

Erme Estuary Site Conservation Statement & Management Plan.



The raised cannon from the Erme Estuary Site on display in Hope Cove

**Prepared for Historic England
January 2018**

Document Control Grid

Title	Erme Estuary Site Conservation Statement & Management Plan.
Author	Tom Cousins
Derivation	
Original Date	
Reviser	David Parham
Date of Last Revision	17 December 2018
Version	0.1
Status	Draft
Summary of Changes	
Circulation	
Required Action	
File Name/location	
Approval	

Executive Summary

The Erme Estuary site is a scatter of iron guns and artefacts possibly ranging from the 16th to the 18th century.

The wreck was discovered in January 1990 by Steven George and it was subsequently investigated by the South West Maritime Archaeology Group (SWMAG) who surveyed the site and published their findings in the International Journal of Nautical Archaeology (Oldham, et al., 1993) this work led to the site's designation in 1991. Investigation of the site over the subsequent 5 years uncovered two stave-built swivel guns dating to around 1500 and at least six cast iron cannon dated to 1690 – 1720 (Carpenter Pers. Comm.).

This Conservation Statement and Management Plan has been produced to enable local, regional and national stakeholder involvement in Historic England's aspirations for the conservation management of the Erme Estuary Site to balance conservation with economic and social needs. The principle aim of this plan is to identify a shared vision of how the values and features of the Erme Estuary can be conserved, maintained and enhanced.

The following management policies have therefore been developed:

Management Policy 1: We will seek to continue to support and develop authorised access, including digital access, to the site as a mechanism to develop the instrumental value of the Erme Estuary site. Physical access to the site needs to be established with consideration to the portability of the artefacts recovered from the site.

Management Policy 2: Through liaising with the local museums and stakeholders, we will seek to provide interpretive material for the marine historic environment at appropriate locations.

Management Policy 3: We will seek to promote the reassessment and expert appraisal of the finds recovered from the site. These updated records will be made publicly accessible and attached to the NHLE.

Management Policy 4: We will seek to develop a system to allow the accessibility of related material through web-based initiatives and support appropriate links to develop effective public understanding.

Management Policy 5: Mechanisms will be identified and developed to address the shared ownership of the site.

Management Policy 6: Key gaps in understanding the significance of the component parts of the site are now being identified, prioritised and addressed so that these significances can contribute to informing the future conservation management of the site.

Management Policy 7: We will seek to encourage the investigation and survey of the mouth of the Erme Estuary. Only when this has been accomplished will the extent and nature of the site(s) be apparent.

Management Policy 8: We will seek to commission a staged programme of assessment and research to reassess the significance of the Erme Estuary Site and address the potential for re or de-designation.

Management Policy 9: We will seek to commission a programme of environmental monitoring across the mouth of the Erme Estuary.

Management Policy 10: Unnecessary disturbance of the seabed within the Estuary should be avoided wherever possible to minimise the risk of damage to buried archaeological material.

Management Policy 11: This CS&MP will be reviewed and updated on a regular basis to reflect the conditions and knowledge pertaining to the site.

Contents

Executive Summary.....	ii
Contents.....	iii
1. Introduction	1
1.1. Project Background.....	1
1.2. Purpose	1
1.3. Aims and Objectives.....	2
1.4. Scope and Liaison.....	2
1.5. Authorship	2
1.6. Status	3
2. Understanding the Erme Estuary Site.....	3
2.1. Historical Development of the Designated Site.....	3
2.2. Description of Surviving Features	4
2.3. Ownership.....	5
2.4. Claim of the Hundred and Manor of Ermington to Wreck below the Low Water Mark	5
Conclusion.....	9

2.5.	Management and Current Use	10
2.6.	Gaps in Existing Knowledge	10
3.	Assessment of Significance	11
3.1.	Basis for Assessment of Significance.....	11
3.2.	Statement of Significance	11
3.3.	Gaps in Understanding Significance.....	12
3.4.	Statutory and Other Designations	13
4.	Issues and Vulnerability	13
4.1.	Introduction	13
4.2.	The Physical Condition of the Site and its Setting	14
4.3.	Conservation and Presentation Philosophy.....	14
4.4.	Visitor and other Occupancy Requirements.....	15
4.5.	The Existence (or Lack) of Appropriate Uses	15
4.6.	Resources, Including Financial Constraints and Availability of Skills	16
4.7.	Lack of Information or Understanding about aspects of the Site.....	16
5.	Conservation Management Policies	16
5.1.	Introduction	16
5.2.	The Erme Estuary Site is a shared resource	17
5.3.	Everyone should be able to participate in the sustaining the Erme Estuary Site	17
5.4.	Understanding the Significance of the Erme Estuary Site is vital	18
5.5.	The Erme Estuary Site should be managed to sustain its values	19
6.	Forward Plan	20
6.1.	Introduction	20
6.2.	Proposed Projects in relation to the Erme Estuary Site.....	20
7.	Implementation	21
7.1.	Consultation.....	21
7.2.	Adoption of Policies	21
7.3.	Authorship and Consultation	22
8.	Bibliography	23
	Appendix 1: Site Location	24
	Appendix 2: Site Plans.....	25
9.	Appendix 3 Finds List.....	27
10.	Appendix 4 - Manorial Rights of Wreck	29
10.2.	The Law Relating to Shipwreck	29

10.3.	The Shoreline Above High Water	30
10.4.	Shipwreck Below the Low Water Mark.....	33
10.5.	The Inter Tidal Zone	36
10.6.	Unresolved Issues: 'Wreck' at Common Law or Sea-Estray ('Droit of Admiralty')?	36
10.7.	"Lords of Manors" – claim to flotsam	39
10.8.	Conclusion.....	42
10.9.	Note:	42

1. Introduction

1.1. Project Background

- 1.1.1. Wreck sites may contain the remains of vessels, their fittings, armaments, cargo and other associated objects or deposits and they may merit legal protection if they contribute significantly to our understanding of our maritime past. The Protection of Wrecks Act 1973 (PWA 1973) allows Government to designate, in territorial waters, an important wreck site to prevent uncontrolled disturbance.
- 1.1.2. Although the National Heritage Act 2002 enabled Historic England to assist in costs relating to works under the Act, the responsibilities of Historic England for the physical management of designated wreck sites must align with our strategic priorities as set out in the Corporate Plan 2017 to 2020. Here, we seek to identify and protect England's most important heritage.
- 1.1.3. In order to guide an understanding of the special interest and cultural values of each site, c will provide the foundation to contextualise change. As such, Conservation is taken to be the process of managing change in ways that will best sustain the values of a place in its contexts, and which recognises opportunities to reveal and reinforce those values (Historic England, 2008).

1.2. Purpose

- 1.2.1. This document seeks to set out a 'Conservation Statement and Management Plan' (CS&MP) for the Erme Estuary Site, an archaeological site designated under the Protection of the Wrecks Act 1973, lying within Mary Reef, Erme Mouth, off Devon (Appendix 1: Site Location). The site is thought to be that of at least one wreck indicated by a cannon assemblage ranging from the 15th to the 18th centuries.
- 1.2.2. The Erme Estuary Site is attributed the National Historic List for England Number 1000071.
- 1.2.3. Historic England has published a set of Conservation Principles, Policies and Guidance for the sustainable management of the Historic Environment (Historic England, 2008). These principles are intended to support the quality of our decision making, with the objective of creating a management regime for all aspects of the historic environment that is clear and transparent in its purpose and sustainable in its application. As such, Conservation is taken to be the process of managing change in ways that will best sustain the values of a place in its context, and which recognises opportunities to reveal and reinforce those values (Historic England, 2008).
- 1.2.4. The Conservation Statement and Management Plan has therefore been produced to enable local, regional and national stakeholder involvement in identifying aspirations for the conservation management of the Erme Estuary Site.

1.3. Aims and Objectives

- 1.3.1. The principle aims of this Conservation Statement and Management Plan is to identify a shared vision of how the values and features of the Erme Estuary Site can be conserved, maintained and enhanced and balance conservation with economic and social needs.
- 1.3.2. This will be achieved through the following objectives
 - Understanding the Erme Estuary Site
 - Assessing the significance of the Erme Estuary Site
 - Identifying where the significance of the Erme Estuary Site is vulnerable
 - Identifying policies for conserving the significance of Erme Estuary Site
 - Realising the public value of the conservation of the Erme Estuary Site
 - Identifying Management Policies.

1.4. Scope and Liaison

- 1.4.1. Heritage 2020 sets out how heritage organisations will work together to benefit the historic environment. It is coordinated on behalf of the whole sector by the Historic Environment Forum. The Historic England Action Plan forms Historic England's contribution to Heritage 2020. This Action Plan details how the objectives of Historic England's Corporate Plan will be delivered and provides an estimate of the resource needed. Assessing the significance of England's Protected Wreck Sites is an acute priority identified within Historic England's Action Plan, while individual Conservation Statements & Management Plans assist with an improved understanding of the significance and character of these priority areas of our heritage.
- 1.4.2. Practical measures that can conserve maintain and enhance the values and features of the Erme Estuary Site identified as being at risk will be delivered through this Conservation Statement and Management Plan.
- 1.4.3. There are currently 53 historic wrecks in English waters protected under the PoWA 1973, access to these sites is managed under a licensing scheme and authorisation from the Secretary of State for the DCMS.
- 1.4.4. The South West Maritime Archaeology Group who have conducted work on the site since 1990 have been invited to provide comment in relation to the preparation of this plan and the ongoing management of the Erme Estuary Site.
- 1.4.5. In addition, Anthony Mildmay-White, current Lord of the Manor at Ermington and the local land owner, who has previously asserted a claim to wreck in the Erme Estuary, has also been asked to comment.

1.5. Authorship

- 1.5.1. This document has been prepared by Bournemouth University (BU) and Mike Williams, a maritime lawyer, with contributions through stakeholder involvement. Full Acknowledgments of those who contributed to, or were consulted on, its preparation will be presented on the final version.

- 1.5.2. This document is based on the Historic England Standard for Conservation Statements for English Heritage sites and draws on the Conservation Statement and Management Plans for the *Rooswijk* (Dunkley, 2009), the *Stirling Castle* (Dunkley, 2008) and the *Invincible* (Pascoe & Cowan, 2016).

1.6. Status

- 1.6.1. This plan is in the draft/consultation phase and has yet to be adopted by Historic England.

2. Understanding the Erme Estuary Site

2.1. Historical Development of the Designated Site

- 2.1.1. The history of the site is unknown and may be comprised of more than one wreck; the finds recovered from the site date between the 16th to the early 18th century and are in two main areas c.400 metres apart from each other.
- 2.1.2. The site was found in 1990 by Steven George where further investigation revealed four cannon (each about 2.4m long), a large anchor, and two swivel guns (Site A). A fifth cannon, which had already been buoyed by persons unknown, was found on the south (seaward) side of the reef c.300 metres away from the main site in a gully on East St. Mary's Rocks (Site B).
- 2.1.3. A pre-disturbance survey was conducted by the South West Maritime Archaeology Group (SWMAG) in 1990 to create accurate plans and establish the extent of the site (appendix 2). This involved setting up a rope grid over the site in which the surface finds and detected anomalies could be plotted. Following this work the site was designated under the PoWA 1973 on the 3rd May 1991 under Order 1991/1110. However, the area designated does not cover the sites positions as laid out in Oldham, et al. (1993).
- 2.1.4. Following designation SWMAG was issued a licence to excavate in 1992 to establish the extent of buried material, the team excavated test pits up to 1m in depth without hitting bedrock with the first 450mm characterised by loose mobile sand overlaying loose rocks and shale which became more compacted at depth (Oldham, et al., 1993, p. 327). No archaeological material was found below 0.3m. The debris trail to the south of Site A led to the discovery of Site B 400m to the south within an 80m long gully. The work completed by the SWMAG was published in the International Journal of Nautical Archaeology in 1993 (Oldham, et al., 1993)
- 2.1.5. No comprehensive study of all the finds has been produced, the mix of finds and their dates especially the swivel guns dated to the c.1500 and the finbankers dating to c.1700 suggest multiple wrecking events. However wrought iron swivel guns were known to be in use up to the 18th century due to the difficulties in casting small cannon (Brown, 2014). A list of known finds can be found in Appendix 3.
- 2.1.6. The known information of the Erme Estuary Site may be presented as a summary *Ship Biography* which draws together the main attributes of the site and provides a statement of the site's archaeological interest

Build	No ship structure is thought to have survived on the site and the original build is unknown, the finbankers have been dated between 1670 and 1729 and the swivel gun to c.1500, however it should be noted that these types of guns were in use up the 18 th century.
Use	The original use of the vessel is unknown; the artefact assemblage is limited to mainly metal and other robust artefacts ranging from the 16 th to the 18 th centuries.
Loss	Unknown. The artefacts recovered range from 16 th to the early 18 th century suggesting multiple wrecks, however no comprehensive study of the artefacts has taken place to confirm this. The site is of local interest as a wreck or wrecks lost in the entrance to the Erme.
Survival	No substantial structure is known to survive on the site. Work completed by SWMAG in 1992 showed a mobile layer of sand up to 450mm deep in which all the finds were situated (Oldham, et al. 1993). Multiple small finds as well as at least one large gun and the swivel guns were recovered. Organic artefacts such as the euphroe and rope fragments suggest that there is potential for organic survival of artefacts on the site. It was reported by the licensees in 1996 that two more guns may have been illegally salvaged from the site (Wood & Dean, 1996).
Investigation	The site was discovered in 1990 and was investigated using metal detectors and excavation up to the mid-1990s. As sediment levels fluctuated the site was covered revealing no surface artefacts upon government inspections in 1996.

A site visit in 2004 did not locate any of the cannons on the site; it did however note a smaller anchor of a similar style to the one on the main site.

2.2. Description of Surviving Features

- 2.2.1. The site lies in two main areas, Site A (Appendix 2.1) lies at a charted depth of in 4-8 m in a partially sheltered location to the north of East Mary's Rocks; Site B (Appendix 2.2) is located within the gully on East Saint Mary Rocks themselves, at the mouth of Erme Estuary, South Devon (Appendix 1). The site consists of part buried small finds, large cannon & anchors on a seabed of flat estuarine silty sand. It should be noted that both sites lie outside of the protected areas as shown in Appendix 1.
- 2.2.2. An area of seabed measuring approximately 40m by 12m defines Site A which contained a large anchor, two swivel guns and at least five large iron guns approximately 2.5m long which have been identified as finbankers dating between 1690 and 1720. One of these guns was raised in 1994 and it is now displayed in Hope Cove.
- 2.2.3. The sediment covering the site is mobile and by 1996 the ADU reported that the seabed is was flat and featureless sand, and "it is estimated by the licensed team that sand levels have risen at least by one metre since 1990" (ADU, 1996). It was also reported by the site licensees that two of the guns may have been illegally removed from the site, however these statements could not be verified.

- 2.2.4. Site B is located within an 80m long gully on the seaward side of East St. Mary's Rocks where an additional gun was located in a gully within the reef. This area produced several of the smaller artefacts including the coins, pan weight, bronze figurine and multiple lead shot.
- 2.2.5. The two sites both feature similar finbanker guns as well as musket shot, in Site B numerous bar shot were recovered however similar ammunition was not seen in Site A. This suggests that the gully area may contain a mix of artefacts from numerous wrecks and may be a natural catchment area.
- 2.2.6. The ADU visited the site in 1996 (Wood & Dean, 1996) where reports of unauthorised diving and the potential illegal salvage of two of the guns were made. No archaeological features were reported as being seen on this visit.
- 2.2.7. A search of the area in 2004 failed to locate the guns but did revealed a second smaller anchor of a similar style to the one the main site located at 50°18.284W. 003°57.111W (WGS84) (Oldham & Parham, 2004)
- 2.2.8. The licensee team visited the site in 2005 with Bournemouth University as part of a BSAC Jubilee funded investigation where they located the 3.3m long anchor and the two of the Finbanker cannons but no other archaeological material was discovered (SWMAG, 2006).

2.3. Ownership

- 2.3.1. As an unknown wreck ownership cannot be established for the wreck.
- 2.3.2. The site lies within England's Territorial sea. In addition to the owners of the seabed – normally around England & Wales the Crown Estate – consents may be required to undertake archaeological investigation.

2.4. Claim of the Hundred and Manor of Ermington to Wreck below the Low Water Mark

- 2.4.1. **NOTE: It is intended that before reading this section readers will have read and familiarised themselves with the legal principles relating to claims of entitlement to wreck set out in Appendix 4 hereto.**
- 2.4.2. Following the creation of the office of Receiver of Wreck by the Merchant Shipping Act 1854, under the administrative control of the Board of Trade, the Board despatched a solicitor, Mr. O'Dowd, to visit each coastal county in the United Kingdom¹. Mr. O'Dowd's task was to ascertain which areas of the coastline were subject to claims of a franchise of wreck, the basis upon which the franchise was claimed and the geographical limits of each claim. This inquiry was administrative, not judicial, in nature and this was conceded by the Crown at the time.² However, notwithstanding this administrative character, where the finding of a franchise of unclaimed wreck was made this undoubtedly acted as a prima facie admission by the Crown

¹ At the time this would have included what is now the Republic of Ireland. See further *Cornish Wrecking 1700-1860 Reality and Popular Myth* Pearce, C. (2010) Boydell Press Woodbridge pp.178-181.

² NA BT212/1

of entitlement of a grantee to unclaimed wreck. Mr. O'Dowd subsequently prepared a report for each coastal County, listing the franchises, how they were acquired³ and the geographical limits of these franchises. This information, together with the relevant Board of Trade file number, was also denoted on a series of O.S. maps of the coastline. Mr O'Dowd's original report for Devon, received by the Board of Trade in February 1857, does not appear to be extant but a photocopy of a later copy of it has survived and was made available by the late Mr. Neville Oldham. A photocopy record of the O.S. maps of the Devon coastline on which are denoted the franchises of unclaimed wreck and their geographical limits is in the possession of the Receiver of Wreck.

- 2.4.3. In relation to the Hundred of Ermington and the Manor of Ermington, Mr. O'Dowd concluded that the then manorial holder, Lady Elizabeth Bulteel, was entitled to wreck. The geographical extent of the right to unclaimed wreck was "*... in and at the Mouth of the River Erme and also on the Sea Coast of the Hundred of Ermington extending eastwards and westwards [...unreadable text ...] as far as the Rivers Avon and Yealm respectively all in the County of Devon and also so far seaward from the said coasts respectively as an Umber Barrel can be seen at sea.*".
- 2.4.4. Prima facie it was an admission by the Crown of an entitlement to unclaimed wreck below the Low Water Mark.⁴ However the matter was reconsidered by the Board of Trade in 1859 (in respect of Lady Elizabeth Bulteel) and in 1878 (in respect of H. B. Mildmay) and in 1909 (in respect of F. B. Mildmay). The minutes of the Board of Trade relating to these reconsiderations are extant⁵ but the matter is concisely summarised in a memo correspondence between Mr. R. C. Williams and Mr. D. R. Smith of the Marine Division of the Board of Trade between April and October 1952.⁶ This correspondence records the 1857 admission made by Mr. O'Dowd but states that in May 1859 this admission was cancelled, and an amended admission made. This amended admission created certain geographical exceptions to entitlement in respect of the Manors of Ringmore and Noss Mayo. It also appears to have removed the entitlement to unclaimed wreck "*...also so far seaward from the said coasts respectively as an Umber Barrel can be seen at sea.*". The photocopy of Mr. O'Dowd's report of February 1857 has the original wording crossed out and replaced by the words:

³ i.e. by express grant or prescriptive usage

⁴ On 19th March 1857 a communication was apparently sent to the Receiver of Wreck at Dartmouth notifying that official that Lady Elizabeth Bulteel was entitled to (unclaimed) wreck in the terms set out in an attachment thereto. This attachment recorded the same entitlement as that stated by Mr. O'Dowd in his report, thus encompassing an entitlement out to sea as far as an Umber Barrel could be seen. See NA BT 243/123.

⁵ The file numbers are 3109/59; H2375/78; H3418/78; H3005/78; H5128/78; H1120/79; H3015/09; H7605/09; H8073/09; H10373/09; H10985/09; H3015/09 and copies thereof are in the papers of the late Neville Oldham, but the National Archive references have not been recorded. It is likely that they are now contained in NA BT 243/141.

⁶ File No. M.3520/50, now NA BT243/141/97272.

“From the River Avon to the River Yealm both in the Co. of Devon: with the exception of so much of the said coast as is comprised in the Manors of Ringmore and Noss Mayo respectively”

2.4.5. This amendment to Mr. O’Dowd’s report is noted as ‘3109/59’ in the margin of the entry relating to the Hundred and Manor of Ermington. This appears to be a file reference i.e. file ‘3109 /59’. Given that the wording “...also so far seaward from the said coasts respectively as an Umber Barrel can be seen at sea.” is crossed out and this would not be necessary to create the above exceptions for the Manors of Ringmore and Noss Mayo, it is a reasonable conclusion that the Board of Trade intended to remove any entitlement to unclaimed wreck below the Low Water Mark which was delineated by sight of a floating Umber Barrel. This conclusion is strengthened by a draft letter dated 5th July 1859 from the Marine Department of the Board of Trade. It is addressed ‘Madam’ and expressly refers to the ‘Hundred of Ermington’. It limits the entitlement to ‘...any Wreck washed ashore...’. Attached to the copy of this letter is a copy of the standard template recording entitlement of Manors to unclaimed wreck. This template has been completed with the name of *Lady Elizabeth Bulteel of the Hundred of Ermington* and under ‘Description of ‘Wreck’ to which entitled’ records “Wreck washed ashore and unclaimed by the owners”.

2.4.6. The memo correspondence of 1952 also records that the matter was again considered in 1878 by the Board of Trade, Mr. H. B. Mildmay apparently reasserting the claim to unclaimed wreck as far out to sea as an Umber Barrel could be seen. The memo correspondence records that the Board of Trade informed his solicitors that it “... could not admit the claim in any terms which might be construed to recognise a right to floating wreck”.⁷ This reference is noted in the margin as occurring under file no ‘M.3005/78’.⁸ The contents of this file are extant and were photocopied by the late Mr. Neville Oldham. A Minute dated 15th July 1878 states:

“Mr. O’Dowd is still in Ireland and is not expected back at present. He has however written, stating that ‘he has not in a single instance reported a claimant entitled to “floating wreck””.

2.4.7. This statement by Mr. O’Dowd is somewhat difficult to reconcile with the wording of the manorial entitlement in his original report but it is clear in 1878 that the Board of Trade restricted the entitlement of the Hundred and Manor of Ermington to wreck washed ashore.

2.4.8. In 1909 the Board of Trade again restricted the entitlement of Mr. F. B. Mildmay to wreck washed ashore⁹ and similarly in 1952, following a repeated assertion of an entitlement to

⁷ Ibid. The file on this matter is recorded, probably incorrectly, as M3005/78, this reference corresponding to the file numbers on the Minutes photocopied by the late Mr. Neville Oldham.

⁸ In fact, the correct file reference should be ‘H/3005/78’. ‘H’ denotes the Harbour Department of the Board of Trade, which dealt with such matters in 1978. By 1952 such matters were dealt with by the Marine Division of the Board of Trade, their files carrying the prefix ‘M’. It is therefore assumed that the use of the prefix ‘M’ in the marginal note in 1952 is a mere typographical error.

⁹ File H3015/09, the contents of which are extant and were photocopied by the late Mr. Neville Oldham.

wreck out to sea as far as an Umber Barrel could be seen.¹⁰ From 1859 to 1952 therefore the Board of Trade had consistently declined to accept any entitlement by the Hundred and Manor of Ermington to unclaimed wreck other than that washed ashore.

2.4.9. In 1991, following the recovery of the tin ingots by the South West Maritime Archaeological Group (SWMAG), the present title holder of the Hundred and Manor of Ermington, Mr. Mildmay-White, again asserted his claim to unclaimed wreck from the coast of the Hundred and Manor as far out to sea as an Umber Barrel could be seen.¹¹ This claim, which if substantiated would have entitled the Lord of the Manor to the unclaimed tin ingots, subject to a salvage award, if any, claimed by SWMAG, was notified to the late Mr. Neville Oldham of the SWMAG by the Receiver of Wreck at Salcombe on 16th November 1991.¹² This notification was preceded by correspondence between Messrs. Norton Rose and Mr. D. Andrew Burr, an official of the Marine General Division of the Department of Transport.¹³ It is not known if the file relating to this matter is still extant. It is possibly in the archives of the Maritime & Coastguard Agency.¹⁴

2.4.10. In a letter dated 1st November 1991¹⁵ from Mr. D. Andrew Burr to Messrs. Norton Rose, Mr. Burr stated that he is quite satisfied “... especially from the recitation of 1856, that your client’s rights are to all wreck in the prescribed area and are not confined to items “washed ashore””. The letter goes on to state that the finds (presumably the tin ingots) “... may be released to your client ...”. The clear implication from these statements is that upon behalf of the Crown Mr. Burr had accepted the manorial entitlement to unclaimed wreck out to sea as far as an Umber Barrel could be seen. Apart from looking at what is termed a ‘ledger entry’ it appears that Mr. Burr did not have recourse to the previous Board of trade files in the matter, nor to the legal principles set out in Appendix 4 hereto.

2.4.11. In or about early 1993 the SWMAG engaged the services, pro bono, of Mr. P. H. Fletcher-Tomenius, Solicitor. Upon behalf of SWMAG Mr. Fletcher-Tomenius challenged the validity of the claim to entitlement to unclaimed wreck as far out to sea as an Umber barrel could be seen on the basis of the legal principles set out in Appendix 4 hereto. This caused the Department of Transport to revise its previous conclusion contained in the letter of the 1st November 1991 that the Hundred and Manor of Ermington was entitled to wreck as far out to sea as an Umber barrel could be seen. Consequently, on 16th April 1993 Mr. Burr replied

¹⁰ File M.3520/50; NA BT243/141/97272.

¹¹ Mr. Mildmay-White was represented by Messrs. Norton Rose, Solicitors, London.

¹² A copy of this communication is in the SWMAG site archive.

¹³ The Dept. of Transport was a successor to the Board of Trade in respect of transport matters, including marine matters.

¹⁴ In 1994 or thereabouts a single office of Receiver of Wreck for the whole United Kingdom was created and the office was located within the Marine and Coastguard Agency (MCA). The first office holder was Ms. Veronica Robbins and it is known that she continued to deal with this matter. It is highly likely therefore that the file was transferred to the UK Receiver within the MCA and is still extant. However, it has not been possible to confirm this with the current Receiver, Ms. Alison Kentuck.

¹⁵ A copy of the letter is in the SWMAG site archive.

to Mr. Fletcher - Tomenius¹⁶. The letter stated that the Department of Transport had concluded that in the light of the arguments Mr. Fletcher - Tomenius had advanced “ ... *that the claim cannot be dismissed, but that further evidence is now required to prove it totally to the Receiver’s satisfaction.*” Clearly any former admission in favour of the Hundred and Manor of Ermington of an entitlement to unclaimed wreck, other than that washed ashore, was in effect withdrawn by the letter.

2.4.12. The letter then goes on to summarise the basis of the claim of entitlement by the Manor to unclaimed wreck below the Low Water Mark i.e. a grant by the Crown, custom or prescription at Common Law. It also accepts that Mr. Fletcher-Tomenius’ summary of the Common Law, which accorded with the legal principles set out in Appendix 4 hereto, is “ ... *broadly accurate*”. The letter dismisses custom as a basis for such entitlement. In relation to a grant from the Crown or Prescription at Common Law the letter invites Messrs. Norton Rose to furnish further evidence. The letter also advanced as an alternative the possibility of an amicable settlement of the issue between the parties. In the event this alternative course of action was pursued by the parties, the manorial claim to the tin ingots recovered by the SWMAG reportedly not being determined by the Department of Transport or the Receiver of Wreck.¹⁷ Instead it was eventually agreed in 2002 by both parties that the ingots would be donated to the Royal Albert Memorial Museum Exeter without prejudice to each parties’ legal submissions or positions.¹⁸ This agreement was acquiesced in by the Receiver and the ingots were acquired by the museum under the provisions of the (then) Merchant Shipping Act 1894.

Conclusion

2.4.13. There can be no doubt that the Hundred and Manor of Ermington is entitled to unclaimed wreck washed ashore. In respect of unclaimed wreck recovered from below the Low Water Mark, should recoveries be made from the site in the future then the Hundred and Manor of Ermington would be at liberty, should it so choose to do so, to pursue a claim to entitlement to unclaimed wreck below the Low Water Mark as far out to sea as an Umber Barrel may be seen. The burden of proof would be upon the Hundred and Manor of Ermington to establish such an entitlement and the standard of proof would be the civil one of the ‘balance of probability’. The matter would presently fall to be determined under Part IX Merchant Shipping Act 1995 on the basis of the legal principles outlined in Appendix 4 hereto. It is not the function of this Management Plan to evaluate the merits and demerits of any such possible claim by the Hundred and Manor of Ermington to entitlement to unclaimed wreck below the Low Water Mark nor to determine the validity thereof. Consequently this Management Plan expressly refrains from so doing or attempting to speculate on the likely outcome of such a claim. In the words of Sir John Nicholl it is “... *a question hereafter, but it is one which does not arise at present ...*”.¹⁹

¹⁶ A copy of the letter is in the SWMAG site archive.

¹⁷ Pers. Com. Receiver of Wreck 14.11.2016

¹⁸ Letter dated 26th July 2002 from J. Allan, Royal Albert Memorial Museum & Art Gallery to Mr. N. Oldham acknowledging the donation.

¹⁹ *The King (in his office of Admiralty) v Two Casks of Tallow* 3 Hagg 294 at 299.

2.5. Management and Current Use

- 2.5.1. Physical access to the Erme Estuary Protected wreck site is restricted to licenced divers and further recovery of artefactual material will be managed through the current licensing system. However the protected zone does not appear to cover the areas of the site where artefacts were recovered as shown in Oldham, et al. 1993 therefore there is no control over diving on the site, therefore the site needs to be re-assessed for potential and either be re-designated in the correct position or de-designated.
- 2.5.2. The finds raised from the site between 1990 and 1995 are in private hands, the large finbanker is on display at Hope Cove on a replica carriage alongside an un-associated anchor with no interpretation or mention of the site. The finds recovered by SWMAG in this period are in private hands and were declared to the Receiver of Wreck, drawn and recorded before being returned to storage. Some artefacts are loaned to the local museum in Salcombe on occasion. A list of known finds recovered from the site can be found in Appendix 3.
- 2.5.3. Following the death of Neville Oldham, the two wrought iron swivel guns have passed to Dave Parham and are currently undergoing active conservation. There is no formal agreement in place, but It is hoped to donate these to Salcombe Museum.
- 2.5.4. Until 2015 the licence was held by Neville Oldham. The current licensee for the site is Dave Parham.

2.6. Gaps in Existing Knowledge

- 2.6.1. Existing knowledge of the site is severely limited. Given the large date range in the recovered artefact assemblage it is still to be established whether the site consists of one or multiple wrecks. A list of potential wrecks was produced by the licensee team in the 1991 (Oldham, et al., 1993) and there are very extensive documentary sources for English maritime history from the 17th century onwards, and research into them would almost certainly produce several candidates for the Erme Estuary wreck(s). Printed sources like the Calendar of State Papers may give some idea of the material available, but there would also be many unpublished documents that would need to be studied.
- 2.6.2. The main gap in the knowledge of the physical site is the actual location of the main area, plans produced in 1991 place the site as outside the current protected area. Area 2 is easily identified as the long gully located on East St Mary Rocks visible on aerial photography approximately 280m outside of the protected area. It is unknown if the two sites are related or represent a mix of different wrecks given the dynamic environment either of these are a possibility.
- 2.6.3. With the varying dates and provenances applied to the recovered finds it is not clear whether the site(s) represent one or more wrecking events the artefacts would need to be assessed individually and grouped by their key attributes.

3. Assessment of Significance

3.1. Basis for Assessment of Significance

- 3.1.1. Significance means the sum of the cultural and natural heritage values of a place (English Heritage 2008). Cultural heritage value has many aspects, including the potential of a place to yield primary information about past human activity (evidential value, which includes archaeological value), the ways in which it can provide direct links to past people, events and aspects of life (historical value), the ways in which people respond to a place through sensory and intellectual experience of it (aesthetic value, which includes architectural value) and the meanings of a place for the people who identify with it, and communities for whom it is part of their collective memory (communal value).
- 3.1.2. In addition, the historic environment is a cultural and natural heritage resource shared by communities characterised not just by geographical location but also by common interests and values. As such, emphasis may be placed upon important consequential (technically, 'instrumental') benefits or potential, for example as an educational, recreational, or economic resource, which the historic environment provides. The seamless cultural and natural strands of the historic environment are a vital part of everyone's heritage, held in stewardship for the benefit of future generations.
- 3.1.3. The basis for assessing significance therefore enables consideration of the varying degrees of significance of different elements of the site. By identifying those elements which are vital to its significance and so must not be lost or compromised, we are able to identify elements which are of lesser value, and elements which have little value or detract from the significance of the site.

3.2. Statement of Significance

- 3.2.1. The site was originally refused designation in autumn of 1990 due to lack of information, pre-disturbance survey and site plan was produced leading to the sites designation in 1991 as it showed that it may have archaeological potential.
- 3.2.2. Without firm dating we cannot attribute a specific event or events to the site or a specific period in which to attribute it to.
- 3.2.3. The following table seeks to summarise these values of the Erme Estuary Site as a whole, by noting how those values relate to the surviving fabric and it's constitute parts.

Evidential	Relating to the potential of the Erme Estuary Site to yield information about past human activity, the Erme Estuary site is limited. A series of artefacts were raised in the early 1990s which are now in private hands. The broad dating of the artefacts provides us with no coherent period for significant evidential information. To date no ship structure has been identified however only limited excavation has occurred on the site and the potential for buried archaeological material still needs to be established.
-------------------	--

Historical	Relating to the ways which the Erme Estuary can provide direct links to past people, event and aspects of life the site is limited, a list of candidates for wreck or wrecks is broad and no one historical event can be attached to the site. One candidate suggested for the site is a French Wreck dating to 1637 due to the presence of a Silver Half-Ecu coin however this conflicts with the dating of the finbankers (1680-1750). To address this, the whole assemblage would need to be reassessed.
Aesthetic	Relating to the ways in which people respond to the Erme Estuary site through sensory and intellectual experience of it is limited. Beyond the main dive team in the early 1990s the site is relatively unknown. Outside of the wreck itself the seabed is designated a special area of conservation.
Communal	Relating to the meanings of the Erme Estuary for the people who identify with it, and whose collective memory it holds the site is limited. The finbanker cannon raised from the site in the 1990s was put on display at Hope Cove in 2010 with no interpretation or information on the site, the other finds are in private hands and the site knowledge is limited to the project team. The initial survey was published in the IJNA (Oldham, et al., 1993).
Instrumental	Economic, educational, recreational and other benefits which exist as a consequence of the cultural or natural heritage values are limited, there are no public displays giving information on the wreck and diving is restricted within the protected zone to named divers accompanied by the site licensee. However, the main areas of the site are located outside of the protected area.

3.3. Gaps in Understanding Significance

- 3.3.1. The assessment of significance is hindered by the lack of knowledge identified in section 2.4.
- 3.3.2. Information on the Erme Estuary site is very limited, the results of the initial site work revealing a wide section of finds from a large date range was published in the IJNA (Oldham, et al., 1993). The mix of finds suggests that there may be multiple wreck sites present on the site. The finds should be reassessed and input into a database and mapped onto a site plan by their key attributes which may provide a better idea of the site.
- 3.3.3. An initial search of potential historical candidate was undertaken by the licensee team who concluded that a French wreck of 1637 was the most likely candidate however this does not fit with the dating of the finbankers. All the finds would need to be reassessed, compared to establish if there is a case for single or multiple wrecks.
- 3.3.4. Documentary sources for these periods make a search for shipwreck information feasible, although of course the work would need to be properly funded so that it can be carried out by a professional historian familiar with the manuscript material and the maritime background.

3.4. Statutory and Other Designations

- 3.4.1. In May 1991 Statutory Instrument 1991/1110 came into force protecting an area with a 250m radius centred 50°18.41N 003°57.19W (OSGB36), not including sections that are above high tide. However this does not cover either portions of the sites positions as listed in Oldham, et al. (1993) and it was recommended in an ADU report in 1999 that the designated area be moved c.350 to the south east to be centred on 50°18.27N 3°57.01W (OSGB36) [50°18.306N 3°57.078W (WGS84)] this would require a radius of c.300m to cover both the two main areas of the site however this was not acted upon (see Appendix 1).
- 3.4.2. The site lies within the Start Point to Plymouth Sound and Eddystone Special Area of Conservation and any work conducted may need a Habitat Regulations Assessment to assess whether any impacts of proposed work will have a likely significant effect on the sites designated features, this will be a requirement of a MMO license.
- 3.4.3. In addition to this the site lays adjacent an Area of Outstanding Natural Beauty (AONB), a Site of Special Scientific Interest (SSSI), and the South Devon Heritage Coast.
- 3.4.4. Archaeological interventions that impact the seabed may require a licence issued by the Marine Management Organisation under the Marine and Coastal Access Act 2009 and a licence from the Crown Estate.
- 3.4.5. In addition, section 40 of the National Environment and Rural Communities act (2006) places a duty on all public bodies to have regard to biodiversity (Natural England, 2006).

4. Issues and Vulnerability

4.1. Introduction

- 4.1.1. This section summarises the main conservation and management issues that affect the significance of the Erme Estuary Site and its component parts and elements.
- 4.1.2. Vulnerability may be assessed against environmental factors and human impacts on the site including the setting.
- 4.1.3. It is accepted that all wreck sites are vulnerable because of the nature of their environment, for a site to be considered at risk there must be a threat of damage, decay or loss of the monument. Current assessment indicates that sites are at a medium or high risk unless they are buried below bed level during successive tidal cycles. However, a programme of positive management may mitigate the loss, deterioration or damage of the monument through natural processes.
- 4.1.4. Issues relating to the values identified in the statement of significance are presented thematically rather than in order of severity or priority for remedial action. Relevant issues cover a wide range, including
 - The physical condition of the site and its setting
 - Conservation and presentation philosophy

- Ownership and legal requirements
- The existence of appropriate uses
- Resources, including financial constraints and availability of skills
- Lack of information or understanding about aspects of the site
- Conflicts between types of significance

4.2. The Physical Condition of the Site and its Setting

- 4.2.1. The site lies at the entrance of the Erme Estuary, a ria or drowned river valley, the cannon and finds were found in two main concentrations. The main area of the site is located on a flat sandy seabed of mobile sediment at approximately 50°18.330N 3°57.130W (WGS84) (based on the site plan published in Oldham et al. (1993).
- 4.2.2. The second area of artefacts was located 300m to the south of the main site within a deep gully located on East Mary Rock a reef at the entrance of the estuary that dries in parts to 1.5m.
- 4.2.3. The licensee team suggest that sediment levels have risen by up to a metre across the sites (ADU, 1996) between 1990 and 1999 burying the sites and the cannon, although this cannot be verified. Subsequent visits to the site have failed to locate the guns but a second anchor was observed in 2004 at 50°18.284W. 003°57.111W (WGS84) 100m to the south of the marked centre of the site in the 1991 site report.
- 4.2.4. It appears from this that the site is relatively stable however no site inspections have occurred on the site since 2006 and regular monitoring should be established as policy.

4.3. Conservation and Presentation Philosophy

- 4.3.1. The exact location of the site within the mouth of the Erme Estuary has not been established the protected area and areas indicated in the site reports do not coincide. The position of Area Two is easy to establish due to being located on East St Mary Rocks themselves.
- 4.3.2. A site plan of both areas was produced in 1991 which has yet to be accurately georectified, site inspections from 1996 onwards by the ADU and licensee teams have shown that the whole site was covered, this suggests that the site is relatively stable and not at risk from natural processes, however no site inspection has taken place since 2004. A proton magnetometer survey was conducted over the site in 1994 which revealed some clusters of magnetic anomalies but were not groundtruthed (SWMAG, 1995) however the data contained significant amounts of noise and not thought to be a viable survey (pers. Comm. Pete Holt 2016). It should be noted that with the issues of the site positioning as noted above it is entirely possible that the subsequent dives and inspection failed to locate the site as they were diving in the wrong area.
- 4.3.3. No interpretive information on the site exists, the finbanker raised by SWMAG in the 1990s was put on display upon a replica carriage at Hope Cove in 2010 however no interpretation of the gun or the site.

4.3.4. A small display of artefacts from the wreck is on loan to Salcombe Maritime museum but is accompanied by very little interpretation. The museum has expressed an interest in accessioning the site archive.

4.4. Visitor and other Occupancy Requirements

4.4.1. There are currently no plans to introduce a diver trail on the Erme Estuary site. Any person wishing to visit the Erme Estuary site will be directed to the Licensee and be encouraged to participate in any existing work planned on the site. Since the initial survey work in the 1990 very little archaeological material including the guns has been located on the site, likely making the site unappealing for a physical dive trail.

4.4.2. Given the lack of information and burial condition of the site the creation of a digital access will require additional survey and research alongside the digitisation of the site plans and finds records to assist in creating a digital trail of the site.

4.4.3. The site along with the Erme Ingot Site is located at the mouth of the Erme Estuary, a popular section of the South West Coast Path under the ownership of the Flete Estate any interpretive material or signs would require the prior permission from the Estate and should be produced in partnership with the Erme Estuary Management Advisory Group.

4.4.4. The raised gun was put on display in Hope Cove in 2010 along with an un-associated anchor however there is no interpretation of the site in association with this.

4.5. The Existence (or Lack) of Appropriate Uses

4.5.1. Enforcement of the Protection of Wrecks Act 1973 is the responsibility of the appropriate County Constabulary as it is a criminal offence to any of the following in a designated area without a licence granted by the appropriate Secretary of State:

- Tamper with, damage or remove any part of a vessel lying wrecked on or in the seabed or any object formerly contained in such a vessel.
- Carry out diving or salvage operations directed to the exploration of any wreck or to removing objects from it or from the seabed, or uses equipment constructed or adapted for any purpose of diving or salvage operations. This is likely to include deployment of remotely operated vehicles.
- Deposit anything including anchors and fishing gear which, if it were to fall on the site, would obliterate, obstruct access to, or damage any part of the site.

4.5.2. It is also an offence to cause or permit any of the above activities to be carried out by others, without a licence, in a restricted area.

4.5.3. Following publication of the site's position as a newly designated wreck several instances of unauthorised diving were reported by bailiffs on the local Mildmay Estate. The licensee team believed that two guns were stolen from the site at this time (Wood & Dean, 1996).

4.5.4. However, the two main areas of the site as documented in Oldham, et al. (1993) appear to lie outside the designated area and therefore do not have any legislative protection. A policy would have to be developed to assess the site and re-designate as appropriate.

4.6. Resources, Including Financial Constraints and Availability of Skills

4.6.1. The finds recovered from the site are in private hands with a few artefacts on loan to the Salcombe Maritime Museum, leading to limited evidential value of the Erme Estuary Site, a full archive audit would be required to fully assess the site.

4.6.2. Before any intrusive work takes place on the site an archive audit should occur, and a suitable museum should be found to accession any recovered artefacts. Salcombe Maritime Museum has expressed an interest on accessioning the finds recovered from the site.

4.6.3. In accordance with the Diving at Work Regulations 1997, archaeological interventions underwater commissioned by Historic England can only be undertaken by a registered Diving Contractor, and then only by such a Contractor with appropriate archaeological experience

4.7. Lack of Information or Understanding about aspects of the Site

4.7.1. *Taking to the Water* (Historic England's Initial Policy for the management of Maritime Archaeology) (Roberts & Trow, 2002) address the backlog from excavations and surveys on protected wreck sites. It was recognised that many of the survey and excavation licences issued over the past 25 years required the academic reporting of the field work results and as the majority of the work was completed a-vocationally the finances for the analysis and dissemination were lacking.

4.7.2. However, in the case of the Erme Estuary the initial survey results from 1991 were published in the IJNA, comprehensive site maps of the two areas were produced but lack real world positioning. A proton Magnetometer survey was conducted over the site in 1994 however it was not accurate enough to confidently position the known guns on the site (SWMAG, 1995). More information is needed on the location of the site to accurately georectify the site plans produced in 1990 and protect the appropriate area of seabed.

5. Conservation Management Policies

5.1. Introduction

5.1.1. This section of the CS&MP builds on sections 3 (assessment of significance) and 4 (Issues and vulnerability) to develop conservation policies which retain or reveal the sites significance providing a framework for decision making in the future management and development of the site or reveal the sites significance meeting statutory requirements and complying with Historic England's standards and guidance.

5.1.2. It is intended that the policies will create a framework for managing change on the Erme Estuary Site that is clear in purpose, and transparent and sustainable in its application. The aim is to achieve implantation through the principles of shared ownership and partnership balancing the protection of the site with economic and social needs.

5.2. The Erme Estuary Site is a shared resource

- 5.2.1. The Erme Estuary site forms a unique record of past human activity which reflects the aspirations, ingenuity and investment of resources of previous generations. It may also be an economic asset as a generator of tourism or inward economic investment.
- 5.2.2. People value the Erme Estuary site as part of their cultural and natural heritage. It reflects the knowledge, beliefs and traditions of diverse communities. It gives distinctiveness, meaning and quality to the places in which we live, providing a sense of continuity and a source of identity. It is a social and economic asset and a resource for learning and enjoyment
- 5.2.3. The Erme Estuary site therefore is a social asset as a resource for learning and enjoyment. Each generation should therefore shape and sustain the historic environment in ways that allow people to use, enjoy and benefit from it, without compromising the ability of future generations to do the same.
- 5.2.4. In addition, the conflict between the desire for access to the site and the restrictions imposed by conservation needs and legislative limitations will be reconciled through visitor management
- 5.2.5. Learning is central to sustaining the historic environment. It raises people's awareness and understanding of their heritage, including the varied ways in which its values are perceived by different generations and communities. It encourages informed and active participation in caring for the historic environment.
- 5.2.6. Education at all stages should help to raise awareness and understanding of the site's values, including the varied ways in which these values are perceived by different generations and communities.
- 5.2.7. Interpretive information on the site(s) within the Erme Estuary should be produced detailing the history of the wrecks and the presence of a submerged forest within the mouth.
- 5.2.8. *Management Policy 1: We will seek to continue to support and develop authorised access, including digital access, to the site as a mechanism to develop the instrumental value of the Erme Estuary site. Physical access to the site needs to be established with consideration to the portability of the artefacts recovered from the site.*
- 5.2.9. *Management Policy 2: Through liaising with the local museums and stakeholders, we will seek to provide interpretive material for the marine historic environment at appropriate locations.*
- 5.2.10. *Management Policy 3: We will seek to promote the reassessment and expert appraisal of the finds recovered from the site. These updated records will be made publicly accessible and attached to the NHLE.*

5.3. Everyone should be able to participate in the sustaining the Erme Estuary Site

- 5.3.1. Local, regional, national and international stakeholders have the opportunity to contribute to the understanding and sustaining of the Erme Estuary Site. Judgments about the values and

decisions about the future of the Erme Estuary Site will be made in ways that are accessible, inclusive and informed

- 5.3.2. Participants should use their knowledge, skill and experience to help other understand the value of the site. They will play a crucial role in communicating and sustaining the established values of the site encouraging other to understand, value and care for the site and helping others articulate the values they attach to the Erme Estuary Site.
- 5.3.3. Specialist skills and knowledge relating to the site should be maintained, developed and passed on. Written agreements with project partners should be developed to formulate a future strategy for continuing work on the site.
- 5.3.4. A combined GIS and database system should be produced to allow an accurate plot of the finds in combination with their dating and other relevant information to allow researchers to establish any grouping and context between the layers. This data and information could then be exported to a web-based system to allow 'digital access' to the site.
- 5.3.5. While there can be no doubt that the Hundred and Manor of Ermington is entitled to unclaimed wreck washed ashore. The claim to wreck below the low water mark is unclear should recoveries be made from the site in the future then the Hundred and Manor of Ermington would be at liberty, to pursue a claim to entitlement to unclaimed wreck below the Low Water Mark as far out to sea as an Umber Barrel may be seen. The burden of proof would be upon the Hundred and Manor of Ermington to establish such an entitlement and the standard of proof would be the civil one of the 'balance of probability'. The matter would presently fall to be determined under Part IX Merchant Shipping Act 1995 on the basis of the legal principles outlined in Appendix 4 hereto. It is not the function of this Management Plan to evaluate the merits and demerits of any such possible claim by the Hundred and Manor of Ermington to entitlement to unclaimed wreck below the Low Water Mark nor to determine the validity thereof. Consequently, this Management Plan expressly refrains from so doing or attempting to speculate on the likely outcome of such a claim.
- 5.3.6. *Management Policy 4: We will seek to develop a system to allow the accessibility of related material through web-based initiatives and support appropriate links to develop effective public understanding.*
- 5.3.7. *Management Policy 5: Mechanisms will be identified and developed to address the shared ownership of the site.*

5.4. Understanding the Significance of the Erme Estuary Site is vital

- 5.4.1. The significance of the Erme Estuary Site embraces all the cultural and natural heritage values that are associated with it. To identify and appreciate these values, it is essential first to understand the structure and ecology of the site, how and why that has changed over time, and its present character.

- 5.4.2. Judgements about values are necessarily specific to the time they are made. As understanding develops, and as people's perceptions evolve and places change, so assessments of significance will alter, and tend to grow more complex.
- 5.4.3. The purpose of understanding and articulating the significance of the Erme Estuary Site is to inform decisions about its future.
- 5.4.4. We acknowledge that there are considerable gaps in our understanding of the sites significance as set out in Section 4.7 and a formal programme of staged assessment and research is required to contribute to a fuller understanding of the site in its entirety. Such work should conform to the Management of Research Projects in the Historic Environment (Historic England, 2015) and is likely to comprise of the following stages:
- A geophysical survey of estuary mouth to establish an accurate location and extent of the site.
 - Collation and assessment of the site archive to determine the significance and academic potential of the site.
 - Determination of further work to fulfil this academic potential and recommend for re-designation or de-designation.
 - Preparation of a research archive.
 - Historical research for potential candidates.
 - Report text for publication
 - Publication
- 5.4.5. *Management Policy 6: Key gaps in understanding the significance of the component parts of the site are now being identified, prioritised and addressed so that these significances can contribute to informing the future conservation management of the site.*
- 5.4.6. *Management Policy 7: We will seek to encourage the investigation and survey of the mouth of the Erme Estuary. Only when this has been accomplished will the extent and nature of the site(s) be apparent.*
- 5.4.7. *Management Policy 8: We will seek to commission a staged programme of assessment and research to reassess the significance of the Erme Estuary Site and address the potential for re or de-designation*

5.5. The Erme Estuary Site should be managed to sustain its values

- 5.5.1. Changes to the Erme Estuary site underwater are inevitable, whether caused by natural processes, through use, or by responses to social, economic and technological advances. Such changes will be managed in ways that will best sustain the significance of a place in its setting, while recognising opportunities to reveal or reinforce its values for present and future generations.
- 5.5.2. Conservation is the process of managing change to a significant place in its setting in ways that will best sustain its heritage values, while recognising opportunities to reveal or reinforce those values for present and future generations.

- 5.5.3. There have been no studies to accurately quantify the natural change across the site, the sediment levels been reported to have fluctuated to up to one metre across the site(s) but recording of this has not been established. There is a need to understand the sediment levels, how they change over time and varying weather conditions to predict how much the sediment fluctuated over time, the effects of this change needs to be monitored and evaluated and the results used to inform subsequent actions.
- 5.5.4. Irreversible intervention on the Erme Estuary site may be justified if it increases understanding of the past, reveals or reinforces particular heritage values of a place, or is necessary to sustain those values for present and future generations, so long as any resulting harm is decisively outweighed by the benefits.
- 5.5.5. New work should aspire to a quality of design and execution which may be valued both now and in the future. This neither implies nor precludes working in traditional or new ways but should respect the significance of a place in its setting.
- 5.5.6. *Management Policy 9: We will seek to commission a programme of environmental monitoring across the mouth of the Erme Estuary.*
- 5.5.7. *Management Policy 10: Unnecessary disturbance of the seabed within the Estuary should be avoided wherever possible to minimise the risk of damage to buried archaeological material.*
- 5.5.8. *Management Policy 11: this CS&MP will be reviewed and updated on a regular basis to reflect the conditions and knowledge pertaining to the site.*

6. Forward Plan

6.1. Introduction

- 6.1.1. To commence the implementation of the proposed Management Policies outlined in Section 5, Historic England is seeking to support projects that will increase our understanding of the value and setting of the Erme Estuary Site. The projects are outlined in Section 6.2 below.

6.2. Proposed Projects in relation to the Erme Estuary Site

- 6.2.1. No formal program of investigation or monitoring of the Erme Estuary site has occurred since the mid-1990s, the results of the initial survey were published in the IJNA in 1993 (Oldham, et al., 1993) when focus shifted to the nearby Erme Ingot site, before ultimately shifting to the Salcombe Cannon Site, sediment levels in the intervening years were reported to have covered the site ending work in the Erme.
- 6.2.2. An audit of the current site archive should be conducted to establish stronger dates and contexts for the site(s).
- 6.2.3. A series of geophysical surveys including a caesium-vapour magnetometer and bathymetric surveys should be conducted over the mouth of the estuary encompassing both the Estuary and Ingot protected sites following the appropriate guidelines laid out in Historic England's Marine Geophysics Data Acquisition, Processing and Interpretation (Plets, et al., 2013). The

results of this survey should be groundtruthed with a diver survey to confirm if the targets are of archaeological interest and current level of sediment covering the site. This will give us an accurate position of the site to inform for the correct location for re-designation if the site is deemed significant. The data recorded in this survey could be compared to historic data to establish if there have been any major sediment fluctuations previously and be repeated at regular intervals and after major weather events to establish a program of environmental monitoring (Policies: 6, 7, 8, 9 & 11).

- 6.2.4. The project archive should be collated, audited and expertly reassessed with the results inputted into a site database with integrated GIS allowing us to gain a better idea of the spatial layout of the site and the dating of the various artefacts. Once the accurate position of the site has been established this database can be spatially adjusted to give real world positions of the artefacts and georectifying any site plans. This can then form the basis of a digital trail of the dive site (Policies: 1, 4, 5, 6, 8 & 11)
- 6.2.5. Where possible we will seek to have the recovered finds and archive accessioned by an accredited museum (possibly Salcombe Maritime Museum) and work with them and other stakeholders to develop and interpretive displays about the maritime archaeology of the Erme Estuary (Policies: 1& 2)
- 6.2.6. After the finds have been re-assessed a professional maritime historian familiar with the manuscript material and the maritime background of the 17th century should be commissioned to provide historical candidates from the best available evidence obtained from the site archive. (Policy 8)
- 6.2.7. Once all this work has been completed the site(s) significance should be re-assessed and it should be decided on whether to de-designated the site(s) or re-designate the site in the correct position (Policy 8).

7. Implementation

7.1. Consultation

- 7.1.1. This document will be internally reviewed by Historic England.
- 7.1.2. The Conservation and Management Plan for the Erme Estuary Site shall be circulated for a four-week stakeholder consultation to refine how the values and features of the Erme Estuary can be conserved, maintained and enhanced. Responses to the consultation will be considered and the Plan revised as appropriate.

7.2. Adoption of Policies

- 7.2.1. Following consultation, the Plan was adopted.
- 7.2.2. A programme that identifies a realistic timescale for implementing the Plan, considering those areas which need immediate action, those which can be implemented in the medium or long term, and those which are ongoing will be devised.

7.2.3. Responsibilities for management of the site lies with Historic England (led by the Designation Department), all stakeholder will work toward implantation of this plan. In addition, provision will be made for periodic review and updating the Plan.

7.3. Authorship and Consultation

7.3.1. This Conservation Statement & Management Plan for the Erme Estuary Site has been prepared by:

Tom Cousins
Maritime Archaeologist
Bournemouth University
Talbot Campus
Fern Barrow
Poole
BH12 5BB
TCousins@bournemouth.ac.uk

Dave Parham
Maritime Archaeologist
Bournemouth University
Talbot Campus
Fern Barrow
Poole
BH12 5BB
DParham@bournemouth.ac.uk

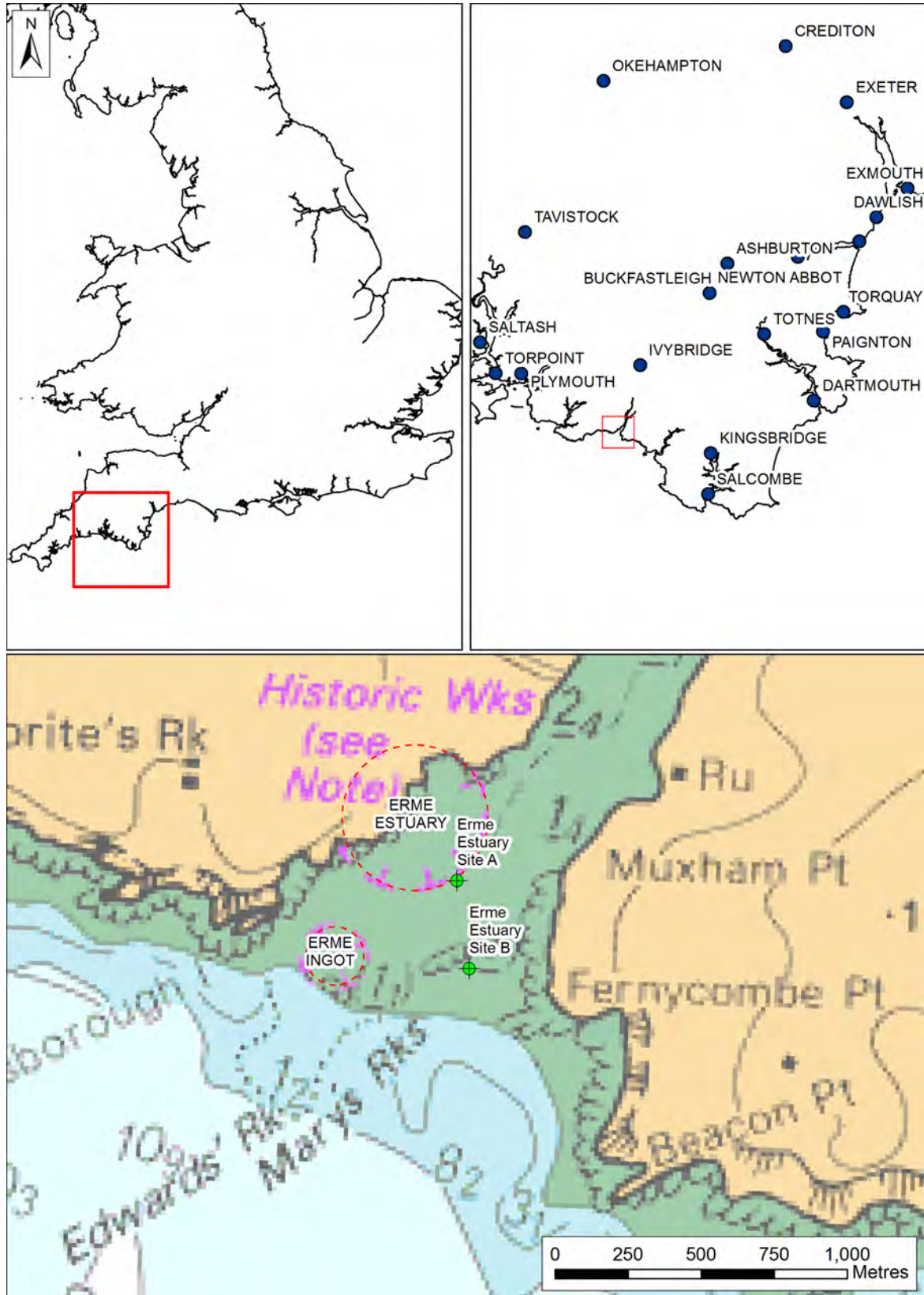
7.3.2. The following individuals and organisations have been invited to comment on this draft plan:

- Heritage Organisations
 - British Museum
 - Devon County Archaeologist
 - Historic England
 - Nautical Archaeological Society
 - Plymouth City Museum and Art Gallery
 - Receiver of Wreck
 - Royal Albert Memorial Museum & Art Gallery, Exeter
 - Salcombe Maritime Museum
- Recreational Diving Organisations
 - All South Devon Charter Boats
 - All South Devon Sub Aqua Clubs
 - All South Devon Diving Schools
- Port Authorities
 - South Hams District Council
 - Yealm Harbour Master
- Inshore Fisheries & Conservation Authorities
 - Devon Wildlife Trust
 - South Devon Estuary Officer, (Salcombe – Kingsbridge, Erme, Yealm & Avon Estuaries)
 - Southern Inshore Fisheries and Conservation Authority (SIFCA)
- Other Bodies
 - Crown Estates
 - Lord of the Manor of Ermington
 - Natural England

8. Bibliography

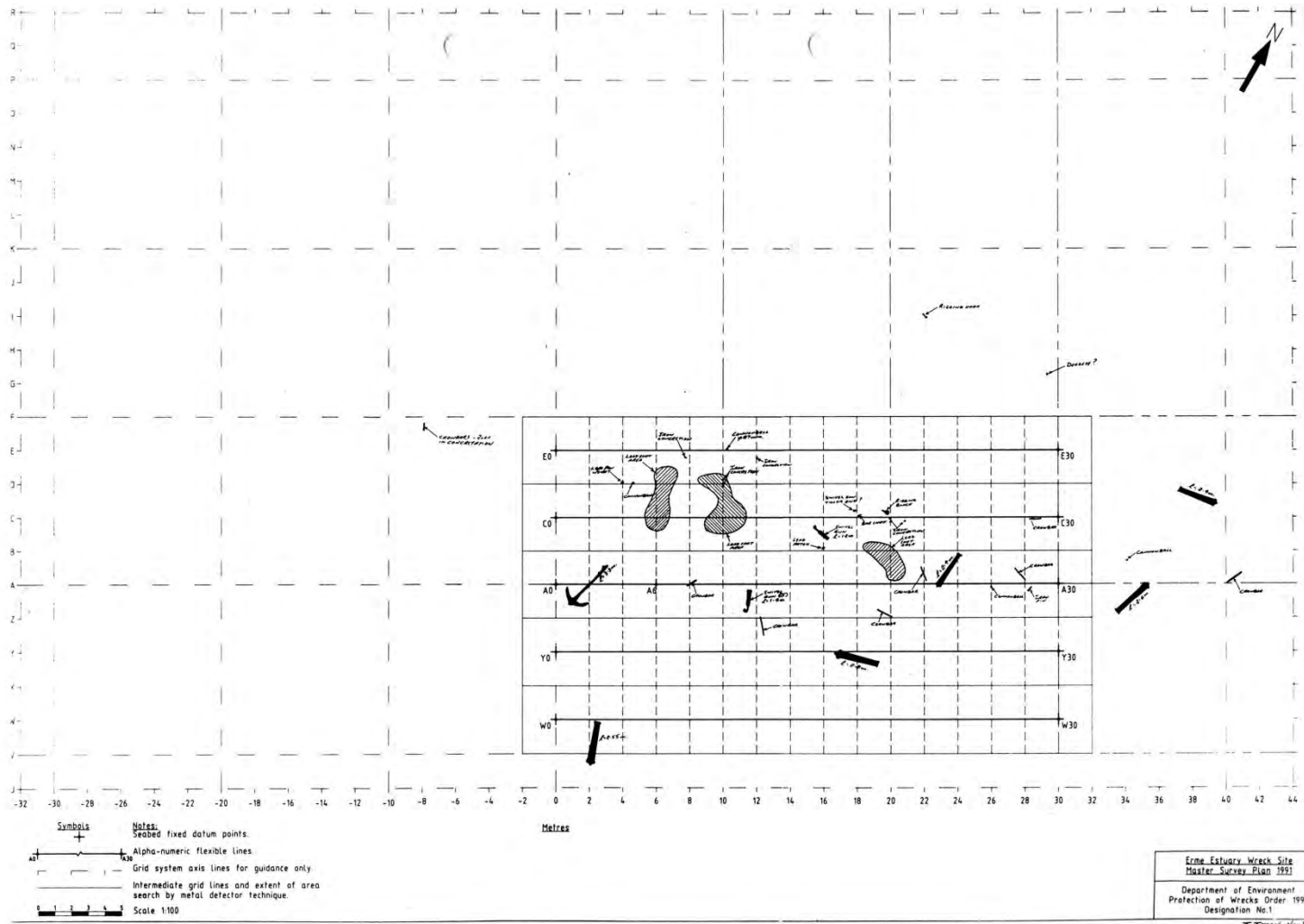
- ADU, 1996. *Erme Estuary Gun Site, Devon, England Report No. ADU 96/10*. London: ADU.
- Brown, R., 2014. *Report No. 197 Report on cast-iron swivel gun from the Swash Channel*, s.l.: s.n.
- Dunkley, M., 2008. *Sterling Castle, Goodwin Sands, off Kent. Conservation Statement and Management Plan*, s.l.: Historic England.
- Dunkley, M., 2009. *Rooswijk, Goodwin Sands, off Kent. Conservation Statement and Management Plan*, s.l.: Historic England.
- Historic England, 2008. *Conservation Principles, Policies, and Guidance, for the Sustainable Management of the Historic Environment*, s.l.: Historic England.
- Historic England, 2015. *The MoRPHE Project Managers' Guide*. 1.2 ed. Swindon: English Heritage.
- Natural England, 2006. *Natural Environment and Rural Communities Act*, s.l.: HM Stationary Office.
- Oldham, N., Palmer, N. & Tyson, J., 1993. The Erme Estuary, Devon, historic wreck site, 1991-3. *The International Journal of Nautical Archaeology*, Volume 22A, pp. 323-330.
- Oldham, N. & Parham, D., 2004. *Erme Estuary Cannon Site designation (No1 1999/1110) Order1110*, s.l.: Unpublished Report.
- Pascoe, D. & Cowen, C., 2016. *HMS Invincible Conservation Statement and Management Plan*, s.l.: Unpublished Report.
- Plets, R., Dix, J. & Bates, R., 2013. *Marine Geophysics Data Acquisition, Processing and Interpretation*, London: Historic England.
- Roberts, P. & Trow, S., 2002. *Taking to the Water: English Heritage's Initial Policy for the Management of Maritime Archaeology in England*, London: English Heritage.
- SWMAG, 1995. *Erme Estuary Site Survey Report*, s.l.: Unpublished Report.
- SWMAG, 2006. *Report on the Erme Estuary Protected Wreck Sites 2005/6*, Ellesmere Port: BSAC.
- Wood, A. & Dean, M., 1996. *Erme Estuary Gun Site, Devon, England: ADU 96/10*, London: Archaeological Diving Unit.

Appendix 1: Site Location



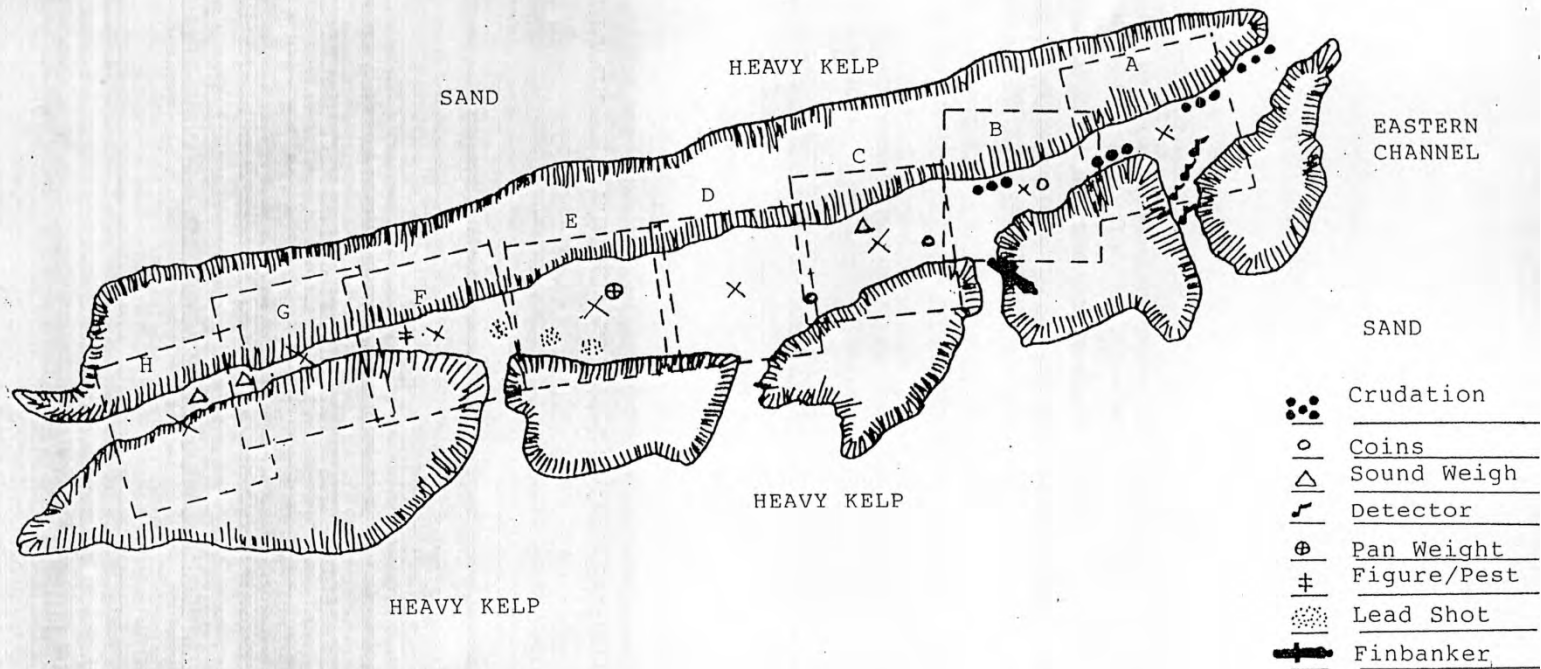
© Crown Copyright/SeaZone Solutions. All Rights Reserved. Licence No. 052006.001 31st July 2011. Not to be used for Navigation. Note that Site A and B are not within the designated area for the Erme Estuary.

Appendix 2: Site Plans



Master Survey of Site A produced by SWMAG in 1992

ERME ESTUARY PROTECTED WRECK SITE
 REEF AREA ## MARY REEF EAST



Scale 25mm/10 mtrs>

IDENTIFICATION BLOCKS :
 A;B;C;D;E;F;G;H and extensions
 10 mtr x10 mtr Blocks

Master plan of 'Site B' produced by SWMAG in 1992

9. Appendix 3 Finds List

<u>Find</u>	Description
French half Ecu	dated 1620 (eroded) Louis XIII can be clearly seen. Dated by Le Musee De La Monnaie in Paris as between 1610 – 40 Silver crown & fleur de leys visible, worn around the edge but in good condition.
silver coin	Similar to the French half Ecu found along with several copper coins. Have been identified as French. Silver coin in good condition. Copper coin are badly damage and hardly distinguishable
Pestle	bronze in excellent, similar in form to types used until the late 19 th /early 19 th century. 245mm long weight 580g
Pan weight	made of lead marked with a dagger, the sign of the Guildhall of London & a 'C' below a crown, the mark of 'Charpentier', Chevelle' or St. Lo. The mark is dated 1549-1780. NO INFO ON GUILDHALL DATE 60mm diameter 450g weight
Sounding weights & lead patches	Numerous finds have been found with more lead shot similar in size to that found in protected area.
Figurine	is 61mm long, 25g wt., is hollow & broken off at base
Swivel Gun	Swivel guns date from 1450 to 1500 might be towards the latter period because of attempts of decoration, particularly the octagonal collar of the swivel. Ornamental rings shrunk onto the outside of the barrel, no longer surviving but traces are left. Guns are made of solid sheets of iron turned into a tube & joined. Loaded with selected pebbles and at least one shows traces of some sort of cloth bag in which the pebbles were held. They are flared like blunderbusses to the muzzle.
swivel gun	This gun was X rayed and revealed to be a swivel gun complete with breach chamber, ammunition (flint shot), ball & tampion in place and with a decorative knot on the tiller. This gun was dated by Colin Carpenter to 1450-1500 & possible French (the only other similar gun known being in the French Navy museum in Paris)
Finbanker	The large gun is a Swedish Finbanker of 1680 to 1715. The Swedes exported cast guns of this type all over the world and this is one of them. It just might be an example of the copies of such guns made in this country, but I favour the Swedish organ. It has all the characteristic mouldings of the Swedish made article. The bore of 4.623 makes it approximately a 12 pounder and it is complete though trunnions are slightly worn. The length in 2.69m
Finbanker	Gun D/06 marked I.X.X = 1 Skipton, 20 units 20 pundits = 28cwts may have been in service on a Swedish vessel, either Swedish east India company or merchants fleet
Breach Block	One breach block raised, still has tampion in place
Anchor	Ship anchors suggest ship of 200 tons
Timber	Large unworked timber, though to be woodland debris carried down on the river

**Surgeons pewter
handle/syringe**

**Breach bolt form a
small gun**

Bar Shot

Numerous shot

10. Appendix 4 - Manorial Rights of Wreck

10.1.1. In 1990 divers from the South West Maritime Archaeological Group discovered several cannon, dated between 1690 and 1750, on a reef lying across the mouth of the River Erme in South Devon. The following year 42 ingots of almost pure tin, crudely shaped in earth moulds, were discovered on the seaward side of the reef. These dated from the Bronze Age. Both these wreck sites were designated as being of national importance under the Protection of Wrecks Act 1973. This Act prohibits diving operations upon these sites without licence from the Secretary of State for National Heritage. However, the 1973 Act, while effectively prohibiting unauthorised salvage of these historical artefacts, has no impact upon the issue of title to them, which is resolved by the legal provisions relating to shipwreck.

10.1.2. This point was brought home when in 1991 the Lord of the Manor of Ermington lodged a notice with HM Receiver of Wreck under (the then) s.524 of the Merchant Shipping Act 1894²⁰ claiming title to these historical artefacts. The basis of the claim was that manorial records revealed that in 1271 the Manor of Ermington was granted, by the Crown, the right to all unclaimed wreck found out to sea, for the distance that a floating Umber Barrel (roughly equivalent to a modern 40-gallon drum) could be seen floating on a clear day. The prospect that artefacts of national historical importance could be claimed by a manorial owner under a mediaeval right in the late 20th century caused considerable concern in maritime archaeological circles. The concern centred upon the risk that there could be irretrievable dispersal of the archaeological assemblage. This concern was then compounded when the National Trust advanced a similar claim to artefacts from the so-called Silver Dollar wreck in Lamorna Cove, in respect of the manor of Penrose, which the Trust now owns. In the latter claim the right to unclaimed wreck was alleged to extend out to sea for as far as a person, mounted on a horse on a specified cliff, could see a floating Umber Barrel.

10.1.3. Extensive research has been conducted into the legal structure surrounding manorial rights to wreck and this paper examines this legal structure.

10.2. The Law Relating to Shipwreck

10.2.1. The origins of the law relating to title to wreck appear to have been mainly formulated in the 11th and 12th centuries. Prior to the industrial revolution the manufacture of goods and the processing of materials was, relatively, very inefficient and shipwrecks were all too frequent. As a result, for coastal inhabitants, the recovery of property from the sea following shipwreck was an extremely important source of economic activity:

1235	Wreck recovered to value of £3,000 in Manor of Hoveden
1624	One gale produced recoveries of anchors and stores worth £200;

²⁰ Now s.242 Merchant Shipping Act 1995

1626	Admiralty Court produced £30,000 for Lord High Admiral of England, Duke of Buckingham;
1633	North Cornwall produced droits worth £29,000 in that year;
1793-1816	Droits produced £914,896 3s 6d. – This did NOT include prize.

10.2.2. The early laws relating to shipwreck reflected the almost total lack of any salvage and diving technology, in that the law initially concerned itself only with what floated or came to shore with the tide. As a result, entitlement to property came to be based upon where the property was recovered and for the purposes of this paper we can identify three geographical areas of relevance:

- the shore above high water
- the inter tidal zone between high water and low water
- From the lower water mark to the jurisdictional limit of territorial waters (the "narrow waters").

10.3. The Shoreline Above High Water

10.3.1. The Anglo-Saxon term for wreck was "SAE UPWERP", that which was cast up from the sea and under the Common Law this is what wreck means, property cast ashore by the tide after shipwreck. The term "wreck" allegedly derives from the Norman "VARECH", but it may also be derived from the Latin term for wreck "WRECCUM MARIS". Since the property was deposited on the land, entitlement to it followed the ownership of the land and the Crown owns all land absolutely. This right of the Crown to wreck was a prerogative right. The Crown's right to wreck appears to pre-date the Norman Conquest. Following the Conquest, this right became part of the emerging Common Law, at least by the reign of Henry III (1216-1272) and eventually was put upon a statutory basis in 1275 by the Act of Westminster I. This Act is judicially regarded as being merely declaratory of the earlier existing Common Law and this prerogative was again confirmed in 1353 by an Act of Edward II. Today this privilege of the Crown is embodied in statute, contained in s.523 Merchant Shipping Act 1894²¹.

Any person ... entitled to unclaimed wreck found at any place ... shall give the Receiver a statement containing the particulars of his entitlement....

s. 242 MSA 1995

Her Majesty and her Royal Successors are entitled to all unclaimed wreck found in any part of Her Majesty's Dominions except in places where [this right has been granted] to any other person ...

s.241 MSA 1995

The expression "wreck" includes jetsam, flotsam, lagan and derelict found in or on the shores of the sea or any tidal water.

s. 255(1) MSA 1995

²¹ Now s.241 Merchant Shipping Act 1995

- 10.3.2. However, the Crown, often short of funds and facing difficulties in enforcing its rights in remote locations, sold the right of wreck to local landowners. A case in 1102 illustrates both the operation of the principle and the limited, decentralised powers of the Crown in feudal society. A vessel carrying treasure belonging to Henry I was wrecked at Dungeness. The Abbot of Battle, the local landowner who had been granted right of wreck, seized the treasure. Henry was obliged to concede the matter.²²
- 10.3.3. It is alleged that by 1189 the Crown had granted away or sold the right of wreck to local landowners along almost the entire coast of England and Wales.²³ It is these grants that today form many of the manorial claims to right of wreck. The Dungeness case also illustrates the complete disregard initially paid to an owner's rights after shipwreck, even where his identity was established. This disregard was nothing more than blatant forfeiture for trespass on the land. It was a little inequitable even by mediaeval standards.
- 10.3.4. Subsequently a number of ordinances, charters and eventually Acts gradually restored the owner's rights. It is alleged that the process commenced in the reign of Henry I and was continued by Henry II in 1174.²⁴ One of the difficulties of this period was that legislation was not considered perpetual but died with the Monarch. These provisions provided that if any person or latterly a beast escaped alive then the shipwreck was not legally wreck and thus not forfeited to the Crown or local landowner. The owner retained title to his property if he claimed within three months. The dating of these provisions has been doubted but what is beyond doubt is that Richard I made a similar provision in 1190, extending the owner's rights to his children or relatives.²⁵
- 10.3.5. By the time of Henry III, the time limit was extended to one year and a day by the Common Law and in 1275 the Act of Westminster I put the rule on a statutory basis.²⁶ While these attempts to restore an owner's rights may well have been an example of mediaeval chivalry, its wisdom in relation to the well-being of shipwrecked mariners and their pets is very much open to question. Apparently if there were no survivors, then no owner could claim his property washed up on the shore and it was forfeited as wreck.

Restoration of Owner's Title to Legal Wreck

²² Melville M. Bigelow ed., *Placita Anglo-Normanica: Law Cases from William I to Richard I*; Sampson, Low, Marston, Searle & Rivington London 1879 p.86

²³ Stuart A. Moore, *A History of the Foreshore*, 3rd.ed. Steven and Haynes 1888 p.48

²⁴ Melville M. Bigelow ed. *op.cit.* p.143-6

²⁵ Prof. Reginald G Marsden ed. *Select Pleas in the Court of Admiralty*, Seldom Society, Bernard Quaritch London 1892-1897 Vol.2 p.x1

²⁶ Statute of Westminster I Edw. 1 c.4

Henry I - *Ordinance alleged to state that if any person escaped out of a shipwreck it was not wreck (wreccum maris)*

Validity questioned by Marsden.

Henry II - Charter 26th May 1174 - *if any man or beast escapes alive therein goods washed up could be claimed by owner within 3 months*

Validity doubted by Marsden.

Richard I - *Ordinance in 1190 if any man or beast escaped alive from ship the owner of vessel or goods shall enjoy unrestricted possession of them; if owner died children or brethren could retain property but if unclaimed Crown took title;*

Henry III - *Bracton, writing in his reign states the Common Law had embraced this rule, the Owner having 1 year and 1 day to claim title.*

Westminster I (3 Ed. I C. 4)

What shall be adjudged Wreck of the Sea, and what not.

CONCERNING Wreck of the Sea, it is agreed, that where a Man, a Dog, or a Cat escape out of the Ship, that such Ship or Barge, or any Thing within them, shall not be adjudged Wreck:

.....if any sue for [the] Goods and can prove that they were his.... within a Year and a Day, they shall be restored to him, without Delay.

Edward III - 27. Ed. III St.2 1353 - *goods coming to land which may not be said wreck shall, upon proof of ownership and without suit at Common Law, be delivered to the merchants paying to them that saved ... them the sum convenient for their travel.*

10.3.6. This rather absurd interpretation of the law survived until 1777 when Lord Mansfield in *Hamilton v Davis*²⁷ restored a measure of sanity to the law. In 1770 a ship, the *Hillhouse*, sailed from Cork to Liverpool with hogsheads of tallow. She disappeared with all hands, but some hogsheads washed up near Liverpool. The owners of the cargo reached agreement with those who collected the items bar one manorial owner, who claimed the items as wreck since no living creature survived the vessel's loss. Lord Mansfield, in interpreting the Act, stated that there was a negative provision in the Act to the effect that if a living creature survived then the shipwreck was not legal wreck. He then went on to hold that there was no contrary positive implication to be read into the Act. In other words, if nothing survived, the Act did not imply that the shipwreck was legal wreck and thus forfeited immediately. The provision was merely evidentiary. Survivorship of a living creature was evidence of ownership, but the Act did not preclude the identity of the owner from being established by other means. This evidence could then be adduced within a year and

²⁷ *Hamilton v Davis* (1771) 5 Burr 2732

a day. This case marked the last milestone in the restoration of an owner's rights to wreck and subsequent legislation has now reduced the period to one year.

10.3.7. What of salvor's rights in property washed ashore? Where property was not legal wreck, because a man or beast survived, an Act of 1353²⁸ stipulated an owner reclaiming the goods had to pay a reasonable sum for salvage. We have no indication how this sum was assessed. If this property was legal wreck, it seems that anyone recovering it did so on behalf of the Crown or the manorial lord. Retention of it was thus theft against the Crown or the Manor. This was no adducement to honesty and Sir Henry Marten complained of the reputation the English had abroad for "merciless and savage wildness" in wrecking.²⁹ In 1633, this judge recognised the right of salvors in legal wreck and despite some official opposition; the Admiralty Courts henceforth followed this practice.³⁰ Thus by the end of the 18th century the absolute right of the Crown and its manorial grantees to wreck had been substantially diluted by the recognition of the rights of salvors and owners.

10.3.8. Thereafter where wreck was recovered, irrespective of the survival of man or beast, and a person subsequently established title to it within a year it would be restored to him upon payment of a salvage fee. If no one claimed title to the property within that period the unclaimed wreck would vest in the Crown or, where appropriate, its manorial grantees. Today these principles are embodied in the Merchant Shipping Act 1894³¹, as amended, but the Common Law principles, outlined above, remain applicable to manorial rights of wreck as most, if not all, manorial grants predate the Merchant Shipping Acts 1854 and 1894, which reformed the law of wreck but were not retrospective.

10.4. Shipwreck Below the Low Water Mark

10.4.1. Below low water, shipwrecked property could not be *wreccum maris*, i.e. legal Common Law wreck. The law therefore devised the classifications of jetsam, flotsam, lagan and later derelict. These categories reflect the very limited technology available when the law was formulated. As technology advanced, the law inevitably lagged behind. To catch up, it merely adapted the existing concepts to the advance of salvage technology. Sir Henry Constable's case in 1601 defined these categories³². This case merely confirms the view of the 13th Century writers of the Common Law. Such remnants of shipwreck on the high seas were variously described as "adventurae maris, sea-estrays or findalls".³³ I shall refer to them as sea-estrays from here on.

²⁸ 27 Edw. III c.13

²⁹ Marsden op.cit. Vol.2 p.xxxvi

³⁰ *ibid.* Vol.2 p.xxxviii

³¹ Now Part IX Merchant Shipping Act 1995

³² *Sir Henry Constable's Case* (1601) 5 Co Rep 106a

³³ *De Jure Maris* Hale, Harg. Law Tracts Vol I p.41

COMMON LAW

WRECK (Wreccum Maris)

Remains of a Ship, her Cargo or apparel cast ashore within ebb and flow of the tide after Shipwreck.

ADMIRALTY LAW

Jetsam *goods cast into the sea to lighten a ship, which is in danger and notwithstanding the ship afterwards perish;*

Flotsam *Ship is sunk or otherwise perished and the goods float on the sea;*

Lagan *goods are so cast into the sea and afterwards the ship perishes and such goods ... sink to the bottom, and the mariners, to the intent to have again, tie to them a buoy or cork, or such other thing what will not sink, so that they may find them again;*

Sir Henry Constable's Case (1601)
Approved by Ct. of Appeal in *The Cargo Ex Schiller*
(1877) 2 P.D. 145.

10.4.2. The concept of a derelict took a little longer to evolve, although its origins date from at least the 14th century. The Black Book of the Admiralty compiled between the early 13th century and late 15th century speaks of vessels floating without any man therein as being "bona waviata". Surprisingly the concept did not achieve any reported judicial consideration until 1798 when it was defined by Sir William Scott³⁴.

Derelict - The Evolution:

Blacke Booke of The Admiralty C14th? *"... all manner of vessels floating or waveing found upon the sea, without any man therein ..."*
No. D23, 74 No. 48

The Aquila I C. Rob 37 1798 Legal Derelict – *"It is sufficient if there has been an abandonment at sea by master and crew, without hope of recovery."*
Per Sir W.Scott at 37

10.4.3. In 1835 the Court stated that the essence of a derelict is that the owner has lost physical possession but not necessarily title to the ship and cargo.³⁵ As salvage technology advanced, the Courts responded by extending the concept of a derelict to sunken cargo, eventually in 1924, the Court applied the concept to a sunken vessel and in 1970 to the scattered remains of a vessel.

Cargo of gold salvaged from sunken R.N. Warship. "This treasure ... was a derelict; it was out of possession of any person in right of the owner it was at the bottom of the sea and fished up from it; and there was no doubt in the mind ... [of] the Court of Appeal that it was a derelict."

³⁴ The Aquila I C. Rob 37 1798

³⁵ H.M.S. Thetis 3 Hagg. 288

H.M.S. Thetis 3 HAGG.288 1835 Per. Sir. W. Scott at 235

Steamship - lying in North Sea in 24m., broken into 3 parts; "*The things in question here are, ... derelict... The possession of a salvor in a ship or cargo or wreck derelict in this sense is ... as well known to the law as any other right of a salvor.*"

The Turbantia (1924) P.78

"The Court of Admiralty recognises as a class of salvage service, work done in raising a wreck or derelict, or its contents to the surface. The word derelict is used in salvage cases ... in the limited sense that it is not in the possession or control of any owner ..."

Morris v. Lyonesse Salvage Co. Ltd (The Association and The Romney) [1970] 2

Lloyd's Rep. 59

- 10.4.4. Finally in 1986, the point was expressly decided in the case of the Lusitania that a derelict which sinks remains a derelict.³⁶

"Once a vessel has become derelict, I find it difficult to think of any good reason why she should cease to be derelict merely because she is not afloat but is lying on the sea bed. To my mind it is clear beyond doubt that a derelict which sinks remains a derelict."

Lusitania [1986] 1 Lloyd's Law Rep. 132

- 10.4.5. Below the Low Water Mark, the potential claimants to shipwreck are salvors, the owners of the vessel and its cargo and the Crown. It is convenient here to distinguish between what are termed the narrow seas, corresponding to what today we call territorial waters, which are relevant to manorial claims to wreck and the high seas beyond, which are not.

- 10.4.6. Within territorial waters, i.e. from the Low Water Mark to the seaward limit of jurisdiction, the situation was legally and practically simple. By the 13th century the Crown had established a prerogative right to Droit of Admiralty i.e. jetsam, flotsam, lagan and subsequently derelict. By the end of the 14th century, the right of an owner to recover his property, subject to salvage, was recognised and Droit of Admiralty was restricted to such property within these classifications, which remained unclaimed after a year. Droit of Admiralty was shared between the salvor and the Crown, initially on a basis of an equal share but later upon a variable share determined according to principles which emanate from the Admiralty Courts.

- 10.4.7. Finally, it is important to note that the consequence of these principles, when speaking of wreck, is somewhat counter-intuitive. In common parlance one speaks of vessels lying on or in the sea-bed beyond the Low Water Mark as 'wrecks' and divers speak of 'wreck diving' when accessing such remains. Material recovered from such remains is referred to as 'wreck', whereas in law it is technically 'derelict' and therefore **not** wreck at Common Law (wreccum maris) and thus any Common Law

³⁶ The Lusitania [1986] 1 LL.L Rep.132: See also Morris v Lyonesse Salvage Co. Ltd. (The Association and The Romney) [1970] 2 LL.L. Rep.59

grant to 'wreck' (*wreccum maris*) will not pertain to it. Even more confusingly, while such remains below the Low Water Mark are not wreck at Common law (*wreccum maris*), as they are not washed ashore within the ebb and flow of the tide, they would, as flotsam, lagan, jetsam or derelict, constitute *statutory* wreck, as s.255(1) Merchant Shipping Act 1995 defines 'wreck' as "*includes jetsam, flotsam, lagan and derelict found in or on the shores of the sea or any tidal water*"³⁷. Consequently, there are legally two forms of 'wreck'. 'Wreck' at Common Law is '*wreccum maris*', i.e. the '*Remains of a Ship, her Cargo or apparel cast ashore within ebb and flow of the tide after Shipwreck*' and statutory 'wreck', as defined by s.255(1), which encompasses **both** Common Law wreck (*wreccum maris*) and jetsam, flotsam, lagan and derelict in Admiralty Law into one statutory category of 'wreck'. For this reason, it is always important to distinguish between the two forms of wreck by referring to 'wreck at Common Law' or 'Common Law Wreck' (*Wreccum Maris*) and 'statutory wreck', which encompasses both wreck at Common law (*Wreccum Maris*) and sea-estrays (flotsam, jetsam, lagan and derelict) in one statutory category.

10.5. The Inter Tidal Zone

10.5.1. The inter tidal zone i.e. the area between the High-Water Mark and the Low Water Mark was a scene of conflict between the jurisdictions of the Common Law and the Admiralty Courts. Since wreck was shipwrecked property cast ashore it fell under the land-based jurisdiction of the Common Law, while shipwreck which remained at sea, e.g. flotsam, lagan, jetsam and derelict fell under Admiralty jurisdiction. Each jurisdiction sought to enlarge its influence at the expense of the other, so in the reign of Richard II legislation was passed to prohibit the Admiralty Courts from dealing with wreck.³⁸

10.5.2. Between High Water and Low Water there remained a problem. As the tide flooded the area was clearly sea, yet as the tide ebbed it assumed the qualities of land. The law eventually compromised by holding that the intertidal zone was '*divisum imperium*'. As the tide ebbed the Common Law prevailed, and any shipwrecked property left stranded was wreck, whereas as the tide flooded and such property remained afloat it was flotsam, jetsam etc and thus droit under Admiralty jurisdiction. This approach appears to have been adopted as early as the 14th century but was confirmed by the courts in Sir Henry Constable's case in 1601.³⁹

10.6. Unresolved Issues: 'Wreck' at Common Law or Sea-Estray ('Droit of Admiralty')?

10.6.1. Unfortunately, this left unresolved a number of possibilities. What if an item grounded and then refloated with the next tide? Was it wreck or Droit of Admiralty? What if an item was bumping? These questions matter because they determine in whom the salvaged property becomes vested. If no owner or successor in title comes

³⁷ This definition has been used in the Merchant Shipping Acts 1854 – 1995.

³⁸ 13 Ric.II st.1 c.5

³⁹ *op.cit*

forward within the statutory period to claim the salvaged property, subject to payment of any salvage award, then the property is unclaimed. If it constitutes unclaimed 'wreck' at Common Law, i.e. 'wreccum maris' washed ashore by the ebb and flow of the tide, then it will vest in the Crown or, where the Crown has granted wreck away, to the Crown's grantee, such as a manorial owner⁴⁰. However, if the property is not 'wreck' but a sea-estray i.e. jetsam, lagan, flotsam or derelict, then a grant of a right of 'wreck' (wreccum maris') will not confer a right to such unclaimed property and the property (sea-estray) is a 'Droit of Admiralty' and will vest in the Crown, again subject to payment of any salvage award. Consequently, determining the status of the recovered material as wreck at Common Law (wreccum Maris) or as Droit of Admiralty is essential to determining its disposal.

10.6.2. In a series of cases in the 19th century the Admiralty Courts went some considerable way to resolving these issues. The leading case in this matter is *The King (in his office of Admiralty) v Forty-Nine Casks of Brandy*,⁴¹ which was decided in 1836. The forty-nine casks were discovered deposited from the High-Water Mark, through the intertidal zone, where some were aground, and others were merely bumping, to well out to sea. The Lord of the Manor claimed the Casks in their entirety. In determining this claim, which will be examined later in more detail, the Court elaborated the principles for determining when shipwrecked property was wreck (wreccum maris) at Common Law and when it was Droit of Admiralty. Those casks recovered below the Low Water Mark were within Admiralty jurisdiction and were condemned as Droit of Admiralty. Those aground above the High-Water Mark were wreck and if unclaimed, became vested in the Lord of the Manor. Those aground, or merely bumping, between High Water and Low Water were wreck but those still afloat between High and Low Water when recovered were Droit of Admiralty. The case was followed a year and a half later by another case, which raised similar issues, in *The King (in his office of Admiralty) v Two Casks of Tallow*.⁴² The case was concerned with exactly when property, recovered between the High and Low Water marks, became wreck. The Court emphasised that to be wreck the property must come ashore, bringing it within the jurisdiction of the Common Law. If an object was aground, even though surrounded by some remaining tide, it would be wreck whereas an object still afloat, say in a tidal pool, would not be wreck even if the surrounding area had dried with the ebb of the tide. As we have seen where an object was semi-buoyant, bumping on the shore it would be wreck. The one issue the Court would not address was where an object took ground and then refloated on the next flood tide. Would the initial grounding have vested, subject to an owner coming forward, title to the property in the manorial lord? The Court declined to determine the matter, declaring it to be a "question hereafter."

⁴⁰ S.241 Merchant Shipping Act 1995

⁴¹ 3 Hagg.257

⁴² 3 Hagg 294

- 10.6.3. Rather confusingly the third case to deal with the question of manorial claims to wreck in the 19th century is rather contradictory. The *Pauline*⁴³ dealt with a manorial claim to a vessel of that name which had taken ground off the Exe Estuary and was abandoned by her crew. The following day she was boarded by the manorial bailiff, the vessel being aground above the Low Water Mark at the time surrounded by tide deeper than a man could wade through. Consequently, a boat was used to board her. Rather confusingly Dr Lushington held the vessel to be Droit of Admiralty and not wreck. This seems unlikely since the vessel had firmly taken ground and as Sir John Nicholl had stated in *The King (in his office of Admiralty) v Two Casks of Tallow* " ... if [an article] become fixed to the land, though there may be some tide remaining around it, it may be considered as "wreccum maris".⁴⁴ It may be that the depth of water surrounding the grounded vessel, which necessitated access by boat, was a deciding factor in the court's view but this interpretation is admittedly speculative, the reasoning of the court not being explicit on the point.
- 10.6.4. Notwithstanding this apparent contradiction, between 1836 and 1845 these three cases largely determined the principles relating to the resolution of manorial claims to wreck down to the Low Water Mark. However, the most interesting aspect of the claim of the Manor of Ermington is that the claim is to wreck beyond the Low Water Mark, as far out to sea as an UMBER Barrel may be seen floating. This requires an extended interpretation be given to the term 'wreck' at Common Law (wreccum maris) and that an apparent Droit of Admiralty be subordinated to Common Law jurisdiction and to a grant at Common Law of unclaimed wreck.
- 10.6.5. Where such a claim is based upon an express grant made after 1189 AD judicial consideration of the matter appears to have rejected the validity of such extended claims to right of Common Law wreck (wreccum maris) below the Low Water Mark and thus within Admiralty jurisdiction. Such a claim was considered by the Court in the case of the Forty-Nine Casks and the case of the Two Casks of Tallow. In the latter case the manorial claim had been of a right to wreck for three miles out to sea. In relation to the possibility that such an extended right of wreck could be expressly granted the Court, in the case of the 49 Casks, doubted the validity of such a grant if the grant were made after 1189 AD. Droits of Admiralty belong to the King, not *jure coronae*, but to the King in his office of Admiralty. The existence of that Office of Lord High Admiral was presumed by the court to have existed since Time Immemorial (1189 AD), from which time such Droits attached to the Office, as did sole jurisdiction below the Low Water Mark. Any manorial grant of Common Law wreck (wreccum Maris), to take effect below the Low Water Mark, made after 1189 AD, would derogate from the existing grant of Droits and absolute jurisdiction to the Office of Admiralty made in 1189 AD. A manor, being a creature of Common Law and "land jurisdiction", could not be given privileges below the Low Water Mark into Admiralty jurisdiction after

⁴³ 2 W.Rob.358

⁴⁴ *op.cit.* at 298

1189 AD. Any grant purporting to do so would, in the Court's opinion, be "... *an illegal grant and void*."⁴⁵ The Court reiterated this view in the case of *Two Casks of Tallow*, where it stated that below Low Water a manorial grantee can have no claim, land jurisdiction terminating at the High-Water Mark, except for the inter tidal zone, where it is '*divisum imperium*'.

10.6.6. Prima facie this decision is fatal to any claim advanced to "wreck" (*Wreccum Maris*) below the Low Water Mark, since any grant made after 1189 AD would be, in the words of Sir John Nicholl, '*illegal and void*'. Similarly, any claim to any sea-estray (*Droit of Admiralty*) below the Low Water Mark, such as *Jetsam*, *Flotsam*, *Lagan* or *Derelict*, made by express grant after 1189 AD would also be void. It would infringe upon the rights to sea-estrays (*Droit of Admiralty*) presumed to have been granted to the Office of Lord High Admiral in 1189 AD. The ratio in these two cases to this effect was certainly adopted by the Board of Trade's law officers. The Receiver of Wrecks Precedent Book contains the following entry:

10.7. "Lords of Manors" – claim to flotsam

When considering any claim by a Lord of Manor to flotsam, salvaged in the open sea, i.e. outside a harbour, reference should be made to Law Officer's Opinion on M.13134/25 respecting the view that the Crown has no power to alienate the droit pertaining to the Office of Lord High Admiral without the authority of an Act of parliament. (M.13134/25)"⁴⁶

10.7.1. This opinion accords precisely with the ratio expressed by the courts in these two cases. It requires any claim based upon express grant by the Crown to Common Law 'wreck' (*wreccum maris*) or sea-estray (*flotsam*, *jetsam*, *lagan* or *derelict*) to be evidenced by a grant dating from before 1189 AD, as after that date all such sea-estrays (*Droit of Admiralty*) had already been vested in the Office of Lord High Admiral and could not be granted away by the Crown again. Nor, after that date, could a grant to Common Law wreck (*wreccum Maris*) be extended below the Low Water Mark into Admiralty jurisdiction, since this would also amount to derogation from grant made to the Office of Lord High Admiral in 1189 AD.⁴⁷

⁴⁵ *op.cit.* at 287

⁴⁶ The author is grateful to the Receiver, Ms. Alison Kentuck, for providing a copy of this precedent. The reference 'M.13134/25' is reference to a file of the Marine Division of the Board of Trade created in 1925. If the file still exists it will be in the National Archive (NA) but unfortunately there is no way of converting this reference into a NA reference and thus no simple way of ascertaining if the file, with the full opinion, exists. None the less the Receiver's Precedent Book has cogent evidentiary value.

⁴⁷ A potential doubt about the validity of the ratio in the *49 Casks*' case is that, as Professor Marsden has demonstrated, there is no evidence of an Office of Lord High Admiral existing prior to 1360. Whilst various offices of Admiralty existed before this upon a regional basis, the first reference to a single central office dates only from this time. As a result it appears that the presumption articulated in the *49 Casks*' case that the office existed from Time Immemorial can only be a legal fiction. It may be that a future court is prepared to accept this fiction but the

- 10.7.2. Therefore, to be a valid grant of Common Law wreck (*wreccum Maris*) extending below the Low Water Mark such express grant would have to predate 1189 AD (Time Immemorial). A manorial grant prior to that date would predate the granting by the Crown of sole jurisdiction below Low Water to the Office of Lord High Admiral and could be valid. Any such express grant of 'wreck', as far out to sea as an Umber Barrel could be seen floating, would of course give an extended meaning to the term 'wreck', but it would be open to the parties, by common intention, to give the term such an extended meaning, were it to be done expressly. Such an intention could also be inferred from the context of the delimitation i.e. the distance at which such a floating barrel could be seen. An express grant, prior to 1189, would thus be a valid manorial grant of wreck below the Low Water Mark. However, the evidentiary difficulties of establishing such a grant prior to 1189 AD are undoubtedly formidable.
- 10.7.3. As an alternative a manor could claim by prescription a right to unclaimed Common Law wreck (*wreccum Maris*) against the Crown and a right to unclaimed sea-estrays (Droit of Admiralty) against the Office of Lord High Admiral. Prescription is a Common Law process and is regarded as evidence of a grant, admissible where the grant itself cannot be adduced. As such, prescription is said to lie in grant. If prescription, as proven by long usage, can be established, the law assumes the grant to have been made prior to 1189 AD (Time Immemorial). As stated above, such a grant would then be valid. One difficulty however may be that prescription is a Common Law process and at Common Law 'wreck' is restricted to shipwrecked property cast ashore above the Low Water Mark. Entitlement to 'wreck' by prescription, being a process of implication, may thus be restricted to that Common Law meaning of wreck. An analogy may be drawn with Easements, where the Court will only accept a right, evidenced by prescription, where it can be shown to fall within the category of Easements. Such an interpretation would exclude a prescriptive claim to Droit of Admiralty below the Low Water Mark and thus to any recovered shipwrecked material (derelict) recovered below that Mark.
- 10.7.4. Furthermore, an additional difficulty to any claim by prescription, be it entitlement to Common Law wreck (*Wreccum Maris*) or to Droit of Admiralty, is that prescriptive claims must be '*nec clam*', i.e. without secrecy. In other words, the prescriptive usage, in this case taking possession of shipwrecked material, must be practised openly with the knowledge of the Crown or the Office of Lord High Admiral, as applicable. In both the case of the Forty-Nine Casks and the case of the Two Casks of Tallow the Court emphasised that the right must be acquired '*as of right*'. In other words the usage could not be '*sub silentio*' but had to be brought to the notice of the Office of Lord

decision itself predates Professor Marsden's research and to that extent may allow that aspect of the decision to be challenged.

High Admiral before a prescriptive claim could be successfully asserted.⁴⁸ Certainly after the Merchant Shipping Act 1854 established the Office of Receiver of Wreck and imposed a statutory duty to report to the Receiver the taking of possession of statutory wreck, the prescriptive claimant would need to establish a prescriptive usage by the reporting of the taking possession of unclaimed statutory wreck to the Receiver for the requisite prescription period. Finally, while a right to Common Law wreck (*Wreccum Maris*) may be acquired by prescription⁴⁹, it would appear that a prescriptive right to Droit of Admiralty can only be established between the High and Low Water Marks⁵⁰ and in the case of *Two Casks of Tallow* Sir John Nicholl appears to go so far as to deny the possibility of establishing a prescriptive claim to Droits of Admiralty below the Low Water Mark.⁵¹ These considerations would constitute an additional and not insubstantial hurdle for a manorial claimant to overcome in attempting to establish a prescriptive right to Droit of Admiralty below the Low Water Mark.

10.7.5. The third basis of the manorial claim could be custom, asserted upon behalf of the inhabitants residing in a coastal locality and not for the benefit of an individual, as with prescription. A custom is a particular rule which has existed either actually or presumptively from Time Immemorial (1189 AD) and has obtained the force of law in a particular locality, even though contrary to or not consistent with the general Common Law of the realm. In *Sir Henry Constable's Case*⁵² there is a reference to such a customary claim, "... *those of the West Country prescribe to have wreck in the sea so far as they may see a Humber barrel ...*"⁵³ This claim was reiterated by Hale in *De Jure Maris*, without any judicial authority being cited in support⁵⁴. This claim was referred to in the *49 Casks'* case but the claim there concerned a manor in Dorset and in any event the claim was based upon the terms of an express grant, not custom, so the Court did not pursue the reference.

10.7.6. That such a custom existed, at least in social and economic terms if not legal, seems more than probable. Manorial records from the South West, dating from 1632 state the Lord of the Manor is to have wreck as far as a man can cast a dart at low water; other records compiled in 1699, 1702 and 1709 assert such a claim as far as a Tar Barrel on fire can be seen from the land. Witness statements dated 1582 and 1753 also assert such a claim, the distance being delimited by various other yardsticks such

⁴⁸ *The King (in his office of Admiralty) v Forty Nine Casks of Brandy* op.cit at 288; *The King (in his office of Admiralty) v Two Casks of Tallow* op.cit. at 297

⁴⁹ *Sir Henry Constable's Case* op.cit at 106a.

⁵⁰ *Ibid*; see also *De Jure Maris* op.cit at p.42

⁵¹ *Op.cit* at 297.

⁵² *Op.cit*

⁵³ Some sources refer to an Umber barrel, others to a Humber barrel

⁵⁴ *De Jure Maris* op.cit. p.41

as the visibility from land of a hamboroughe barrel, a herring barrel or a small rowing boat.⁵⁵

10.7.7. Whatever the judicial presumption as to the date on which jurisdiction below the Low Water Mark was transferred to the Office of Lord High Admiral and with-it Droit of Admiralty, there is considerable evidence that these extended claims to wreck were habitually advanced by manorial lords, who undoubtedly exercised them regularly and were prepared to contest them in Court if necessary. To some extent the practice had a measure of practicality. In the days of wooden sailing ships and little communication or salvage technology, the first intimation of a shipwreck visible from the shore would be barrels and other items of cargo and ship's apparel left floating on the surface. The only salvage available would be to row out to sea and recover the items. Undoubtedly such instances occurred with regularity and it may well be that if the ratio in the case of the 49 Casks is upheld, this will be an example of a social and economic custom which failed to become an accepted legal custom or rule of law.

10.8. Conclusion

10.8.1. The claim of the Manor of Ermington to historical artefacts from these wrecks below the Low Water Mark raises fundamental questions of principle as to the legal framework surrounding the Common Law concept of wreck, the Office of Lord High Admiral and its entitlement to Droits of Admiralty. The claim also reignites the centuries' old tension between the Common Law and Admiralty jurisdictions, which was such a prominent feature in the development of early Admiralty Law and its Courts. Finally, the claim raises questions as to whether the early law of wreck is an appropriate vehicle for determining the ultimate destination of historically significant archaeological artefacts. Should a resolution of these issues ever be reached it will be of interest both to legal historians and the marine archaeological community. If nothing else this dispute gives credence to the belief that history does indeed repeat itself.

10.9. Note:

10.9.1. This Annex is based upon a conference paper was presented by Mr. M. V. Williams, Senior Lecturer in Law to the NAS Conference at the University of Plymouth in March 1995. It has been updated to incorporate references to the Merchant Shipping Act 1995 and subsequent research. It is reproduced here with the kind permission of the author.

⁵⁵ *Cornish Wrecking 1700-1860 Reality and Popular Myth* Pearce, C. (2010) Boydell Press Woodbridge p.149 & 176; *The Penheleg Manuscript Pool*, P.A.S (ed.) Journal of the Royal Institution of Cornwall Vol 111 Part 3 1959 pp. 163 – 228 at p.173 (fn.51; p.177& p.211 (fn.222). I am grateful to Mr P.A.S. Pool B.A., Solicitor, for drawing my attention to these manorial records, which he purchased in 1958