

# PROTECTING OUR MARINE HISTORIC ENVIRONMENT: MAKING THE SYSTEM WORK BETTER

## PARTIAL REGULATORY IMPACT ASSESSMENT

### 1. Title of proposal

'Protecting our marine historic environment: making the system work better'.

### 2. Purpose and intended effect of measure

#### (i) The objective

To update and improve marine historic environment legislation and make it fit for purpose in the 21<sup>st</sup> century: specifically, to produce;

- a positive approach to managing the marine historic environment which will be transparent, inclusive, effective and sustainable and central to social, environmental and economic agendas at a local as well as national level;
- a legislative framework that protects the marine historic environment but enables appropriate change.

#### Effects of the proposal

The exact form and therefore effects of the proposal will depend on the results of consultation. At this stage the Government is committed to no specific action and is using this consultation to suggest proposals for improving the way in which the system operates, for the benefit of all those involved in the system. The consultation paper seeks views on how best to simplify the existing, piecemeal protection legislation; to make the decision-making process more transparent and remove uncertainty for all those involved in the system; to make the decision-making process more streamlined and efficient; to increase flexibility of management of the marine historic environment and to ensure rigour in designation decisions.

The effects on individual stakeholders cannot be quantified until the Government decides what action to take post-consultation, but in general we expect to see the following benefits:

- better information for seabed users and stakeholders about why items and features of importance have been protected, what is considered important and how they can best be looked after;
- ensuring amenity societies and others concerned locally or nationally with conserving the marine historic environment would be better able to obtain information and participate;
- greater clarity for all interested parties and other sea users by making licensing procedures simpler and clearer and providing better access to information, guidance and assistance.

## Devolution:

England, Wales Scotland and Northern Ireland share much of the legislation which governs the marine historic environment, although it is largely implemented on a devolved basis, and so DCMS, the Welsh Assembly Government, the Scottish Executive and the Department of the Environment Northern Ireland are all partners in this process. The interests of all partners will be reflected in both the discussions which will take place and in any conclusions that emerge.

### (ii) The background

The marine review has identified four major areas for improvement:

- **Simplification**: the marine historic environment protection system is highly selective and coverage is incomplete. New protections have been added in a largely reactive fashion. Few people have a grasp of all parts of the legislation. There are gaps and inconsistencies in interpretation. Where there are complex sites, such as a submerged prehistoric landscape, designation can be unwieldy or problematic.
- **Openness**: processes are often for good reason kept confidential. A consultation process exists but is not necessarily wide. The official designation of protected sites is often not understood nor widely publicised. There is little encouragement to seabed or asset owners to feel involved. Nor is there currently easy access to sites and information for the general public.
- **Flexibility**: the present system requires individual designation of assets and individual consents for each activity. Where there are complex sites this can prove laborious. There are lessons from the management of the natural environment and advances in thinking about Integrated Coastal Zone Management and community involvement which have not fully fed through into marine heritage protection.
- **Rigour**: in 1973 there was one designated<sup>1</sup> wreck site and no submerged Scheduled Ancient Monuments. There are now 54 designated wreck sites in the UK and two submerged Scheduled Ancient Monuments. There are many hundreds of thousands of un-designated sites. This is a rich inheritance but a huge stock to manage. The new system must be robust enough to conserve the best and to continue to take on board changes in what people value without devaluing the currency.

---

<sup>1</sup> I.e. a restricted area identified as the site of a vessel of historical, archaeological importance under the *Protection of Wrecks Act 1973*

(ii) Risk Assessment

It is not currently possible to quantify numerically the effect of proposals, as the extent of each suggestion is open to debate as part of the consultation process. The Government will take a view following analysis of responses.

<b>Risk</b>	<b>Probability</b>	<b>Effect</b>
Existing rules about reporting and ownership of finds are based on 'wreck'. It can be unclear which legal rules should be applied to specific finds.	High	All marine historic assets should be subject to general rules regarding reporting, initial treatment and ownership.
Strict criteria for designating historic wrecks limits flexibility to balance the differing needs of stakeholders	Medium	Allowing more discretion and discernment in designation decisions
Lack of clarity about significant features creates uncertainty about what consents will be granted and how controls will be enforced	Medium	Statements of significance to identify reasons for designation, offering greater clarity for owners and others with an interest.
Lack of information about decisions not to designate can lead to lack of certainty about how criteria are applied could lead to loss of confidence in the system	Medium	Provision of statement of reasons not to designate
Lack of clarity about exact area included in designated area creates uncertainty about what consents will be granted and how controls will be enforced	Medium	Geographical limits to be defined by distances around a point, by boxes or by other mapped shapes.  Clarity for owners, and others with an interest.
Lack of information about applications to designate – - decisions are made without proper consultation with those affected by the decision.	High	Open process with owners (and wider community where appropriate) consulted on applications for designation. Automatic protection

		applies to feature from receipt of application to ensure it is protected during application process.
Lack of formal appeal process – unclear to stakeholders how to challenge a decision in order to rectify a mistake	Medium	Provision of new right of appeal. Details open to consultation
No statutory provision for owners or others with an interest to enter into management agreements for designated sites - opportunity may be lost to introduce a system which would best protect the asset whilst balancing an owners needs	High	Provide statutory power for owners to enter into management agreement for future and maintenance of site. Reduce need for multiple consent applications

### 3. Options

This document is still at consultation stage. The Government is not yet committed to any particular course of action. The extent of each suggestion is open to debate as part of the consultation process. The Government will take a view on specific proposals, their impact and the suite of options (or none) for change that it is minded to take following analysis of responses. It is not possible to calculate specific benefits at this stage, or compare options.

#### SUMMARY OF MAIN SUGGESTIONS FOR CHANGE

##### General approach

- Seek the closest practical integration of marine and terrestrial historic environment protection (*paragraph 29*), but to maintain a regulatory system that is UK wide and takes account of the special nature of the marine environment.
- Marine historic assets to be subject to some general rules regarding reporting, initial treatment and ownership, but 'protection' will only be applied to specific sites that are sufficiently important to warrant restrictions on activity (*paragraph 35*).

## **Marine historic assets**

- Introduce a statutory definition of 'marine historic asset' that encompasses all types of physical trace of the marine historic environment (*paragraph 42*).

## **A new unified designation for marine heritage assets**

### **Approach**

- Include in a new designation all elements of the marine historic environment, including those covered by the *Protection of Wrecks Act 1973* and the *Ancient Monuments and Archaeological Areas Act 1979* (*paragraph 43*).
- Continue to use the *Protection of Military Remains Act 1986* to protect military remains, but where military remains may have a historic significance, then the Ministry of Defence will agree with the heritage agencies on a case-by-case basis the most effective way of protecting the asset. (*paragraph 48*).

### **Who should be responsible for national designation**

- Responsibility for administering the new designation would remain with Historic Scotland, Cadw and DoENI, and would be given to English Heritage in England, subject to four safeguards (*paragraphs 49-50*).

### **Criteria and discretion**

- Publish criteria that marine cultural heritage sites will need to satisfy in order to be designated (*paragraph 51*).

### **Management and control for protected sites**

- Introduce a single consent regime for all protected maritime sites, applicable to activities that are otherwise prohibited. A licence can be sought that will expressly permit an activity (*paragraph 55-56*).
- Use of standardised restrictions, so that sea-users can broadly anticipate what activities are allowed (*paragraph 55*).

### **Statements of importance**

- The heritage agencies to provide a 'statement of importance' for each protected site showing the reasons for protection, what is important about the site and indicating the activities for which consent would be needed (*paragraph 58*).
- Statements of importance to be subject to periodic review. Revoke protection where the review indicates that the site's importance no longer meets current criteria (*paragraph 61*).

### **Site boundaries**

- Continue to define the geographical limits of protected sites by distances around a point, boxes or other mapped shape (*paragraph 64*).
- Provide clear geographical information concerning protected areas and restrictions on activities to mariners in an appropriate format (*paragraph 65*).

## **Openness and interim protection**

### **Consultation**

- Introduce a formal requirement for wider consultation when a proposal is made to protect a site (*paragraph 68*).
- Consider a form of interim protection for sites for which protection is proposed during the period in which people are being informed and consulted (*paragraph 70*).

#### **Appeals procedure**

- Introduce a right of appeal against decisions to protect marine historic assets (*paragraph 71*).

### **Ownership and ongoing management for items on the List**

#### **Owners and other interests**

- Encourage owners and others having interests in marine historic assets that are designated to address the long-term management of sites (*paragraph 74*).
- Provide owners and other interests with clear information explaining what protection means and guidance on how to protect and enhance sites (*paragraph 75*).

#### **Management agreements**

- Owners and other interested parties to be able to enter into management agreements with the heritage agencies in respect of designated marine historic asset sites (*paragraph 77*).

#### **Support for Owners**

The heritage agencies to provide advice to owners and other interests in addressing the long-term management of marine historic sites (*paragraph 79*).

### **Promoting Access and High Standards**

#### **Access**

- Promote public access to marine historic assets, to the extent that such access does not impinge unreasonably on continued survival and condition, or interfere with owners and others' interests (*paragraph 82*).

#### **Standards**

- The heritage agencies should continue to promote high standards in the investigation and treatment of marine historic assets (*paragraph 87*).
- Support the development of voluntary codes of practice by sea-using groups (*paragraph 90*).

#### **Expanding Research and Skills**

- The heritage agencies to promote publication and archiving of marine historic assets (*paragraph 92*).
- Build on and support the role of recreational divers in safeguarding marine historic assets (*paragraph 95*).

## Ownership

### Reporting Finds

- Consideration of an introduction of an obligation on people who disturb or recover marine historic assets to contact an appropriate agency (*paragraph 96*).

### Identifying Owners

- Introduce a mechanism for identifying owners of marine historic assets and for resolving issues of ownership that may arise along the lines of the Receiver of Wreck's office (*paragraph 102*).

## 4. Benefits

*Option 1: Do nothing.* Risks identified above will continue.

*Other options:*

This document is still at consultation stage. The extent of each suggestion is open to debate as part of the consultation process. The Government will take a view on specific proposals, their impact and the suite of options it is minded to take following analysis of responses. It is not possible to calculate specific benefits at this stage, or compare options. However, in general terms we would expect:

Measure	Benefits
Legislation simplified and brought together under one designation regime in England	Transparency of system benefitting all affected by it
New single definition of marine historic assets	Remove confusion about which legal rules apply to finds. Bring clarity to procedures following discovery.
Statutory responsibility for the designation decision to be given to English Heritage	Such powers already held by home country heritage agency and the national Assembly for Wales
Statements of significance to identify reasons for designation.	Clarity for owners and others with an interest.
Provision of statement of reasons not to designate	Clarity for owners and others with an interest.  Decisions open to challenge.
Geographical limits of designated sites to be defined by distances around a point, by boxes or by other mapped shapes showing exact area designated.	Clarity for owners and others with an interest.

Automatic protection applies to feature from receipt of application. Designation process becomes open with owners/community etc. informed/involved.	Opening up of system to all. Increased engagement with historic environment.
Provision of new right of appeal. Details open to consultation	Clarity for owners and others with an interest.
Opportunity for owners to enter into management agreement for future and maintenance of site.	Reduction of need for multiple consent applications. Increased efficiency Facilitation of commitment from owners to heritage protection through better understanding of their asset.

Business sectors affected

Measure	Sector affected (numbers to be quantified)
Legislation simplified and brought together under one designation regime	Commercial interests including marine aggregate, communications, energy and various dredging interests  Local authorities; Non-Departmental Public Bodies (NDPBs); voluntary sector and Non Governmental Organisations (NGOs)  Various sizes
EH to carry out designation	DCMS and EH
Statements of significance to identify reasons for designation.	Commercial interests including marine aggregate, communications, energy and various dredging interests  Local authorities; NDPBs; voluntary sector; NGOs; owners/stakeholders  Various sizes
Provision of statement of reasons not to designate	Commercial interests including marine aggregate, communications, energy and various dredging interests;

	<p>Local authorities; NDPBs; voluntary sector; NGOs; owners/stakeholders</p> <p>Various sizes</p>
<p>Geographical limits of designated sites to be defined by distances around a point, by boxes or by other mapped shapes showing exact area designated.</p>	<p>Commercial interests including marine aggregate, communications, energy and various dredging interests</p> <p>Local authorities; NDPBs; voluntary sector; NGOs; owners/stakeholders</p> <p>Various sizes</p>
<p>Automatic protection applies to feature from receipt of application. Designation process becomes open with owners/community etc. informed/involved.</p>	<p>Commercial interests including marine aggregate, communications, energy and various dredging interests</p> <p>Local authorities; NDPBs; voluntary sector; NGOs; owners/stakeholders; local communities</p> <p>Various sizes</p>
<p>Provision of new right of appeal. Details open to consultation</p>	<p>Commercial interests including marine aggregate, communications, energy and various dredging interests</p> <p>Local authorities; NDPBs; voluntary sector; NGOs; owners/stakeholders</p> <p>Various sizes</p>
<p>Opportunity for owners to enter into management agreement for future and maintenance of site.</p>	<p>Commercial interests including marine aggregate, communications, energy and various dredging interests</p> <p>Local authorities; NDPBs; owners/stakeholders</p> <p>Various sizes</p>

Issues of equity and fairness

Measure	Equity/fairness
Legislation simplified and brought	Correcting inequalities between different

together under one designation regime	designation systems and the consent regimes flowing from them.
EH to make designation decision	Decision made by experts in heritage sector – but balanced by ministerial supervision, call-in powers and a formal right of appeal.
Statements of significance to identify reasons for designation.	Makes system more transparent – more information makes process fairer and makes it easier for owners/businesses to challenge decisions made by the authorities
Provision of statement of reasons not to designate	Makes system more transparent – more information makes process fairer and makes it easier for owners/businesses to challenge decisions made by the authorities
Geographical limits of designated sites to be defined by distances around a point, by boxes or by other mapped shapes showing exact area designated.	Makes system more transparent – more information makes process fairer and makes it easier for owners/businesses to challenge decisions made by the authorities
Automatic protection applies to feature from receipt of application (with time limits within which decision must be made). Designation process becomes open with owners/community etc. informed/involved.	<p>Owners have the burden of restrictions placed on their use of a site before a decision made that it is worthy of protection. But this is balanced by the benefits of more consultation about decision-making, and certainty about time within which decision will be made.</p> <p>Overall this makes system more transparent – more information makes process fairer and makes it easier for owners/businesses to challenge decisions made by the authorities</p>
Provision of new right of appeal. Details open to consultation	A clear procedure for appeals is fairer to those affected by designations making system more transparent. Correcting an inequality which currently favours the decision making authority.
Opportunity for owners/others with an interest to enter into management agreement for future and maintenance of site.	A fairer system which gives owners/others with an interest more involvement and influence in the management of their own asset.

## 5. Costs

(i) Compliance costs

-

This document is still at consultation stage. The extent of each suggestion is open to debate as part of the consultation process. The Government will take a view on specific proposals, their impact and the suite of options it is minded to take following analysis of responses. As proposals are wide-ranging it is not possible to calculate specific costs at this stage, or compare options.

(ii) Other costs

This document is still at consultation stage. The extent of each suggestion is open to debate as part of the consultation process. The Government will take a view on specific proposals, their impact and the suite of options it is minded to take following analysis of responses. It is not possible to calculate specific costs at this stage, or compare options.

(iii) Costs for a typical business

This document is still at consultation stage. The extent of each suggestion is open to debate as part of the consultation process. The Government will take a view on specific proposals, their impact and the suite of options it is minded to take following analysis of responses. It is not possible to recommend a specific option at this stage.

## **6. Consultation with small business: The Small Firms Impact Test**

### **7. Competition Assessment**

This document is still at consultation stage. The extent of each suggestion is open to debate as part of the consultation process. However, proposals are still at an early stage and the extent of each suggestion is open to debate as part of the consultation process. The competition assessment will be repeated in the light of responses to consultation and more specific proposals.

### **8. Enforcement and sanctions**

The consultation seeks views about the proposed right of appeal and control mechanisms. The extent of these and to whom they should apply is open to debate as part of the consultation process. The Government will take a view on proposals, their impact and the suite of options it is minded to take following analysis of responses. It is not possible to calculate specific benefits at this stage, or compare options.

### **9. Monitoring and review**

### **10. Consultation**

(i) within Government

Historic Scotland, Cadw and DOENI.

Departments with a major interest consulted include the Office of the Deputy Prime Minister, Department of Trade and Industry, Department for Transport, the Receiver of Wreck, the Crown Estate, the Home Office, Ministry of Defence and Department for Environment, Food and Rural Affairs.

(ii) Public consultation

Formal consultation paper widely disseminated in paper and electronic formats. Minimum of 12 weeks consultation period.

The results of consultation will be analysed following the close of the public consultation period, and the results published in due course.

### **11. Summary and recommendation**

This document is still at consultation stage. The extent of each suggestion is open to debate as part of the consultation process. The Government will take a view on specific proposals, their impact and the suite of options it is minded to take following analysis of responses. It is not possible to recommend a specific option at this stage.

### **12. Declaration**

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed \_\_\_\_\_

Date