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09 December 2013

Dear Carrie & Mark,

Human Remains from Wreck Sites: a Proposed Policy for Consultation

Thank you for the opportunity to comment upon this proposed policy.

The Institute for Archaeologists

The Institute for Archaeologists (IfA) is a professional body for the study and care of the historic environment. It promotes best practice in archaeology and provides a self-regulatory quality assurance framework for the sector and those it serves.

IfA has over 3,000 members and more than 70 registered practices across the United Kingdom. Its members work in all branches of the discipline: heritage management, planning advice, excavation, finds and environmental study, buildings recording, underwater and aerial archaeology, museums, conservation, survey, research and development, teaching and liaison with the community, industry and the commercial and financial sectors.

In matters relating to maritime archaeology IfA is advised by its Maritime Affairs Group (MAG), to which most professional maritime archaeologists belong. The Group exists to:

- advance the practice of maritime archaeology by promoting professional standards for the management, conservation, understanding and enjoyment of the maritime archaeological resource;
- provide advice and commentary to IfA on matters relating to maritime archaeology;
- aid in the development of professional guidelines and standards for the execution of maritime archaeological work;
- promote the training of archaeologists and others in maritime archaeological practice; and,
- facilitate the exchange of information and ideas about maritime archaeology and to communicate these to the wider profession.

A Proposed Policy for Human Remains from Wreck Sites

General

IfA welcomes the formulation of this draft policy and recognises the importance of guidelines setting out good practice for the treatment of human remains within the existing legal framework. The Institute endorses the content of this draft subject to the minor points of detail and the one issue of substance set out below.

Specific Comments

1. In the third paragraph on the second page I would suggest deleting the words '*it appears that ...*' since the coroner's power to order exhumation is now statutory and the faculty regime is ecclesiastical. In the second sentence, I would also suggest deleting the word '*therefore*', since the absence of a mechanism formally to permit an activity, does not, without more, make the activity a criminal offence. (For instance, there is no common law mechanism formally to permit trees to be felled, but without more - for instance, the statutory provisions as regards tree preservation orders - it is not a criminal offence to chop down a tree.)

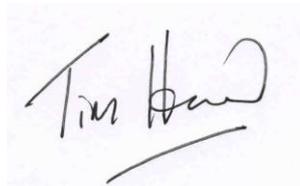
2. Although the Protection of Military Remains Act 1986 is concerned primarily with protecting the remains of service personnel, this is done in the first place by designation of vessels and aircraft, or sites containing the remains of vessels and aircraft (defined to include remains of personnel connected therewith). They are not, so far as I am aware, designated specifically as military graves. Consequently I would suggest re-phrasing the first sentence of the sixth paragraph on the second page to reflect that fact, i.e. by referring to vessels and aircraft (including the remains of personnel) rather than 'Military Maritime Graves' in the first line. (See also, the penultimate paragraph of the third page.)

3. IfA welcomes the reference in the last paragraph of the fourth page of the draft policy document to the need to comply with the IfA *Code of conduct* in dealing with human remains.

4. IfA is wholly supportive of this attempt to regularise practice with regard to human remains in the marine context and ensure that it is applied in a manner consistent with terrestrial policy and practice¹. However, if section 25 of the Burial Act 1857 does not apply to the majority of human remains encountered on wreck sites, it is not clear what legal basis there would be for the Ministry of Justice simply to '*stipulate ... that the exhumation licensing scheme applies to human remains found on wreck sites ...*' (second paragraph of the fifth page of the draft policy document). For instance, how could the Ministry enforce against a failure to obtain a licence (an offence under statute) if there is no statutory power to grant a licence and how could it enforce against a failure to adhere to conditions? Conversely, would a 'licence' granted by the Ministry without statutory power be an absolute defence to the prosecution of a common law offence in relation to the disturbance of human remains? These questions are asked not to undermine this valuable initiative but with a view to ensuring that practice and policy are robust and defensible. Legislative provision would provide an answer but this may not be feasible in the short term.

IfA would be happy further to discuss any issues raised in this letter. In the meantime, if there is anything further that I can do to assist please do not hesitate to contact me.

Yours sincerely,



Tim Howard LLB, Dip Prof Arch
Policy Advisor

¹ In this regard, however, IfA would like to see the application form currently used to apply for a licence under the Burial Act 1857 revised to elicit details with regard to the accreditation of those proposing to undertake archaeological work (for instance, by registration under IfA's Registered Organisations scheme: see <http://www.archaeologists.net/regulation/organisations>).