

Impact case study (REF3)

Institution: University of Plymouth		
Unit of Assessment: UoA18		
Title of case study: Enhancing Legal and Policy Structures for Underwater Heritage Protection		
Period when the underpinning research was undertaken: 2009-2020		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s):	Role(s) (e.g. job title):	Period(s) employed by submitting HEI:
Jason Lowther	Associate Professor in Law	April 2004 - continuing
Period when the claimed impact occurred: 2018 – 31.12.2020		
Is this case study continued from a case study submitted in 2014? N		
1. Summary of the impact (indicative maximum 100 words)		
<p>Lowther's research has directly resulted in the protection of Underwater Cultural Heritage (UCH). Such heritage mainly occurs in shipwrecks but has lacked the equivalent level of protection from damage or misappropriation as terrestrial heritage assets. His research enabled the Foreign and Commonwealth Office (FCO) to secure international protection of Ernest Shackleton's Antarctic expedition ship <i>Endurance</i> and led to the conservation of the <i>Valentine</i> tank plus another twelve maritime sites. It has given agencies involved in protecting heritage the detailed regulatory awareness of the context, nature and cultural importance of UCH, enabling them to include UCH within national policies, and to implement better multi-agency enforcement for its protection. In one specific example, Lowther's research for Historic England provided them with the legal foundation on which they have consequently been able to plan for the recovery, recording and reburial of the structure and artefacts from the <i>London</i> wreck.</p>		
2. Underpinning research (indicative maximum 500 words)		
<p>Lowther's research from 2016 to 2020 has focused on mechanisms that can contribute to UCH protection and has two principal strands: those directed at legal mechanisms deployed to manage heritage assets; and those directed towards more effective enforcement. The scope of this research leads the world and, together with UCH and archaeology expert, Mike Williams (a Visiting Professor at the University of Plymouth), Lowther is principal researcher for Historic England and other stakeholders in this field, including the Foreign and Commonwealth Office, the Department for Digital, Culture, Media and Sport, the Maritime Archaeology Sea Trust, and the Nautical Archaeology Society. Lowther contributes expertise in maritime regulation, enforcement, and environment to the research partnership with Williams, and their combined expertise gives them a unique knowledge-base through which to respond to the legislative research questions that emerge from these stakeholders.</p> <p>Lowther's earlier research (also with Williams) has framed the issues in terms of regulatory responses to Underwater Cultural Heritage (UCH) issues, considering them from novel perspectives in respect of the Legislative Marine Licensing Scheme (to which Lowther and Williams both drafted exceptions for marine archaeology) [3.1]; and in respect of the broader heritage components in Environmental Impact Assessment [3.2]. Lowther and Williams have focused their research efforts over the last 5 years on how to use their earlier research evidence to deliver implementation, effectiveness and enforcement.</p>		

In 2016 the Joint Nautical Archaeological Policy Committee (JNAPC) commissioned Lowther to undertake research into a potential policy anomaly in respect of underwater heritage assets relating to the use of one of the key protective legislative regimes. The stated policy of Historic England was not to schedule permanently submerged heritage assets under the Ancient Monuments and Archaeological Areas Act (AMAAA) 1979. Scheduling is the selection of nationally important sites which are then proactively managed. Lowther and Williams' research confirmed that this policy left significant heritage assets without legal protection from damage or removal and, as a consequence, it did not conform to the requirements of the enabling statute, meaning that significant UCH was omitted from the protective regime [3.3] [3.4]. As a result of this research this anomaly has now been rectified.

Separate to the AMAAA issue is the enforcement capability of the regulator, Historic England, which has responsibilities in other legislation to conserve UCH. Historic England lacked physical marine enforcement resources and wished to develop a multi-agency response involving regulators with seaborne resources. Consequently, they commissioned Lowther and Williams to undertake research into the enhancement of enforcement measures for the protection of UCH [3.5]. The project (Nov 2018) comprised a 50,000-word, fully referenced, research report, extensively researched using a mixed methods approach of desk-based analysis of literature and the law, and face to face interviews. The conclusions and recommendations of the report highlighted numerous knowledge-gaps and opportunities for knowledge-sharing and cross-party working which had not been explored before. An accepted recommendation was the creation of a common enforcement manual to be utilised by all seaborne regulators in respect of UCH matters. This work has been commissioned by Historic England (Project Number 8067) and is ongoing.

Following the agreement of a Memorandum of Understanding between the University of Plymouth (led by Lowther) and the Maritime Archaeology Sea Trust (MAST), in which Plymouth's remit is to provide legal expertise and research capacity, collaborative work was undertaken on behalf of the Foreign and Commonwealth Office (FCO) to develop a policy for UCH in the British Antarctic Territory (BAT) [3.6]. The aim of this original piece of research was to inform BAT's administrative approach to UCH protection in the area of its control; and to provide an exemplar of best practice for UCH matters in the region. For this project, Lowther undertook research into the Environmental Protocol to the Antarctic Treaty and its scope and potential application to UCH, which was used to inform the development of the strategy and exemplar. Bournemouth University provided archaeological input to the project.

On the basis of this research, Lowther and Williams undertook legal research and horizon scanning for Historic England in 2019/20, in partnership with the Nautical Archaeology Society and other expert contributors, as a feasibility study (*A feasibility study for a scheme for the Recovery, Recording and Reburial of material from the protected wreck of the London (1665) in the Thames Estuary (HE Project Number 7784)*, published by the Nautical Archaeology Society in December 2020). This was commissioned by Historic England, to enable them to establish plans for the proposed recovery, recording and reburial of the *London* from the Thames estuary.

3. References to the research (indicative maximum of six references)

The published research has been in legal/archaeological peer-reviewed journals and/or comprised in grant funded or otherwise commissioned reports to Government departments, statutory bodies or policy organisations, which have been commissioned as a result of known expertise. URLs for the applied/commissioned research are provided.

3.1 Lowther, J. and Williams, M. (2009) 'Marine Licensing and the Marine and Coastal Access Bill', *Liverpool Law Review*, 30(2), pp. 115-128.

3.2 Lowther, J. and Williams, M. (2012) *Beyond National Legislation: using European regulation to manage the UK's Underwater Cultural Heritage*, IKUWA3 (Internationaler Kongress für Unterwasserarchäologie, UNESCO), pp. 95-104.

- 3.3 Lowther, J., Parham, D. and Williams, M. 'Scheduling Under the Ancient Monuments & Archaeological Areas Act 1979 in English Waters', *JNAPC Discussion Paper* (prepared for JNAPC and Historic England, July 2016) – available via <http://www.jnapc.org.uk/JNAPC%20Scheduling%20Paper.Final-170816.pdf>
- 3.4 Lowther J., Parham D. and Williams, M. (2017) 'All at Sea: When Duty meets Austerity in Scheduling Monuments in English Waters', *Journal of Planning and Environmental Law*, Issue 03, pp. 2-21.
- 3.5 Lowther, J., Gall, S., Bean, E. and Williams, M. (2018) *Enhancing Protection of Underwater Heritage Assets* (Historic England Project Number 7146) - available via <https://historicengland.org.uk/images-books/publications/enhancing-protection-underwater-heritage-assets/>
- 3.6 MAST, University of Plymouth Law School, Bournemouth University (2018) *Headline Strategy for The Conservation and Protection of Underwater Cultural Heritage in The British Antarctic Territory* – available via FCO website at <https://www.gov.uk/government/publications/british-antarctic-territory-underwater-cultural-heritage>

The work for Historic England on *Enhancing Protection for Underwater Heritage Assets* was funded by a grant of £32,000. In addition, Historic England provided £35,000 of funding for research for the Common Enforcement Manual.

4. Details of the impact (indicative maximum 750 words)

Contemporary locational and retrieval technologies, including diving, have brought many formerly inaccessible underwater cultural artefacts within the reach of illicit interventions. This has resulted in numerous, irreplaceable losses often with a significant monetary as well as cultural value. Preservation and study of such heritage in situ is recognised as the international standard to ensure its sustainability as an asset for future generations, and research at UoP has provided the evidence for a legal framework to be deployed to protect these invaluable assets in this way. In addition, UoP research has delivered the enforcement networks and regulatory awareness that were necessary for Historic England to recognise the legislative requirements of any work commissioned to prevent the erosion and environmental decay of underwater archaeological material.

Protection of Antarctic Underwater Cultural Heritage (UCH)

Until 2018, the British Antarctic Territory Heritage Strategy did not include the regulatory framework to ensure the conservation of UCH. This was problematic because technological advances had enabled recovery of UCH in this region. As a direct result of UoP research, this anomaly was addressed and has enabled the FCO to take steps to protect Antarctica's vulnerable heritage [5.1].

For example, using the policy and methodologies proposed by UoP, the FCO was successful at the Antarctic Treaty Consultative Meeting (Prague, July 2019) in securing full Historic Site and Monument status for the wreck of Ernest Shackleton's Antarctic expedition ship, *Endurance* [5.2]. The international protection of this within the Antarctic Treaty System was critical as the wreck was being sought by unauthorised salvage teams and consequently was under threat of damage and destruction. In addition to establishing the legal grounds for protecting the wreck, the UoP research provided the means by which the UK could assert its lead in diplomacy through demonstrating its commitment to protecting nationally and internationally important heritage. Within the Treaty system, this gave the site the highest level of protection possible under current powers. The wreck of *Endurance* is the first (and currently the only) underwater heritage asset protected by way of the heritage provisions in the Environmental Protocol to the Antarctic Treaty. Stuart Doubleday, Deputy Head Polar Regions Department, Foreign and Commonwealth Office, explained that: "*This ...provides a template for increasing the number of Antarctic wrecks protected. This was a significant success and is a useful contribution to the UK's efforts in demonstrating our leadership in Antarctic affairs, particularly in relation to heritage*" [5.3].

Protection of Nationally Important Submerged Heritage Assets

Lowther's research has been instrumental in the secure designations of nationally important monuments offshore. As a consequence of Lowther's research, Historic England are using the scheduling under the Ancient Monuments and Archaeological Areas Act 1979 (AMAAA) to amend its previous de facto policy not to protect heritage assets that were permanently submerged. This has led to the first scheduling taking place on May 31st 2019, with a further twelve having subsequently been scheduled within the impact period reported.

Lowther's expertise was sought by the marine archaeology community to challenge Historic England's policy previous policy; Gill Graham, Head of Heritage, Department of Digital, Culture, Media and Sport, testifies that UoP "*has shared considerable expertise and knowledge both with Historic England and with government policy officials and in doing so has guided policy formation and sensitive decisions.*" [5.4]. UoP also worked with the Joint Nautical Archaeology Policy Committee (JNAPC) to affect this policy change. JNAPC's Chair, Robert Yorke observed that "*JNAPC has been advocating the designation of wrecks under the AMAAA 1979 for some time and we are very pleased that Historic England is now using scheduling underwater with increasing frequency since this change of policy took place. [UoP] research has materially assisted the work of JNAPC*" [5.5].

This significant turnaround in policy has resulted in a commitment to the conservation of our historic underwater environment. The first site scheduled under the new policy was a Valentine Tank Assemblage in Poole Bay in May 2019 to coincide with the D-Day commemorations [5.6]. The Valentine tank was an infantry support tank produced in the UK during the Second World War and was one of seven tanks which sank with the loss of six crewmen. Since then another twelve maritime sites have been scheduled using this process, with the most recent in the impact period being completed in May 2020 [5.7]. The scheduling of a number of sites in such a short period of time, is demonstrative of the number of sites hitherto falling outside of the legislative scheme and offering the potential for greater conservation effort to prevent interference thus securing their worth for current and future generations to discover, understand more about, enjoy and celebrate.

Improved enforcement networks and regulatory awareness of UCH issues

A commonly identified obstacle to interagency working has been the reported lack of understanding of the context, nature and cultural importance of underwater cultural heritage. Lowther's report for Historic England strengthened enforcement networks and enabled Historic England to develop more effective working relationships. Mark Dunkley, Marine Listing Officer and Maritime Archaeologist at Historic England, confirmed that the work "*has directly assisted Historic England's working relationship with many of these bodies on the National Heritage & Cultural Property Crime Working Group where we are now utilising existing structures more effectively in respect of intelligence to inform operational interventions*" [5.8]. Lowther's report was shared with stakeholders including members of the devolved administrations in Wales and Northern Ireland to inform their own strategic approaches to maritime heritage management. Following an expert workshop at Historic England's London HQ in 2019, a key recommendation of the report was to develop a Common Enforcement Manual, to be available to all non-specialist agencies working within the English inshore Marine Area. This represents a significant outcome, demonstrating a step-change in Historic England's enforcement approach and capacity in respect of UCH.

The London

The warship *London* blew up and sank in the Thames Estuary in 1665 with the loss of over 300 lives. The *London* wreck is designated under the Protection of Wrecks Act 1973, and is on Historic England's *Heritage at Risk Register*, due to the ongoing erosion and environmental decay of archaeological material. Lowther's contribution of legal analysis in March 2020 to the feasibility study in respect of the *London* directly led to Historic England developing a planned framework for the recovery, recording and reburial of the structure and artefacts from the wreck. Bringing the material to the surface and potentially reburying it in an intertidal or inland

site had raised several disparate legal issues, and these were addressed specifically in the UoP analysis. Lowther's contribution, according to Mark Beattie-Edwards, CEO of the Nautical Archaeology Society "was particularly important to Historic England to ensure that they fully appreciated the legislative requirements of any work commissioned as a result of the study" [5.9]. This view was confirmed by Hefin Meara, Maritime Archaeologist at Historic England, who stated that the UoP work had "...demonstrated that there is no legal barrier to undertaking a programme of recovery, recording and reburial for artefacts from the wreck" [5.10].

5. Sources to corroborate the impact (indicative maximum of 10 references)

5.1 Testimonial Jessica Berry, CEO, Maritime Archaeology Sea Trust

5.2 Antarctic treaty, Revised List of Historic Sites and Monuments (Item 93 – Measure 12(2019) <https://www.ats.aq/e/protected.html>)

5.3 Testimonial Stuart Doubleday, Deputy Head Polar Regions Department, Foreign and Commonwealth Office.

5.4 Gill Graham, Head of Heritage, Department of Digital, Culture, Media and Sport

5.5 Testimonial Robert Yorke, Chair, Joint Nautical Archaeological Policy Committee

5.6 Testimonial David Parham, Professor of Archaeology, Bournemouth University and JNAPC committee member.

5.7 Scheduling Notice – Valentine Tank Assemblage (Historic England) <https://historicengland.org.uk/listing/the-list/list-entry/1459754>

5.8 Testimonial Mark Dunkley, Archaeologist and Marine Listing Advisor, Historic England:

5.9 Testimonial Mark Beattie-Edwards, CEO, Nautical Archaeology Society

5.10 Testimonial Hefin Meara, Maritime Archaeologist, Historic England