



NEW ZEALAND
ARCHAEOLOGICAL
ASSOCIATION

ARCHAEOLOGY IN NEW ZEALAND



This document is made available by The New Zealand
Archaeological Association under the Creative Commons
Attribution-NonCommercial-ShareAlike 4.0 International License.

To view a copy of this license, visit
<http://creativecommons.org/licenses/by-nc-sa/4.0/>.



OPPORTUNITIES FOR UNDERWATER ARCHAEOLOGY IN NEW ZEALAND

Andrew Dodd
Department of Conservation, Auckland

Background

It has been 25 years since the state of underwater archaeology in New Zealand was first considered by the archaeological community (Sutton 1977: 138, McKinlay 1977) and the national framework for underwater cultural heritage management is still relatively under-developed in this country. The facilities and capacity for individual projects have been considerably improved through the establishment of the Maritime Archaeological Association of New Zealand (MAANZ) and the establishment of a maritime conservation lab aboard the *Hikatia* in Wellington (Churchill 1991: 7), but the development of a nationwide system for management of the underwater archaeological resource remains elusive.

Since its formation, numerous projects have been undertaken by members of MAANZ largely on a voluntary basis. These include investigations of the *Endeavour* (1795), *Buffalo* (1840), *La'Alcemene* (1857), *Salcombe Castle* (1865), *Taupo* (1881), *Hydrabad* (1878), *Martha* (1882), the Waikaremoana whaleboats (1869), and the Mahanga Bay jetty (built ca. 1865) (Churchill 1991: 9–10, <http://www.maanz.wellington.net>). Prior to this projects had been fairly infrequent, and usually initiated by non-diving archaeologists working with members of the dive community, such as the mapping and photographing of remnant palisading on a submerged pa site in Lake Okataina near Rotorua (Grace 1982), and the underwater survey carried out in Lake Owhareiti in the Bay of Islands (Campbell 1986).

Unfortunately, underwater investigations are comparatively expensive and specialised equipment is often necessary. Unlike terrestrial archaeology, where the cost of archaeological investigation or monitoring can often be incorporated into the cost of development, the majority of damage to New Zealand's shipwrecks occurs through un-regulated fossicking, commercial salvage

operations on shipwrecks that fall outside of the scope of the legislation (such as the *Elingamite* [1902]), and through natural deterioration. In the event of an application being made to the Historic Places Trust to carry out a salvage operation on a historic wreck, the Trust is able to regulate activity, such as in the case of the salvage operations carried out on the *General Grant* (1866), but applications concerning shipwrecks and other types of underwater sites are infrequent. Relative development pressures, limited funding, and the limited number of professionally qualified or experienced underwater archaeologists in New Zealand mean that the majority of the Trust's advocacy and enforcement to date has been focused on the management of terrestrial archaeological sites.

Application of New Zealand's heritage legislation to underwater heritage sites

As with land based archaeology the legalisation provides the framework for underwater cultural heritage management, and while this has been the subject of publications in the past (Kenderdine 1991, Churchill 1993), there has been significant change in the legislation since then. The following statutes all have considerable scope for enhancing underwater cultural management in New Zealand:

Historic Places Act 1993

In practice, the archaeological provisions of the *Historic Places Act* 1993 provide the basis for underwater cultural heritage management in New Zealand. Section 2 of the Act defines an archaeological site as including "the site of the wreck of any vessel where that wreck occurred before 1900; and is or may be able through investigation by archaeological methods to provide evidence relating to the history of New Zealand." This applies to well over 1200 of the 2000 reported shipwrecks in New Zealand waters (Ingram 1990: 1–271), but despite this there has only been one attempted prosecution for damage to a historic shipwreck site. This occurred in 1983 under the *Historic Places Act* 1980 (an earlier version of the current act), when a diver was charged and convicted in the Tauranga District Court with causing damage to the wreck of the *Taupo*. The charge was dismissed however, when it was appealed in the High Court because the Trust could not prove that the diver knew the wreck was protected as a historic site (*Drury v Police* [1984] M.235/83). However, lack of awareness of protected status is no longer considered sufficient excuse and the onus of proving that the defendant had prior knowledge of the historic status of a site is no longer necessary.

Resource Management Act 1991

Additional scope for management of underwater cultural heritage is also available to local authorities under the *Resource Management Act 1991* (RMA). Local authorities are now required to recognise and provide for the protection of historic heritage as a ‘matter of national importance’ (RMA s.6f). Until recently local authorities were required only to have ‘particular regard for historic heritage’ (RMA s.7e now repealed), and few councils applied this mandate to including underwater sites on their schedules. A notable exception to this is the Auckland Regional Council with several historic shipwrecks included on the schedule of the coastal plan, and incorporated into the Cultural Heritage Inventory (CHI). Although the amendments to the Act specifically state that it is the ‘protection of historic heritage from inappropriate subdivision, use, and development’ (s.6f) that is to be considered a matter of national importance, it can still be argued that historic shipwrecks in the vicinity of the foreshore area are at risk from developments such as wharf construction and reclamations, and that salvage constitutes ‘use’ of a site that should be provided for.

Antiquities Act 1975

As the majority of deliberate modifications to underwater cultural heritage are associated with fossicking and salvage operations seeking the recovery of artefacts or souvenirs, the *Antiquities Act 1975* (AA) also has significance. Under the *Antiquities Act* wrecks of ships and aircraft over 60 years old, including items associated with those wrecks, are classified as antiquities (AA s.2), and it is illegal to export the item without a permit (AA s.5). This enables the Ministry of Culture and Heritage, who administer the act, to prevent items removed from New Zealand shipwrecks being transported and traded outside of New Zealand.

Maritime Transport Act 1994

The *Maritime Transport Act 1994* requires the finder of a wreck to notify the Director of Maritime Safety upon its discovery. In the event of the finder not being the owner of the wreck they must then allow the police to take possession of the wreck (MTA s.105[1a-b]). While this legislation has generally not been effective in protecting the wreck from salvage or looting activities, it may be particularly useful in terms of providing accurate relocation details for incorporation into a national wreck database.

Marine Reserves Act 1971

Additional protection for underwater cultural heritage may soon come in the form of amendments to the *Marine Reserves Act 1971* (MRA). The *Marine Reserves Act* is administered by the Department of Conservation (DOC), and in

its present form contains provisions for the protection of marine life, the seabed, foreshore or any natural features in marine reserves (MRA s.3[d]), although this can be interpreted to include shipwrecks if they are deemed to be part of the underwater environment (Churchill 1993: 48). The currently proposed *Marine Reserves Bill* (MRB) is more explicit and states the protection of historic material among the principles that must be taken into account in the management of a marine reserve. Historic material is defined as “mean[ing] an object (movable or immovable) or place that has a cultural, historical, or archaeological character, and that contributes to an understanding and appreciation of New Zealand’s history and cultures” (MRB s.9[c]). If the bill is passed it will also become illegal to modify, damage, destroy or remove historic material from a marine reserve without a concession granted by the Minister of Conservation (MRB s.13[b]). While less than 1% of New Zealand’s marine environment is presently protected under marine reserves DOC is looking to actively expand this with a target of protecting up to 10%, although this target may include mechanisms other than marine reserves such as *taiapure*, *mataitai*, world heritage site listings, and marine closures (Department of Conservation and Ministry for the Environment 2000: 67 [Objective 3.6]). If the Marine Reserves Bill is passed in its current form the Department of Conservation may assume a greater degree of responsibility for the management of a significant portion of New Zealand’s underwater cultural heritage.

International conventions

While the legislative framework for heritage management in New Zealand, including underwater heritage, is currently being strengthened, further amendments will be necessary if we are to adopt international conventions such as the UNESCO Convention on the Protection of the Underwater Cultural Heritage (http://www.unesco.org/culture/legalprotection/water/html_eng/index_en.shtml). This requires countries to adopt a rolling date in their definition of historic heritage before it can be ratified. Unfortunately this was identified as a “contentious” issue and not included in the presently proposed *Historic Places Act* amendments. There is no real justification for the 1900 cut off point as this is an arbitrary date which does not coincide with any significant advance in technological or social change, especially given that it is the depositional date rather than the time of construction which defines whether a wreck is to be protected or not. This fosters a situation where an arguably nationally significant vessel such as the *Elingamite*—built in 1887 and said to be “a first rate ship of her class”, carrying gold bullion of 17,320 pounds at the time it sank in 1902, and in which 17 people drowned and 28 died of exposure (Ingram 1990: 281)—is not protected, while a far less significant ketch such as the *Liberty*—built in

1896 and sank at its moorings in the Firth of Thames in same year—would be protected. In the event of this being addressed, the ratification of the UNESCO convention would be an important step for maritime archaeology in New Zealand signalling intention of the government to recognise maritime archaeology as a legitimate area of research that has considerable potential to advance knowledge of New Zealand's maritime history, and develop a programme of underwater cultural heritage management in accordance with international standards.

National database resources

Along with the legislation, a nation-wide database for shipwrecks with accurate relocation references either incorporated into the NZAA site record file, or set up separately through MAANZ is essential for the management of underwater cultural heritage in New Zealand. Although there are known to be over 2000 vessels wrecked in New Zealand's coastal waters (Ingram 1990), it has been estimated that less than 10% have been physically relocated and identified (Churchill, 1991: 7). Unfortunately, because of the time, equipment and expense involved there has been little in the way of systematic survey and recording undertaken by private individuals in New Zealand. Kelly Tarlton's work in the 1960s and 70s was the perhaps the most comprehensive programme in New Zealand in terms of relocation of shipwrecks, but the prevailing philosophy of the time was focused on underwater exploration and salvage rather than the discipline of maritime archaeology as it is known today.

While there already exists a good documentary record detailing the majority of shipwreck sites in New Zealand in the form of contemporary newspaper articles, shipping registers, more recent comprehensive publications (Ingram 1990, Locker-Lampson and Francis 1979) and internet resources (<http://thequay.kiwiclub.com/index.htm>), there is little in the way of formally recorded precise relocation references for most shipwrecks. By undertaking a national survey programme similar to Australia's National Historic Shipwrecks Programme, New Zealand would be in a position to create a database of historic wrecks in New Zealand waters, which could then be used as the basis for an underwater cultural management system that could include more detailed survey, monitoring and excavation of significant wrecks to provide information for *in situ* site management and dissemination of information back to the wider community.

Community involvement

In the absence of any public funding, progress in recording and preservation of underwater cultural heritage will be necessarily reliant on the dive community

volunteers. The importance of the efforts of these groups in the field of underwater archaeology both prior and subsequent to the formation of publicly funded programmes for underwater heritage, is widely acknowledged (Robinson 1977, Henderson 1986: 3–4, Staniforth 2000: 24–25). Due to the difficult environment of underwater archaeology, and limitations of public funding, additional requirements of time and resources in Australian recording programmes have largely been met by interest groups and local communities keen to learn more about their maritime heritage (Nutley 1994). In the absence of sufficient funding for the enforcement of legislation, communities that value their heritage are more likely to be active in monitoring and reporting damage to wreck sites to appropriate authorities (Nutley 1987: 324–327). Dive clubs and charter operations that see shipwrecks as a commodity that people will pay money to visit will be encouraged to become actively involved in the protection of their local dive site resources. Through the activities of MAANZ, as well as smaller scale projects, the dive community in New Zealand has already demonstrated an active interest in shipwrecks and a willingness to participate in archaeological survey and recording projects.

Australian Parallels

The present situation in New Zealand with regard to professional underwater archaeology has several similarities to that of Australia during the 1960s and 1970s, and consideration of the Australian experience may be particularly useful when considering the direction of New Zealand's underwater cultural heritage management. Despite the passing of *Museum Act Amendment Act, WA* in 1964 which provided for the protection of the four known Dutch East Indiamen shipwrecks in Western Australia, the museum found itself unable to adequately protect or investigate these shipwrecks as it lacked trained maritime archaeologists as well as the necessary funding (Crawford 1977: 30). As with the present situation in New Zealand, destruction of wrecks through looting was a continuing problem until 1970 when funding was made available for the museum to employ two full-time staff for the protection of its wrecks and initiate its wreck inspection programmes. Following the success of the inspection programmes the *Maritime Archaeology Act, WA* (1973) was enacted, providing blanket protection for the remains of ships wrecked prior to 1900, including land based sites associated with those wrecks such as survivor camps (Crawford 1977: 33). Three years later the Commonwealth *Historic Shipwrecks Act* (1976) was passed which provided protection for ships wrecked in Commonwealth waters and clear direction for individual states to adopt and implement shipwreck recording and protection programmes. With assistance from the Western Australia Museum a tertiary qualification programme in maritime archaeology was offered

at Curtin University in 1980, and graduates from the course with appropriate skills and experience were soon available to carry out contract work and fill the positions that became available in each state. The formation of the Australian Institute for Maritime Archaeology (AIMA) in 1982 following the Second Southern Hemisphere Conference on Maritime Archaeology in Adelaide, also created a successful lobby group that was able to bring about significant changes in underwater cultural heritage management. By the end of the 1980s underwater heritage management programmes had been adopted in all Australian States. While New Zealand universities are presently unable to offer formal qualifications in maritime archaeology, and there is still a lack of suitably experienced or qualified maritime archaeologists in New Zealand, post-graduate courses in this discipline are now offered as semi-flexible distance learning options from Flinders University in Adelaide, that can be undertaken by New Zealand residents.

Case law also provides an interesting point for comparison. As with the New Zealand High Court decision in 1983 to grant the appeal in favour of a diver charged with damaging the historic *Taupo* shipwreck, a case bought before the High Court of Australia by a local salvage diver in 1976 (*Robinson v. The Western Australian Museum* [1977] 51 A.L.J.R.806) found that the wreck of the *Vergulde Draeck* (1656) was beyond the 3-mile limit making it outside the jurisdiction of the Western Australian Government, and that the WA *Maritime Archaeology Act* therefore could not be enforced. However, in the interim the Commonwealth Government had passed the *Commonwealth Historic Shipwrecks Act* (1976) which allowed for the protection of shipwrecks located in Commonwealth water effectively protecting the wreck of the *Vergulde Draeck*. The court ruling protecting the *Vergulde Draeck* was no doubt encouraging for advocates of underwater cultural heritage management in Australia. It simultaneously served to reinforce the resolve of the Maritime Museum in continuing their shipwreck inventory and protection programme, while sending a clear message that Australia's shipwreck protection laws would be upheld in court if necessary. Conversely, the New Zealand High Court's decision to dismiss the charges in the *Police v Drury* case may to some extent explain the subsequent reluctance of heritage agencies to pursue shipwreck survey and recording programmes in this country, during a time when they were being implemented with such success in Australia.

New Zealand's underwater archaeological resource is in many ways similar to that of Australia. While no Dutch shipwrecks have been discovered in New Zealand waters, both countries have a rich maritime heritage that is an important facet of our settlement history, both Maori and European. Many of New Zealand's

shipwrecks have been already subject to commercial salvage and fossicking by divers in the past but there is still considerable potential for archaeological investigation. Divers are likely to have been more interested in trophy items such as ship bells, portals, cannon and coin and while many of these easily portable artefacts might be missing from the surface considerable portions of the vessel structure and subsurface deposits are still likely to be intact. Given the comprehensiveness of our existing heritage legislation and the presence of an active maritime archaeological association there already exist considerable opportunities for developing a programme of underwater cultural heritage management in New Zealand.

References

Campbell, J., 1986. Underwater survey of Lake Owhareiti, Bay of Islands district. *New Zealand Archaeological Association Newsletter*, 29(3): 176–188.

Churchill, D., 1991. The Maritime Archaeological Association of New Zealand – MAANZ (Inc.). *The Bulletin of the Australian Institute for Maritime Archaeology*, 15(1): 7–10.

Churchill, D., 1993. New Zealand shipwreck legislation. *The Bulletin of the Australian Institute for Maritime Archaeology*, 17(2): 47–49.

Crawford, I., 1977. Maritime archaeology legislation in Western Australia. In, *Oceans Society of Australia, 1977, Papers from the First Southern Hemisphere Conference on Maritime Archaeology*, 30–33. Oceans Society of Australia, Melbourne.

Department of Conservation and Ministry for the Environment, 2000. The New Zealand biodiversity strategy: our chance to turn the tide, Whakakohukihukitia te tai roroku ki te tai oranga. Department of Conservation, Wellington.

Grace, R., 1982. A drowned pa in lake Okataina. *New Zealand Archaeological Association Newsletter*, 25(4): 247–251.

Henderson, G., 1986. Maritime archaeology in Australia: Introduction. In, M. Staniforth and M. Hyde (eds.), *Maritime Archaeology in Australia: A Reader*, 2–4. Southern Archaeology, Blackwood.

Ingram C.W.N., 1990. *New Zealand Shipwrecks: 195 years of disasters at sea*. Beckett Books, Auckland.

Kenderdine, S., 1991. Legislation and the submerged cultural heritage of New Zealand. *Bulletin of the Australian Institute for Maritime Archaeology*, 15(1) :1-6.

Locker-Lampson, S., and I. Francis 1979. *The Wreckbook*. Millwood Press, Wellington.

McKinlay, J.R., 1977. The New Zealand Historic Places Trust and the laws covering marine archaeology in New Zealand. In, J.N. Green (ed.), *Proceedings of the First Southern Hemisphere Conference in Maritime Archaeology*, 20–23. Australian Sports Publications, Melbourne.

Nutley, D., 1987. Maritime heritage protection: education as the long arm of the law. In, M. Staniforth and M. Hyde (eds.), *Maritime Archaeology in Australia: A Reader*, 29–33. Southern Archaeology, Blackwood.

Nutley, D., 1994. Community based shipwreck surveys. *The Bulletin of the Australian Institute for Maritime Archaeology*, 18(1): 11-12.

Robinson, D., 1977. The role of the amateur in maritime archaeology. In, *Oceans Society of Australia, 1977, Papers from the First Southern Hemisphere Conference on Maritime Archaeology*, 110–113. Oceans Society of Australia, Melbourne.

Staniforth, M., 2000. A future for Australian maritime archaeology? In, M. Staniforth and M. Hyde (eds.), *Maritime Archaeology in Australia: A Reader*, 22–26. Southern Archaeology, Blackwood.

Sutton, D., 1977. Abstracts of papers read to the NZAA biennial conference, May 1977. *New Zealand Archaeological Association Newsletter*, 20(3): 133-150.

Legislation Cited

New Zealand Legislation

Antiquities Act 1975

Historic Places Act 1993

Marine Reserves Act 1971

Marine Reserves Bill

Maritime Transport Act 1994

Resource Management Act 1991

Australian Legislation

Commonwealth

Historic Shipwrecks Act 1976

Western Australia

Maritime Archaeology Act 1973

Museum Act Amendment Act 1964