

EXPLANATORY MEMORANDUM TO

THE PROTECTION OF WRECKS (DESIGNATION) (ENGLAND) ORDER 2016

2016 No. 685

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Culture, Media and Sport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This Order designates as a restricted area under the Protection of Wrecks Act 1973 (“the 1973 Act”) areas around the wreck sites of:
- *HMS A3*, an early Royal Navy submarine that sank on 2 February 1912.
 - *SM U-8*, an early German U-boat that was scuttled in 1915.
 - *Grace Dieu* and *Holigost*, two of the four ‘great ships’ commissioned by Henry V in the 15th Century.
- 2.2 This Order also revokes the Protection of Wrecks (Designation No.2) Order 1974 (S.I. 1974/56) which designated as a restricted area, the site of the *Grace Dieu*. This Order adjusts the position of the restricted area and extends its radius so that it now also includes the wreck site of the *Holigost*.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to a negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative context

- 4.1 Section 1(1) of the 1973 Act provides that where the Secretary of State is satisfied that there is, or may prove to be, the site of a vessel lying wrecked on or in the sea bed in UK waters and that the site ought to be protected from unauthorised interference on account of the archaeological, historical or artistic importance of the vessel, or of any objects contained or formerly contained in it which may be lying on the seabed in or near the wreck, he may by order designate an area around the site as a restricted area. Under section 1(3) it is a criminal offence for a person to engage in specified activities in a restricted area, except under the authority of a licence granted by the Secretary of State.
- 4.2 Section 1(4) of the 1973 Act requires the Secretary of State to consult with such persons as he considers appropriate before making a designation order. Historic England, on behalf of the Secretary of State, has carried out the necessary consultation.

4.3 The Secretary of State has exercised his powers under section 3 of the National Heritage Act 2002 to direct Historic England to exercise certain of his administrative functions under the 1973 Act on his behalf. As a result, the Secretary of State is advised by Historic England on whether wreck sites within UK waters adjacent to England should be designated.

5. Extent and territorial application

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is England only.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 Underwater cultural heritage is a devolved subject area, for which the Department for Culture, Media and Sport has responsibility in England. Currently 49 wreck sites around the English coastline are designated under the Protection of Wrecks Act 1973.

7.2 The Order designates as restricted areas the areas within a distance of 50 metres from the wreck sites of HMS A3 (located near Portland Bill, Dorset) and SM U-8 (located off Folkestone, Kent), and within a distance of 85 metres from the wreck site of the Grace Dieu and the Holigost (located at Bursledon, Hampshire).

HMS A3

7.3 One of four vessels in the first group of pre-First World War A-class submarines, the A3 was built by Vickers, Sons & Maxim Ltd. in Barrow-in-Furness. She was launched in March 1903 and commissioned on 13 July 1904. Of the other three boats in the group, the A1 is a Protected Wreck Site in the Solent, the A2 was scrapped after being sold in 1925 and the A4 was scrapped following her sale in 1920. Of the nine submarines that formed the second group of A-class boats, only the A7 survives (as a controlled site under the Protection of Military Remains Act 1986 off Plymouth) as the other vessels were all scrapped. The A3 is therefore one of only three surviving A-class submarines anywhere in the world. Its special interest was identified during the strategic submarine assessment commissioned under Historic England's National Heritage Protection Plan (NHPP) between 2011 and 2015.

7.4 Historic England recommends that the wreck of HMS A3 should be designated under the Protection of Wrecks Act 1973 for the following principal reasons:

- **Period:** the A-class was the Royal Navy's first class of British-designed submarines, laid down during 1903. The class was designed for coastal defensive work;
- **Potential:** together with A1 and A7 (both already designated), the A3 demonstrates experimentation and technical evolution in form, displacement and stability;
- **Rarity:** the A3 is one of only three surviving A-class submarines anywhere in the world;

- **Vulnerability:** the A3 remains vulnerable to legitimate, but uncontrolled, salvage.

SM U-8

- 7.5 The U-8 was a submarine (U-boat) built for the Imperial German Navy. It was launched in March 1911 as the last of a batch of four type U-5 boats ordered from the Germania shipyard, Kiel. On 4th March 1915 U-8 was passing westwards through the Dover Strait when she ran into the defensive nets of the Dover Barrage. The destroyer HMS Gurkha lowered an explosive sweep and when the line snagged on an underwater obstruction the charge was fired. Every lamp in the U-boat was smashed, rivets failed in many places in the pressure hull and the boat began to take on water; the main switchboard caught fire and both motors broke down. The commander, ordered the submarine to the surface, where she was abandoned and later sank. Lying on an even keel in the English Channel off Folkestone, Kent, to the west of the southern end of the Varne Sandbank at a charted depth of 27m, the U-8 was the first U-boat casualty of the First World War off England's coast and is the earliest U-boat wreck recorded in English territorial waters. Despite lying within the hazardous Dover traffic separation zone, the wreck is a well-known recreational diving site and remains vulnerable to theft and deliberate damage. Its two propellers are missing, one of which is known to have been stolen by salvage divers, though it was later recovered. Acoustic survey of the wreck in 2015, commissioned by Historic England, recorded that the submarine is in very good condition and sits upright on the seabed with periscopes and radio masts still present.
- 7.6 Historic England recommends that the wreck of submarine SM U-8 should be designated under the Protection of Wrecks Act 1973 for the following principal reasons:
- **Period:** the U-8 was the first U-boat of the First World War sunk in England's coastal waters;
 - **Potential:** the U-8 was one of only four Type U-5 boats ever built and is the earliest U-boat wreck in England's territorial waters;
 - **Rarity:** the U-8 is a rare example of a pre-First World War German-built submarine;
 - **Vulnerability:** the U-8 remains vulnerable to legitimate, but uncontrolled, salvage.

Grace Dieu/Holigost

- 7.7 The *Grace Dieu* was built in 1418 for Henry V as a large clinker-built ship. Part of the crew mutinied on its one known voyage, and the vessel never went to sea again, being laid up in Southampton Water for several years. It was then towed upstream to its final mud berth on the River Hamble, Hampshire. Following a lightning strike in 1439 it was partially broken up for salvage in the same location. Co-located with the wreck of the *Grace Dieu* is the wreck of a ship believed to be *Holigost*. *Holigost* was originally a Spanish ship named the *Santa Clara*, but was captured in 1413-14 then immediately rebuilt. As Henry V's *Holigost*, it joined the English fleet in November 1415, and participated in actions off Harfleur in 1416 and the Chef de Caux (otherwise known as the Bay of the Seine) in 1417. The *Holigost* was moored in the Hamble for a number of years before being docked at Bursledon on 21 June 1426,

where it was gradually stripped, hulked and abandoned. It is believed to have sunk in the dock where it was being worked upon.

7.8 Historic England recommends that the wreck of *Grace Dieu* should be designated under the Protection of Wrecks Act 1973 for the following principal reasons:

- **Period:** the site represents a well-documented naval vessel from the reign of Henry V, one of the largest clinker-built vessels ever constructed, and evidence of the transition to vessels of the carrack type in northern Europe at this time;
- **Rarity:** sites of medieval shipwrecks are rare, and those capable of identification in the documentary record remain unusual among medieval vessels so far discovered;
- **Documentation:** the vessel's build, use and loss are all extensively documented from primary sources, as are the results of archaeological excavations demonstrating subsequent interventions on the site;
- **Potential:** the vessel has the potential to inform on the development of northern European shipbuilding at a time of transition in the early 15th century, and consequently of the development and evolution of medieval warships.

7.9 It also recommends that the wreck site thought to represent the remains of the *Holigost* is included within the radius of the Protected Wreck Site of the *Grace Dieu* for the following principal reasons:

- **Period:** the site represents the remains of a vessel thought to be the *Holigost*, a medieval vessel contemporary with the *Grace Dieu*;
- **Rarity:** the sites of medieval shipwrecks are rare, and a second medieval wreck site in close proximity to another is unique;
- **Group value:** the wreck has the potential to be contemporary with the *Grace Dieu*, forming a unique assemblage of medieval vessels lost in a similar context;
- **Potential:** this site has the potential to inform on the evolution of the medieval warship, including the nearby wreck of the *Grace Dieu*, and together with the *Grace Dieu*, on the development of the medieval mud docks at Bursledon.

8. Consultation outcome

HMS A3

8.1 In respect of HMS A3, views have been invited from all such persons and bodies as are considered appropriate. These were the British Sub-Aqua Club, the Crown Estate, Dorset Country Council, the Hoddesdon Sub-Aqua Club, the Marine Management Organisation, the Ministry of Defence, Natural England, the Nautical Archaeology Society, the Professional Boatman's Association, the Receiver of Wreck, the Southern Inshore Fisheries and Conservation Authority, Trinity House and the UK Hydrographic Office.

8.2 Three responses were received, all of which either supported or raised no objections to the proposal to designate. The Ministry of Defence responded, noting that as the wreck of HMS A3 is under a permanent level of vulnerability their opportunities for engagement, should it be deemed to be 'at risk', will be limited. The Crown Estate acknowledged receipt of the consultation, but had no comment to make. Likewise,

the Southern Inshore Fisheries and Conservation Authority (IFCA) had no objection to designation.

SM U-8

- 8.3 In respect of the SM U-8, views have been invited from all such persons and bodies as are considered appropriate. These were the British Sub-Aqua Club, the Crown Estate, the Embassy of the Federal Republic of Germany, Mr Innes McCartney, Kent County Council, Kent & Essex Inshore Fisheries and Conservation Authority, the Marine Management Organisation, the Ministry of Defence, the Nautical Archaeology Society, the Receiver of Wreck, Trinity House and the UK Hydrographic Office.
- 8.4 Four responses were received, all of which either supported or raised no objections to the proposal to designate. The owner of the U-8, the Federal Republic of Germany, was contacted through their Cultural & Naval Attachés in London and were supportive of the proposed designation. The UK Hydrographic Office and Receiver of Wreck indicated that they had no objection to the proposed recommendation. Nor did the Crown Estate, but it observed that the proposed restricted area is either overlapping or within a short distance of a cable that is classified as out of service, with its associated lease surrendered. No such cable was observed on the AUV survey data but Historic England will be mindful of this during future interventions. The British Sub-Aqua Club (BS-AC) recognised the importance of the U-8, but noted that designation under the 1973 Act “would result in the exclusion of recreational divers from a site that largely derived its current condition report from a recreational diving club.” However this concern can be addressed through appropriate licencing.

Grace Dieu and Holigost

- 8.5 In respect of the Grace Dieu and the Holigost, views have been invited from all such persons and bodies as are considered appropriate. These were the Centre for Maritime Archaeology, the Crown Estate, Dr Ian Friel, Eastleigh Borough Council, Fareham Borough Council, Hampshire County Council, the Marine Management Organisation, Natural England, the Nautical Archaeology Society, River Hamble River Authority, Royal Armouries, UK Hydrographic Office and University of Southampton.
- 8.6 The Senior Planning Officer for Eastleigh Borough Council indicated that the Council supported the proposal to revise the designation since it considers the marine industry to be a significant aspect of the area’s heritage. Four independent historians (including Dr Friel) also expressed their support for the proposal to revise the *Grace Dieu* designation. The University of Southampton, the Crown Estate, the Nautical Archaeology Society, River Hamble Harbour Authority and the Marine Management Organisation responded offering no objections to proposed re-designation.

9. Guidance

- 9.1 Details of all designated wreck sites in English waters are listed in the National Heritage List for England hosted by Historic England, as well as being published in Mariner Notices and Admiralty Charts issued by the UK Hydrographic Office and on the Receiver of Wreck website. Guidance on applying for licences to such sites may be found online at: <https://historicengland.org.uk/advice/planning/consents/protected-wreck-sites/applying-for-licensing/>

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is not significant.
- 10.2 The impact on the public sector is not significant.
- 10.3 An Impact Assessment has not been prepared for this instrument as no significant impact is foreseen on the private, voluntary or public sectors.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 11.3 The burden for small businesses is a need to be licensed to carry out diving operations at the wreck sites. There is no fee for obtaining a licence.
- 11.4 The legislation applies to all sea users and businesses of all sizes equally since, potentially, the impact of small businesses on wreck sites can be just as detrimental as that of large businesses. As with all applications for licences to access a restricted area, it is for the Secretary of State to consider each application on its merits, having taken into account all material considerations.

12. Monitoring & review

- 12.1 The condition of protected wreck sites in English waters is monitored as part of Historic England's Heritage at Risk programme. Historic England receives reports from licensees and from inspections undertaken by the Government's contractor for archaeological services in support of the 1973 Act.
- 12.2 Historic England is progressively implementing conservation statements and management plans for each of these protected wreck sites.
- 12.3 The Parliamentary Under Secretary of State, David Evennett, has made the following statement regarding a review provision:

In my view it is not appropriate to make provision for review in this instrument, as a review would be disproportionate taking into account the economic impact of the provision made. The impact of the provision will be that those who wish to carry out diving or salvage operations at the sites designated will need to obtain a licence granted by the Secretary of State, which are free to obtain. Only divers who wish to dive in the water immediately surrounding the wreck sites will be impacted by the provision. The Secretary of State is already under a statutory duty under section 3(2)(a) of the Protection of Wrecks Act 1973 to revoke any designation order in relation to a wreck site that no longer requires protection under the Act.

13. Contact

- 13.1 John Tallantyre at the Department for Culture, Media and Sport (Tel: 020 7211 2373 or email: John.Tallantyre@culture.gov.uk) can answer any queries regarding the instrument.