

JOINT NAUTICAL ARCHAEOLOGY POLICY COMMITTEE

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Tel XXXXXXXXXXXXXXX
Fax XXXXXXXXXXXXXXX

4th November 2014

By email and post

Rt. Hon. Michael Fallon MP
Secretary of State for Defence
Ministry of Defence
Floor 5 Zone B
Main Building
Whitehall
London SW1A 2HB

Dear Mr Fallon,

The wreck site of HMS Victory 1744

I am writing in connection with your recent statement that you have given consent for the Maritime Heritage Foundation (MHF) to proceed with the next phase of the agreed Project Design and more specifically that MHF has been granted permission to recover at-risk surface items from the wreck site of HMS Victory in accordance with the Project Design once the necessary licence has been issued by the Marine Management Organisation (MMO).

We are pleased to see this cross-government initiative by the Ministry of Defence (MOD) and the Department for Culture, Media and Sport (DCMS) to protect our underwater cultural heritage in international waters. We also welcome the fact that the MHF has been required to comply with:

1. The Annex to the UNESCO Convention on the Protection of the Underwater Cultural Heritage 2001 ("the Annex")
2. The Museums Association's Code of Ethics for Museums ("Code of Ethics")
3. The Government's heritage policies set out in "Protection and Management of Historic Military Wrecks outside UK Territorial Waters ("the Guidance") including the Annex and Key Management Principles

Your announcement was quite brief and there are therefore a number of further issues and questions on which clarification is needed so that the full implications of your consent can be understood. We would be most grateful if you would respond in full to the following points.

The Permission and the Project Design

The MHF's Published Project Design (which regrettably cannot be printed off its website) would appear to be an abbreviated version and presumably not the document on which MOD/DCMS have based their permission. Rule 10 of the Annex lists the contents required for a compliant project design but the Published Project Design does not include many of these items, not least: a methods statement, the anticipated funding, the composition of the team and its qualifications, the conservation programme, arrangements for curation by a museum of the collection, arrangements for the deposition of the archive, and publication of the project. These are major deficiencies and the MHF's project design may not be compliant with the Annex unless you are in possession of a Full Project Design on which you have based your decision to grant permission. Rule 9 also states that the Project Design should be peer reviewed. Given the MOD's stated commitment to transparency in this matter, please would you address the following:

1. Do you have a copy of a Full Project Design which is compliant with the Annex? If so please would you make it publicly available to us and other archaeological organisations for peer review. Please would you also ensure that the MHF submit it to the MMO with any licensing application.
2. Has the Full Project Design been examined and approved by the HMS Victory Advisory Group, the Expert Panel, and the Government's statutory adviser on underwater cultural heritage, English Heritage?
3. If you do not have a Full Project Design please explain why you have granted permission to a project which is not compliant with the Annex and which does not comply with the Government's own Guidance.
4. When did the Advisory Group last meet to give its advice to the Secretary of State regarding the permission you have now granted to the MHF, as required under the Deed of Gift dated 12th January 2012? Please would you provide us with a copy of that advice.
5. What detailed information and assurances have been provided by the MHF?
6. Please would you provide a copy of permission given to the MHF by the Secretary of State.

The integrity of the collection

In your statement you say that "Artefacts transferred under the Deed of Gift that are recovered and accessioned from the wreck and the associated archive, including site plans, drawings and photographs, will form the "Victory 1744 Collection", which will be managed and curated in line with the Museums Association's Code of Ethics for Museums". This statement appears not to cover personal possessions, gold coins and other artefacts not belonging to the Crown which may have been on board. However, if recovered, such property still forms part of the archaeological assemblage for the purposes of the UNESCO Annex and the Code of Ethics.

Under the Annex all artefacts recovered from the wreck form part of the collection and archive, and there is no differentiation for personal items, specie or even so-called "trade goods". Assuming the Receiver of Wreck is unable to locate an owner, such material will constitute unclaimed wreck and should be treated in a manner consistent with the Annex and the Code of Ethics. The Government's own Guidance is also very clear that collections should be kept intact, and not commercially exploited. Please would you confirm that:

1. All personal items, artefacts and specie, unclaimed after processing by the Receiver of Wreck, will be accessioned into the "Victory 1744 Collection".

2. No artefacts from the HMS Victory wreck site will be sold by the MHF or its contractor, Odyssey Marine Exploration (OME).

Recovery of Surface Items “at-risk”

The MHF’s Published Project Design does not include a strategy for defining artefacts “at risk” or define what is meant by “on the surface”. The site is currently quite stable and so the removal of any artefacts that are partially buried will destabilise the site and potentially expose more artefacts which then become “at risk” below the seabed. This could lead the MHF to claim that further large areas of the site then need to be excavated.

1. How will “at-risk” items be determined and who will make that determination?
2. Will this determination be made in advance, and assessed and approved by the Advisory Group, the Expert Panel and English Heritage before any recovery commences?
3. What measures have the MHF proposed to mitigate the risk to the stability of the site following surface recovery? Have these been approved by the Advisory group?

Observation, monitoring and compliance on board ship

On 20th July 2012 we wrote to Mr Simon Routh asking MOD if they had any observers on board the Odyssey Explorer to monitor her activities. On 31st July Mr Routh replied: “I do accept, however, your point that it would be helpful in any agreement that Ministers might make to have an assurance/compliance mechanism to ensure that the Foundation and its contractors are working within the boundaries established”.

1. Following the precedent of the HMS Sussex Project, what arrangements has MOD made to place independent expert monitors aboard OME’s vessel to ensure compliance with the project design approved by MOD/DCMS.
2. What powers will any monitor have to amend or halt the work programme in the case of a departure from the approved project design, or the need to reassess the approved project design in the light of changed conditions at the site?

Conservation

The MHF’s Published Project Design does not address how or where the conservation of the artefacts will take place. Rule 10(h) states that the project design shall include a conservation programme for artefacts and the site in close cooperation with the competent authorities.

Please will you inform us which organisation will conserve the artefacts and will it be IfA registered?

Curation of the Collection and Archives

The MHF’s Published Project Design does not address curation or say which museum will take the collection. Rules 32 and 33 state that arrangements for curation of the project archive, including any underwater cultural heritage removed, shall be agreed to before any activity commences, and shall be set out in the project design. The collection should also be kept together and intact in a manner that is available for professional and public access as well as for the curation of the archives.

The de-accessioning of artefacts from a collection to pay for archaeological services would constitute bartering within the UNESCO Annex and such an action would represent a breach of the prohibition against commercial exploitation of underwater cultural heritage. It would also breach the Code of Ethics in that it would be de-accessioning material [or not accessioning material which would routinely be accessioned in normal museum practice] to

raise cash or address a short term deficit. The Government's own Guidance is very clear that there are stringent conditions attached to de-accessioning and that it should not be to private individuals or organisations.

1. Which museum will curate the collection and archive and will this be in the UK?
2. Have arrangements been made by the MHF to fund a museum now and in the future?
3. Is any de-accessioning being proposed by the MHF and is the Secretary of State minded to give approval to any de-accessioning in the future?

Anticipated Funding

The MHF's Published Project Design does not address the issue of funding at all. Rule 10(d) states that the project design shall include the anticipated funding. Part V of the Annex is also very clear: Rule 17 states that an adequate funding base shall be assured in advance of any activity, sufficient to complete all stages of the project design, including conservation, documentation and curation of recovered artefacts, and report preparation and dissemination, and Rule 18 states that the project design shall exhibit demonstrated ability, such as securing a bond, to fund the project through to completion. Please would you inform us:

1. How will the project be funded and what is the estimate of the funding requirement?
2. Will the funding be secured by a bond and will this bond be guaranteed by a UK bank?

The MHF/OME contract

The terms of the salvage/recovery agreement between OME and MHF were announced in the OME press release of 2nd February 2012 (see Appendix below). This puts a substantial financial burden on the MHF to pay to OME not just the cost of recovery but an additional large commission on the value of all items recovered. It is not clear, given its extremely limited resources, how the MHF will finance this. It also highlights a potential conflict of interest where OME would be rewarded for undertaking the maximum amount of recoveries, whereas the project design might call only for limited recoveries. Whilst the MOD is a third party to the contractual arrangements between the MHF and OME these contractual arrangements have a direct bearing on the MHF's compliance with their permission, the Annex and the Code of Ethics, and so are of direct concern to the MOD.

1. Is this contract between OME and the MHF still in effect?
2. If so, have MOD/DCMS agreed to its continuation and what safeguards have they put in place to ensure compliance with the agreed project design?
3. How will the MHF fund the payments of these commissions in addition to the other costs of the project?

Human Remains

The Published Project Design does address the issue of human remains but there are still outstanding questions. Previous work on site by OME has already revealed several sets of human remains on or close to the seabed, including two human skulls one of which was trapped under a cannon. It is highly likely therefore that more human remains will be found even in the process of surface recovery. Please would you inform us:

1. Have the MOD/DCMS/JCCC and the Advisory Group approved a protocol for the treatment of any human remains which may be located, and will this be published?
2. What binding agreements has the MOD/DCMS put in place with the MHF to ensure that any human remains that are located will be properly treated?

Remedies for non-compliance

If the MHF were to fail to comply with terms of their permission, the Annex, the Code of Ethics, or an agreed project plan, what remedies or sanctions do MOD/DCMS have available to enforce compliance?

We look forward to your early response to the issues and questions raised in this letter since now that permission has been granted, time would appear to be of the essence.

I am copying this letter to Mr Ed Vaizey, Minister for Culture, Communications and Creative Industries, and to the Advisory Group for HMS Victory.

Yours sincerely

R A Yorke
Chairman

cc

Mr Edward Vaizey MP, Minister for Culture, Communications and Creative Industries

Mr Giles Ahern, Navy Command

XXXXXXXXXXXXXXXXXX Navy Command

XXXXXXXXXXXXXXXXXX DCMS

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Dr Dominic Tweddle, NMRN

XXXXXXXXXXXXXXXXXX English Heritage

XXXXXXXXXXXXXXXXXX, English Heritage

XXXXXXXXXXXXXXXXXX Marine Management Organisation

Appendix

Extract from Odyssey Marine Exploration press release - 2nd February 2012

“The preferred option is for Odyssey to be compensated in cash. However, if the Foundation determines, based on the principles adopted for its own collection management and curation policy, that it is in its best interest to de-accession certain artifacts, the Foundation may choose to compensate Odyssey with artifacts in lieu of cash.

- Odyssey will receive the equivalent of 80% of the fair value of artifacts which were primarily used in trade or commerce or were private property and bear no direct connection to the construction, navigation, defense or crew of the ship, such as coins or other cargo.

- Odyssey will receive the equivalent of 50% of the fair value of all other objects typically associated with the construction, crewing and sailing of ships including, but not limited to, the ship’s hull, fittings, fasteners, construction elements, clothing, organic remains, foodstuffs, cooking utensils, pottery, weapons, ammunition, ground tackle and navigational equipment.

- For any private property including coins or other cargo administered through the Receiver of Wreck, the Foundation has agreed that Odyssey shall receive 80% of the value.

A Private Curatorship Program will be established for certain artifacts from the site considered by the Foundation to be suitable for de-accession to prevent their irretrievable dispersal and to allow ongoing scientific study.”