

Marine Protected Areas in the Seas around Scotland

Guidelines on the selection,
designation and management of
Historic Marine Protected Areas

HISTORIC
SCOTLAND



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CONSULTATION ON THE GUIDELINES

Views are invited on the Scottish Ministers guidelines for the selection, designation and management of Historic Marine Protected Areas. We are inviting written responses to questions set out overleaf by **27 January 2012**. Please send your response to:

Email: Hs.schedulingteam@scotland.gsi.gov.uk

Or

By Post to: Scheduling and Marine, Historic Scotland, Longmore House, Salisbury Place, Edinburgh, EH9 1SH.

If you have any queries please contact Christine Kelly on 0131 668 8914.

This consultation is available on the consultation web pages of the Historic Scotland website at www.historic-scotland.gov.uk/consultations. The consultation, and all other Scottish Government consultation exercises, can also be accessed online from www.Scotland.gov.uk/consultations. To assist the analysis of the responses that we receive, we would be grateful if you would use the consultation questionnaire provided overleaf, or clearly indicate in your response which questions or parts of the consultation paper you are responding to.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. We would therefore be grateful if you could complete and return the Respondent Information Form as this will ensure that we treat your response appropriately. If you ask for your response not to be published, we will regard it as confidential and treat it accordingly.

All respondents should be aware that Historic Scotland and the Scottish Government are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public and after we have checked that they contain no potentially defamatory material, responses will be made available to the public through consultation pages of Historic Scotland's website (<http://www.historic-scotland.gov.uk/index/about/consultations.htm>). Responses can be copied and sent to you on request, but a charge may be made for this service.

What happens next ?

Following the closing date, all responses will be analysed and considered along with any other available evidence. We will then issue a report on the consultation process with the aim of submitting a final version of the Guidelines for approval and publication in March 2012.

Strategic Environmental Assessment

Historic Scotland has applied the criteria specified in Schedule 2 of the Environmental Assessment (Scotland) 2005 Act to the Guidelines on the selection, designation and management of Historic Marine Protected Areas and have determined they are exempt from Strategic Environmental Assessment under Section 8(1).

A copy of this determination can be viewed here www.historic-scotland.gov.uk/seadeterminations

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to:

The Director of Policy & Outreach
Historic Scotland Policy & Outreach
Room 2.31
Longmore House
Salisbury Place
Edinburgh
EH9 1SH

Consultation questions

General

Question 1 - Do you have any comments on the general content, structure and lay-out of the document?

Question 2 - Is there anything missing?

Part 1: selection and designation of Historic Marine Protected Areas

Question 3 – Are you content with the process for selecting candidate HMPAs and presenting proposals? Do you have any suggestions?

Question 4 – Do you have any suggestions in relation to consultation and notification of designation – for example, are there any groups we should be consulting with or places where we should be publicising designation that we have missed out?

Question 5 – Do you agree with the framework for formulating and monitoring preservation objectives for HMPAs set out in Annex B Do you have any suggestions?

Part 2 – management of Historic Marine Protected Areas

Question 6 – Are you content with the process for managing HMPAs? Do you have any suggestions?

Question 7 – Do you have any suggestions in relation to our proposed use of Marine Conservation Orders and permits/directions?

Please Note this form must be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name (if appropriate)

Title Mr Ms Mrs Miss Dr Please tick as appropriate

Surname

Forename

2. Postal Address

<input type="text"/>		
<input type="text"/>		
<input type="text"/>		
<input type="text"/>		
Postcode	Phone	Email

3. Permissions - I am responding as...

Individual

/ Please tick as appropriate

Group/Organisation

(a) Do you agree to your response being made available to the public (in the Historic Scotland library and/or on the Historic Scotland web site)?

Please tick as appropriate Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Historic Scotland library and/or on the Historic Scotland web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

(d) We will share your response internally within Historic Scotland and with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for someone from Historic Scotland or another part of Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate Yes No

INTRODUCTION

1. BACKGROUND

1.1. From the earliest prehistoric settlement to the maritime developments of the industrial revolution, our coasts and seas have been of immense importance. Given a geographical position on a sea route linking northern Europe with the world, these coasts and seas have historically also been of international importance. As a result, Scotland's outstanding marine environment contains a rich cultural heritage that includes the remains of important historic assets of all periods from prehistory to the recent past.

1.2. The Scottish Government is committed to a clean, healthy and biologically diverse marine and coastal environment that meets the long term needs of people and nature. This includes protecting, and where appropriate enhancing our most important marine heritage sites in such a way that they can be valued and understood (Scottish Government 2010).

New marine legislation

1.3. New marine legislation in the form of the UK Marine and Coastal Access Act 2009 ('the 2009 Act') and the Marine (Scotland) Act 2010 ('the 2010 Act') introduces a new framework to enhance stewardship and sustainable development of Scotland's seas through a marine planning system, streamlined marine licensing for developments at sea, and a system of Marine Protected Areas (MPAs) to help conserve Scotland's outstanding marine environment for future generations.

The Scottish Marine Protected Areas Project

1.4. As an executive agency of Scottish Government, Historic Scotland carries out the responsibilities of Scottish Ministers for the historic environment and seeks to ensure that, as far as possible, the nation's coastal and underwater cultural heritage should be managed, protected and investigated as carefully and thoroughly as its terrestrial equivalent. As part of its responsibilities, Historic Scotland is working with Marine Scotland, Scottish Natural Heritage, the Scottish Environment Protection Agency (SEPA) and the Joint Nature Conservation Committee on the Scottish Marine Protected Areas Project to make recommendations to Scottish Ministers on the selection, designation and management of three types of Marine Protected Area:

- **Nature Conservation MPAs** – to help deliver national priorities on biodiversity and geodiversity, including Scotland's contribution to European and international commitments on biodiversity e.g. under OSPAR¹ and the EC Marine Strategy Framework Directive (MSFD)². Marine Scotland is the lead organisation on behalf of Scottish Ministers;

¹ OSPAR is an agreement by relevant governments and the European Community, to co-operate to protect the marine environment of the North-East Atlantic. See <http://www.ospar.org/>

² <http://www.scotland.gov.uk/Topics/marine/seamanagement/international/msfd>

- **Demonstration and Research MPAs** – to demonstrate, or develop research into, sustainable management approaches. They will be established within Scottish territorial waters only. Marine Scotland is the lead organisation on behalf of Scottish Ministers;
- **Historic MPAs (HMPAs)** – to protect marine historic assets of national importance within the Scottish territorial waters (see figure 1). Historic Scotland is the lead organisation on behalf of Scottish Ministers.

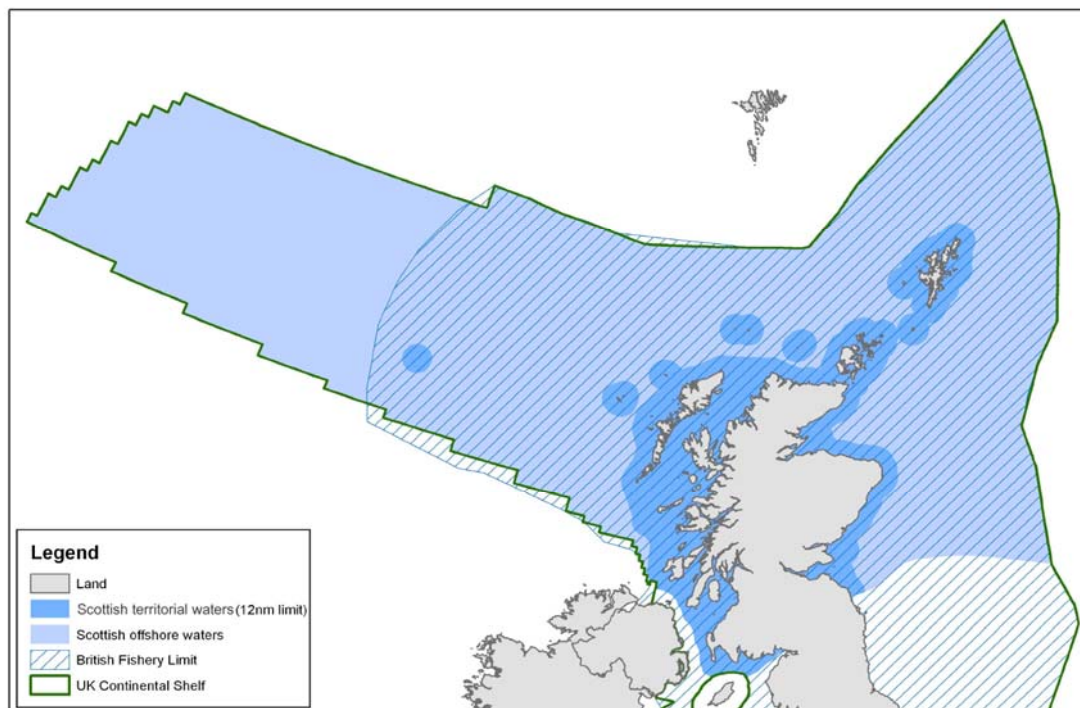


Figure 1: Extent of Scotland's seas.

Purpose of these guidelines

1.5. This guidance note sets out how Historic Scotland will apply powers relating to Historic MPAs (HMPAs). Marine Scotland has prepared separate guidelines for Nature Conservation and Demonstration and Research MPAs (Scottish Government 2011).

1.6. This guidance will hopefully be of use to a wide range of individuals, groups and organisations who may interact with a HMPA and need to know what this designation means for them. For example, recreational divers and many others who discover historic assets on the seabed, archaeologists investigating them, sea-anglers and fishermen seeking to harvest their catch, harbour authorities creating or maintaining channels for safe shipping access, public authorities with management responsibilities in the marine environment, and construction companies installing coastal and offshore installations. All parties have a positive role to play in helping to protect important heritage assets and to promote their understanding and enjoyment.

1.7. It will be reviewed and updated periodically as experience with the new regime develops over time.

2. THE MARINE HISTORIC ENVIRONMENT

2.1. Marine historic assets around our coasts include the wrecks of boats, ships, submarines and aircraft with connections to Scotland and much further afield, harbours, lighthouses, other built structures, crannogs and fish-traps as well as the potential for drowned terrestrial archaeological sites and cultural landscapes.

2.2. Marine cultural heritage has the potential to contribute to knowledge of the past, to the character of Scotland's coasts and seas and to the economies of coastal communities through recreation and tourism. Shipwrecks in particular have held great appeal to the many scuba divers from Scotland and further afield who enjoy underwater adventures in picturesque locations around the Scottish coastline.

Understanding processes that can affect the survival of marine historic assets.

2.3. The marine environment is dynamic and the survival of marine historic assets can be affected by a complex interplay of processes originating from sources that may be naturally occurring (e.g chemical, biological or physical factors), or man-made. Table 1 identifies some man-made operations .

Operation	Coast-edge	Foreshore	Near-shore	Offshore
Extraction	Alteration to water courses	Gravel extraction	Maintenance/capital dredging; Dumping at sea;	Aggregate extraction; Dumping at sea
Construction (site-specific)	Housing; Transport infrastructure (e.g bridges; causeways)	Port development; Marinas; Aquaculture Transport (e.g causeways/ bridges)	Energy installations – e.g. marine and offshore wind renewables;	Energy installations – e.g. renewables and oil and gas development; Carbon Capture Storage;
Construction (linear)	Embankments; cable/pipe-laying	Coastal defences; hard landscaping; Cable/pipe-laying;	Cable/pipe-laying;	Cable/pipe-laying;
Fisheries		Shellfish collection; fixed netting	Static gear; mobile gear (e.g demersal trawling/ nephrops and scallop dredging)	Mobile gear (e.g demersal trawling/nephrops and scallop dredging);
Diffuse activities	Boat-wash; Managed retreat	Managed retreat; Recreation and tourism	Aquaculture operation; Salvage; treasure-hunting; Recreation and tourism; Anchoring/ moorings;	Certain types of Dumping at sea; Salvage; treasure hunting; Recreation and tourism;

Table 1 Some man-made operations capable of hindering preservation objectives for HMPAs. Whether there is any impact will depend on the extent to which a marine historic asset or the area is/is likely to be exposed to the operation and its effects.



Figure 2: Fish traps, Benbecula – © Crown Copyright: RCAHMS. Licensor www.rcahms.gov.uk



Figure 3: The wreck of the Ballista, Sound of Mull (lost 1973). In the background, divers are investigating the remains of a much earlier vessel, HMS Dartmouth, wrecked 1690. 000-000-110-634-R – © Colin J M Martin. Licensor www.scran.ac.uk

2.4. Table 2 sets out in relation to man-made operations, how it is possible to chart impacts to ‘receptors’, via relevant processes or ‘pathways’, and back to the originating ‘sources’ of impact. Impacts can result directly - for example, construction on top of a marine historic asset, resulting in damage or loss of information; or indirectly - alteration caused by erosion as a consequence of sedimentary change resulting from development in the vicinity. Sometimes, where multiple operations are taken into account, their effects can be ‘cumulative’.

Receptor	Impact	Pathway	Source (man-made operations only)
area	physical damage;	collision;	construction, both site-specific and linear
	loss;	abrasion;	anchoring/mooring commercial fishing (static gear; demersal trawling/nephrops and scallop dredging)
asset(s)	alteration;	removal;	extraction (capital dredging) recreation and tourism (e.g diving); salvage/treasure hunting
features of asset(s) – includes structures and objects.	disturbance (incl. disruption of relationship between assets and features of assets)	selective removal; degradation due to changes in water chemistry; degradation due to changes in sedimentation (e.g erosion); excavation of sediments	pollution incidents; recreation and tourism indirect effects from construction (indirect effects) extraction; dumping at sea; ship-wash recreation and tourism (e.g diving); Salvage/Treasure hunting

Table 2 : a source - pathway - impact - receptor model for marine historic assets in relation to man-made operations.

2.5. Although it can often be difficult to mitigate the impacts of processes that are entirely natural, it is possible to do something about man-made operations. The spatial footprint of historic assets on the seabed is often relatively small. Just by being aware of the location of important sites and by understanding how impacts can occur, it is usually possible to adapt activities or to plan developments in a way that avoids impacts altogether or mitigates the effects of these impacts in an acceptable manner.

New marine legislation and policy

2.6. Scottish Ministers are committed to protecting and managing Scotland’s rich heritage in a sustainable way such that current and future generations can understand, appreciate and benefit from it. In the marine environment, the 2009 and 2010 Acts include complementary mechanisms to deliver sustainable economic growth that are relevant for the stewardship of our coastal and marine heritage:

- **statutory marine planning** to balance competing interests while protecting the environment. A Scottish National Marine Plan is in preparation and, in the future, regional marine plans will enable planning at a more detailed level;
- **streamlined marine licensing** system to regulate operations requiring consideration of impacts to the environment including sites of historical or archaeological interest;
- powers to designate **Nature Conservation, Demonstration and Research, and Historic Marine Protected Areas (MPAs)** in order to help conserve Scotland's outstanding marine environment for the benefit of future generations;
- powers to make **Marine Conservation Orders** to support the preservation objectives of HMPAs;
- **common enforcement** powers to allow Marine Enforcement Officers to monitor and enforce marine licensing and conservation provisions.

2.7. To ensure that a robust policy framework underpins the new legislation, all the UK administrations have jointly adopted a UK Marine Policy Statement that recognises the cultural dimension of the marine environment, providing a framework for developing marine plans and taking sustainable decisions affecting coasts and seas. Scottish Ministers have also set out their policies for the historic environment in the Scottish Historic Environment Policy - SHEP (Historic Scotland 2009a), identifying three desired outcomes:

- Outcome 1: the historic environment is cared for, protected and enhanced for the benefit of our own and future generations;
- Outcome 2: to secure greater economic benefits from the historic environment;
- Outcome 3: the people of Scotland and visitors to our country value, understand and enjoy the historic environment.

2.8. Scottish Ministers look to Historic Scotland to work in an open, inclusive and transparent way, to engage with stakeholders and to work in partnership in taking forward the visions and ambitions set out in the SHEP.

The role of HMPAs and their relationship to other heritage designations.

2.9. Since the last Ice Age and before, the coast edge and seabed have undergone constant change which continues to this day. As a result of this state of flux, once-terrestrial sites may now be submerged; once-marine sites may now be on land. Fish-traps and crannogs in the inter-tidal zone experience cyclical inundation and exposure by tides, while lighthouses and harbours extend from dry land into the sea. The wrecks of ships and aircraft can be found, sometimes far offshore. They may however be considered as part of a wider cultural landscape that extends some way inland. In the case of shipwrecks, this might encompass the yards where they were built, the ports they served, the lighthouses they passed, and the routes they crossed.

2.10. Although the historic environment extends seamlessly from land out to sea, we face different challenges in our management of terrestrial and marine areas and have

put in place complementary planning systems and heritage protection mechanisms to meet these challenges. The coastal zone is the area where these two systems meet and where integrated coastal zone management delivers compatibility between terrestrial and marine approaches.

2.11. The new powers under the 2010 Act relating to HMPAs provide for the protection of 'marine historic assets' of national importance. The HMPA designation will be used to complement existing heritage protection mechanisms in a manner that takes account of local circumstances while seeking to align forms of designation with the relevant marine or terrestrial management systems:

- the HMPA designation can encompass areas of seashore above mean high water spring tides that lie adjacent to the area of sea. In practice however, the HMPA designation will normally be used for the designation of historic assets and groups of assets that are wholly under water, in some cases some way offshore. It is to replace use of section 1 of the Protection of Wrecks Act 1973 in Scotland;
- 'scheduling' of monuments of national importance³ can be applied on land and out to the limit of the Scottish territorial waters. However, scheduling will normally be the preferred designation for nationally important monuments on the foreshore, or which have both land-ward and marine components. Examples include crannogs and fish-traps, or the archaeological remains of coastal castles, industrial and religious sites, settlements, defence networks, and military defences. As such the boundaries of scheduled monuments may extend across the land-sea interface. Any works to a scheduled monument require the prior written permission of the Scottish Ministers through Historic Scotland, a process known as Scheduled Monument Consent;
- 'listing' of buildings of special architectural or historic interest⁴ can be applied down to the low-water mark. It is generally used to recognise the significance of coastal buildings and structures such as lighthouses, harbours, and bridges that have both land-ward and marine components. Proposals to alter listed buildings are subject to listed building consent through the terrestrial planning system.

2.12. These principles will be kept under review.

Relationship to other relevant UK regimes

2.13. Although use of section 1 of the Protection of Wrecks Act 1973 will cease in Scotland this mechanism will continue to be used elsewhere in the UK for the foreseeable future alongside scheduling and listing.

2.14. The Ministry of Defence administers provisions for statutory protection of military remains across the UK under the Protection of Military Remains Act 1986 ('the 1986 Act') and there are a number of Controlled Sites and Protected Places in waters

³ under the Ancient Monuments and Archaeological Areas Act 1979 - recently amended in Scotland by the Historic Environment (Amendment) (Scotland) Act 2011.

⁴ under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 - recently amended in Scotland by the Historic Environment (Amendment) (Scotland) Act 2011.

adjacent to Scotland. Although it is conceivable that there may be some instances where the boundaries of HMPAs might overlap with sites protected under this regime, jurisdiction over Controlled Sites and Protected Places under the 1986 Act remains with the Ministry of Defence.

2.15. Restrictions on recovery of artefacts exist by virtue of an HMPA designation. However, where recoveries have been authorised within an HMPA, all obligations to report recoveries of 'wreck' under section 236 of the Merchant Shipping Act 1995 remain.

2.16. Historic Scotland will continue to liaise with English Heritage, CADW, DoE, the Ministry of Defence and Maritime Coastguard Agency on matters of common interest in relation to heritage.

Undesignated marine historic assets

2.17. The designation of HMPAs relates to marine historic assets of national importance within Scottish territorial waters. Both within Scottish territorial and offshore waters, there are likely to be a number of currently undesignated sites of demonstrably equivalent significance, yet to be recorded or awaiting discovery. There are also a far greater number of undesignated sites that will not meet the criteria for national importance. Some of these can still contribute positively to the wider marine environment and to local economies. Marine Planning and licensing provide mechanisms whereby such assets can be considered so that they can be preserved in-situ wherever feasible (Scottish Government 2011b).

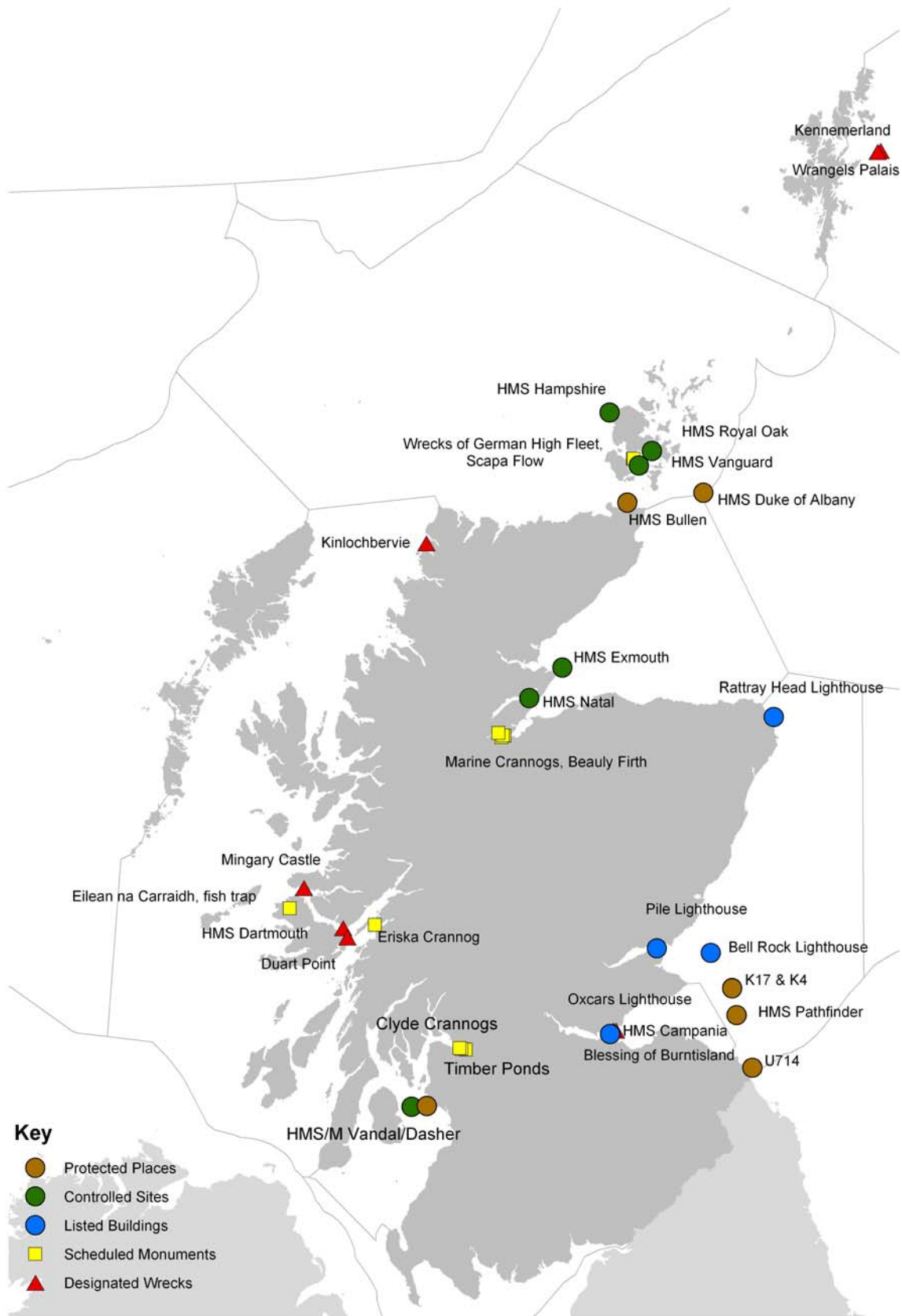


Figure 4: Map showing marine cultural heritage designations. There are many more scheduled monuments and listed buildings that have both landward and marine components. The ones shown are those that are fully marine. The map does not show sites of aircraft that are automatically protected places under the Protection of Military Remains Act 1986.

PART 1: SELECTION AND DESIGNATION OF HISTORIC MARINE PROTECTED AREAS

3. SELECTION

General principles

3.1. The 2010 Act allows Scottish Ministers to designate a HMPA where they consider it desirable to do so for the purposes of preserving a marine historic asset which is of national importance and which is, or which they are satisfied may be, located in the area. The following general policy principles apply to the selection and designation of HMPAs (Historic Scotland 2009c):

- marine historic assets from all parts of the Scottish Marine Protection Area are equally worthy of study and consideration for statutory protection;
- designation will be an ongoing process that recognises our changing state of knowledge and that every generation will have its own view of what comprises its heritage;
- decisions on designation and de-designation will be made on the basis of the best evidence available, according to the criterion of national importance, following consistent application of guidance set out in [Annex A](#);
- designation of a HMPA will normally be preceded by consultation with owners and stakeholders with an interest in the marine historic asset or role in the adjacent marine area;
- information on HMPAs and on the processes involved with designation will be made widely and easily available and decisions relating to designation will be explained in clear language;
- Historic Scotland will work closely with Marine Scotland and Scottish Natural Heritage where the area of seabed comprising a HMPA contributes to Scottish Ministers' biodiversity or geodiversity policy aims and the network for biodiversity.

The Scottish Marine Protected Areas Project

3.2. [Historic Scotland's Scheduling and Marine team](#) is working with Marine Scotland, Scottish Natural Heritage and Joint Nature Conservation Committee on the Scottish Marine Protected Areas Project. The aim of the Scottish MPA Project is to make recommendations to Scottish Ministers on the selection of new MPAs and the creation of a network of MPAs for biodiversity in the seas around Scotland.

Procedures for selecting candidate HMPAs

3.3. As part of the Scottish MPA project, the selection of candidate HMPAs will be led by Historic Scotland in discussion with stakeholders. Designations may occur in relation to priorities identified by Historic Scotland and candidates which Historic Scotland are asked to consider by third parties. In both scenarios, candidates are assessed against the criterion of 'national importance'.

Historic Scotland programme

3.4. There is no current intention to substantially or rapidly increase the number of heritage designations offshore. Historic Scotland's programme for 2011-15 will focus on the transition of existing designated wreck sites and underwater scheduled monuments to HMPA status and identification/selection of a small number of other high priority sites or areas. From 2015, it is likely that selection of HMPAs will be largely reactive, with periodic review of existing designations, occasional assessments following new discoveries and consideration of third party requests. Further information on Historic Scotland's priorities is provided in *Historic Scotland's strategy for the protection, management and promotion of marine heritage* (Historic Scotland 2011).

Third party proposals

3.5. Third parties should make early contact with Historic Scotland who will ask nominees to set out the evidence base on which the case for designation may be assessed. Some nominations may not be deemed, in our current state of knowledge, by Historic Scotland to be of sufficient significance to merit detailed assessment. Where this is merited, survey may be necessary before a decision to designate is taken. As this work would have to be balanced against other priorities, assessments may take some time to complete. Nominees will be kept informed on progress with each case.

Field assessments.

3.6. Historic Scotland works alongside other partners in the Scottish MPA project, pursuing opportunities to share data and participate in coordinated surveys to inform selection of candidate areas. Where more specific field assessments are required to inform designation, Historic Scotland will either undertake this work utilising its share of a UK-wide archaeology services contract managed on behalf of Department of Culture Media and Sport (DCMS), the Devolved Administrations and the home Country heritage agencies, by English Heritage, or commission work separately.

HMPAs and the network for biodiversity

3.7. There is a recognition that areas designated for cultural heritage reasons may also be of value for nature conservation and in turn, areas recognised for nature conservation value may have the potential to deliver incidental benefits for cultural heritage. Joint working with Scottish MPA project partners will focus where desirable on scientific assessments of the biodiversity or geodiversity value of the seabed comprising a candidate HMPA. In turn, where Historic Scotland identifies historic assets of interest within search areas where survey work is planned for other types of MPA, copies of survey data may be sought by Historic Scotland to help enhance the historic environment record for the coasts and seas around Scotland.

Stakeholder engagement

3.8. The identification and designation of HMPAs will be undertaken in collaboration with marine stakeholders. In Scotland, MPA designation is being undertaken at a national level. The Marine Strategy Forum represents national marine interests. It will be the main forum for strategic level engagement on MPA selection and designation. Occasional meetings and workshops with marine sectors and the heritage sector will

provide opportunities to discuss HMPA designation process and priorities in more detail with interested parties. Following the abolition of the UK-wide Advisory Committee on Historic Wreck Sites, engagement with the heritage sector will principally be by virtue of occasional workshops with the Built Environment Forum of Scotland.

3.9. As the designation process continues towards individual proposals, the level of engagement with stakeholders will increasingly reflect direct interest in specific proposals, for example from those living and working in coastal locations where candidate HMPAs are situated. Figures 7 and 8 set out mechanisms for formal consultation.

Content of proposals

3.10. Proposals will include sufficient information to satisfy the requirements of the 2010 Act and to enable stakeholders to understand the case for each designation and what the management implications of designation would be:

- a brief introduction to the proposed HMPA, including description of any marine historic assets within the area, and the desirability of designation;
- a summary of current understanding of survival and site condition. This should include information on risks to marine historic assets including damaging operations where known and an assessment of the potential for minimising loss/maintaining the extent of survival of marine historic assets, and for minimising deterioration/maintaining/improving site condition across the area;
- a statement of national importance;
- a location map of the proposed boundary of the HMPA. This will delineate, where possible, the location of asset(s) within the area;
- relevant management information including any activities considered necessary to be restricted/prohibited/regulated through use of Marine Conservation Orders;
- a description of the sources of information used to develop the proposal;

Character of 'marine historic assets' eligible for designation

3.11. For the purpose of HMPA designation, a marine historic asset is defined as any of the following:

- a. a vessel, vehicle or aircraft (or part of a vessel, vehicle or aircraft);
- b. the remains of a vessel, vehicle or aircraft (or a part of such remains);
- c. an object contained in or formerly contained in, a vessel, vehicle or aircraft;
- d. a building or other structure (or a part of a building or structure);
- e. a cave or excavation;
- f. a deposit or artefact (whether or not formerly part of a cargo of a ship) or any other thing which evidences, or groups of things which evidence, previous human activity.

3.12. The wide ranging legal definition of ‘marine historic asset’ set out in the 2010 Act is intended to reflect evidence for the wide variety of types of marine heritage identified along our coasts and seas. The following sections set out policy decisions as to how this definition will be applied in practice and where its application will be limited.

3.13. The intention is to be able to apply the designation both to individual historic assets (ie one shipwreck) and also to a coherent group(s) of sites within a geographical area of seabed. An example might be an important fleet anchorage, battle site or navigational hazard where multiple wrecks exist relating to one or more dates of loss, together with associated evidence; or a submerged prehistoric land-surface containing structural or artefact-based evidence from prehistory.

3.14. The most commonly identified sites offshore include the wrecks of boats, ships, submarines and aircraft. Widespread remains of human activity also exist along the coast, both in terms of transport infrastructure relating to maritime history, in the form of ports and harbours, cleared landing spaces and lighthouses; and of exploitation of marine resources including coastal mines, kelp kilns, salt pans, and fish-traps. Settlement along the coast edge was also widespread with growing evidence for use of marine crannogs since the Iron Age in areas such as the Firth of Clyde and Beaully Firth. There is also potential for evidence for prehistoric sites now fully submerged to be found, particularly in sheltered, sediment-rich areas of the northern and western isles, as well as some key estuaries and firths (e.g Solway and Forth.)

3.15. One of the key changes in the definition of what can be protected under the 2010 Act by comparison with earlier marine heritage legislation in the UK is the inclusion of ‘deposit or artefact (whether or not formerly part of a cargo of a ship) or any other thing or group of things which evidence previous human activity’. This clause ensures that designation captures scattered artefacts associated with structures but also enables, where appropriate, statutory protection to be extended to include coherent groups of artefacts of national importance, commonly termed ‘artefact scatters’. These artefact scatters are almost the sole surviving evidence for activity during the first 7,500 plus years of human occupation in Scotland.



Figure 5: A fish-trap on the west coast of Scotland. DP 017734 - © Crown Copyright: RCAHMS. Licensor www.rcahms.gov.uk

3.16. Examples of the type of site in Scotland which the definition of ‘deposit or artefact’ would encompass are:

- groups of prehistoric stone or later anchors and other anchorage debris such as ship ballast mounds;
- scatters of stone and flint tools or archaeological deposits such as shell middens rich in artefactual and palaeo-environmental evidence, which mark the sites of some of the earliest evidence for human occupation in Scotland. Research now underway in Scotland, albeit at an early stage, suggests that, due to sea level change since the last ice age, there is potential for the survival of prehistoric archaeology to be preserved under water in some areas that were once on land;
- evidence from an historic event of national importance, such as might survive from a naval encounter at sea, including scattered cannons or spreads of cannonballs.

3.17. It is important to stress that the remains should form a coherent anthropogenic entity or group to be considered of national importance. This would exclude:

- isolated finds recovered from the seabed, for example, a Bronze-Age torc recovered from the seabed near the Shiant Isles in 1991 (see fig.14: Cowie 1994);
or

- palaeo-environmental deposits and landscapes (for example submerged peat deposits or forests) which may contain evidence of human impacts but which are primarily of natural formation.

Desirability and purpose of designation

3.18. Designations will be taken forward where Scottish Ministers consider this desirable to help preserve the asset and to celebrate and communicate its heritage value so that everyone can appreciate these assets and act responsibly. In particular, designation can add value where there is the possibility, either at the time of consideration or at some stage in the future, that historic assets of national importance may be put at risk in part or whole by man-made activities, for example, by tourism, by salvage activities, by seabed development, or by exploitation of marine resources. In these instances, statutory protection establishes a legal framework and a presumption of protection in situ, with a variety of mechanisms available to ensure that change is managed in an informed manner.

3.19. In some instances, HMPA designation may not be an appropriate way forward even for historic assets that may otherwise meet the criteria. For example:

- where important coastal monuments are at imminent risk from erosion or where designation would cut across existing international marine commitments on the disposal of disused offshore installations⁵: such assets are generally best preserved through recording and retention of relevant records (for example see Capturing the Energy – a project that is documenting the offshore oil industry);⁶
- where it is decided that designation through alternative mechanisms is preferable. For example, this might include listing of harbours or lighthouses in use; scheduling of monuments at the coast edge; designation at UK level of dangerous wrecks by virtue of Section 2 of the Protection of Wrecks Act 1973; or military remains under the Protection of Military Remains Act 1986;
- where identification within marine planning systems is more appropriate and sufficient (for example areas of wartime munitions dumping marked on charts).

Location and burden of proof

3.20. The 2010 Act allows for designation where there is a marine historic asset of national importance located within the area, or where Scottish Ministers are satisfied that there may be. Historic Scotland will base its recommendations on designation and de-designation on the best available evidence. This will generally include geophysical and/or diver based survey data as well as background research of a sufficient quality to enable an informed decision to be made. In most instances, the presence and character of the historic assets under consideration will be sufficiently clear from the research. The most obvious exception to this is likely to occur where geophysical surveys using sub-bottom sonar systems indicate buried archaeological evidence on

⁵ OSPAR Decision 98/3 on the Disposal of Disused Offshore Installations

⁶ <http://www.capturing-the-energy.org.uk/>

the seabed (for example anomalies indicating the presence of a buried wreck). In such cases, conclusive proof could only be achieved by excavation which is not feasible. In such instances, decisions will be based on background research corroborated with positive identification of anomalies of appropriate character from relevant forms of geophysical data. Decisions to designate would not follow from reliance on one source of information alone.

Boundary setting

3.21. Setting boundaries for HMPAs will be based upon the following principles:

- draw boundaries around marine historic assets sufficient to allow for their support and preservation, to be determined on a case by case basis;
- the size of the protected area should be related only to the nature/extent of the marine historic asset within its environment and the management of assets within the protected area. It does not relate to importance (ie a larger area is not a more important area);
- use the best available evidence relating to the location and extent of assets within the area.

3.22. These principles should be put into practice by:

- drawing boundaries away from the coast as straight lines, to ensure ease of identification on charts and at sea;
- using complex site shapes where possible rather than simple square/rectangular boundaries to ensure that the boundary relates closely to the marine historic assets of interest. Small circular protected areas may be used as a starting point for single historic assets (e.g wrecks), particularly in the case of urgent designations;
- locating co-ordinate points so that they are relevant to the historic assets of interest, rather than at the nearest whole degree or minute point;
- using 'mosaic' sites, in which MPAs may be made up of more than one discrete area where multiple historic assets of national importance form a coherent group, in order to ensure that a boundary closely reflects the location and extent of the assets, but without taking in large areas of intervening seabed.

3.23. Boundaries should generally be considered to be fixed at the time of designation, although there may be circumstances when it is appropriate to review them. This might occur for example, where archaeological investigation reveals that the extent of an asset is smaller or larger than first revealed.

National Importance

3.24. The 2010 Act requires that marine historic assets must be considered to be of national importance to be eligible for designation. [Annex A](#) sets out guidance on the determination of national importance for marine historic assets. This is essentially the same guidance used for scheduling and allows for all archaeological sites and monuments in Scotland to be considered against the same criteria. These criteria will

be applied to HMPA designation through the preparation of a statement of national importance, an important component of any proposal.

Preservation objectives

3.25. The 2010 Act requires that preservation objectives are formulated for HMPAs in order to guide management according to the specific needs of individual areas. Preservation objectives are also relevant when it comes to enforcement.

3.26. There is an established tradition in formulating conservation objectives for nature conservation, based around the principles of restoring a feature to, or maintaining it in, ‘favourable condition’. However, unlike marine natural features, marine historic assets represent a non-renewable resource, without the capacity to ‘recover’ where their condition deteriorates. With these key differences in mind, the preparation of preservation objectives for HMPAs will focus on objectives that are practicable for marine cultural heritage and in line with Scottish Ministers Historic Environment Policy (SHEP).

3.27. The 2010 Act sets out that the purpose of HMPA designation is to preserve marine historic assets of national importance. This purpose may be elaborated as a framework of preservation objectives applicable for HMPA designation based around the overarching policy principle of *protection in-situ* as the first option. Further information on the formulation and monitoring of preservation objectives is provided in [Annex B](#).

Example preservation objectives applicable to assets	Example preservation objectives applicable for area
<p>To [minimise loss /maintain the extent of survival] of marine historic assets <i>in-situ</i>;</p> <p>To [minimise deterioration of/ maintain/ improve] site condition of marine historic assets;</p> <p>*to be tailored on a case by case basis. Others may be introduced as experience with the regime develops over time.</p>	<p>No marine historic assets are wholly or partially removed from their original location except where the Scottish Ministers are satisfied that this is desirable for the purpose of making a significant contribution to the protection of the significance of marine historic assets or public knowledge about marine cultural heritage;</p> <p>Marine historic assets are not subject to commercial exploitation for trade, speculation, or their irretrievable dispersal. Nothing in this objective is to be taken to prevent professional archaeological services; or provision for public access except where public access is incompatible with other preservation objectives;</p> <p>Disturbance of human remains is avoided.</p>

Table 3: A preservation objectives framework for HMPAs.



Figure 6: Laying sand-bags on the seabed to help protect and stabilise the site of a 17th-century historic shipwreck in the Sound of Mull. When this wreck was discovered by divers, structure and artefacts had become exposed and were at risk of being lost. After a rescue excavation was completed, the hull structure has been covered in sand-bags to encourage natural processes to help re-stabilise the site and prevent further exposure of ship structure. 000-000-110-634-R – © Colin J M Martin. Licensor www.scran.ac.uk

4. DESIGNATION

4.1. The 2010 Act establishes formal designation procedures which Historic Scotland will follow to ensure that the process of designation is fully accountable and one in which stakeholders have opportunities to participate at well defined stages, including through formal 12 week consultation. Figure 7 sets out the process that will be followed under all but urgent cases.

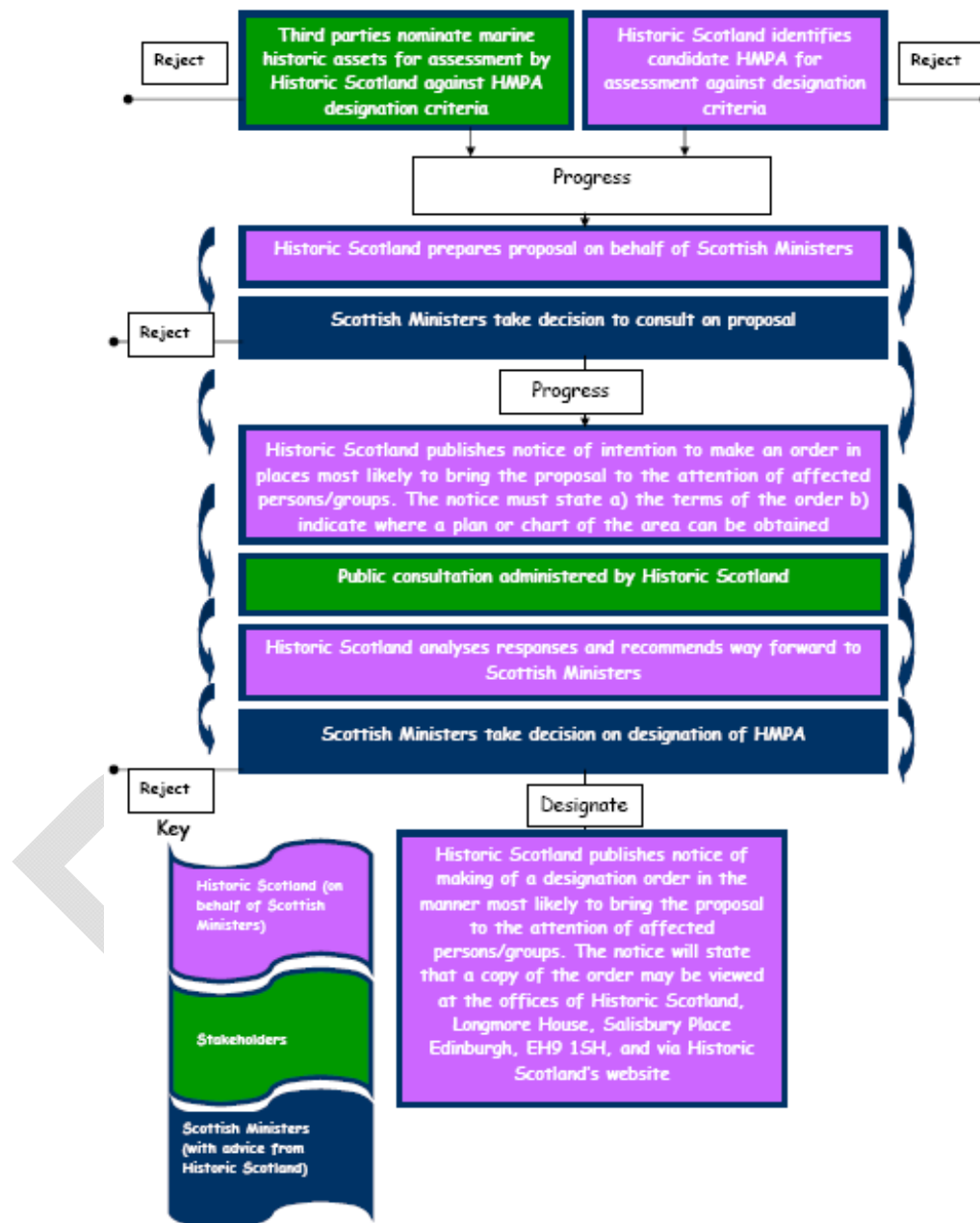


Figure 7: Designation procedures for HMPAs under sections 75 and 76 of the 2010 Act. Where a Marine Conservation Order is required to enhance the protection of a HMPA, the process of making this Order will often take place in tandem with the designation procedure.

Urgent designation

4.2. The 2010 Act allows Scottish Ministers to take forward designation prior to consultation where there is an ‘urgent threat’ to a marine historic asset. The urgent process will be followed in situations where Historic Scotland considers that twelve week consultation will engender an unacceptable level of risk to a marine historic asset. For example, an important site may be or might come under threat from commercial treasure hunting; or a recent discovery may be considered highly vulnerable to damage once a precise location becomes public knowledge. Figure 8 shows the process that will be followed in these instances.

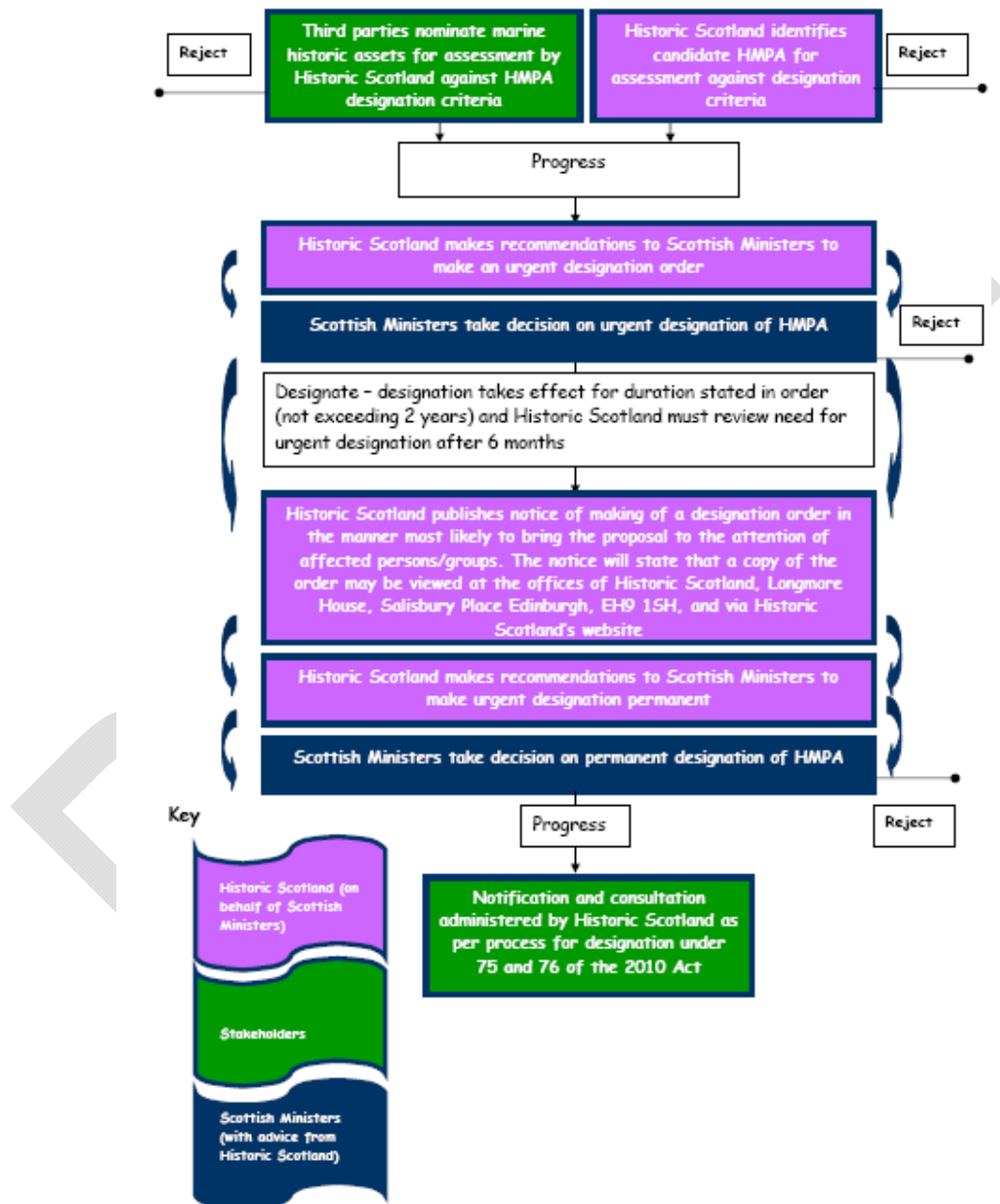


Figure 8: Process tree for making urgent designations under section 77 of the 2010 Act. Where an urgent Marine Conservation Order is required, the process of making this Order will often take place in tandem with the designation procedure.

Consultation

4.3. When consulting on HMPA designations, Historic Scotland will consult widely with stakeholders likely to be interested in or affected by the order (see table 4)

Types of consultee	Consultees	Designation policy/strategy	Designation proposals
Statutory consultees	SEPA SNH Maritime and Coastguard Agency Commissioners of Northern Lighthouses	Yes	Yes
Other governmental bodies	Ministry of Defence; Marine Scotland Transport Scotland UK Hydrographic Office RCAHMS	Yes	Yes
Industry groups	Scottish Fishermens Federation Scottish Renewables Oil and Gas UK UK Major Ports Group Scottish Salmon Producers Association Shellfish Growers Association	Yes	Yes
Tourism and recreation umbrella groups	VisitScotland Royal Yachting Association Recreational Diving Associations Recreational sea-angling representative bodies	Yes	Yes
Heritage groups	Built Environment Forum of Scotland Joint Nautical Archaeology Policy Committee Nautical Archaeology Society	Yes	Yes
Other public authorities relevant to area	Marine Planning Partnerships (by area) Adjacent local authorities (by area) Adjacent local authority archaeology service (as appropriate) Harbour authority (as appropriate)	No	Yes
Community groups and others (includes also regional industry groups)	Identifiable owners of marine historic assets Community Councils Relevant Inshore Fisheries Group Other fishing associations and community groups as appropriate for geographic areas	No	Yes
Research institutions	Universities with relevant interests only	No	Yes

Table 4; Consultation in relation to HMPA designation

Finding out about HMPA designation

4.4. Table 5 sets out how the notice about designation orders (together with any accompanying Marine Conservation Orders) will be publicised by Historic Scotland. Information on HMPA designations, including spatial data relating to the extent of protected areas, will also be made available online – at the minimum through Historic Scotland’s website (www.historic-scotland.gov.uk) but much wider dissemination will be pursued by virtue of opportunities for joint marketing through the Scottish Marine

Protected Areas project. Notice of designations will also be made to the UK Hydrographic Office and suppliers of marine cartography so that they can also consider making sea-users aware of HMPA designations. To help promote wider understanding and appreciation of HMPAs, Historic Scotland proposes to publish a booklet guide for visitors, investigators and managers and will consider the need for on site signage and other promotional media for individual designations on a case by case basis.

Publication of notices	Places where copies of orders will be lodged
<p>All proposals</p> <p>Fishing News Sport diving magazines RYA magazine E-notices to wide circulation of contacts</p> <p>(Proposals relevant for particular geographical locations)</p> <p>Local newspaper (e.g. Edinburgh Gazette; Oban Times; Orcadian/Orkney Today)</p>	<p>All proposals</p> <p>Historic Scotland offices (Longmore House) Historic Scotland website</p> <p>(Proposals relevant for particular geographical locations)</p> <p>Local Council offices;</p>

Table 5 Publicity of notices for designation.

Amendment or revocation of designations

4.5. The 2010 Act makes provision for MPA designations to be amended or revoked on review. Historic Scotland will keep a record of condition for HMPAs on the basis of the best available evidence and will contribute to the six-yearly reporting cycle to the Scottish Parliament on progress and status of all types of MPA in Scottish waters. This process may result in recommendations to Scottish Ministers to amend or revoke HMPA designations:

- if the results of monitoring work show that the preservation objectives for a HMPA are unlikely to be met and need to be altered; and/or
- if new data becomes available which indicates that it is no longer desirable to designate a historic asset(s) as a HMPA;

PART 2: MANAGEMENT OF HISTORIC MARINE PROTECTED AREAS

5. WHAT ARE THE IMPLICATIONS OF HMPA DESIGNATION?

5.1. HMPAs should not be thought of as no-go areas. The emphasis is on managing change in an informed way that respects the cultural significance of HMPAs and their benefit for current and future generations. It is to be hoped that the presence of a well managed HMPA, with broad stakeholder support within local communities, may enhance the economy of an area, for example by encouraging sustainable heritage tourism.

5.2. Social and economic factors relating to the wider use of protected areas are taken into account at the management stage with works and activities accommodated where at all possible. In instances where there are multiple interested groups that have a stake in the use of a HMPA, the process of engendering support may be encouraged by involving interested parties in the development of non-statutory management plans that codify how stakeholders can work together to further the preservation objectives of an HMPA.

Quick guide – what does HMPA designation mean for me?

- Designation does not prevent public access. Indeed, where this is consistent with preservation objectives, responsible access is to be encouraged. However it becomes an offence to carry out intentional or reckless actions including removal, alteration or disturbance of historic assets, and works or activities in the area which damage or interfere with a marine historic asset or have a significant impact on the protected area, such that the preservation objectives of the area are hindered. See [section 10](#) for more information on **offences and enforcement**;
- Public authorities with functions capable of affecting marine historic assets are expected to carry out these duties in a way that respects the preservation objectives for HMPAs. See [section 6](#) for information on **duties on public authorities**);
- Impacts to marine historic assets from a wide range of works or activities subject to planning or marine licensing processes will be assessed by Historic Scotland in discussion with the relevant authority. See [section 7](#) for more information on **managing activities through planning and marine licensing processes**;
- Where there is a need to prohibit/restrict/regulate particular activities this is possible through use of **Marine Conservation Orders**. See [section 8](#) for more information;
- Historic Scotland will be promoting the location of HMPAs to fishermen who generally seek to avoid impacts to historic assets on the seabed. If a need arises to restrict or prohibit particular types of commercial fishing activity, this would be undertaken through use of existing sectoral fisheries regulations. Go to [section 9](#) for further information on **managing commercial fishing interactions with HMPAs**.

5.3. Stakeholders should refer to information about individual designations for specific management guidance but table 6 should give some idea about what designation means for a wide variety of activities that may take place within a HMPA providing that no reckless or intentional prohibited acts occur. The only exception to this is if these activities have been restricted/prohibited through use of regulations (e.g Marine Conservation Orders).

Examples	Restrictions following HMPA designation	Marine Conservation Orders
Recreational diving, bathing, walking,	<p>Bathing, diving/walking is not restricted by designation alone and you should feel free to take photographs or video during your visits, complying with codes of practice established for diving/outdoor access.</p> <p>You are encouraged to provide brief reports about your visits to Historic Scotland to help them to monitor the condition of marine historic assets.</p> <p><u>But - You must not recover artefacts or damage or disturb a marine historic asset in any way. For example, you should ensure that shot lines you place to aid access to marine historic assets are carefully placed and not used as mooring lines for your vessel - this risks damage to marine historic assets.</u></p>	<p>Marine Conservation Orders can be used to restrict/regulate/ prohibit these activities.</p> <p>You will need to refer to information about each HMPA to find out if there is an MCO in place.</p>
Scientific and archaeological investigation	<p>You are encouraged to contribute to furthering knowledge and awareness about marine historic assets by carrying out non-intrusive survey work, and disseminating the results of this information in accordance with archaeological best practice.</p> <p><u>But - Intrusive activities, including archaeological excavation and recovery of objects of historic interest are subject to marine licensing, and you will need to apply to Marine Scotland Licensing Operations Team (MS-LOT) who will take advice from Historic Scotland about whether these activities should proceed, subject to conditions.</u></p>	<p>If there are restrictions in place, you should seek advice from Historic Scotland about any permit that may be required.</p>
Recreational sea-angling	<p>Wrecks can often act as artificial reefs attracting fish. Sea-angling would not be restricted by HMPA designation alone providing that no damage or disturbance of marine historic assets occurs. For example, you should not use anchors over marine historic assets and you should avoid snagging fishing lines.</p>	
Boating, vessel traffic	<p>Boating is generally encouraged within HMPAs providing that no damage or disturbance of marine historic assets occurs. For example, boat owners should avoid use of anchors over marine historic assets except in instances of maritime distress to save life or secure the safety of a vessel.</p>	
Commercial fisheries	<p>Fishing is permitted to the extent that it does not damage or interfere with marine historic assets or have a significant impact on the protected area. For example, pelagic fishing techniques would be acceptable where there is no contact with the seabed or structures proud of it and therefore no risk of damage to marine historic assets.</p>	<p>Where there is a need to regulate fishing activity, sectoral fisheries measures will be used.</p>

Table 6 Quick Guide – the effects of designation on diffuse activities within HMPAs,

6. DUTIES IN RELATION TO THE FUNCTIONS OF PUBLIC AUTHORITIES

6.1. HMPA designation places duties on public authorities with functions that are capable of adversely affecting marine historic assets within a HMPA, to carry out those functions in a way that best furthers or, where this is not possible, least hinders stated preservation objectives. To fulfil this duty, under section 82 of the 2010 Act, public authorities will have to consider and implement changes in the way they carry out their functions or activities to help ensure that they deliver benefits for and minimise adverse effects on HMPAs, taking advice from Historic Scotland.

Type of function	Examples of key types of public authority engaged in this work	Key examples of relevant activity	Advice on discharging the duty on public authorities in relation to HMPAs
Developing strategies, plans and programmes	Scottish Government departments, agencies, and non-departmental public bodies	National Marine Plan	As part of the process known as 'strategic environmental assessment', strategies, plans and programmes prepared in relation to matters across the Scottish Marine Area will need to have regard to the existence of HMPAs and policies/management advice designed to help to protect historic assets within these areas,
	Local authorities	Regional Development Plans	
	Marine Planning Partnerships	Regional Marine Plans	
Administration of and regulatory enforcement regimes	Scottish Government	Regulation of commercial fisheries	Historic Scotland will work with relevant departments to consider the need for sectoral fisheries regulation and enforcement measures to manage impacts to HMPAs
		Enforcement of marine licensing/planning regimes	Historic Scotland will work with marine planning authorities to advise on compliance with regulations where this relates to HMPAs
Maintenance of harbours and navigation channels or development of coastal infrastructure	Statutory port/harbour authorities	Maintenance of navigation channels at sea	Consulting with Historic Scotland if significant adverse impacts are anticipated (see case-study)

Table 7 – Illustration of the scope of general duties on public authority functions. The term public authorities relates to bodies with functions of a public nature. Duties would also apply to public authorities exercising reserved functions within the Scottish Marine Area if so directed by the relevant Secretary of State for any MPA;

6.2. The 2010 Act recognises that in exceptional circumstances it might be necessary for a public authority as part of its functions to undertake works or activities which may significantly hinder the preservation objectives for a HMPA. Where this is

the case, it must inform Scottish Ministers through Historic Scotland and it must have regard to advice from Historic Scotland. Contact information is provided [here](#).

In practice, public authorities should make early contact with Historic Scotland to determine the significance of an activity so that advice can be given at an early stage. Where advice is requested, Historic Scotland has 28 days to respond after which time public authorities may decide to go ahead with an activity as planned. However, this 28-day rule does not apply if Historic Scotland notifies the authority that it need not wait, or where the activity is routine and previous guidance has not ceased to apply.

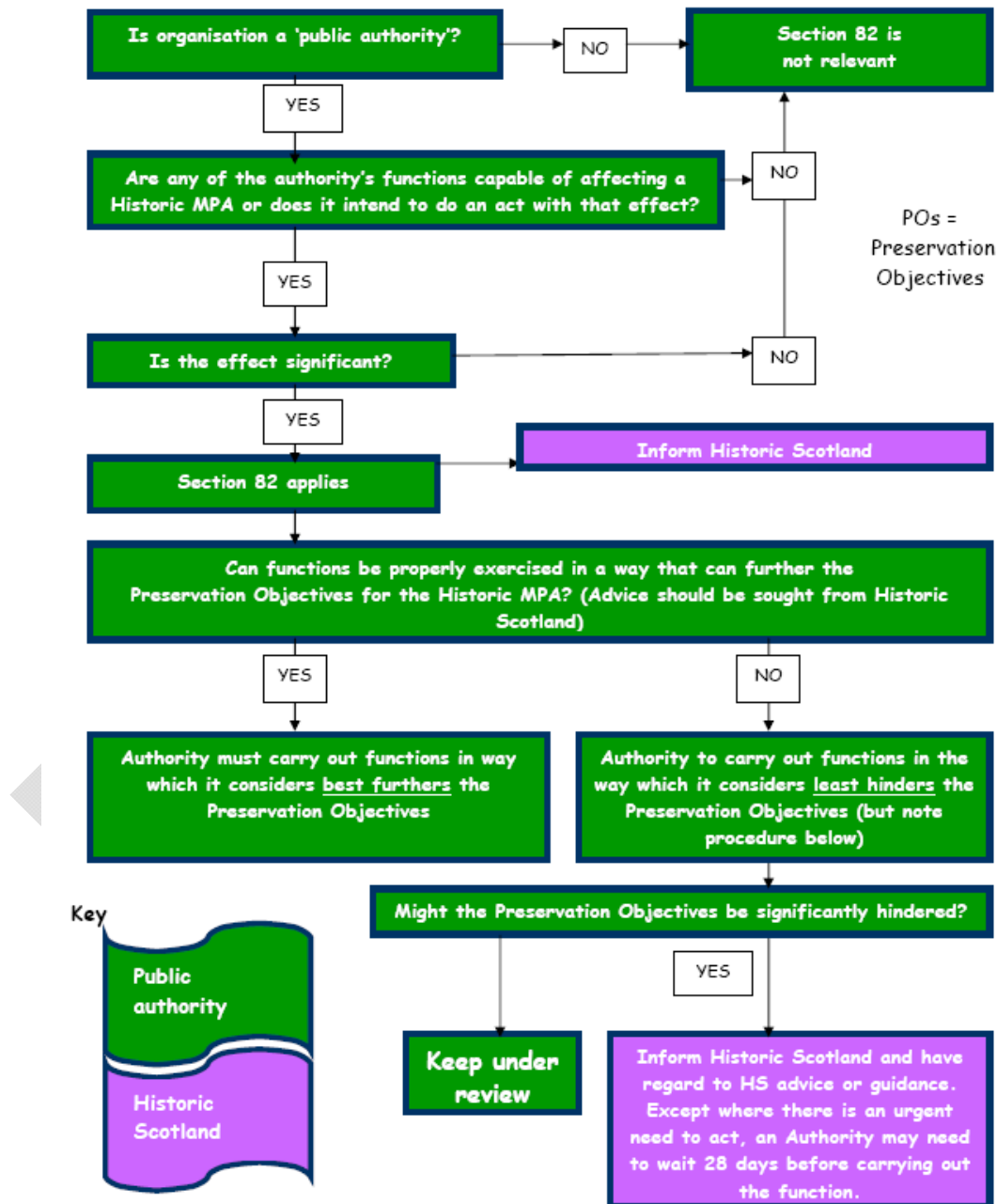


Figure 9: Process tree relating to on the functions of public authorities under section 82 of the 2010 Act

Case-study

Question – What should a statutory harbour authority do if it is required to carry out maintenance dredging in order to fulfil its statutory functions of keeping channels safe for navigation purposes and there is a HMPA in the vicinity?

Answer - Historic Scotland does not anticipate significant issues in this regard but if a maintenance dredging channel were situated close to a HMPA, the public authority should make contact with Historic Scotland to ascertain whether the activity threatens the HMPA. If a significant risk to historic assets were to be identified, for example, changes to the sedimentary regime caused by dredging resulting in erosion around designated historic assets, Historic Scotland would work with the authority to determine the least damaging approach. For example, carrying works out at specified times of the year or during specified tidal conditions. Historic Scotland contact information is provided [here](#).

Requirement to report to Historic Scotland about offences

6.3. A Public Authority is also required to inform Historic Scotland in relation to acts or omissions which it believes are offences and which will, or may, significantly hinder the achievement of stated preservation objectives.

6.4. This duty will apply, for example, where a public authority carries out regulatory or enforcement functions (either on its own account or on behalf of another authority) in the course of which it becomes aware that an offence has been committed. For example, a marine conservation order may have been breached, or activities may have been carried out without a necessary marine licence or permit or in breach of licence or permit conditions.

6.5. This information will be used by Historic Scotland/Marine Scotland to consider enforcement action and will also help Historic Scotland to improve the advice it provides.

7. MANAGING ACTIVITIES THROUGH PLANNING AND MARINE LICENSING

7.1. There are a wide range of activities and works in the marine environment that require some form of authorisation, whether through planning permission, or marine licensing. Under Section 83 of the 2010 Act, public authorities that authorise applications for works and activities in the marine environment capable of affecting (other than insignificantly) a marine historic asset in a HMPA (see table 8) will have to take advice from Historic Scotland. Contact information is provided [here](#). Applicants are also advised to take early account of the presence of HMPAs and the need to avoid impacts to marine historic assets as part of their proposals.

Type of works/activity	What consent is required	Licensing authority and source of further information
Aquaculture developments	Requires Planning consent by virtue of provisions under the Town and Country Planning Regulations	Relevant local planning authority.
<p>Marine licensable activities – for example:⁷</p> <ul style="list-style-type: none"> • depositing any substance or object in the sea or on or under the seabed • scuttling any vessel or floating container; • construct, alter or improve works on or over the sea or on or under the seabed • using a vehicle, vessel, aircraft, marine structure or floating container to remove any substance or object from the seabed within the Scottish marine area - this would <u>include recovery of objects of historic interest</u> • carrying out any form of dredging within the Scottish marine area (whether or not involving the removal of any material from the sea or seabed) – this would <u>include archaeological excavation</u> • deposit and/or use any explosive substance • incinerate substances or objects 	<p>Part 4 of Marine (Scotland) Act 2010;</p> <p>Renewable energy projects subject to consent under section 36 of the Electricity Act 1989 are subject to a single handling process with marine licensing by Marine Scotland</p>	<p>Marine Scotland Licensing Operations Team</p> <p>Marine Scotland Licensing Operations Team PO Box 101 375 Victoria Road Aberdeen AB11 9DB Tel: +44 (0)1224 295579 e-mail: ms.marinelicensing@scotland.gsi.gov.uk</p>

Table 8: Authorisation of operations in Scottish Territorial Waters. In addition to this, licensing of oil and gas developments is administered at UK level by DECC.

⁷ The bulleted list of licensable activities is not exhaustive. For more complete information, please see Marine Scotland licensing manual <http://www.scotland.gov.uk/Topics/marine/Licensing/marine/Applications/general>

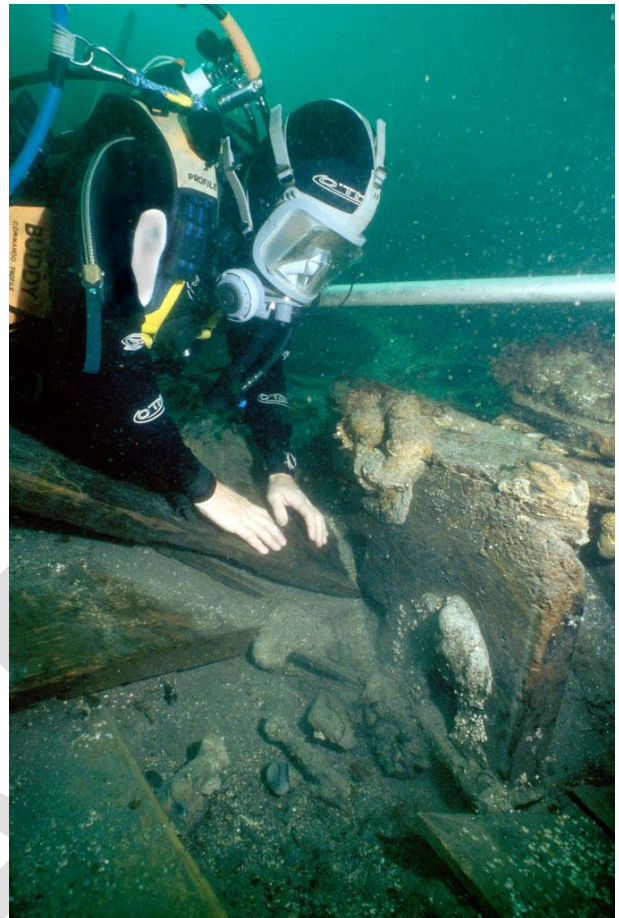


Figure 10: If you wish to carry out archaeological excavation within a HMPA, to recover objects of historic interest, or to carry out other licensable operations, you will need to apply to Marine Scotland (for a marine licence). Historic Scotland will advise Marine Scotland on a case by case basis. 000-000-110-646-R; 000-000-110-703-R – © Colin J M Martin. Licensor www.scran.ac.uk

Requirements on authorising authorities

7.2. Where an authority believes that there is or may be a significant risk of an act hindering the achievement of an HMPA's preservation objectives it must:

- notify Historic Scotland and have regard to Historic Scotland's advice;
- wait 28 days before granting the authorisation (unless Historic Scotland advises that authorisation can be given earlier).

In practice, early liaison by public authorities [with Historic Scotland](#) is strongly advised so that Historic Scotland can provide the necessary advice on a case by case basis.

7.3. The 28 day notification requirement is waived where the authority considers there is an urgent need for authorisation to be given, although in these circumstances it must still notify Historic Scotland as soon as practicable. Urgent situations where no notification is required are emergencies which pose a risk to human health or to the wider environment such as:

- maritime emergencies, for example where the priority of rescue services is to ensure the safety of those on board a stricken vessel and where prior authorisation by Historic Scotland would not be expected before carrying out rescue or salvage operations of the stricken vessel;
- pollution control works to respond to pollution hazards and events. In these instances, the response required may need to be mobilised at speed to minimise impacts to the wider environment and it may not be possible for Historic Scotland to respond to public authorities within the necessary time-frame.

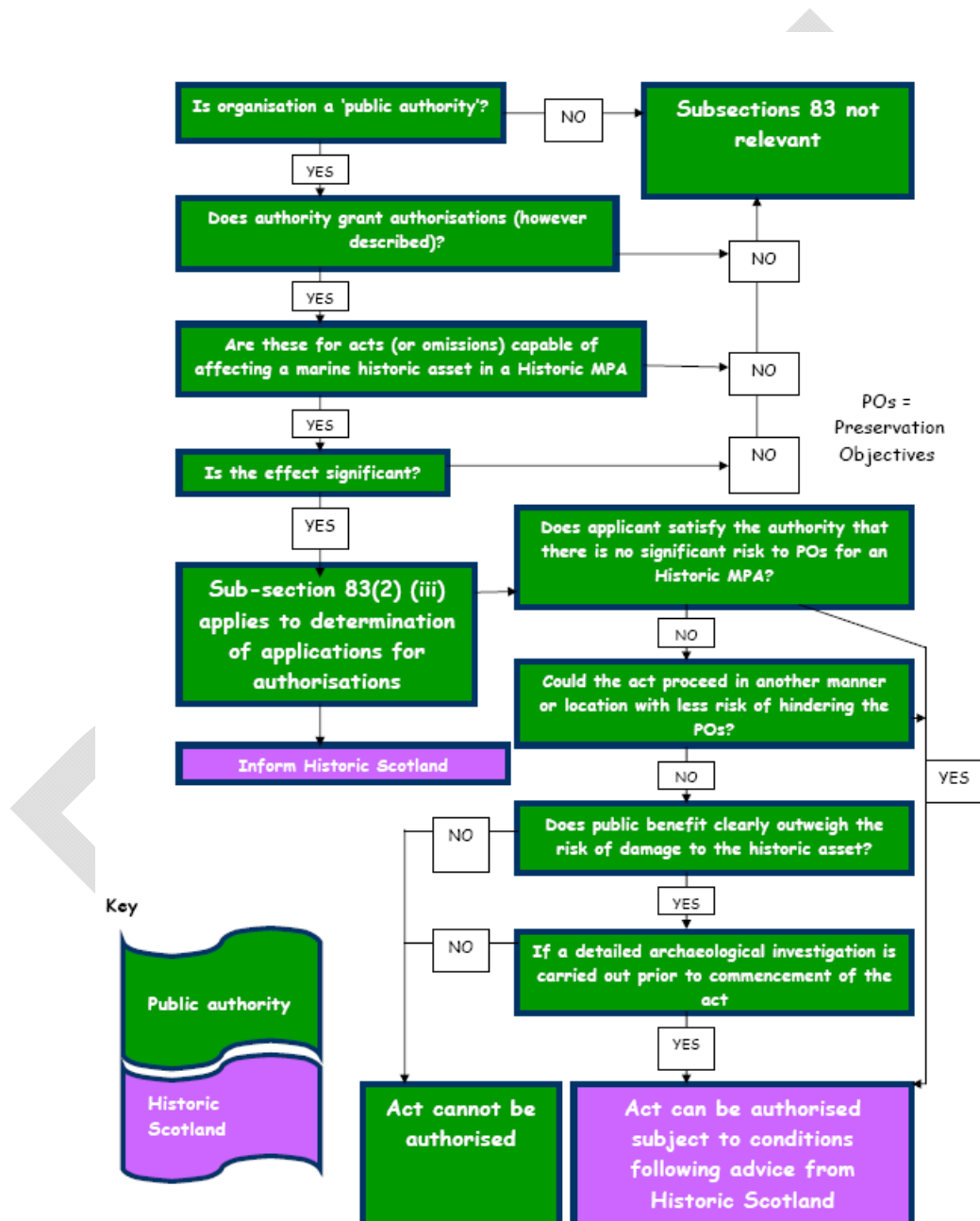


Figure 11: Process tree where public authorities issue authorisations for operations capable of affecting a marine historic asset in a HMPA (Section 83 of the 2010 Act)

7.4. Where urgent action is not merited, a public authority must not grant an authorisation unless:

A) the applicant has satisfied the authority that there is no significant risk of the act hindering the achievement of the preservation objectives of a HMPA,

Or;

B) the applicant has satisfied the authority that there is no other means of proceeding with the act which would create a substantially lower risk of hindering the achievement of the preservation objectives and that the benefit to the public of proceeding with the act clearly outweighs the risk of damage to the marine historic asset that will be created by proceeding with it.

Mitigation measures

7.5. Where the public authority concludes that authorisation should be given despite risk to the asset, if the authorising authority has the power to grant authorisation subject to conditions it must exercise its power so as to make it a condition of the authorisation that before the act in question is commenced, a detailed **archaeological investigation** of the area is carried out.

Archaeological investigation

7.6. The exact requirements of an archaeological investigation will vary depending each individual circumstance and the threats posed to marine historic assets. At the most extreme level where part or whole of a marine historic asset may be damaged or lost as a result, projects could entail underwater archaeological survey and excavation, as well as post-excavation recording and conservation of recovered artefacts, followed by archiving and dissemination of results to the general public. Such recording can be difficult and can result in significant financial burdens and time constraints on a development.

7.7. In some instances, the application itself may relate to intrusive archaeological investigation (involving excavation - essentially a form of dredging in marine licensing terms - and/or recovery of items of historic interest from the seabed).

7.8. In both instances, Historic Scotland will work with public authorities and applicants to advise on the preparation of project designs and on the conditions that should be attached to authorisations. Historic Scotland will also continue to monitor the archaeological investigation process until it is complete.

7.9. In planning for archaeological investigations, public authorities and applicants should ensure that proposals are prepared and delivered with regard to the principles of archaeological best practice set out in the Annex to the 2001 UNESCO Convention for the Protection of the Underwater Cultural Heritage (see [Annex C](#)).

Guidance for developers and licensing authorities on seabed development and the marine historic environment

7.10. If sea-users and developers are aware of the location of HMPAs, they should be able to avoid the majority of impacts to marine historic assets. For larger scale works that fall within the scope of environmental assessment legislation, strategic

assessment of plans and programmes and environmental assessment of individual works will also help to minimise significant effects. In instances where environmental impact assessment is required, Historic Scotland works with developers and their consultants to guide the location of developments and to ensure that impacts on HMPAs are minimised.

7.11. There is also a wide range of published guidance now available to help developers and regulatory authorities to take appropriate account of marine heritage:

- Joint Nautical Archaeology Policy Committee Code of Practice for Seabed Development (Crown Estate 2006)
- Guidance for the offshore renewable energy sector (Wessex Archaeology/ Cowrie 2007).

Case-study

Q. I work for a local council and we want to remove rock outcrops from a channel to facilitate improved access to an island harbour for the local community. The rock outcrops lie within the protected area of a HMPA. To whom should I apply for a licence and what will be expected of us?

A. You need to apply to [Marine Scotland Licensing Operations Team \(MS-LOT\)](#) for a marine licence (because this type of dredging is a licensable activity). You may also need to apply for a Crown Estate seabed lease. Because the area lies within the boundaries of a HMPA, you will be expected to set out in your application for a marine licence, the benefit to the public of the proposal, and to demonstrate that the activity poses no risk to the preservation objectives for the HMPA, or if this is not possible, that there is no other means of proceeding with the required act which would reduce the risk posed to an acceptable level. To do this, applicants are advised to consult with appropriately qualified archaeologists. You may also find it helpful to discuss the matter in advance with Historic Scotland.

Once a marine licence application has been received, Marine Scotland will consult with Historic Scotland, and must have regard to Historic Scotland's advice. Historic Scotland has 28 days to respond. In instances where impacts cannot be avoided but the benefit to the public outweighs the risk of damage to marine historic assets, Historic Scotland will request that an archaeological investigation is carried out and the requirement for this will be stipulated as a condition in the marine licence issued by Marine Scotland. As the applicant, your organisation will be expected to pay for this work to be carried out to standards of archaeological best practice, with regard to the Annex of the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage.

Contact information for Historic Scotland is provided [here](#).

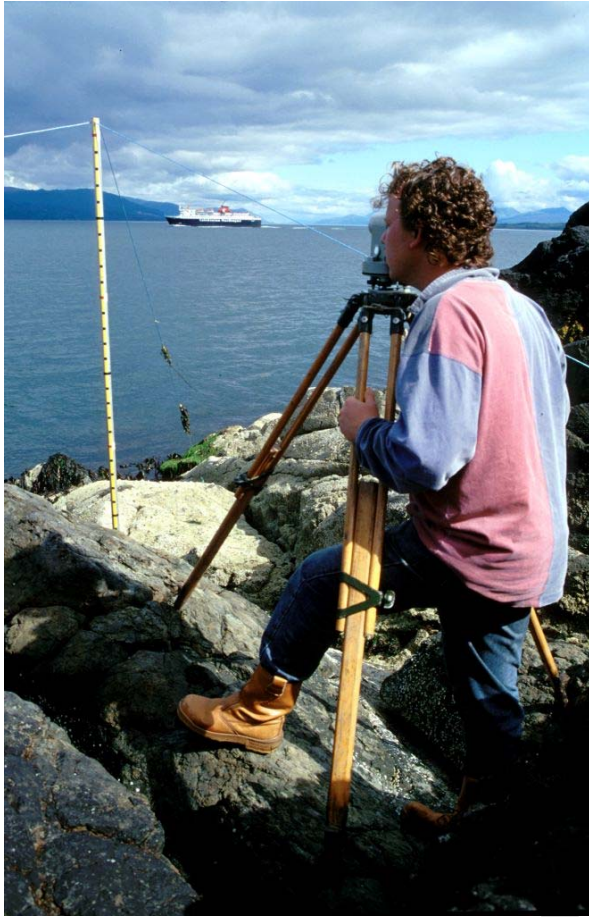


Figure 12: Careful archaeological investigation helps to ensure that marine historic assets are properly recorded for the benefit of future generations. 000-000-110-641-R ; 000-000-110-653-R – © Colin J M Martin. Licensor www.scran.ac.uk

8. MARINE CONSERVATION ORDERS (MCO)

What is a Marine Conservation Order (MCO)

8.1. The 2010 Act enables Scottish Ministers to make marine conservation orders (MCOs) for the purpose of furthering the preservation objectives of a HMPA:

- table 11 sets out example provisions that can be applied by virtue of an MCO. The MCO powers are wide-ranging but will primarily be used to manage operations that pose a risk to marine historic assets but cannot be regulated through other mechanisms (eg marine licensing or duties on public authorities);
- MCOs can be used to apply to any area of Scotland, and to prohibit, restrict or regulate activities within the boundaries of a HMPA, and in a specified area beyond it. They can also make different provision for different cases (e.g different parts of the protected area or different ways of carrying out an activity);
- MCOs are made by statutory instrument, subject to parliamentary process in the Scottish Parliament (see figure 12).

Prohibit Restrict Regulate	Entry into Movement Activity Works (where activity/works includes use of equipment, surveying or exploring (whether intrusive or not) fixing or attaching anything to the seabed or seashore)	Person Animal Vessel Vehicle Thing	In the Protected Area
	Anchoring or any vessel Fixing of moorings or anchors in the seabed		Within the Protected Area
	Killing Taking Destruction Molestation Disturbance	Animals Plants	In the Protected Area
	Removal of all or part of any	Thing Category of things (including in particular all or part of a marine historic asset)	From the Protected Area
	Depositing by any means	Anything	In a Protected Area
	Doing of anything which (in the opinion of the Scottish Ministers) may	Interfere with the seabed Damage the seabed Damage or disturb any object including a marine historic asset	In the Protected Area
		Cause harm	To the Protected Area
	Restrict the speed at which any vessel or vehicle may move	Where movement might hinder the stated preservation objectives for a HMPA	In the Protected Area or in any specified area outside the Protected Area

Table 9 Examples of provisions that can be applied to an MCO. The provisions would need to relate to Preservation Objectives for the HMPA.

- Urgent MCOs can be made where there is an urgent need to regulate activity and a delay to allow for the procedure involved in making a full MCO would result in significant risk to marine historic assets. With urgent orders no prior notification is required but the need for an Urgent MCO must be kept under review and it cannot last for more than 12 months. An urgent continuation order is needed to extend the duration of the order a further 12 months after which time the full procedure set out in figure 12 is required to make an MCO permanent.

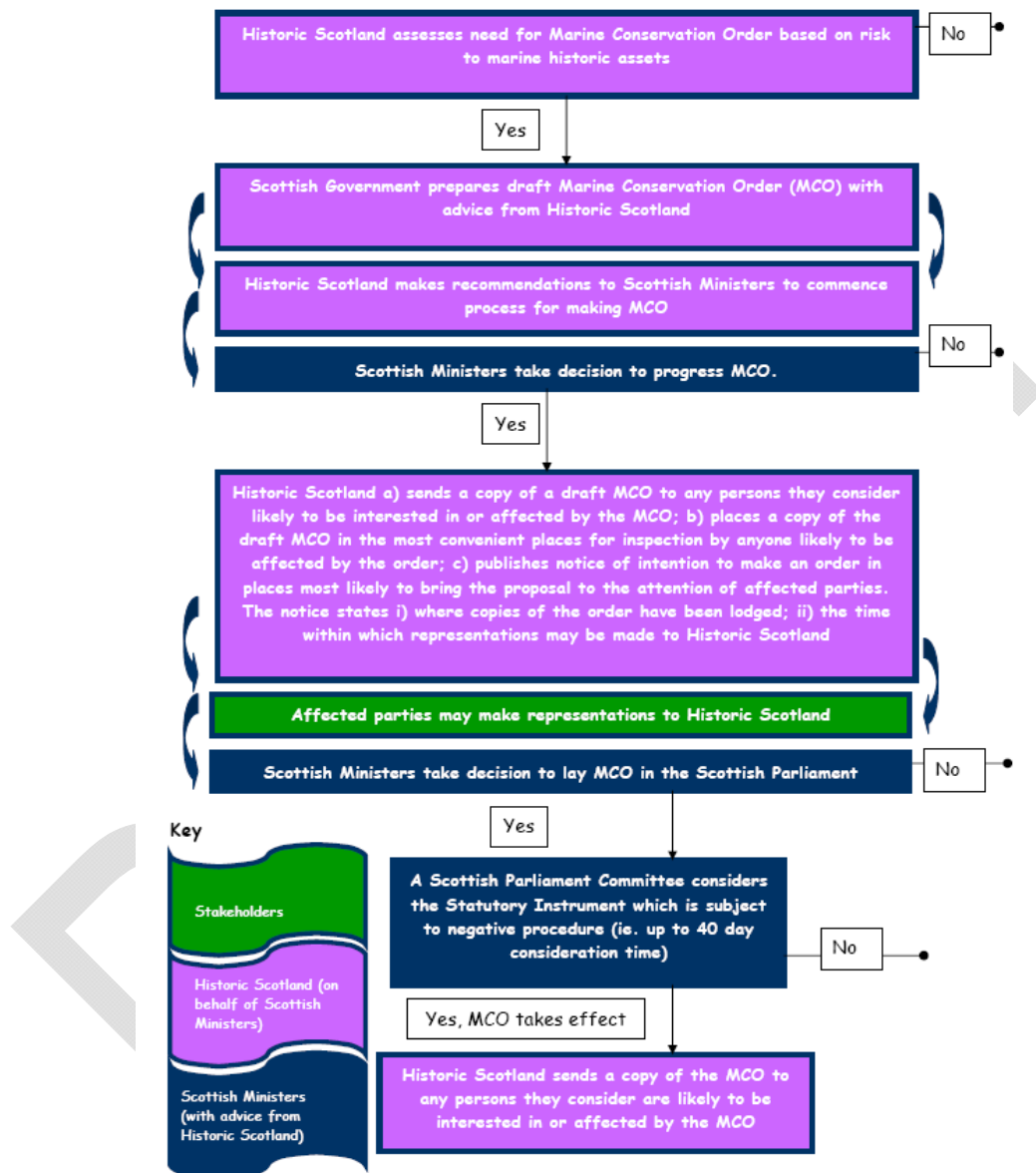


Figure 13: Procedure for making, amending or revoking Marine Conservation Orders (section 87 of the 2010 Act.) The making of an MCO will normally take place at the time of designation of a HMPA.

Principles relating to the use of MCOs for HMPAs

8.2. The following principles will underpin the making of an MCO for HMPAs:

- a. an MCO will be made on the basis of an evidence-based assessment and will be subject to periodic review;
- b. the making of an MCO will normally be preceded by consultation with owners and stakeholders with an interest in the marine historic asset or role in the adjacent marine area;
- c. information on MCOs and on the processes involved would be made widely and easily available and explained in clear language.

8.3. Where an MCO is considered necessary for a HMPA, a draft order will often be provided during consultation procedures for the designation itself in order to streamline administrative procedures and ensure that all parties are clear about proposed management restrictions in advance of designation. Further information on procedures for consultation and publicity of notices may be found in [section 4](#).

8.4. The duty in section 91 of the 2010 Act to assess the impact of prohibition or restriction of activities of an MCO does not apply where the order is to further the stated preservation objectives for an HMPA. However, a Regulatory Impact Assessment will accompany the draft MCO.

The use of MCOs for HMPAs

8.5. MCOs will normally be used where there is a need for a more focussed regulatory regime to manage **activities directed at marine historic assets**. Archaeological excavation and recovery of objects of historic interest will primarily be captured by marine licensing. As a policy principle, responsible non-intrusive access (for example survey work, or simply visiting marine historic assets) to HMPAs is to be encouraged except where such access hinders preservation objectives. If this is the case, MCOs may be considered necessary to ensure that exploration (whether involving recreational diving, or use of remote operated vehicles) and non-intrusive survey can be managed effectively. Examples of when MCOs might be used for this purpose include the period following the discovery of a particularly vulnerable marine historic asset, or where open access arrangements continue to hinder preservation objectives and extra protection is considered necessary.

8.6. An MCO may also be needed to restrict some other **activities that have an incidental effect on marine historic assets**. Possible examples include use of anchors. Again, the decision to apply protection through an MCO will be made on a case by case basis, considering risk to marine historic assets while seeking to avoid duplication of regulation with other mechanisms (e.g marine licensing)..

Authorising activities regulated by MCOs through Permit and Directions

8.7. Each MCO will list the restricted activities that cannot be undertaken and will normally provide for two types of authorisation by Scottish Ministers: **Permits** and **Directions**

Permits

8.8. Permits will be primarily be used where there is a need for Scottish Ministers to consider in detail what is proposed in relation to a restricted activity within a HMPA. The following principles apply:

- permit application forms will be made available on the Historic Scotland website and applications will be made in writing to Historic Scotland, at no cost to the applicant;
- anyone will be able to apply to Historic Scotland for a permit which will be issued if the activities proposed support, or at the very least, do not hinder the preservation objectives of the HMPA;
- permits will be allocated for one year or as otherwise stipulated;
- permits may be granted subject to conditions and may be varied or revoked by Scottish Ministers at any time as specified in the MCO;
- permit holders can make a very important contribution to the management of a Historic MPA but the issuing of a permit by Historic Scotland does not confer ownership rights to a Permit Holder.

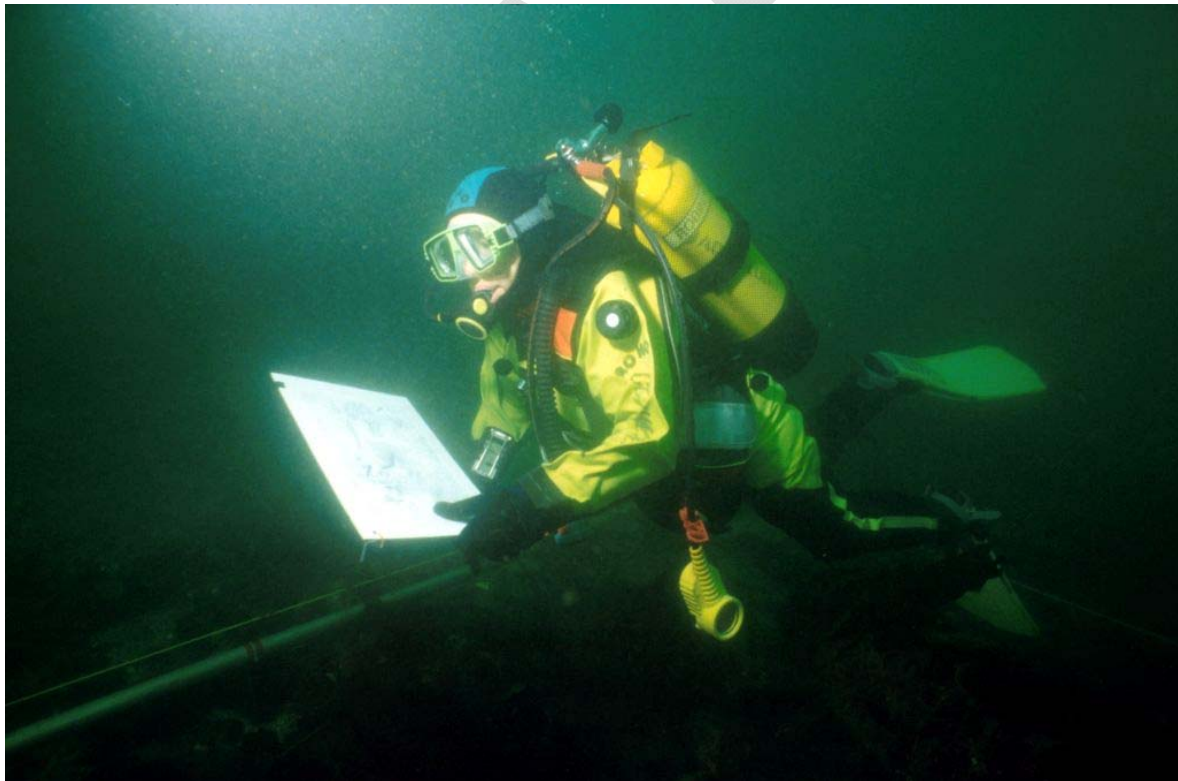


Figure 14: A diver on an underwater wreck trail on the west coast of Scotland. 000-000-110-700-R
– © Colin J M Martin. Licensor www.scran.ac.uk

Delegating powers to Permit Holders to issue authorisations

8.9. An MCO can provide for it to be possible to delegate the issuing of authorisation for a prohibited act to a third party. This mechanism will be used by Historic Scotland where a Permit is required for diving operations and where Permit Holders (for example the operators of a local diving centre) wish to be able to authorise access to visiting divers acting under their supervision without having to ask Historic Scotland to update the terms of a Permit for each visit. In these instances, the Permit will include a Direction that will provide the Permit Holder with delegated powers to issue the authorisation providing that certain conditions are met. This would include, for example, a requirement to provide a briefing before a dive about the rules in place within a HMPA. Other uses may emerge as experience with the regime increases with time.

Directions

8.10. The MCO can also provide for Scottish Ministers to issue various types of Direction in relation to HMPAs, in order to authorise things that would otherwise be restricted/prohibited by virtue of the MCO:

- a Direction issued to any person (or categories of persons) specified in the order. This would normally be issued in the form of a written letter. It would principally be used to ensure that projects operating at Historic Scotland's instruction, for example, archaeological contractors carrying out monitoring work, would not be contravening an MCO;
- a direction issued generally – this form of direction would normally be issued in as a written statement accompanying information about the area, which would be circulated to all those with relevant interests. It is envisaged that a Direction will be a useful mechanism for example, to specify types of activity that might be acceptable, perhaps in different zones of a HMPA, in a way that would be difficult to achieve in sufficient detail within an MCO. As Directions can be made and withdrawn relatively quickly, this mechanism also ensures that Historic Scotland will be able to respond quickly to eventualities that arise.

8.11. Other uses of directions may emerge as experience of the regime develops with time.

9. REGULATION OF COMMERCIAL FISHERIES USING SECTORAL MEASURES

9.1. It is well known that shipwrecks can create artificial reefs and habitats for marine life, enhancing the biodiversity of our seas and oceans. These oceans are an important source of food through fishing. In many instances commercial fishing has contributed important information about the location of marine heritage sites. For example, fishermen reported flint and animal bone discoveries in the southern North Sea and the recovery of a Bronze-Age torc off the Shiant Isles (Cowie 1994). Information about seabed obstructions from Kingfisher charts has also helped to enhance historic environment records, identifying potential heritage features on the seabed. It is seldom in the interests of commercial fishermen to impact towed or static fishing gear on shipwrecks and other seabed features risking expensive damage to gear. Indeed, significant advances in technology now allow towed and static fishing gears to be deployed to high degrees of spatial accuracy, meaning that important seabed features can be avoided. This is all good for the preservation of significant marine heritage sites. However, it remains the case that fishing gears designed to operate close to or in contact with the seabed have the potential to impact negatively on a HMPA.



Figure 15: A Bronze-Age torc recovered by fishermen off the Shiant Isles. © The Trustees of The National Museums of Scotland

9.2. In the majority of cases, it is hoped that the existence of a HMPA and promotion of awareness with Inshore Fisheries Groups (IFGs) will be sufficient to deter damaging activities by commercial fishing interests. However, where there is

contemporary evidence to establish the scale and nature of threats from commercial fishing to a HMPA and a need to seek industry specific regulation, this will be followed through by pursuit of use of regulatory mechanisms available through the Inshore Fishing (Scotland) Act 1984 or the Sea Fish (Conservation) Act 1967. These allow for sectoral regulation through use of area closures and other restrictions as deemed appropriate for environmental purposes, including for the purposes of conserving or enhancing any features of archaeological or historic interest.

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10. OFFENCES AND ENFORCEMENT

General offences relating to marine historic assets

10.1. HMPA designation introduces a number of ‘general offences’ (see table 10). These general offences are primarily intended to prevent a) acts that would amount to reckless environmental vandalism, and to guard against b) the incidental results of lawful activities where insufficient care and attention has been paid to the preservation objectives of the area concerned.

Detail of offence	Penalties
<p>A person commits an offence under this section if the person –</p> <p>a) intentionally or recklessly does a prohibited act in a HMPA and</p> <p>b) the act has significantly hindered, or may significantly hinder, the achievement of the preservation objectives for the HMPA.</p> <p>Prohibited acts are:</p> <p>a) Carrying out works or activities which (or which are likely to)</p> <ul style="list-style-type: none"> i) damage or interfere with a marine historic asset; ii) have a significant impact on the protected area. <p>b) removes, alters or disturbs a marine historic asset</p>	<p>(i) fine on summary conviction up to £50k</p> <p>(ii) fine on indictment</p> <p>The level of fine to take account of the financial benefit accruing from the offence</p>

Table 10: General offences relating to marine historic assets (section 96).

10.2. Where a suspected offence has occurred in relation to prohibited acts that result from a lawful operation, it will be necessary for prosecutors to demonstrate that the person had not taken reasonable steps to guard against hindrance of the preservation objectives or to foresee the infringement resulting from a lawful operation. For this to be the case, wide availability of information about a HMPA (for example displayed on widely-used charts, leaflets, on the internet, or on notices adjacent to the site) may help to convince a court that reasonable steps have not been taken and to guard against any perception of ignorance of the law.

Offence of contravening a Marine Conservation Order

10.3. In addition to general offences against marine historic assets, there is an offence of contravening, or failing to comply with a Marine Conservation Order where one is in place.

Offence	Detail	Penalties
Contravening a marine conservation order	<p>A person who contravenes a marine conservation order commits an offence</p> <p>‘Contravene’ includes fail to comply</p>	<p>(i) fine on summary conviction up to £50k</p> <p>(ii) a fine on indictment .</p> <p>The level of fine takes account of financial benefit accruing</p>

Table 11: Contravening a Marine Conservation Order.

Exceptions to offences

10.4. Sections 97 and 98 set out exemptions from general offences and an offence of contravening a Marine Conservation Order. Exemptions include acts carried out with prior authorisations (e.g MCO permits or marine licences) or in accordance with public duties (where legislative requirements have been followed).

10.5. Specific defences exist for activities carried out in the interest of national security, for the prevention or detection of a crime, and in the interests of public health. There is also a defence for actions undertaken in pursuit of sea fisheries where the accused person can prove that the damage could not reasonably have been avoided. Again the wide availability of information about a HMPA (for example displayed on widely-used charts) may help to convince a court that reasonable steps have not been taken to avoid impacts.

10.6. It is also a defence if a person can prove that the act alleged to constitute an offence was carried out to save life, or secure the safety of a vessel if the person has taken reasonable and timely steps to inform Historic Scotland of what happened.

Enforcement

10.7. The 2010 Act provides enforcement powers to Marine Enforcement Officers (MEOs), which will apply in relation to HMPAs. The common enforcement powers include boarding vessels and marine installations, entering and inspecting premises and vehicles, powers of search and seizure, forcing vessels to port, and requiring production of certain information.

10.8. In addition to Historic Scotland's own enforcement capability, Marine Scotland has around 120 enforcement officers who, in addition to discharging fisheries protection duties, will also act as MEOs. These officers will be able to work collaboratively with Historic Scotland to provide a significantly enhanced compliance monitoring capability at HMPAs. In addition to a network of coastal offices, Marine Scotland also operates offshore patrol vessels, surveillance aircraft and is currently enhancing its inshore marine capability through the procurement of a number of rigid-hulled inflatable boats (RIBs). Through these assets and joint working, we will be able to gain more accurate intelligence about marine activity in the vicinity of HMPAs and use this enhanced intelligence picture to provide better protection for historic wrecks and other marine heritage sites through an intelligence led policing model.

10.9. The coastal office network will have a particularly important role to play as the officers based there are in daily contact with local marine users and are ideally placed to actively promote the protection of HMPAs and provide associated guidance and information.

10.10. While we hope the enhanced protection referred to above will deter and prevent non-compliance and offences being committed in relation to HMPAs, enforcement action will be taken where required. There will be a multi-agency approach to enforcement involving Historic Scotland, Marine Scotland, the police, and other justice partners. Historic Scotland and Marine Scotland, in particular, will work together closely on the protection of HMPAs including on common approaches to related enforcement policy, procedures and associated training.

11. FURTHER INFORMATION

11.1. Queries and requests for further information on HMPAs can be obtained from Historic Scotland as follows:

Information	Team responsible	Contact details
Selection and designation of HMPAs	Scheduling and Marine	Historic Scotland Longmore House Salisbury Place Edinburgh EH5 3EH 0131 668 8600 Email: Hs.schedulingteam@scotland.gsi.gov.uk
Management of HMPAs	Strategic Heritage Management Team	Historic Scotland Longmore House Salisbury Place Edinburgh EH5 3EH 0131 668 8600 Email: []

Table 12: Historic Scotland contacts

11.2. Information about existing designated wrecks, scheduled monuments, listed buildings and, in due course, HMPAs in Scotland's territorial waters can be accessed via the Historic Scotland website (www.historic-scotland.gov.uk)

11.3. Information on other types of new MPA around Scotland can be obtained from Marine Scotland, Marine Planning and Policy team at :

Marine Planning and Policy
Marine Scotland
1A South
Victoria Quay
Edinburgh
EH6 6QQ

11.4. Information about existing MPAs protected for biodiversity purposes within inshore waters can be accessed via the SNH web-based information service SNH (www.snh.gov.uk/snhi) which includes information on all protected areas in Scotland. Information about MPAs designated for biodiversity purposes within Scottish offshore waters can be accessed through JNCC's website (www.jncc.gov.uk)

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Merchant Shipping Act 1995 - <http://www.legislation.gov.uk/ukpga/1995/21/contents>

Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 - <http://www.legislation.gov.uk/ukpga/1997/9/contents>

Protection of Military Remains Act 1986 - <http://www.legislation.gov.uk/ukpga/1986/35/contents>

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Seafish Conservation Act 1967 – <http://www.legislation.gov.uk/ukpga/1967/84>

UK Marine and Coastal Access Act 2009 - <http://www.legislation.gov.uk/ukpga/2009/23/contents>

13. GLOSSARY

Activities directed at marine historic assets - activities having marine historic assets as their primary object and which may, directly or indirectly, physically disturb or otherwise damage marine historic assets.

Activities incidentally affecting marine historic assets - activities which, despite not having marine historic assets as their primary object or one of their objects, may physically disturb or otherwise damage marine historic assets.

Biodiversity – the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they form part; this includes diversity within species, between species and of ecosystems.

Demonstration/Research MPA - refers to MPAs established using the provisions in Section 67 (1) (b) of the 2010 Act for Scottish territorial waters.

Designation – used to refer to the formal process of establishing a MPA under the Marine (Scotland) Act 2010.

Designated wreck – a wreck of historical, artistic, or archaeological importance afforded statutory protection under section 1 of the Protection of Wrecks Act 1973

European Marine Site – is used to refer jointly to Special Areas of Conservation (SACs) and Special Protected Areas (SPAs) in the marine environment.

Geodiversity – is the variety of rocks, minerals, fossils, landforms, sediments and soils, together with the natural processes which form and alter them.

Historic MPA (HMPA) - refers to MPAs established using the provisions in Section 67 (1) (c) of the 2010 Act for Scottish territorial waters.

Historic Scotland – an executive agency of Scottish Government charged with safeguarding the nation's historic environment and promoting its understanding and enjoyment on behalf of Scottish Ministers

IUCN – International Union for Conservation of Nature

JNCC – Joint Nature Conservation Committee, the statutory nature conservation adviser to the UK and Scottish Governments outwith 12nm.

Listed Building - a building placed on the Statutory List of Buildings for its Special Architectural or Historic Interest.

MCO – a Marine Conservation Order made by virtue of section 85 of the 2010 Act.

MPA - Marine Protected Area is used specifically to refer to the provisions in the Marine (Scotland) Act and UK Marine and Coastal Access Act as well as a generic term to refer to any area that contributes to the MPA network in Scottish waters. A commonly used definition of a marine protected area is that provided by the International Union for Conservation of Nature (IUCN): 'any area of intertidal or subtidal terrain, together with its overlying water and associated flora, fauna, historical

and cultural features, which has been reserved by law or other effective means to protect part or all of the enclosed environment.

MPA Network – the network of MPAs in Scottish waters comprising existing MPAs (principally European Marine Sites and SSSIs notified for marine features), new MPAs (as proposed in the 2010 Act) and other areas whose management is delivered by other measures but which also provide benefits for important marine natural features.

Nm – Nautical miles (1.85km)

Nature Conservation MPA – used to refer to MPAs established using the provisions in Section 67 (1) (a) of the 2010 Act for Scottish territorial waters and in the UK Marine and Coastal Access Act 2009 in offshore waters adjacent to Scotland.

OSPAR – used to refer to the OSPAR Convention for the Protection of the Marine Environment of the North-East Atlantic. Scottish waters fall within two OSPAR Regions: II Greater North Sea and III Celtic Seas.

Protection in-situ – protection ‘in the original position’ on the seabed

Risk – The combination of the probability or frequency of an occurrence of a recognised hazard in relation to the magnitude of the consequences.

Scottish Marine Area - the area of sea within the seaward limits of the territorial sea of the United Kingdom adjacent to Scotland, including the bed and subsoil of the sea within that area.

Scottish Marine Protection Area – The Scottish Marine Area but excluding any waters upstream of the fresh-water limit of estuarial waters

Scottish waters – includes inshore and offshore waters around Scotland.

Selection – is used to describe the process of applying guidelines to develop proposals for MPAs and the Scottish MPA network.

Scheduled Monument – a monument afforded statutory protection under the Ancient Monuments and Archaeological Areas Act 1979

Site – used in this guidance to refer to a place where marine historic assets are preserved

Site condition – defined for this guidance as the state of a marine historic asset in its seabed environment at any point in time.

SNH – Scottish Natural Heritage the statutory nature conservation adviser to Government on land and sea out to 12nm i.e. within Scottish territorial waters.

Survival – a record of the state of a marine historic asset relative to some former state. The extent of survival reflects the cumulative effects of all the natural and human processes that have operated upon a marine historic asset over time.

Trajectory – this relates to whether the survival/site condition is improving, remaining stable, or experiencing decline in relation to some previous point in time.

UNESCO – United Nations Educational, Scientific and Cultural Organisation.

ANNEX A DETERMINATION OF 'NATIONAL IMPORTANCE' FOR THE DESIGNATION OF MARINE HISTORIC ASSETS

Cultural Significance

1. The first step in considering whether an asset is of national importance is to identify and understand its cultural significance. The concept of 'cultural significance' will apply widely and to different degrees to all of Scotland's historic environment, and should not be confused with the establishment of 'national importance', which is a separate process. For an asset to be considered as being of national importance it must, first, have a particular cultural significance – artistic; archaeological; architectural; historic; traditional; aesthetic; scientific; social – for past, present or future generations. Such significance is inherent in the asset itself, its nature, setting, use, associations, meanings, records, related assets and related objects.

2. Cultural significance of any asset, whether of international, national importance or more local significance, can be characterised by reference to one or more of the following; the characteristics are in three groups:

Intrinsic – those inherent in the asset;

Contextual – those relating to the asset's place in its wider physical environment or in the body of existing knowledge; and

Associative – more subjective assessments of the associations of the asset, including with current or past aesthetic preferences.

Intrinsic characteristics

a. The condition in which the asset has survived. 'Condition' includes potential survival of archaeological evidence, and goes beyond the survival of marked field characteristics;

b. the archaeological, architectural, historic, scientific, technological or other interest or research potential of the asset or any part of it;

c. the original or subsequent functions of the asset and its parts;

d. the apparent developmental sequence of the asset.

Contextual characteristics

e. The present rarity or representativeness of all or any part of the asset, assessed against knowledge of the history and archaeology of Scotland, its seas, and their place in the wider world;

f. the relationship of the asset to others of the same or related classes or period, or to features or other assets in the vicinity. This is particularly important where individual assets, themselves perhaps of limited immediate significance, form an important part of a widespread but varied class. The diversity of the class should be a material consideration in making individual decisions;

g. the relationship of the asset and its parts with its wider physical environment and setting.

Associative characteristics

- h. The historical, architectural, cultural and social influences that have affected the form and fabric of the asset, and vice versa;
 - i. the aesthetic attributes of the asset;
 - j. its significance in the national or international consciousness or to people who use or have used the asset, or descendants of such people; and
 - k. the associations the asset has with historical, traditional or artistic characters or events.
4. Understanding of cultural significance may change as a result of the continuing history of the asset, or in the light of new information, or changing ideas and values.

National Importance

5. The relationship of marine historic assets to the adjacent land can be complex and variable. Some elements may have been integral parts of adjacent landmasses, now inundated. In the case of wrecks or material associated with wrecks of vessels or aircraft, some have strong and far-reaching connections; others may have a transitory association but little or no original link to the places in which they have come to rest. The determination of national importance is to encompass consideration for such assets which may be important beyond Scotland.
6. The primary objectives of HMPA designation are to help preserve marine historic assets of national importance and to celebrate and communicate their heritage value so that everyone can appreciate these assets and act responsibly.
7. The purpose and implications of each designation are issues that require to be taken into consideration when assessing candidates for designation. Designation may not be the only, or the most appropriate, mechanism to secure the future of all assets, even those that may otherwise meet the criteria.
8. The particular significance needed to define the asset as of 'national' importance may be established in terms of one or more of the following:
- a. its inherent capability or potential to make a significant addition to the understanding or appreciation of the past;
 - b. its retention of the structural, technical, decorative or other characteristics of its kind to a marked degree;
 - c. its contribution, or the contribution of its class to the marine historic environment and/or the wider marine environment;
 - d. the quality and extent of any documentation or association that adds to the understanding of the asset or its context;
 - e. the diminution of the potential of a particular class or classes of asset to contribute to an understanding of the past, should it be lost or damaged; and
 - f. its place in the national or international consciousness is a factor that may be considered in support of other factors.

ANNEX B – PRESERVATION OBJECTIVES

This guidance describes a framework to be adopted by Historic Scotland to assist in the formulation and monitoring of preservation objectives for HMPAs. Consistent application across the HMPA designation programme will help to ensure that preservation objectives are robust and support designation in a manner that is, as far as possible, specific, measurable, achievable, relevant, and timely.

Formulating preservation objectives

The 2010 Act sets out that the purpose of HMPA designation is to preserve marine historic assets of national importance. This purpose may be elaborated as a framework of preservation objectives based around the overarching policy principle of consider *protection in-situ* as the first option. It comprises clauses relating to the survival/ site condition of marine historic assets and the management of the protected area as a whole.

Example preservation objectives applicable to assets	Example preservation objectives applicable for area
<p>To [minimise loss /maintain the extent of survival] of marine historic assets <i>in-situ</i>;</p> <p>To [minimise deterioration of/ maintain/ improve] site condition of marine historic assets;</p> <p>*to be tailored on a case by case basis. Others may be introduced as experience with the regime develops over time.</p>	<p>No marine historic assets are wholly or partially removed from their original location except where the Scottish Ministers are satisfied that this is desirable for the purpose of making a significant contribution to the protection of the significance of marine historic assets or public knowledge about marine cultural heritage;</p> <p>Marine historic assets are not subject to commercial exploitation for trade, speculation, or their irretrievable dispersal. Nothing in this objective is to be taken to prevent professional archaeological services; or provision for public access except where public access is incompatible with other preservation objectives;</p> <p>Disturbance of human remains is avoided.</p>

Table 13: A preservation objectives framework for HMPAs.

There is line of sight from this framework of objectives to Scottish Ministers' policies for the historic environment (SHEP), the UK Marine Policy Statement and to the general principles set out in the ['Annex to the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage'](#). The UK Government abstained from voting on the 2001 Convention but has accepted that the Convention's Annex represents best practice for archaeology, a policy principle shared by Scottish Ministers.

Formulating specific objectives for marine historic assets involves the following stages.

To ensure that objectives for marine historic assets are practicable, their formulation will involve the following staged assessment for each HMPA proposal.

Step 1 – Identify the survival and site condition of marine historic assets and the area

Understanding survival and site condition of marine historic assets prior to designation is important to provide a baseline for setting preservation objectives and for future monitoring.

Understanding survival involves firstly compiling observations relating to evidence of the fabric of a marine historic asset *in-situ*, including form/extent of structural components and features (marked field characteristics), and other archaeological evidence (e.g individual fixtures, contents, objects, environmental remains). Secondly, by comparing the quality and integrity of *in-situ* remains with what evidence exists relating to a marine historic asset in its original form, we can estimate the degree of survival and express our estimation in percentage terms. This picture of survival reflects the cumulative effect of natural and man-made influences on a marine historic asset over time. In practice, making accurate estimations of survival is likely to be easier for more recent marine historic assets where there is full exposure on the seabed and documentary evidence of former state exists. It may be more difficult where there is significant buried evidence. The table below includes broad headings of survival percentage together with text descriptions of the extent of surviving evidence on which a percentage assessment is based.

Survival descriptor	Text description
Survival >80%	Enter as appropriate
Survival 61-80%	
Survival 41-60%	
Survival 21-40%	
Survival <20%	
Unknown	

Table 14: % survival - adapted from English Heritage (2009).

Recording site condition involves a snap-shot assessment of the state of a marine historic asset within its seabed environment at a particular point in time.

Site condition score	Description
Optimal condition	Optimal ie, the best we can realistically expect to achieve: there is very little or no erosion, or signs of deterioration or other damage.
Generally satisfactory with minor localised problems	There may be some localised erosion or deterioration, affecting up to 15% of an asset. It does not constitute serious damage and is an acceptable feature of the asset.
Generally satisfactory but with significant localised problems	More widespread evidence of deterioration or damage affecting 25% of the asset.
Generally unsatisfactory with major localised problems	There may be evidence of part collapse of structure, significant erosion, deterioration or evidence of impacts from operations
Extensive problems	Widespread evidence of damage or deterioration which may affect 50% or more of an asset. This could be caused by one or more factors, such as erosion or deterioration affecting structures, leading to severe structural problems and/or collapse.
Unknown	Might occur in instances where it has not yet been possible to ascertain condition, or where an asset has been buried in sediment, or where an assessment has been made using geophysics survey or other evidence requiring further field verification.

Table 15: recording site condition of a marine historic asset - adapted from HS guidance for new schedulings and English Heritage (2009).

Step 2 - identify risk to marine historic assets and the area.

In order to identify how the extent of survival of a marine historic asset and site condition is likely to change through time (ie remaining stable, declining or improving), it is useful to identify impacts evident to assets and the area and likely sources for these impacts. Table 16 provides an assessment framework for this based on the source - pathway - impact - receptor model in table 2.

Applying this framework will also enable Historic Scotland to make informed judgements about the level of risk posed to assets and the area if no change in the management regime takes place. This is an important step, not only in the development of preservation objectives that are practicable, but also in the successful management of a Historic MPA because it provides a) useful baseline evidence basis for monitoring and provision of operational advice by Historic Scotland, and b) it aids consideration of the need for particular management measures (e.g through Marine Conservation Orders).

Hazard				Risk – where risk = severity x frequency		
Receptor	Impacts evident	Pathways evident	Sources evident	Severity (1-3)	Probability/frequency (1-3)	Risk (high/med/low)
area	e.g physical damage; loss; alteration; disturbance	e.g collision; abrasion; removal; selective removal; degradation; excavation of sediments	<i>man-made:</i> (e.g construction, both site-specific and linear ; anchoring/ mooring; commercial fishing (specify techniques); extraction; recreation and tourism; salvage and tourism; pollution risk. Or combination of factors)			
asset(s)			<i>natural:</i> (e.g biological: flora, fauna, microorganisms. Or chemical: oxygen concentration, changes in pH, nutrients. Or physical: waves, currents, sedimentation, temperature, light-levels. Or combination of factors)			
features of asset(s) – includes structures and objects.						

Table 16: assessing risks to marine historic assets and the area.

In some instances the exact cause of changes in survival and site condition will be complex, involving an interplay of both natural and man-made processes. Defining the relationship between these processes can take time. In advance of designation therefore it is acceptable to focus on the most obviously evident processes at play on the basis of the best available evidence. This information base can be improved through monitoring as time goes on.

Step 3 – Formulate preservation objectives for marine historic assets

Once the extent of survival, site condition and key sources of risk to marine historic assets are established, this information is used to formulate the desired objectives:

- *Survival of marine historic assets, in-situ as the first option* – as cultural heritage is a finite resource, it is not possible to improve the extent of survival for obvious reasons. Therefore, the options are, at the very least, to *minimise loss*, and, more optimistically, *to maintain the extent of survival*.
- *Site condition of marine historic assets - Minimising deterioration* in site condition may be all that can reasonably be achieved in many instances, particularly where the key risks arise from natural processes which may be difficult, if not impossible to do anything about, and which are likely to result in an almost inevitable worsening in site condition over time. One possible example might be large metal shipwrecks subject to high levels of corrosion-related deterioration in sea-water. In such instances, it may be possible to minimise deterioration of site condition by managing man-made impacts; stopping deterioration altogether may not be sustainable. In other instances however, it is realistic to seek to *maintain site condition* so that there is not little if any discernible decline by comparison with the position at the time of designation. However, the word ‘maintain’ should not be understood in terms of placing an onus on owners to undertake practical maintenance or repair works of the sort that might be encouraged for monuments/historic buildings on land. This would clearly be impracticable under water. In a very few instances, it may be realistic to set an objective of *improving site condition*, though this will typically require some level of management intervention at site level. For example, some *in-situ* conservation techniques can prove useful to stabilise areas of localised sediment loss by encouraging reburial of archaeological deposits (thereby prolonging survival of marine historic assets).

Formulating objectives for the area of a Historic MPA.

These objectives act to guide management of the area as a whole. Although the principle of protection of marine historic assets *in-situ* as the first option holds, a balancing objective is included to set out those instances where **recovery of marine historic assets (in whole or part) is acceptable**. That is when the Scottish Ministers are satisfied that this is desirable for the purpose of making a significant contribution to the protection of or knowledge about marine cultural heritage. This would be on the following grounds:

- that other preservation objectives cannot be met (ie a marine historic asset cannot be saved) and preservation by record is the only means to preserve the national importance of marine historic assets for current and future generations;
- or where knowledge about marine historic assets cannot be gained by non-intrusive methods of investigation alone and the proposal involves the minimum necessary intervention;
- or where the decision has been taken to accept the loss of marine historic assets in-situ by virtue of a decision taken by a public authority in accordance with section 83 of the 2010 Act and mitigation by archaeological investigation is required.

- that the work is carried out in a manner consistent with the relevant rules of the Annex of the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage (Rules 9 and following).

An objective is also included to **restrict commercial exploitation of marine historic assets for trade or speculation**. This covers activities such as treasure hunting or commercial salvage. The specific exception is for archaeological investigation carried out in accordance with best practice as this may involve a commercial element (ie contractors may be paid for their services), and also for tourism (e.g charter operators taking diving groups to dive on shipwrecks) providing that public access is consistent with other preservation objectives.

An objective is also included **relating to human remains**. This may be applicable in certain circumstances (for example, where it is known or considered likely that there are human remains present within marine historic assets in the area).

Monitoring preservation objectives

After designations have occurred, it will be necessary to monitor site condition and survival on an ongoing basis. This will often be possible through non-intrusive survey and recording. Historic Scotland will keep a register of the ‘trajectory’ of survival/site condition using the framework in table 17, making this information available with documentation for the HMPA. Such monitoring will enable Historic Scotland to determine whether preservation objectives can and are being met, to identify any changes in levels of risk and to improve provision of management advice. Where new information comes to light, reviews may result in changes to preservation objectives by amendment of designation orders. Information gathered using monitoring regimes may also be used in audits of the historic environment (see for example www.heritageaudit.org.uk/), of Scotland’s Seas,⁸ or reports to the Scottish Parliament under the 2010 Act.

Trajectory	Notes
Improving	There is a visible improvement in the site condition of a marine historic asset(s) since the last inspection, typically as a result of ongoing management intervention.
Stable	The extent of survival/ site condition of a marine historic asset(s) shows little or no sign of active deterioration either recent or mid-term. The site condition of a marine historic asset with localised problems such as erosion is stable, provided the damage remains constant.
Declining	The extent of survival/ site condition of a marine historic asset is deteriorating by comparison with previous assessments. This could be as a result of ongoing damage, causing loss of fabric which might be gradual or rapid.
Unknown	It is not possible to assess the trend in site condition or survival as a field assessment has not been made recently or is not known. More detailed evaluation may be required to make an assessment.

Table 17: recording trajectory in survival/ site condition - adapted from English Heritage (2009).

⁸ <http://www.scotland.gov.uk/Topics/marine/science/assessment/atlas>

ANNEX C – RULES CONCERNING ACTIVITIES DIRECTED AT UNDERWATER CULTURAL HERITAGE (ANNEX TO THE 2001 UNESCO CONVENTION ON THE PROTECTION OF THE UNDERWATER CULTURAL HERITAGE) ⁹

I. General principles

Rule 1. The protection of underwater cultural heritage through in situ preservation shall be considered as the first option. Accordingly, activities directed at underwater cultural heritage shall be authorized in a manner consistent with the protection of that heritage, and subject to that requirement may be authorized for the purpose of making a significant contribution to protection or knowledge or enhancement of underwater cultural heritage.

Rule 2. The commercial exploitation of underwater cultural heritage for trade or speculation or its irretrievable dispersal is fundamentally incompatible with the protection and proper management of underwater cultural heritage. Underwater cultural heritage shall not be traded, sold, bought or bartered as commercial goods.

This Rule cannot be interpreted as preventing:

(a) the provision of professional archaeological services or necessary services incidental thereto whose nature and purpose are in full conformity with this Convention and are subject to the authorization of the competent authorities;

(b) the deposition of underwater cultural heritage, recovered in the course of a research project in conformity with this Convention, provided such deposition does not prejudice the scientific or cultural interest or integrity of the recovered material or result in its irretrievable dispersal; is in accordance with the provisions of Rules 33 and 34; and is subject to the authorization of the competent authorities.

Rule 3. Activities directed at underwater cultural heritage shall not adversely affect the underwater cultural heritage more than is necessary for the objectives of the project.

Rule 4. Activities directed at underwater cultural heritage must use non-destructive techniques and survey methods in preference to recovery of objects. If excavation or recovery is necessary for the purpose of scientific studies or for the ultimate protection of the underwater cultural heritage, the methods and techniques used must be as non-destructive as possible and contribute to the preservation of the remains.

Rule 5. Activities directed at underwater cultural heritage shall avoid the unnecessary disturbance of human remains or venerated sites.

Rule 6. Activities directed at underwater cultural heritage shall be strictly regulated to ensure proper recording of cultural, historical and archaeological information.

⁹ See <http://unesdoc.unesco.org/images/0012/001260/126065e.pdf>

Rule 7. Public access to in situ underwater cultural heritage shall be promoted, except where such access is incompatible with protection and management.

Rule 8. International cooperation in the conduct of activities directed at underwater cultural heritage shall be encouraged in order to further the effective exchange or use of archaeologists and other relevant professionals.

II. Project design

Rule 9. Prior to any activity directed at underwater cultural heritage, a project design for the activity shall be developed and submitted to the competent authorities for authorization and appropriate peer review.

Rule 10. The project design shall include:

- (a) an evaluation of previous or preliminary studies;
- (b) the project statement and objectives;
- (c) the methodology to be used and the techniques to be employed;
- (d) the anticipated funding;
- (e) an expected timetable for completion of the project;
- (f) the composition of the team and the qualifications, responsibilities and experience of each team member;
- (g) plans for post-fieldwork analysis and other activities;
- (h) a conservation programme for artefacts and the site in close cooperation with the competent authorities;
- (i) a site management and maintenance policy for the whole duration of the project;
- (j) a documentation programme;
- (k) a safety policy;
- (l) an environmental policy;
- (m) arrangements for collaboration with museums and other institutions, in particular scientific institutions;
- (n) report preparation;
- (o) deposition of archives, including underwater cultural heritage removed;
- (p) a programme for publication.

Rule 11. Activities directed at underwater cultural heritage shall be carried out in accordance with the project design approved by the competent authorities.

Rule 12. Where unexpected discoveries are made or circumstances change, the project design shall be reviewed and amended with the approval of the competent authorities.

Rule 13. In cases of urgency or chance discoveries, activities directed at the underwater cultural heritage, including conservation measures or activities for a period of short duration, in particular site stabilization, may be authorized in the absence of a project design in order to protect the underwater cultural heritage.

III. Preliminary work

Rule 14. The preliminary work referred to in Rule 10 (a) shall include an assessment that evaluates the significance and vulnerability of the underwater cultural heritage and the surrounding natural environment to damage by the proposed project, and the potential to obtain data that would meet the project objectives.

Rule 15. The assessment shall also include background studies of available historical and archaeological evidence, the archaeological and environmental characteristics of the site, and the consequences of any potential intrusion for the long-term stability of the underwater cultural heritage affected by the activities.

IV. Project objective, methodology and techniques

Rule 16. The methodology shall comply with the project objectives, and the techniques employed shall be as non-intrusive as possible.

V. Funding

Rule 17. Except in cases of emergency to protect underwater cultural heritage, an adequate funding base shall be assured in advance of any activity, sufficient to complete all stages of the project design, including conservation, documentation and curation of recovered artefacts, and report preparation and dissemination.

Rule 18. The project design shall demonstrate an ability, such as by securing a bond, to fund the project through to completion.

Rule 19. The project design shall include a contingency plan that will ensure conservation of underwater cultural heritage and supporting documentation in the event of any interruption of anticipated funding.

VI. Project duration - timetable

Rule 20. An adequate timetable shall be developed to assure in advance of any activity directed at underwater cultural heritage the completion of all stages of the project design, including conservation, documentation and curation of recovered underwater cultural heritage, as well as report preparation and dissemination.

Rule 21. The project design shall include a contingency plan that will ensure conservation of underwater cultural heritage and supporting documentation in the event of any interruption or termination of the project.

VII. Competence and qualifications

Rule 22. Activities directed at underwater cultural heritage shall only be undertaken under the direction and control of, and in the regular presence of, a qualified underwater archaeologist with scientific competence appropriate to the project.

Rule 23. All persons on the project team shall be qualified and have demonstrated competence appropriate to their roles in the project.

VIII. Conservation and site management

Rule 24. The conservation programme shall provide for the treatment of the archaeological remains during the activities directed at underwater cultural heritage, during transit and in the long term. Conservation shall be carried out in accordance with current professional standards.

Rule 25. The site management programme shall provide for the protection and management in situ of underwater cultural heritage, in the course of and upon termination of fieldwork. The programme shall include public information, reasonable provision for site stabilization, monitoring, and protection against interference.

IX. Documentation

Rule 26. The documentation programme shall set out thorough documentation including a progress report of activities directed at underwater cultural heritage, in accordance with current professional standards of archaeological documentation.

Rule 27. Documentation shall include, at a minimum, a comprehensive record of the site, including the provenance of underwater cultural heritage moved or removed in the course of the activities directed at underwater cultural heritage, field notes, plans, drawings, sections, and photographs or recording in other media.

X. Safety

Rule 28. A safety policy shall be prepared that is adequate to ensure the safety and health of the project team and third parties and that is in conformity with any applicable statutory and professional requirements.

XI. Environment

Rule 29. An environmental policy shall be prepared that is adequate to ensure that the seabed and marine life are not unduly disturbed.

XII. Reporting

Rule 30. Interim and final reports shall be made available according to the timetable set out in the project design, and deposited in relevant public records.

Rule 31. Reports shall include:

- (a) an account of the objectives;
- (b) an account of the methods and techniques employed;
- (c) an account of the results achieved;
- (d) basic graphic and photographic documentation on all phases of the activity;
- (e) recommendations concerning conservation and curation of the site and of any underwater cultural heritage removed; and
- (f) recommendations for future activities.

XIII. Curation of project archives

Rule 32. Arrangements for curation of the project archives shall be agreed to before any activity commences, and shall be set out in the project design.

Rule 33. The project archives, including any underwater cultural heritage removed and a copy of all supporting documentation shall, as far as possible, be kept together and intact as a collection in a manner that is available for professional and public access as well as for the curation of the archives. This should be done as rapidly as possible and in any case not later than ten years from the completion of the project, in so far as may be compatible with conservation of the underwater cultural heritage.

Rule 34. The project archives shall be managed according to international professional standards, and subject to the authorization of the competent authorities.

XIV. Dissemination

Rule 35. Projects shall provide for public education and popular presentation of the project results where appropriate.

Rule 36. A final synthesis of a project shall be:

- (a) made public as soon as possible, having regard to the complexity of the project and the confidential or sensitive nature of the information; and
- (b) deposited in relevant public records.