

Replacing the Protection of Wrecks Act in Scotland – a decade on

A decade ago, many of Scotland's protected historic wrecks became Historic Marine Protected Areas ("Historic MPAs") or were de-designated altogether. This followed a decision by the Scottish Parliament to replace section 1 of the Protection of Wrecks Act 1973 with Part 5 of the Marine (Scotland) Act 2010, bringing marine heritage protection in Scotland into line with nature conservation, as part of a common approach to the protection of our natural and cultural marine heritage.

Although section 1 of the 1973 Act (the part that deals with historic wrecks) is no longer in force in Scotland, it would be remiss not to acknowledge the major role it played in the investigation and protection of Scotland's underwater heritage. The 1973 Act provided a legal framework that facilitated increasing knowledge about maritime heritage by dedicated wreck licensees, while helping to protect some of our most important historic wrecks from the threat of salvage and treasure hunting.

In the 1970s scuba diving was opening up an exciting new frontier for discovery in the waters around Scotland's coasts. The wreck of the Fifth Rate Royal Navy Frigate HMS *Dartmouth*, lost in 1690 in the Sound of Mull, was found by a group of divers on holiday from Bristol. Their preliminary survey revealed a scatter of cast-iron guns and finds which included a ship's bell revealing the identity of the vessel. The discovery was reported to the Receiver of Wreck and the recoveries were voluntarily donated to the National Museum of Scotland. Soon afterwards the *Dartmouth* was amongst the first wrecks to be designated under the 1973 Act.

Historic wrecks like *Kennemerland* and *Wrangels Palais* on the islands of Out Skerries, Shetland, are the northernmost protected wrecks in the UK, illustrating the importance of Shetland's position on northern sea routes that connected Europe with the rest of the world. It was on the wreck of the Dutch East Indiaman *Kennemerland* (sank 1664) that a young pioneering archaeologist Keith Muckelroy set about establishing some of his theoretical approaches to wreck formation, which continue to underpin the practice of nautical archaeology today. Shetland museums played a major role in curating the rich collection of artefacts and documents from these investigations and making them accessible to the public.

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Jill Sweetnam excavating the wreck of HMS *Dartmouth* with the dredge. Credit: HES (Dr Colin and Dr Paula Martin Collection)



The statutory wreck protection notice, HMS *Dartmouth*, flanked by (left) Roger Holman and (right) Ray Bishop of the Bristol Undersea Archaeology Group. Credit: HES (Dr Colin and Dr Paula Martin Collection)

Duart Point, Sound of Mull. A visiting diver tours the wreck, guided by a waterproof site-map. Credit: HES (Dr Colin and Dr Paula Martin Collection)

Amongst the major concerns that provoked Scotland to replace the 1973 Act was a perception that it was excessively restrictive – for example, by limiting access to licence holders alone. Arguably, this created an atmosphere of secrecy and mistrust as divers who found many of these wrecks perceived that they were at risk of being excluded by archaeologists. This perception has taken time to address, not least through the efforts of the diving associations in promoting responsible practice, and through the Nautical Archaeology Society’s outreach and training programmes.



When Historic Scotland assumed responsibilities for Scottish administration of the 1973 Act in the 1990s, it adopted the principle of parity of esteem for how it approached underwater heritage compared with heritage on land. Support included funding projects, from site investigations through to interpretation and publication. Creative thinking was required to get round some of the more burdensome aspects of the 1973 Act. In the Sound of Mull, with a green light from the then UK Advisory Committee on Historic Wreck Sites (ACHWS), Historic Scotland approved establishment of the UK’s first protected historic wreck visitor scheme on the Duart Point wreck in 1994–95. During visitor days, the wreck became an underwater museum with visitors enjoying the privilege of observing underwater excavation first hand before exploring an exhibition in Duart Castle.

Meanwhile, in 2001, following concerns in museum circles about the number of artefacts being recovered from the German High Seas Fleet in Scapa Flow, Historic Scotland decided against designating these wrecks under the 1973 Act, on the basis that the licensing requirements would have been unworkable for thousands of visitors each year. Instead, they decided to ‘schedule’ the wrecks using the same legislation used to protect nationally important monuments on land.

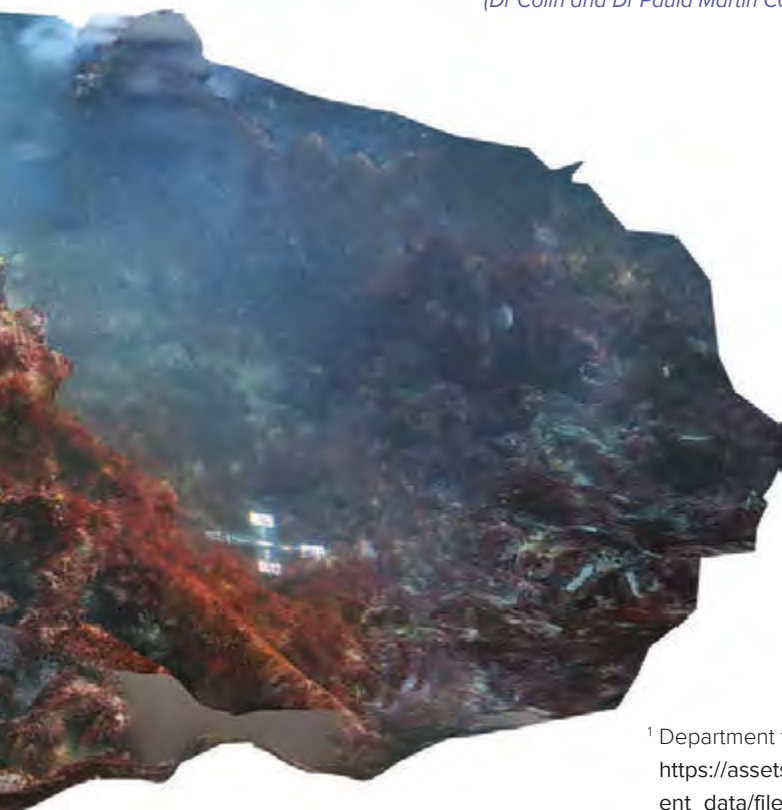
November 2023 marked the 10th anniversary since the creation of Scotland’s first Historic MPAs. The experience has mostly been positive, and we now have eight designations in place, with three others



Photogrammetry by archaeologists from Wessex Archaeology of the engine assemblage of the wreck of PS Comet, Argyll and Bute. Credit: HES (photograph by Wessex Archaeology)



Duart Point, Sound of Mull. Diver inspecting the large, panelled door. © Credit: HES (Dr Colin and Dr Paula Martin Collection)



awaiting decision by Scottish government. Some scheduled wrecks remain in Scapa Flow, and indeed we recently scheduled the wreck of the paddle steamer *Comet* as an interim measure. The intention at present is that these designations will gradually be replaced by Historic MPAs in the coming years.

The changes introduced through Historic MPAs include many improvements that the heritage sector had been calling for through various reviews that took place in the early 2000s, leading to a UK government White Paper in 2007.¹ The changes included: consultation in advance of designation; urgent designation mechanisms as a form of ‘interim protection’; a broadening of what types of sites are eligible for designation; the ability to designate ‘areas’ rather than just ‘sites’; more flexible consent mechanisms; regulating impacts beyond just diving and salvage to include activities such as commercial fisheries; and also increasing penalties for breaking the law.

While these have been significant changes, the need to continue to investigate and monitor our historic shipwrecks hasn’t changed. At Historic Environment Scotland, we remain reliant on collaboration and partnership with communities of interest and place. In an era of tight heritage agency budgets, citizen science and a sense of responsibility for collective stewardship remains ever relevant.



Philip Robertson

Philip is Deputy Head of Designations at Historic Environment Scotland. Before working for HES, Philip used to run a dive centre in the Sound of Mull on the west coast of Scotland. For the last 15 or so years, he has headed up marine policy and marine designation at Historic Scotland, and now Historic Environment Scotland. During this time, Philip has managed a variety of projects on protected wrecks in Scottish waters.

¹ Department for Culture Media and Sport (2007) Heritage Protection for the 21st Century. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/228520/7057.pdf