a certain level of work has been carried out. It is easy to see how a similar approach might be applied to the marine environment; with heritage partners rewarded, or at the very least their financial outlay compensated, once an agreed quantity of work had been completed. One clear area of difference between HPAs and the ES scheme is that the discipline of archaeology maintains a strong desire for work conducted on archaeological sites to be published in the public domain. Some means to facilitate this, such as annual reports containing publication standard information or occasional monographs, could achieve this.

A further area of difference relates to site ownership, this is discussed in full in **Section 3**, but is worth briefly considering here. This consideration primarily relates to the freedom of access of sites located in the marine environment, unlike most terrestrial agricultural land where access is through agreement or via public rights of way. The implication of this difference is that once a site has been subject to beneficial work, financial incentive awarded and the results of this work made public, the site may become the subject of unwanted access. This may be in the form of high visitor numbers leading to damage, or simply to looters/salvors interested in removing artefacts or material from the site. This may be as simple as the removal of mundane items such as metal fastenings due to their monetary value, or the wholesale destruction of a site that was otherwise preserved *in situ*. The undesignated nature (as currently proposed) of the HPA sites would mean that providing any raised material was declared to the Receiver of Wreck, no statutory offence would have been committed. Yet the site, along with the work of the heritage partner and the results of the financial incentive, provided through public money, may be permanently destroyed or lost. While statutory protection cannot guarantee to prevent such a scenario from occurring, it can act as a strong incentive for the preservation of protected sites and in its ultimate form to provide a means to punish those who transgress.

In summary, there is obviously a reasonable level of potential correlation between existing undesignated agreements for terrestrial assets and the possible inception of a system for the marine environment. However, there are also a number of specific considerations that derive from the inherently different nature of the sites under discussion; both as cultural rather than natural heritage and through location in the marine, rather than terrestrial environment. Some of these issues have been touched upon above, but space is now provided for a fuller discussion of them, along with related issues or considerations.

6.4 WHICH POTENTIAL ISSUES MAY BE ENCOUNTERED AND HOW CAN THEY BE RESOLVED?

Following a review of the literature related to a number of management agreement systems for a variety of site types, both natural and cultural, it is possible to generate a range of issues which should be considered in the creation of HPAs for undesignated marine sites. Rather than simply highlighting potential issues, implicitly assumed to be negative, the answer to this question first sets out a number of observations relating to potentially positive results of implementing HPAs (HPAs) on undesignated marine sites;

- HPAs represent a positive way to manage England's underwater cultural heritage and allow for work to be conducted on sites in a manner that encourages conservation, continuity of work and a sense of public ownership.
- HPAs can be proactive and forward-looking. They should aim to enhance the asset, for the benefit of the public, as well as sustain it for the future. They can offer direction as to the type and standard of work which can be undertaken on marine sites on an England wide basis.
- HPAs modelled in part on the Environmental Stewardship scheme represents a possible means to direct the type of activity carried out under HPAs and to provide a way to facilitate work through financial grants. For example, partners could be rewarded for fulfilling a certain number of options in a satisfactory way; site survey, monitoring, environmental analysis, etc.

In addition to the benefits of implementing a system of HPAs for undesignated marine sites, there are a number of observations which can be identified and which should be included as recommendations or considerations when drafting the outline for the initiation of a HPA.

- In the first instance, HPAs should be drawn up in consultation with the individual, group, institution, public body, etc. that is entering into the HPA. This will allow requirements from the statutory body to be included, as well as taking account of the aims/aspirations of those entering into the HPA.

- The statutory body (EH) responsible for initiating the HPA must clearly demonstrate that their legal remit covers the site (Section 2). Otherwise the HPA will be less meaningful and it will be questionable whether or not the statutory body actually has the power to initiate an HPA and expend public money upon it. In this regard, EH has a clear remit to direct work on ancient monuments, even if they are undesignated. Its remit to direct work on undesignated 'shipwrecks' under the PWA is less well established. Given the desire to include submerged landscapes as well as shipwrecks it would be better to use the term ancient monument as a means to classify sites.
- HPAs need to differentiate between different interested parties. For example: *owners*, who may have a duty of care towards the site; *users*, who may wish to conduct work (including archaeological research) on the site. Different types of HPA may be required to achieve this, aimed at allowing different types of activity or access.

Finally, a number of potentially problems can be identified, which must be considered further.

1. **Site Selection.** It is currently unclear from the published literature which sites, or how many sites, will be the focus of future HPAs. Given on-going constraints on financial resources, coupled with the finite number of potential heritage partners, it is accepted that it will not be possible to initiate an HPA for every undesignated site in the marine environment. In this case, there must be some criteria in place for selecting those sites that could benefit the most from an HPA. During discussion with EH as part of the production of this report it was made clear by EH that selection of sites for HPAs will be based on the Designation Selection Guides for ships and boats (see Section 5.5). Furthermore, that only those sites deemed to be of national importance would be considered as candidates as HPAs, as a means to ensure that resources would only be applied to sites of considerable significance. This raises a subsequent question; namely that if a site is of high significance, then by most measures it should be scheduled as an ancient monument. Clearly, this in turn may change the ease within which an HPA can be initiated.

Throughout this section, where the subject of statutory protection has been raised, the legislation suggested for use is the Ancient Monuments and Archaeological Areas Act 1979 (AMAAA). The use of the AMAAA in the marine zone has been the subject of a previous EH pilot study, which concluded that the AMAAA was a suitable statutory tool for protecting fully submerged underwater remains (Whitewright 2011: 28-29). It has the added advantage of continuing to allow public access to the site without the need for additional licenses, unlike the Protection of Wrecks Act. Furthermore, use of the AMAAA would ensure that marine sites are protected in the same way as terrestrial sites; the seamless approach, a stated aspiration of numerous previous heritage management documents (e.g. Roberts and Trow 2002: 16; Williams *et al* 2005: 12 & 137). Unlike the Protection of Wrecks Act, the AMAAA does not place EH at a financial obligation in regard to the site, for example through the provision of a similar contract to the protected wrecks archaeological contract. The combination of the AMAAA and the National Heritage Act was also noted in **Section 2** as providing EH with its remit for dealing with undesignated sites. Finally, scheduling sites selected for HPA in the marine environment would tie in with the NHPPs stated aim of increasing the number of scheduled sites through strategic, rather than reactive scheduling (EH 2011c: Measure 5A1).

A counter argument to this is that the National Planning Policy Framework, published in March 2012 (DCLG 2012: para 139) recognises that undesignated heritage assets which are of equivalent significance to designated assets should be treated in the same way and should be considered subject to the policies for designated heritage assets. This opens the way for non-designated sites to be the recipient of resources in a similar way to designated sites. As noted in **Section 2**, this is feasible under the National Heritage Act, which clearly makes provision for the expenditure of resources on non-scheduled 'ancient monuments'.

2. **Resource Allocation.** As noted above, it is unlikely and probably undesirable, to initiate an HPA for every site. At the same time, there is a strong possibility that stakeholder groups will want to initiate HPAs on sites of varying degrees of significance; selection is likely to depend on the individual motives and interests of the groups in question. This variance should be seen as a way of encouraging diversity in the range of sites that are subject to HPAs. But it also raises the question of resource allocation. Notably, that should equal levels of resources be allocated to HPAs on sites of differing significance? A solution to this may be to allocate a maximum level of resources to a particular site dependent on the significance of the site. So,

a site of Low significance (which might be of high interest to a local group) will receive fewer resources than a site of Medium significance, and so on. Such a system may form the basis of an overall ranking system for undesignated sites, based on an objective assessment of their significance, using the same criteria as for designated sites.

It is likely that HPAs for undesignated marine sites will require a certain level of financial and non-financial resources, on the part of EH and the heritage partner. If as proposed, such agreements are implemented on undesignated sites, then any investment will lack any form of statutory protection. Such protection might otherwise help in preventing subsequent damage to the site and the reversal of positive work conducted through the HPA. In the current climate of financial austerity, it seems inconceivable that public money could be invested in such a scheme and not be subject to statutory protection, especially when such protection is available within existing legislation.

3. **Possible Class Consent Requirement.** If marine sites selected for HPAs are scheduled under the AMAAA as suggested above, then any work conducted upon them that changed the nature of the site would be subject to the existing consent system (EH 2009: 1-2). In this situation, a number of class consents for specific types of maritime work would need to be passed in order to streamline the process of initiating HPAs. Simple tasks such as non-intrusive measured survey probably do not need consent.
4. **Standardised HPAs.** The system seemingly implied by the NHPP sets out three different agreements; HPAs, Section 17s and Protected Wreck Management Agreements. This seems certain to cause confusion amongst stakeholders. It would be better to simply have a single class of HPAs that can be applied to scheduled monuments, protected wrecks, etc, and which may be varied, as with SSSIs or Environmental Stewardship, dependent on the specific context of the site in question. In part, this returns to the points made above; for HPAs for undesignated marine sites to have real meaning then the site in question may have to be scheduled/designated in some way.
5. **MMO Licensing.** The MCAA system of marine licensing may result in HPA activities being subject to another statutory body (the MMO) or being driven by the requirements of the licensing system, rather than those of a specific site.

7. Outline Provisional Proposal for HPAs for Undesignated Marine Sites

Taking the entirety of the above discussion into account, it is possible to draw up an outline provisional proposal for how HPAs for undesignated marine sites may be structured. Inevitably, these proposals will benefit from discussion between EH, HWTMA and potential stakeholders prior to the finalisation of the HPA methodology for undesignated marine sites in Phase Two of the present project.

The most feasible system appears to be one based broadly on the Environmental Stewardship programme operated by Natural England across farmland (**Section 4.3**). As noted previously, an approach to HPAs based on this system allows EH retaining the strategic direction of work undertaken through HPAs, it provides the heritage partner with a sense of ownership of their work and it also provides a means for work to be financially incentivised.

In the context of undesignated marine sites, the proposed HPAs might include the following general facets;

- Inclusion of a number of related stakeholders, in addition to EH and the heritage partner. For example local authorities, site owners, related 3rd parties.
- Establishment of a clear framework relating to the length of the HPA, including provision for its termination and variation.
- Formulation of a number of different 'heritage tasks' (**Appendix 1**), the implementation of which are beneficial to the on-going/future management of marine heritage sites.
- Tasks would be implemented by a 'heritage partner' with whom EH would enter into the HPA.
- HPAs themselves are graded at three different classes (1-3) (**Appendix 1**). The class selected is dependent on the demonstrable expertise of the Heritage Partner, and serves to provide a measure of protection for the site from damage inflicted due to non-competent Heritage Partners. Certain tasks (e.g. excavation) may be excluded from certain sites in the interests of preserving the site *in-situ* in the best possible condition.
- The class of HPA may also be used to reflect the relative significance of the site, for example a site of high significance is automatically associated with a class 3 HPA, medium with a class 2 HPA and low with a class 1 HPA. This would reflect both the need to ensure the site is well-managed, as well as acknowledging that more complex tasks, carried out on sites of higher significance have the potential to produce data of higher value. Higher classes would ultimately present more tasks to the heritage partner, through the requirement for tasks in lower classes to be completed as part of any higher class HPA.
- The costs to the Heritage Partners of conducting the tasks, under the HPA are defrayed by EH at a standard rate, which is formulated by EH and revised as appropriate. This is a similar approach to that already available through Section 17 of the AMAAA.
- Upon completion of a set number of tasks, and submission of an annual report detailing the outcome of the tasks carried out that year, the Heritage Partner is financially rewarded for the tasks that they have completed. Simpler, lower-level tasks carry less reward than higher-level tasks.
- Tasks are designed in a way to facilitate the development of the archaeological skill-set of the heritage partner, in the case of an in-experienced group or individual. This in turn provides a means for building capacity within this sector which will inevitably be beneficial in the future. Similarly, groups/individuals with existing, proven experience can initiate a higher level HPA, but can still complete (and would be encouraged to complete) tasks from lower/earlier levels.

8. Conclusion

The development of Heritage Partnership Agreements for undesignated heritage assets located in the marine zone represents an exciting and potentially innovative way to improve the future management of England's Underwater Cultural Heritage. Furthermore, it offers a clear way for EH to retain a strategic overview of management strategy, while engaging and rewarding members of the public, either vocational or a-vocational, who are prepared to take an active role in such management.

The preceding discussion offers a background context to the remaining phases of this project which will witness the development and implementation of HPAs on a number of pilot examples in the Solent region. This report has included an initial framework for how such HPAs might be conceived, directed and incentivised. This includes a clear outline of the management benefits from such activities in addition to attempting to provide a means to build capacity within maritime archaeology in England. Finally, it is acknowledged that all the preceding discussion and proposed frameworks will almost certainly be subject to change, revision and in some cases discard, as the process develops towards stage three of the project over the coming months. It is hoped that this report lays the foundations for the various stages of consultation, discussion and revision to be as fruitful as possible, leading to an enhanced outcome for the project overall.

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10. Appendix 1: HPA heritage tasks

HPA Tiered Task List: Entry Level (Class One)

Class	Task	Description	Benefit	Recording Level (EH) Equivalence	
Entry-level (Class One)	1.1	Desk-Based Research 1	Initial desk-based research to establish the presence, position and possible type/identification of the site	BASE	1a
	1.2	Photographic Survey	Non-Intrusive documentation of the site through a comprehensive photographic survey, recording the key features in addition to detailed attributes.	BASE	2a
	1.3	Video Survey	Non-Intrusive documentation of the site through a comprehensive video survey, recording the key features in addition to detailed attributes.	BASE	2a
	1.4	Biological Survey	Documentation and recording of site ecology allowing the completion of a SeaSearch Survey	BASE, INFO_DECAY	2a
	1.5	Archaeological Survey 1	Creation of a basic overview plan of the site. Probably as a measured sketch, rather than a full-scale archaeological survey.	BASE, DEV	2a
	1.6	Site monitoring 1	Monitoring of site as a result of return HPA derived visits, allowing the basic site-plan to be updated and recording any sudden, noticeable or dramatic changes to the overall nature of the site.	BASE, INFO_DECAY, MONITOR	2a
	1.7	HPA Level 1 Report*	Provision of an annual report to EH describing the tasks undertaken and the primary outcome of the work undertaken.	RESOURCE	N/A
	1.8	Submission of data & report to ADS/OASIS*	Submission of all material/data gathered during the course of HPA task work to EH. Includes material such as photos or videos that are not included in the annual HPA report.	RESOURCE	N/A

*Mandatory task, failure to complete signifies breach of HPA

Key	Outcome/Benefit
BASE	Creation of baseline knowledge relating to the site allowing the relative significance of the site to be more fully understood.
BASE_ENHANCE	Enhancement of the established baseline knowledge relating to the site, leading to a better understanding of the site and its relative significance.
BASE_DETAIL	Actions that lead to the inclusion of detailed information, not previously available, within the baseline knowledge of the site.
DEV	Action which facilitates the development of key skills by the heritage partner, ultimately building capacity within the underwater cultural heritage sector.
DISS	Dissemination of HPA output to the general public.
INFO_DECAY	Collection and provision of information which can inform upon any potential, apparent or on-going decay/degradation of the site.
INFO_PROV	Collection and provision of information which can inform upon possible future management of the site.
MANAGE	Task completion allows for the on-going provision for future site management via the incorporation of new knowledge about the site.
MONITOR	Action which allows the on-going, overall in-situ condition of the site to be assessed and compared to existing records.
RESOURCE	Enhancement of overall resource relating to underwater cultural heritage, allowing for wider potential appreciation of its value by the general public and other stakeholders.

HPA Tiered Task List: Intermediate Level (Class Two)

Class	Task	Description	Benefit	Recording Level (EH) Equivalence	
Intermediate-level (Class Two)	2.1	Identification & tagging of primary features	Installation of ID tags on identified key features on the site to facilitate future work, such as measured surveys.	BASE, DEV, MANAGE	2a
	2.2	Archaeological Survey 2	Non-intrusive survey, allowing the creation of a fully-scaled, measured, site plan, describing the extent and disposition of all of the main features of the site. Structural material should be recorded in full, but may not contain every facet of detail.	BASE_ENHANCE, DEV, MANAGE	3b
	2.3	Site monitoring 2	Monitoring of site as a result of return HPA derived visits, allowing the scaled site-plan to be updated and recording any sudden, noticeable or dramatic changes to the overall nature of the site.	BASE_ENHANCE, INFO_DECAY, MONITOR	2a
	2.4	Site risk-assessment	Completion of site risk-assessment in accordance with the guidelines set out by EH. Allows for the on-going provision of an effective management of the site.	BASE_ENHANCE, MANAGE	N/A
	2.5	Desk-based Research 2	Further, more developed, desk-based research into the site to allow a fuller understanding of its wider context and comparable material, leading to a developed appreciation of its archaeological potential and relative significance.	BASE_ENHANCE, DEV, MANAGE	5
	2.6	Internet dissemination 1	Establishment of web-pages dedicated to the work undertaken through the HPA. To ensure consistency, these can potentially be hosted by EH and the heritage partner can submit material to a pre-arranged format.	DISS, DEV, RESOURCE	N/A
	2.7	HPA Level 2 Report*	Provision of an annual report to EH describing the tasks undertaken and the primary outcome of the work undertaken.	RESOURCE	N/A
	2.8	Submission of data & report to ADS/OASIS*	Submission of all material/data gathered during the course of HPA task work to EH. Includes material such as photos or videos that are not included in the annual HPA report.	RESOURCE	N/A

*Mandatory task, failure to complete signifies breach of HPA

Key	Outcome/Benefit
BASE	Creation of baseline knowledge relating to the site allowing the relative significance of the site to be more fully understood.
BASE_ENHANCE	Enhancement of the established baseline knowledge relating to the site, leading to a better understanding of the site and its relative significance.
BASE_DETAIL	Actions that lead to the inclusion of detailed information, not previously available, within the baseline knowledge of the site.
DEV	Action which facilitates the development of key skills by the heritage partner, ultimately building capacity within the underwater cultural heritage sector.
DISS	Dissemination of HPA output to the general public.
INFO_DECAY	Collection and provision of information which can inform upon any potential, apparent or on-going decay/degradation of the site.
INFO_PROV	Collection and provision of information which can inform upon possible future management of the site.
MANAGE	Task completion allows for the on-going provision for future site management via the incorporation of new knowledge about the site.
MONITOR	Action which allows the on-going, overall in-situ condition of the site to be assessed and compared to existing records.
RESOURCE	Enhancement of overall resource relating to underwater cultural heritage, allowing for wider potential appreciation of its value by the general public and other stakeholders.

HPA Tiered Task List: Advanced Level (Class Three)

Class	Task Name	Description	Outcome/Benefit Code	Recording Level (EH) Equivalence
Advanced-level (Class Three)	3.1	Archaeological Survey 3	BASE_DETAIL, MANAGE DEV,	3a, 3b
	3.2	Archaeological excavation	BASE_DETAIL, MANAGE DEV,	3c
	3.3	Site monitoring 3a	DEV, MANAGE,	2a
	3.4	Site monitoring 3b	BASE_DETAIL, MANAGE, MONITOR DEV,	2a
	3.5	Desk-based Research 3	BASE_DETAIL, MANAGE DEV,	5
	3.6	Internet dissemination 2	DISS, RESOURCE	N/A
	3.7	Published dissemination	DISS, DEV, RESOURCE	N/A
	3.8	HPA Level 3 report*	RESOURCE	N/A
	3.9	Submission of data & report to ADS/OASIS*	RESOURCE	N/A
	3.10	Archiving*	RESOURCE	N/A
*Mandatory task, failure to complete signifies breach of HPA				

Key	Outcome/Benefit
BASE	Creation of baseline knowledge relating to the site allowing the relative significance of the site to be more fully understood.
BASE_ENHANCE	Enhancement of the established baseline knowledge relating to the site, leading to a better understanding of the site and its relative significance.
BASE_DETAIL	Actions that lead to the inclusion of detailed information, not previously available, within the baseline knowledge of the site.
DEV	Action which facilitates the development of key skills by the heritage partner, ultimately building capacity within the underwater cultural heritage sector.
DISS	Dissemination of HPA output to the general public.
INFO_DECAY	Collection and provision of information which can inform upon any potential, apparent or on-going decay/degradation of the site.
INFO_PROV	Collection and provision of information which can inform upon possible future management of the site.
MANAGE	Task completion allows for the on-going provision for future site management via the incorporation of new knowledge about the site.
MONITOR	Action which allows the on-going, overall in-situ condition of the site to be assessed and compared to existing records.
RESOURCE	Enhancement of overall resource relating to underwater cultural heritage, allowing for wider potential appreciation of its value by the general public and other stakeholders.