



Marine Protected Areas in the Seas around Scotland

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

September 2019

Table of edits

Date	Change made
14 March 2013	Changes to table 5 on notification to reflect advice from Marine Scotland on proportionality
1 July 2014	Use of circular boundaries around single marine historic assets to facilitate marking on Admiralty Charts, following advice from the UK Hydrographic Office
1 July 2014	Advise early contact with Historic Scotland in relation to archaeological investigations within Historic MPAs, and on handling for intrusive archaeological activities below the marine licensing threshold.
1 July 2014	Updated map
1 October 2015	Updated to reflect creation of Historic Environment Scotland.
1 December 2018	Changes to reflect updated thinking on the place of Historic MPAs in the Scottish MPA network.
22 May 2019	Changes to reflect launch of Historic Environment Policy for Scotland (1 May 2019)

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EXECUTIVE SUMMARY

What is this guidance for?

This guidance sets out how Historic Environment Scotland works with the Scottish Government to apply powers under the Marine (Scotland) Act 2010 to select, designate, and manage Historic Marine Protected Areas (HMPAs), a designation that celebrates and protects evidence of the outstanding marine cultural heritage that survives in the coasts and seas around Scotland.

Who should read this guidance?

This guidance is intended to 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.

What does the guidance cover?

The guidance sets what HMPAs are for and describes the processes that Historic Environment Scotland follows when advising the Scottish Government on designating HMPAs. Advice is also provided on the management of HMPAs, including duties on public authorities, managing impacts through marine planning and licensing, and the use of Marine Conservation Orders where it is necessary to restrict, prohibit or regulate activities that significantly hinder the 'preservation objectives' for an HMPA.

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).

The Marine (Scotland) Act 2010

1.3. The UK Marine and Coastal Access Act 2009 ('the 2009 Act') and the Marine (Scotland) Act 2010 ('the 2010 Act') introduced a framework to enhance protection, 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. Historic Environment Scotland (HES) is working with Marine Scotland, Scottish Natural Heritage, the Scottish Environment Protection Agency (SEPA) and the Joint Nature Conservation Committee to develop a network of Scottish Marine Protected Areas and 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. The key objective is to safeguard natural features in Scottish waters based on the principle of sustainable use. 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 and ideally novel marine 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 Environment Scotland advises the Scottish Government on designating Historic MPAs and provides management advice. Scottish Ministers take the decision on designation.

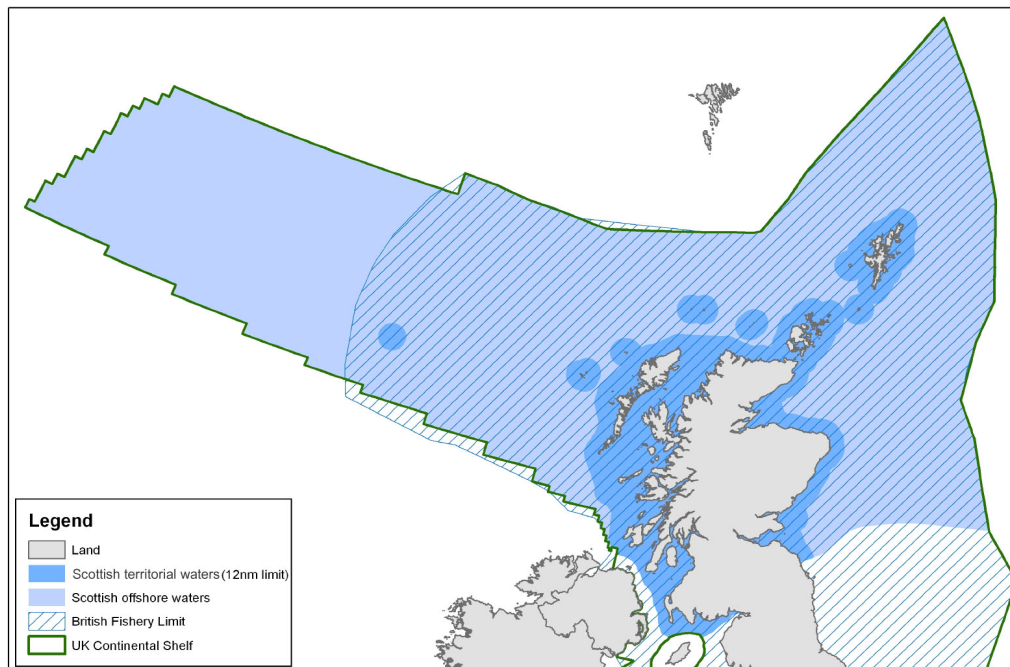


Figure 1: Extent of Scotland's seas.

Purpose of these guidelines

1.5. This guidance note sets out how Historic Environment Scotland (HES) works with the Scottish Government to apply powers under the Marine (Scotland) Act 2010 to select, designate, and manage Historic Marine Protected Areas (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 need to know what a HMPA 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 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.



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

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.

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'.

Operation	Coast-edge	Foreshore	Near-shore	Offshore
<i>Extraction</i>	Alteration to water courses	Gravel extraction	Maintenance/capital dredging; Dumping at sea;	Aggregate extraction; Dumping at sea
<i>Construction (site-specific)</i>	Housing; Transport infrastructure (e.g bridges; causeways)	Ports/harbours/ marinas; Aquaculture; Transport (e.g causeways/ bridges); some wave energy technologies	Energy installations – e.g. marine and offshore wind renewables;	Energy installations – e.g. renewables and oil and gas development; Carbon Capture Storage;
<i>Construction (linear)</i>	Embankment s; cable/pipe-laying	Coastal defences; hard landscaping; Cable/pipe-laying;	Cable/pipe-laying;	Cable/pipe-laying;
<i>Fisheries</i>		Shellfish collection; fixed netting	Static gear; mobile gear (e.g demersal trawling/ nephrops and scallop dredging)	Static gear; mobile gear (e.g demersal trawling/nephrops and scallop dredging);
<i>Diffuse activities</i>	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 if marine historic assets are exposed to the operation and its effects. In this table, near-shore is taken to mean waters shallower than c.30m water depth.

Receptor	Impact	Pathway	Source (man-made operations only)
area	physical damage;	collision;	construction, site-specific and linear
	loss;	abrasion;	anchoring/mooring
asset(s)	alteration;	removal;	commercial fishing (static gear; demersal trawling/ nephrops and scallop dredging)
		selective removal;	extraction (capital dredging)
		degradation due to changes in water chemistry;	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)	degradation due to changes in sedimentation (e.g erosion);	pollution incidents; recreation and tourism
			indirect effects from construction (indirect effects) extraction; dumping at sea; ship-wash

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.

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 use, 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 and, in the future, regional marine plans 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 marine 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

2.8. Scottish Ministers look to Historic Environment Scotland (HES) 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 Historic Environment Strategy *Our Place in Time* (Scottish Government 2014).

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 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 planning and consenting arrangements:

- 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. This will help to align heritage designations offshore with the marine planning system thereby avoiding duplication of consent mechanisms where at all possible. It has replaced 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 Historic Environment 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. Information on designations administered by HES is available at <http://portal.historicenvironment.scot/>

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.

Relationship to other relevant UK regimes

2.13. Although use of section 1 of the Protection of Wrecks Act 1973 has ceased in Scotland this mechanism continues to be used elsewhere in the UK 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 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. Information on military maritime graves in Scotland is available from <https://marinescotland.atkinsgeospatial.com/nmpi/>

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. The National Register of Historic Vessels (NRHV) provides an overview of the UK's surviving historic vessels. Information is available at <https://www.nationalhistoricships.org.uk/>.

2.17. HES will continue to liaise with Historic England, Cadw, DoENI, the Ministry of Defence and Maritime Coastguard Agency on matters of common interest in relation to heritage.

Undesignated marine historic assets

2.18. 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. More information on marine planning and licensing is set out in [section 7](#).

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.

3.2. In advising the Scottish Government on HMPA designation, HES applies overarching principles and policies set out in the Historic Environment Policy for Scotland (HES 2019).

HEP1: Decisions affecting any part of the historic environment should be informed by an inclusive understanding of its breadth and cultural significance.

Principles:

- Recognising the cultural significance of sites and places supports good decision-making.
- A place must be understood in order for its cultural significance to be identified.
- A wide range of factors contributes to cultural significance.
- Knowledge and information about the historic environment is critical to the understanding of our past, present and future.
- The historic environment changes over time, and so does how it is understood and appreciated.
- Research, discussion and exchange of ideas can all contribute to our understanding of the historic environment.
- Understanding will improve when information is made widely available and everyone has the opportunity to contribute to knowledge of the historic environment.

HEP2: Decisions affecting the historic environment should ensure that its understanding and enjoyment as well as its benefits are secured for present and future generations.

Principles:

- Good decisions are well informed, transparent, robust, consistent and proportionate.
- Caring for the historic environment benefits everyone, now and in the future.

HEP5: Decisions affecting the historic environment should contribute to the sustainable development of communities and places.

Principle:

- Everyone has a stake in the historic environment and how it is looked after.

HEP6: Decisions affecting the historic environment should be informed by an inclusive understanding of the potential consequences for people and communities. Decision-making processes should be collaborative, open, transparent and easy to understand.

Principle:

- Everyone has a stake in the historic environment and how it is looked after.

The Scottish Marine Protected Areas Project

3.3. HES works closely 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 MPAs and the creation of a network of MPAs in the seas around Scotland.

Procedures for selecting candidate HMPAs

3.4. As part of the Scottish MPA project, the selection of candidate HMPAs will be led by HES. Designations may occur in relation to priorities identified by HES and candidates which HES are asked to consider by third parties. In both scenarios, candidates are assessed against the criterion of 'national importance' (See the selection guidance in [Annex A](#)).

Third party proposals

3.5. Anyone can ask HES to assess a site for designation by completing an application form available online at <https://www.historicenvironment.scot/advice-and-support/listing-scheduling-and-designations/marine-heritage/propose-a-site-as-a-marine-protected-area/>. Some nominations may not be deemed, in our current state of knowledge, to be of sufficient significance to merit detailed assessment. Where detailed assessment is merited, survey is normally necessary before a decision to designate is taken. As this work has 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. HES 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, HES will commission the necessary work.

HMPAs and the Scottish MPA network

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 HES 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 HES to facilitate heritage assessment, principally through the mechanisms set out above. It is to be hoped that the results of any such

work may help to enhance national and regional inventories of archaeological sites, held by HES and Local Authority Archaeology Services.

Stakeholder engagement

3.8. The identification and designation of HMPAs will be undertaken in collaboration with marine stakeholders. Occasional meetings and workshops with the marine and the heritage sector will provide opportunities to discuss HMPA designation process and priorities in more detail with interested parties. Engagement with the heritage sector takes place primarily through the Built Environment Forum of Scotland,ⁱ an intermediary body for the historic environment sector in Scotland.

3.9. Except in urgent cases, HES also engages with stakeholders on the preparation of advice to the Scottish Government on individual proposals. The level of engagement will reflect direct interest in specific proposals, for example from those living and working in coastal locations where candidate HMPAs are situated. This engagement can take the form of drop-in sessions and meetings, or online surveys/consultation. Figures 8 and 9 set out mechanisms for formal consultation by the Scottish Government as required under sections 75-77 of the 2010 Act .

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. Information should also be provided as to how locations have been recorded and to what level of accuracy;
- 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. To date, 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 Beaulieu 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 4: 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.16: 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);
- where other forms of recognition are more appropriate – for example the National Register of Historic Vessels provides an overview of historic vessels in the UK.

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. HES will base its recommendations on designation and de-designation on the best available evidence. This will generally include geophysical assessment and/or diver-based surveys as well as background research of a sufficient quality to enable an informed decision to be made. Decisions to designate should not

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

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

follow from reliance on one source of information alone. Description of the sources used should be set out in each proposal.

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 for groups of marine historic assets, where possible rather than simple square/rectangular boundaries to ensure that the boundary relates closely to the features of interest. As is the practice UK-wide, to facilitate marking on charts and re-location, small circular protected areas will normally be used for single historic assets (e.g wrecks) and may on occasion also be used for groups of small groups of assets, for the same reason;
- using charted topographical features such as depth contours to delineate boundaries for some sites/features, recognising that this may assist sea-users (for example fishermen) to adapt activities in order to avoid impacts;
- 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 selection 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 by HES in advising Scottish Government on 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 appropriate and practicable for marine cultural heritage and in line with the Historic Environment Policy for Scotland (HEPS).

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 HES and/or 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 5: 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 to ensure that the process of designation by Scottish Ministers is fully accountable and one in which stakeholders have opportunities to participate at well-defined stages, including through formal consultation. This will normally be of 12-week duration although a shorter consultation may be considered desirable in some circumstances. Figure 8 sets out the process that will be followed under all but urgent cases.

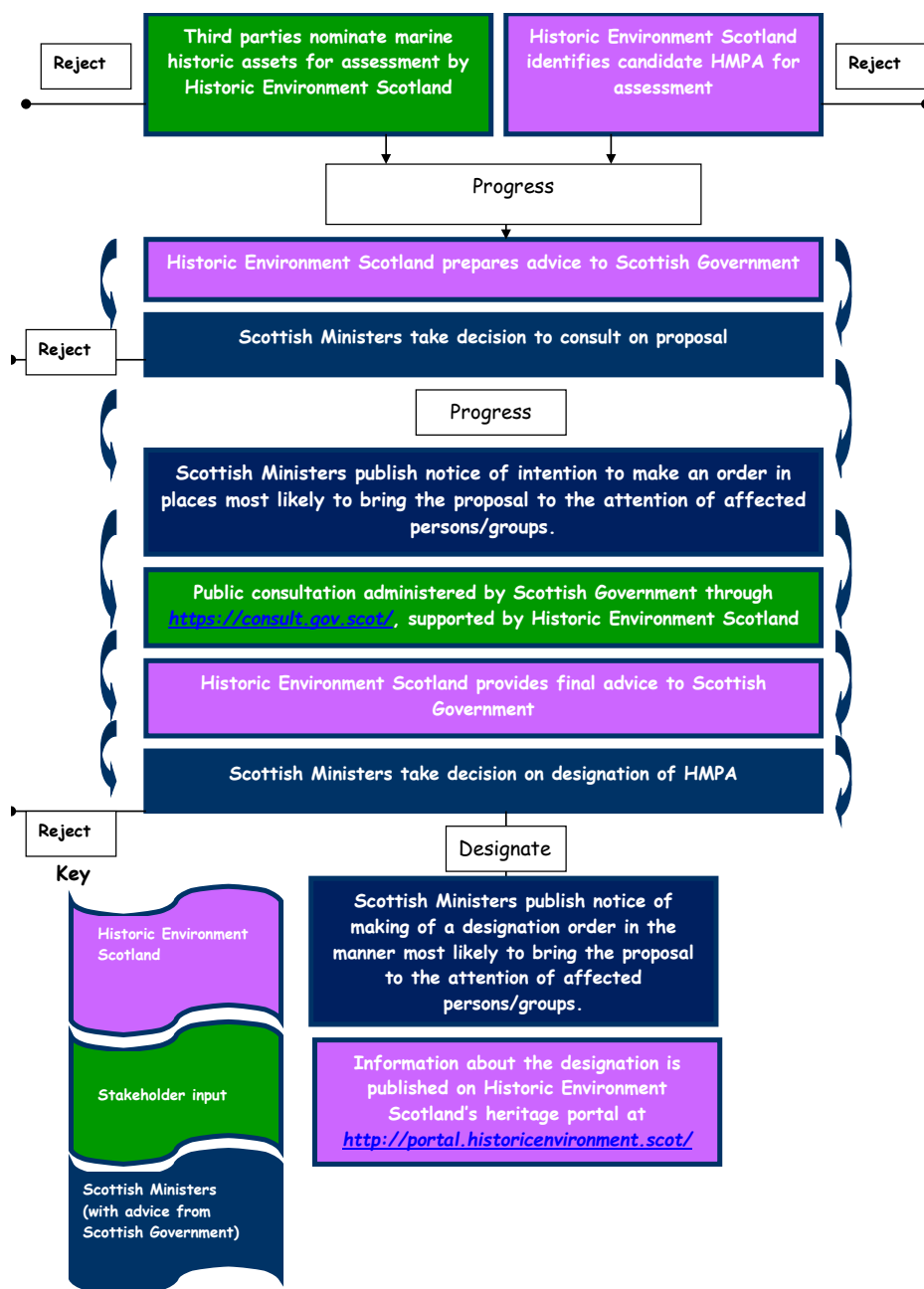


Figure 6: Designation procedures for HMPAs under sections 75 and 76 of the 2010 Act. Where a Marine Conservation Order is required to enhance the protection of a HMPA, the process of making this Order will often take place in tandem with the designation procedure.

Urgent designation

4.2. The Scottish Ministers can take forward designation prior to consultation where there is an 'urgent threat' to a marine historic asset. This may be considered appropriate in situations where advice from HES indicates that public consultation prior to designation 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.

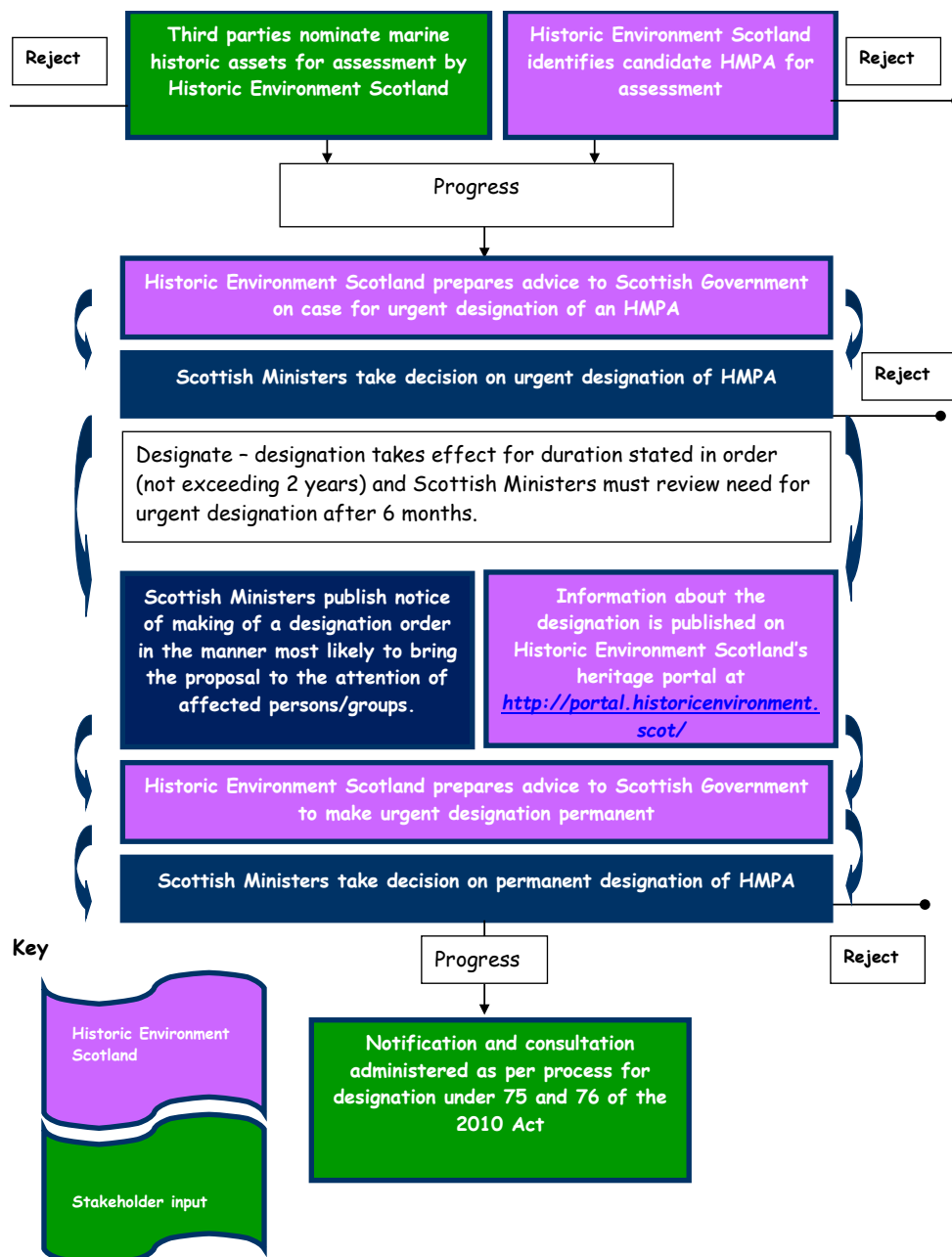


Figure 7: Process tree for making urgent designations under section 77 of the 2010 Act. Where an urgent Marine Conservation Order is required, the process of making this Order will often take place in tandem with the designation procedure.

Consultation

4.3. HES assists the Scottish Government with consultation on HMPA proposals by communicating widely with stakeholders likely to be interested in or affected by a proposed designation order (see table 4)

Types of consultee	Consultees	Designation policy/strategy	Designation proposals
Statutory consultees	Scottish Environmental Protection Agency (SEPA) Scottish Natural Heritage (SNH) Maritime and Coastguard Agency (MCA) Commissioners of Northern Lighthouses (NLB)	Yes	Yes
Other governmental bodies	Ministry of Defence; Marine Scotland Crown Estate; Transport Scotland UK Hydrographic Office Scottish Water 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 Other fishing organisations	Yes	Yes
Tourism and recreation umbrella groups	VisitScotland SportScotland Royal Yachting Association Scotland Recreational Diving Associations Recreational sea-angling representative bodies	Yes	Yes
Heritage groups	Built Environment Forum of Scotland Institute of Field Archaeologists Association of Local Authority Archaeology Services (ALGAO Scotland) Joint Nautical Archaeology Policy Committee Nautical Archaeology Society	Yes	Yes
Other public authorities relevant to area	Marine Planning Partnerships (by area) Adjacent Local Authority 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. This list will be kept under review and can be altered as needs be.

Finding out about HMPA designation

4.4. HES assists the Scottish Government by notifying interested parties about HMPA designation. We also make information on HMPA designations, including spatial data relating to the extent of protected areas, available online through HES's portal (<http://portal.historicenvironment.scot/>). The boundaries of HMPAs are normally shown on UK Admiralty charts.

4.5. To help promote wider understanding and appreciation of HMPAs, has published 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. Further information is available at <https://www.historicenvironment.scot/advice-and-support/listing-scheduling-and-designations/marine-heritage/>

Amendment or revocation of designations

4.6. The 2010 Act makes provision for MPA designations to be amended or revoked on review. HES 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 Government and 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 marine historic assets within 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?

Offences

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](#).

Duties on public authorities

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.

Managing activities through planning and marine licensing processes;

Impacts to marine historic assets from a wide range of works or activities subject to planning or marine licensing processes will be assessed by HES in discussion with the relevant authority. Authorisation decisions are taken in accordance with the appropriate marine plans. See [section 7](#) for more information.

Marine Conservation Orders

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.

Commercial fishing interactions

HES 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 Marine Conservation Orders. [Section 9](#) provides information.

Finding out about management of individual HMPAs

5.3. Stakeholders should refer to information about individual designations but table 5 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 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,	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. You are encouraged to provide brief reports about your visits to HES to help them to monitor the condition of marine historic assets. <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 to aid diver access to wrecks are carefully placed and not used as mooring lines for your vessel - this risks damage to marine historic assets.</u>	Marine Conservation Orders can be used to restrict/ regulate/ prohibit these activities.
Scientific and archaeological investigation	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 in accordance with archaeological best practice. <u>But - Intrusive activities, including archaeological excavation, sampling and recovery of objects of historic interest are subject to marine licensing. You should discuss your plans with HES in the first instance and follow their advice. If a marine license is required, you will need to apply to Marine Scotland Licensing Operations Team (MS-LOT) who will take advice from HES about whether these activities should proceed, subject to conditions. Even if the activity is below the licensing threshold, you will still need to notify Marine Scotland.</u>	You will need to refer to information about each HMPA to find out if there is an MCO in place. If there are restrictions in place, you should seek advice from HES about any permit that may be required.
Recreational sea-angling	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.	
Boating, vessel traffic	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 except in instances of maritime distress.	
Commercial fisheries	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.	Where there is a need to regulate fishing activity, sectoral fisheries measures will be used.

Table 5 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 HES.

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	
	Others	Fisheries Management Plans developed by Inshore Fisheries Groups	
Administration of regulatory and enforcement regimes	Scottish Government	Regulation of commercial fisheries	HES will work with relevant departments to consider the need for fisheries regulation and enforcement measures to manage impacts to HMPAs
		Enforcement of marine licensing/planning regimes	HES 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 HES if significant adverse impacts are anticipated (see case-study)

Table 6 – 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 HES and it must have regard to advice from HES. Contact information is provided [here](#).

In practice, public authorities should make early contact with HES to determine the significance of an activity so that advice can be given at an early stage. Where advice is requested, HES 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 HES notifies the authority that it need not wait, or where the activity is routine and previous guidance has not ceased to apply.

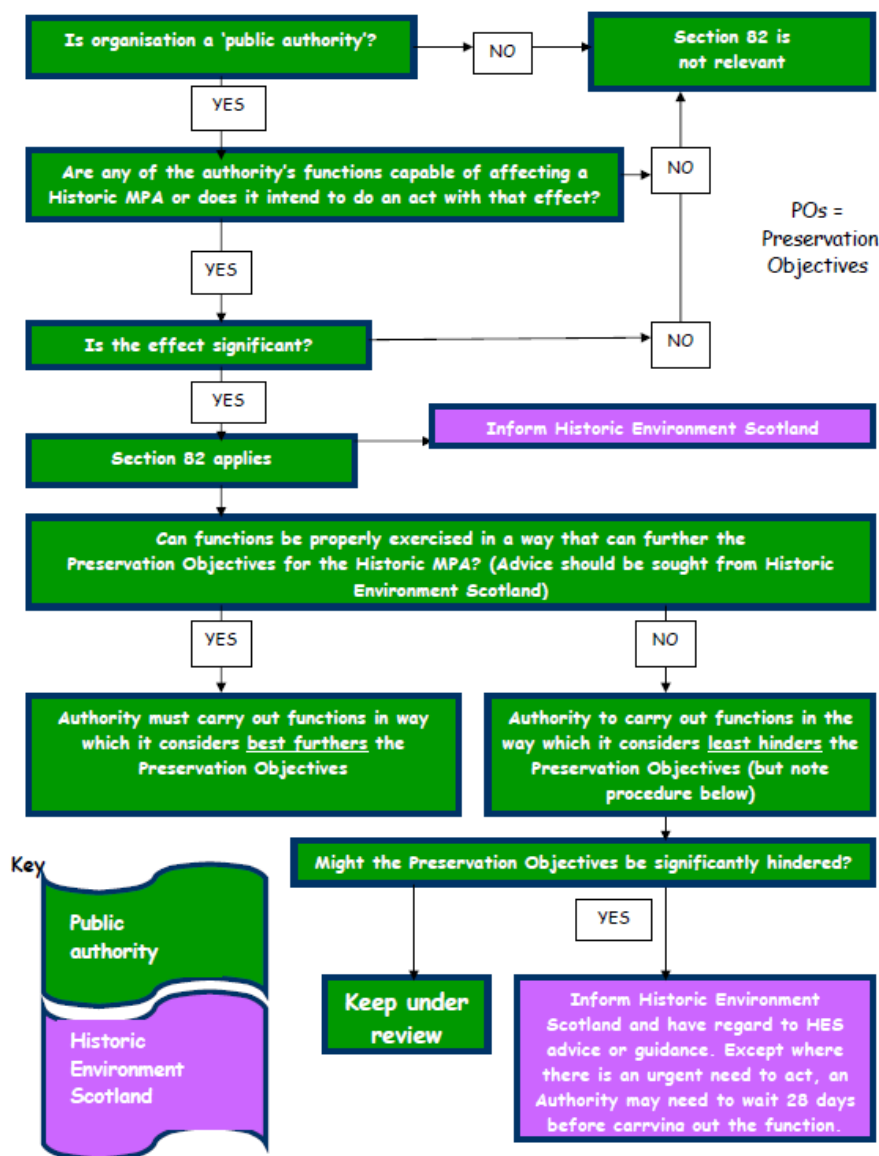


Figure 8: Process tree relating to on the functions of public authorities under section 82 of the 2010 Act

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 HES about offences

6.3. A Public Authority is also required to inform HES 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 HES/Marine Scotland to consider enforcement action and will also help HES to improve the advice it provides.

7. MANAGING ACTIVITIES THROUGH PLANNING AND MARINE LICENSING

Marine plans

7.1. The National Marine Plan sets out how the Scottish Government expects key sectors to develop. This plan includes objectives for the sustainable use of marine resources and policies to help manage conflict in the marine area, including in relation to cultural heritage. In due course, to take account of local circumstances there is the prospect of regional marine planning within Scottish Marine Regions through the work of Marine Planning Partnerships. Under section 15 of the 2010 Act, a public authority must take any authorisation or enforcement decisions in accordance with these marine plans, unless relevant considerations indicate otherwise.

Consenting arrangements – planning permission and marine licensing

7.2. A wide range of activities and works in the marine environment require authorisation, whether through planning permission, or marine licensing (see table 7).

7.3. 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 will have to take advice from HES. Applicants are also encouraged to take early account of the presence of HMPAs and to seek advice from HES. Contact information is provided [here](#).



Figure 9: 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 should discuss your plans with HES in the first instance before applying to Marine Scotland (for a marine licence). HES 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

Type of works/activity	Consent required	Licensing authority
Aquaculture developments	Planning permission - Town and Country Planning Regs.	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>Marine license by virtue of 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</p> <p>Tel: +44 (0)1224 295579 e-mail: ms.marinelicensing@gov.scot</p>

Table 7: Authorisation of operations in Scottish Territorial Waters. In addition to this, licensing of oil and gas developments is administered at UK level by DECC.

Requirements on authorising authorities

7.4. 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 HES and have regard to HES’s advice;
- wait 28 days before granting the authorisation (unless HES advises that authorisation can be given earlier).

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

⁷ The bulleted list of licensable activities through marine licensing is not exhaustive. For more complete information, please see Marine Scotland licensing <https://www2.gov.scot/Topics/marine/Licensing/marine>

7.5. 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 HES 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 HES 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 HES to respond to public authorities within the time-frame.

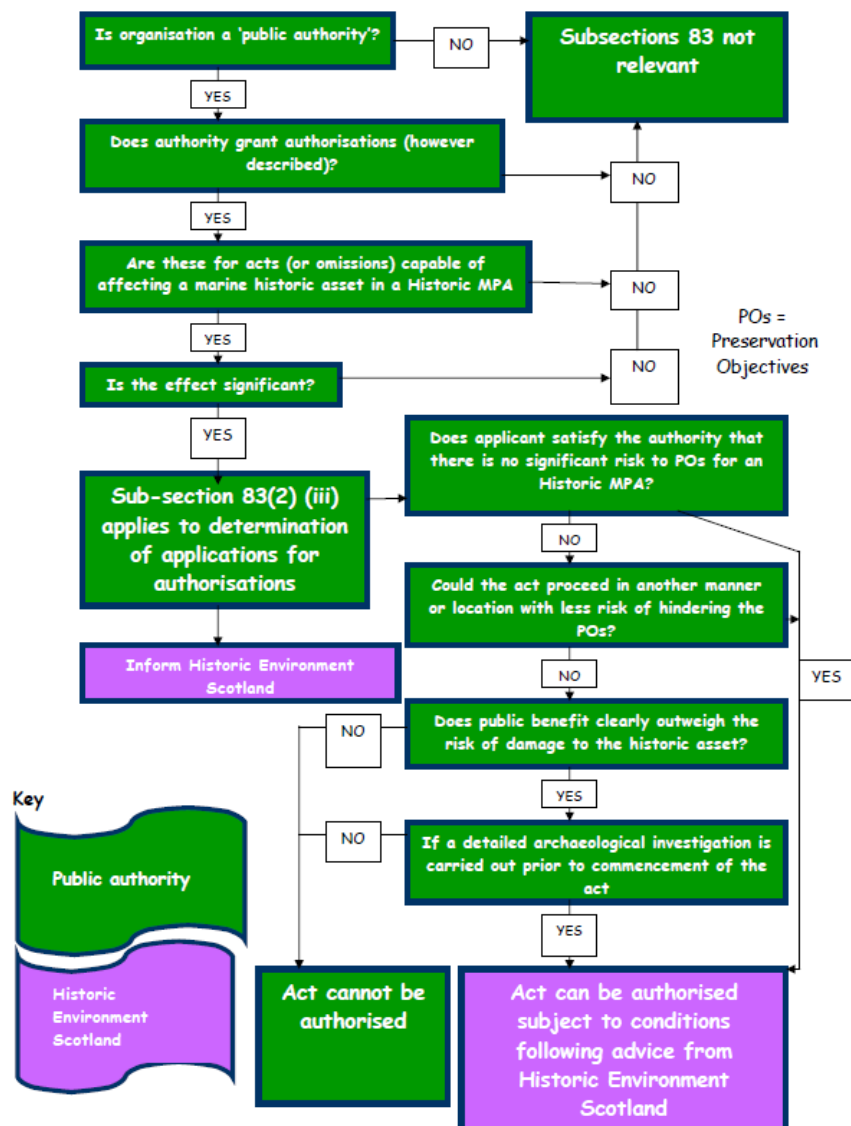


Figure 10: Process tree where public authorities issue authorisations for operations capable of affecting a marine historic asset in a HMPA (Section 83 of the 2010 Act)

7.6. 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.

Impact assessment

7.7. Impact assessment is the process of evaluating the significance of impacts on HMPAs and their preservation objectives, either in relation to projects and plans, or in enforcement situations. In many cases, this assessment will amount to a judgement based on advice from HES built up from a number of factors including:

- the character and perceived significance of marine historic assets affected – with reference to the statement of national importance;
- the magnitude and spatial extent of impacts;
- the probability, duration, frequency and reversibility of the impacts;
- the degree to which the area of an HMPA, marine historic assets or features of marine historic assets are vulnerable to impacts arising from the proposed changes;
- confidence in the accuracy of predictions of change;
- the existence of other guidance and protocols which can also be taken into account in decision making;
- scope for mitigation.

Risks to human health or the environment (for example, due to emergencies) may be reasons to accept/or not accept impacts on HMPAs. However, HES will not normally offer a view on these. The role of balancing concerns in consenting processes would be for the decision maker.

Mitigation measures

7.8. 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. To provide professional assistance where appropriate, developers may wish to commission their own professionally competent archaeological organisation or consultant whose work should meet quality standards set down by the Institute for Archaeologists (IFA).

Archaeological investigation

7.9. 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.

7.10. 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).

7.11. In both instances, HES 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. HES will also continue to monitor the archaeological investigation process until it is complete.

7.12. 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](#)).

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 Environment Scotland's advice. Historic Environment 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 Environment 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 Environment Scotland is provided [here](#).

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

7.13. 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, HES works with developers and their consultants to guide the location of developments and to ensure that impacts on HMPAs are minimised.

7.14. 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).



Figure 11: 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 8 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 13).

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 8 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 14 is required to make an MCO permanent.

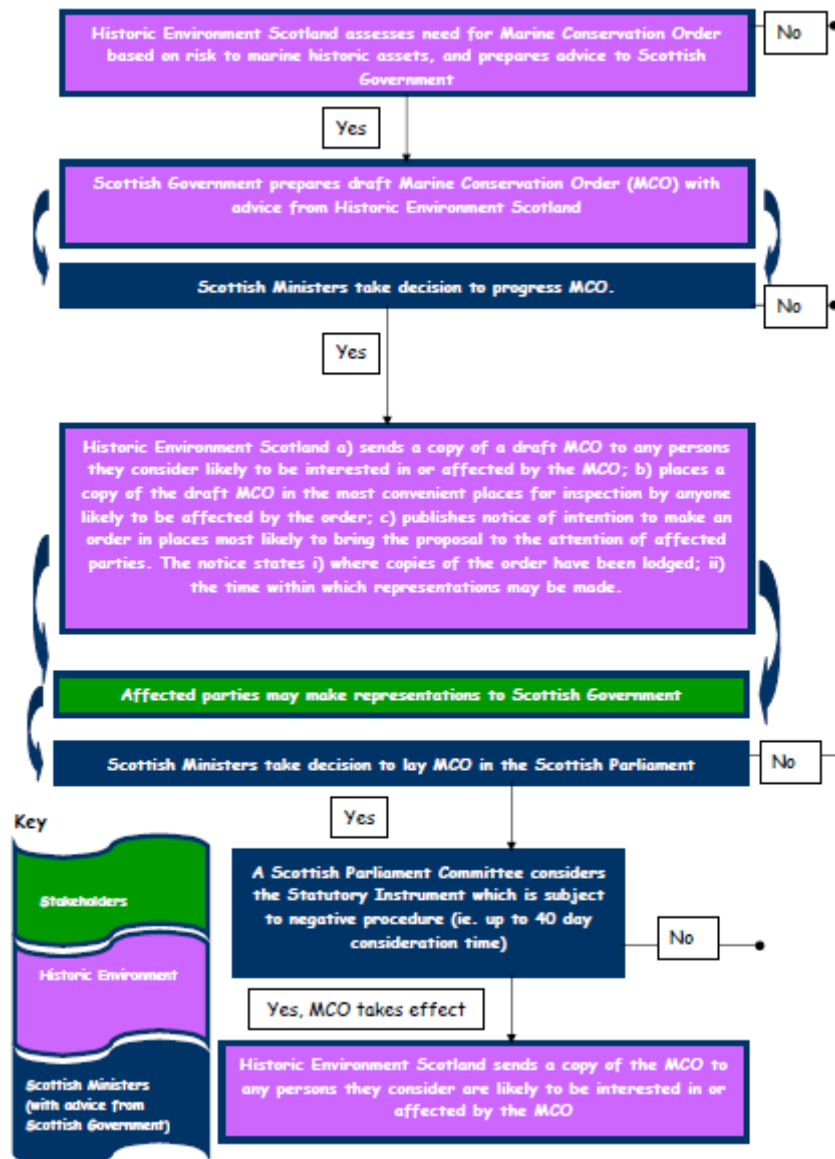


Figure 12: Procedure for making, amending or revoking Marine Conservation Orders (section 87 of the 2010 Act.) The making of an MCO will normally take place at the time of designation of a HMPA.

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 or HES 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 HES website and applications will be made in writing to HES, at no cost to the applicant;
- anyone will be able to apply to HES 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 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 HES does not confer ownership rights to a Permit Holder.



Figure 13: 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 HES 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 HES 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 or HES 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 HES'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 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 HES 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 MARINE CONSERVATION ORDERS OR 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 14: 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, liaison between HES and provision of advice to local fishing associations and fishermen, 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 Marine Conservation Orders and/or the Inshore Fishing (Scotland) Act 1984 or the Sea Fish (Conservation) Act 1967. The latter laws 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. In some areas, fisheries management measures for other types of MPA may provide secondary benefits for HMPAs nested within these larger designated areas.

10. OFFENCES AND ENFORCEMENT

General offences relating to marine historic assets

10.1. HMPA designation introduces a number of ‘general offences’ (see table 9). 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 9: 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 10: 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. 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 to secure the safety of a vessel if the person has taken reasonable and timely steps to inform HES 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 HES'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 HES 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 HES, Marine Scotland, the police, and other justice partners. HES 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 HES as follows:

Information	Team responsible	Contact details
Selection and designation of HMPAs	Designations Team	HES Longmore House Salisbury Place Edinburgh EH5 3EH 0131 668 8600 Email: designations@hes.scot
Management of HMPAs	Strategic Heritage Management Team	Historic Environment Scotland Longmore House Salisbury Place Edinburgh EH5 3EH 0131 668 8600 Email: hmenquiries@hes.scot

Table 11: Historic Environment Scotland contacts

11.2. Information about existing scheduled monuments, listed buildings and HMPAs in Scotland's territorial waters can be accessed via the Historic Environment Scotland decisions portal (<http://portal.historic-scotland.gov.uk>.)

11.3. Information on other types of 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)

Historic Environment Scotland - Scottish Charity No. SC045925

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Legislation

Ancient Monuments and Archaeological Areas Act 1979 - <http://www.legislation.gov.uk/ukpga/1979/46> .

Historic Environment (Amendment) (Scotland) Act 2011 - <http://www.legislation.gov.uk/asp/2011/3/contents/enacted>

Inshore Fisheries (Scotland) Act 1984 - <http://www.legislation.gov.uk/ukpga/1984/26>

Marine (Scotland) Act 2010 - <http://www.legislation.gov.uk/asp/2010/5/contents>

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>

International Conventions

UNESCO 2001 Convention on the Protection of the Underwater Cultural Heritage <http://unesdoc.unesco.org/images/0012/001260/126065e.pdf>

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

Cultural Significance - aesthetic, historic, scientific or social value for past, present or future generations. Cultural significance can be embodied in a place itself, its fabric, setting, use, associations, meanings, records, related places and related objects. (*Australia ICOMOS Burra Charter 2013*)

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

Designation –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) - MPAs established using the provisions in Section 67 (1) (c) of the 2010 Act for Scottish territorial waters.

Historic Environment Scotland (HES) – lead public body for the historic environment in Scotland.

IUCN – International Union for Conservation of Nature

Joint Nature Conservation Committee (JNCC) – 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 UK territorial sea 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 – in this guidance, a place where marine historic assets are preserved

Site condition – in this guidance, 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 Education, Scientific and Cultural Organisation.

ANNEX A: HOW HES ASSESS IF A MARINE HISTORIC ASSET IS OF NATIONAL IMPORTANCE IN PROVIDING ADVICE TO THE SCOTTISH GOVERNMENT

1. When assessing a marine historic asset for designation, we consider whether its cultural significance is of national importance. By 'cultural significance', we mean the aesthetic, historic, scientific or social value for past, present or future generations. The cultural significance of a marine historic asset can be found in its artistic, archaeological, architectural, historic, traditional, aesthetic, scientific and/or social interest.
2. We follow broadly the same approach to selection as we use for scheduling monuments of national importance, to ensure that we consider archaeological sites in the marine environment as we do sites on land. We examine the cultural significance of marine historic assets under the following headings.
 - **Intrinsic characteristics** – how the physical remains of a marine historic asset contribute to our understanding of the past.
 - **Contextual characteristics** – how a marine historic asset relates to its surroundings and/or to our existing knowledge of the past.
 - **Associative characteristics** – how a marine historic asset relates to people, events and/or historic and social movements.
8. 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 submerged. Wrecked vessels and aircraft might have strong and far-reaching connections, or may have come from far afield and have only a passing association with the places where they have come to rest. We therefore consider the cultural significance of such assets beyond Scotland.
9. The national importance of a marine historic asset is demonstrated in one or more of the following ways.
 - It makes a significant contribution to our understanding or appreciation of the past, or has the potential to do so. It may do so in itself, or as an example of a specific type of marine historic asset, or as a geographical group of related marine historic assets.
 - It retains structural, technical, decorative or other physical attributes, which make a significant contribution to our understanding or appreciation of the past. The remains can be upstanding fabric, evidence of buried archaeological structures and deposits, scatters of artefacts or a combination of these.
 - It is a rare example of a marine historic asset type when assessed against knowledge of the history and archaeology of Scotland, its seas and their place in the wider world.
 - It is a particularly representative example of a type of marine historic asset when assessed against knowledge of the history and archaeology of Scotland, its seas and their place in the wider world.

- It has research potential that could significantly contribute to our understanding or appreciation of the past.
- It makes a significant contribution to the marine historic environment and wider marine environment. This may include the relationship of the marine historic asset and its parts to other marine historic assets or features in its vicinity.
- It has significant associations with historical, traditional, social or artistic figures, events or movements that are of national importance.

ANNEX B – PRESERVATION OBJECTIVES

This guidance describes a framework to be adopted by HES 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 12: 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 appropriate and 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 13: % 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 14: 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, whether located within the area or the surrounding vicinity. Table 16 provides an assessment framework for this based on the source - pathway - impact - receptor model in table 2.

Applying this framework using the best available evidence and scientific understanding, will enable HES 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 appropriate and practicable, but also in the successful management of a Historic MPA because it provides a) useful baseline evidence for monitoring and provision of operational advice by HES, 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, micro-organisms. 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 15: 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 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 periodically. This will often be possible through non-intrusive survey and recording. This could be undertaken through the field assessment mechanisms mentioned in 3.6. However, diving clubs, and avvocational archaeologists have traditionally played an extremely important role in helping to survey and monitor sites under water and it is hoped that they will be able to continue to play an important role here too. HES 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.

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

Such monitoring will enable HES 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.

There may be instances where preservation objectives for HMPAs overlap with conservation objectives for Nature Conservation MPAs. For example, this might occur where an HMPA is nested within a larger Nature Conservation MPA. In such instances, HES will work closely with Scottish Natural Heritage in order to minimise any conflict that arises, for example, impacts to biodiversity resulting from activities directed at marine historic assets (e.g archaeological investigation).

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)

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.

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.
