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# Marine Scotland

Proposal to designate two Historic Marine Protected Areas

Queen of Sweden

**BUSINESS REGULATORY IMPACT ASSESSMENT**



**marinescotland**

## Proposal to designate the Queen of Sweden Historic Marine Protected Area - Business Regulatory Impact Assessment (BRIA)

### Title of Proposal

Designating an area of the Scottish territorial seas as the Queen of Sweden Historic Marine Protected Area under the Marine (Scotland) Act 2010.

### Purpose and intended effect

#### Background

The Marine (Scotland) Act 2010. The 2010 Act includes powers to conserve Scotland's outstanding marine natural and cultural heritage through a single system of Marine Protected Areas, with Historic MPAs used to protect 'marine historic assets' of national importance. Schedule 4 part 2 (4) of the 2010 Act provides powers to repeal section 1 of the 1973 Act through commencement order procedure.<sup>a</sup>

#### Objective

Historic Scotland's *strategy for the protection, management and promotion of marine heritage 2012-15* ('the *Marine Strategy*') established an objective of delivering a well-managed group of Historic Marine Protected Areas, designated under the Marine (Scotland) Act 2010. As part of work to deliver this objective, Historic Scotland committed to considering a small number of currently undesignated sites for protection on the basis of 'national importance'. This work is being continued by Historic Environment Scotland, since its establishment on 1 October 2015 as the new lead public body for the historic environment, and advisor to Scottish Government on Historic Marine Protected Areas. This BRIA assesses the impact of the proposed designation of the wreck of the *Queen of Sweden*, Shetland.

#### Rationale for Government intervention

The proposed action follows an application made by a third party to Historic Environment Scotland in April 2015, to assess the wreck of Queen of Sweden as a Historic Marine Protected Area. Historic Environment Scotland have completed their assessment and, as advisor to Scottish Government on marine heritage issues, provided advice to the Scottish Government.

This work by Historic Environment Scotland forms part of a programme of work to help protect and, where appropriate, enhance our most important marine heritage assets in such a way that they can be valued, understood, and enjoyed. By delivering its objective and aligning marine heritage protection within the Scottish Government's overall approach to the management of the marine environment, Historic Environment Scotland will be helping to support the Scottish Government's vision for a 'clean, healthy, safe, productive and biologically diverse marine and coastal environment that meets the long term needs of people and nature', including the development of a network of Marine Protected Areas in the seas around Scotland. In so doing, Historic Environment Scotland is also contributing to the Scottish Government's National Performance Framework's Strategic Objectives:

<sup>a</sup> The repeal of the 1973 Act in Scotland has not yet been commenced so the legislation currently remains in force

- We value and enjoy our built and natural environment and protect it and enhance it for future generations.
- Our public services are high quality, continually improving, efficient and responsive to local people's needs.

The step proposed is in line with the UK Marine Policy Statement<sup>b</sup> and the Historic Environment Policy for Scotland<sup>c</sup>. It also helps to deliver international obligations under the European Convention on the Protection of the Archaeological Heritage – more commonly known as the 'Valetta Convention' – which requires that the historic environment, on land and under water, is protected.

### **Consultation**

In preparing the priorities for action set out in its *Marine Strategy*, Historic Scotland carried out a detailed programme of stakeholder engagement involving preparation of a discussion paper *Towards a strategy* (Historic Scotland 2009), public consultation on the strategy, the final version of which was published in 2012.

Additional engagement on matters in relation to Historic MPAs has taken place through the Scottish Government's Marine Strategy Forum, and, since the creation of Historic Environment Scotland through bi-lateral meetings with industry and other interested parties, including representatives of the fisheries, ports and heritage sectors. Pre-consultation engagement with stakeholders on this proposal has been undertaken through the Shetland Marine Spatial Planning Advisory Group. A presentation on the proposal was provided to the forum membership on 25 July. There have also been follow-up bilateral discussions with the Lerwick Harbour Authority, the Shetland Shellfish Management Organisation and the Shetland Sub-Aqua Club. These discussions have not identified any significant issues and comments have been incorporated into the consultation document

All parties with an interest in the proposal to designate the historic marine protected area were invited to comment during a public consultation that took place 20 February -17 April 2019. A copy of the consultation report is available at <https://www.historicenvironment.scot/about-us/what-we-do/consultations/recently-closed-consultations/#the-queen-of-sweden-historic-marine-protected-area> tab. No changes were required to the BRIA following consultation.

### **Options**

In the circumstances, the Scottish Ministers have considered two options:

Option 1 – the 'do nothing' option. Statutory protection for a site of national importance is not taken forward. The site of the *Queen of Sweden* is currently understood to be subject to a lease by Shetland Council from the Crown Estate. The Shetland Islands' Marine Spatial Plan 2015 (MSP HIS3) may afford some level of protection, but this would be unlikely to prevent potential damage to the wreck or continued removal of artefacts (unless that removal falls within the scope of marine licensing and works licensing). As such, the site may continue to be at risk from unregulated salvage activities.

<sup>b</sup> <http://www.scotland.gov.uk/Resource/Doc/295194/0115242.pdf>

<sup>c</sup> <http://www.historicenvironment.scot/heps>

Option 2 - designate the site as a Historic MPA. This is the preferred option as Historic Environment Scotland's review of the information relating to the historic wreck *Queen of Sweden* has concluded that the site meets the criteria of national importance to merit statutory protection (see Annex B) and that it is desirable to take forward designation as a Historic MPA. Designation takes forward the policy decisions approved by the Scottish Parliament under the Marine (Scotland) Act 2010 and contributes to the objective of establishing a well-managed group of Historic MPAs in the seas around Scotland to help protect Scotland's most important marine historic assets in such a way that they can be valued and enjoyed. Protection is achieved by virtue of a single system for Marine Protected Areas to protect Scotland's outstanding marine natural and cultural heritage that is aligned with the new marine planning/licensing system. This option delivers additional controls in respect of activities, such as salvage, that may continue to be targeted at this site.

*Evidence base for the impact of the options*

Historic Environment Scotland has considered the impact of the options against socio-economic data published in National Marine Planning interactive (NMPI). Prior to consultations, discussions have also been held with Shetland stakeholders through the Shetland Marine Spatial Planning Advisory Group. This research has assisted in identifying the following socio-economic interests as summarised in the table below.

<b>Socio-economic activity</b>	<b>Description of activity</b>
Aquaculture	No current activity and none understood to be planned nearby.
Developed Coasts	The coast is largely developed in vicinity of the wreck.
Discharges / Waste Disposal	The nearest dredge disposal site is located off the north coast of Bressay island, c. 4km to the W of the wreck. There may be storm outfall pipes in the vicinity.
Energy Generation and Transmission	No current generation activity or planned generation activity is in the area. No cabling is known to run through the area (either power or communications).
Fisheries	Discussions with stakeholders on Shetland indicate that, due to location of the wreck (inside the harbour limits and close to the shore) and nature of the seabed (rock and reef), scallop dredge activity does not take place in the designation area. Limited creeling activity is understood to take place around the wreck, particularly during winter months. The assessment hasn't obtained precise figures of the number of creeling vessels using the area but estimates suggest this may be up to 6.
Flood and Coast Protection	No significant infrastructure of this nature is noted in the area of the wreck.
Gathering / Harvesting	Sea angling is understood to take place in the vicinity of the wreck. There are currently no proposals for seaweed harvesting.
Marine Traffic	The site lies within the area of responsibility of Lerwick Harbour Authority. The main ferry and shipping route into the harbour lies around 200-300m to the east. An automated navigation light stands on land at Twageos Point. The harbour handles over 5,000 vessels annually including ferries, cruise ships, large fishing vessels, oil and gas supply ships and vessels engaged in decommissioning work.

Military Activity	There is no known military use of the sea area in the vicinity of the wreck.
Mineral Extraction	None known or known to be planned in the area of the wreck. There is currently no maintenance dredging carried out within the harbour authority limits, however capital dredging was undertaken in 2008, and may be required in the future for waters off Victoria Pier and the North Ness channel (c-1-2km to the north west of the wreck).
Oil and Gas	There is no extraction in the vicinity of the wreck although, as noted above, Lerwick Harbour handles oil and gas related work.
Recreation and Access	Around 500 yachts per year visit Lerwick harbour. There is a chartered anchorage in Brei Wick to the south west of the wreck, but the site itself is not favoured for anchoring, as it lies relatively close to the main shipping navigation channel. The wreck is known to be visited by recreational divers and is mentioned on the website of several dive charter companies. Lerwick Harbour Authority ask that divers who want to dive on the wreck make prior contact with them.

**Table 1 – socio-economic activities at the wreck site of Queen of Sweden (data from National Marine Planning Interactive (<http://marinescotland.atkinsgeospatial.com/nmpi/>) and obtained during discussions with interested parties on Shetland.**

#### Costs

##### Costs to industry

Option 1 – There would be no additional costs to industry.

Option 2 – Under this option, activities that might affect the preservation objectives for the Historic MPA will be considered through marine licensing or planning processes. However, as the area proposed for designation is very small and will in most instances be able to be avoided by developers and sea-users, it is not considered that designation will place a significant burden on marine stakeholders beyond some possible additional costs where assessment of archaeological impacts is required prior to consenting.

##### Assessment of future economic opportunities

Although there are benefits associated with the various options (see below), these do not equate to economic opportunities that can be quantified in a meaningful way.

##### Costs to Government and Historic Environment Scotland

Costs to Historic Environment Scotland include costs in advising on designations, ongoing high priority recording/monitoring work on designated sites, advising on the management of designated sites, and providing support to local stakeholders. Costs to Scottish Government include administration relating to designation orders and any subsequent orders relating to management.<sup>d</sup>

Option 1 – there are no costs to the Scottish Government.

<sup>d</sup> See [http://www.scottish.parliament.uk/S3\\_Bills/Marine%20\(Scotland\)%20Bill/b25s3-introd-en.pdf](http://www.scottish.parliament.uk/S3_Bills/Marine%20(Scotland)%20Bill/b25s3-introd-en.pdf) page 52

Option 2 – Ongoing monitoring costs for the site are estimated at £30k every five years. There will be a small cost for Historic Environment Scotland to provide advice to Marine Scotland on designations, marine licensing applications and to public authorities on functions they exercise. These costs are tentatively estimated at £200 per application.

#### *Benefits*

Option 1 – There are no benefits as no statutory protection exists.

Option 2 – statutory protection as a Historic MPA does not limit responsible access. However, Historic Environment Scotland will be publishing information about the wreck which may be of interest to researchers and others, and help to promote understanding through 'virtual' access. It is possible that this may attract additional diving visitors to the site although the economic value of this is difficult to quantify in any meaningful sense.

#### *Economic Impact Assessment*

On balance, Option 1 results in no change. Option 2 is likely to result in a modest increase in administrative costs to government and business.

#### **Scottish Firms Impact Test**

##### Scottish Firms Impact Assessment

Given that the proposed protected area is very small, the preferred option (option 2) is likely to have a minimum impact on Scottish firms by comparison with the status quo (option 1). No issues were raised at consultation.

##### Competition Assessment

There is little evidence of competition over this relatively small area of seabed. As such, none of the options is likely to have a significant impact. No issues were raised at consultation.

#### **Enforcement, sanctions and monitoring**

Option 1 – No enforcement and monitoring framework is in place.

Option 2 - Monitoring would be carried out primarily by periodic site visits on behalf of Historic Environment Scotland (HES) from a marine archaeology services contractor. HES will continue to work with local communities, the police and other justice partners on enforcement. However, the 2010 Act also provides enforcement powers to Marine Enforcement Officers (MEOs), 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. The Financial Memorandum for the 2010 Act envisaged a cost of enforcement action associated with Marine Protected Areas of £12,000 per site per year. It envisaged that Marine Scotland will take the lead role, closely working with HES and other justice partners on Historic MPAs. Given that the proposed Queen of Sweden Historic MPA is at such a small scale and is adjacent to the coast, this estimate is considered excessive in the circumstances.

### Implementation and delivery plan

Depending on the outcomes of the consultation, the proposed designation of the Queen of Sweden I Historic MPA is expected to take effect shortly after the consultation closes. Publication and notification procedures set out in section 75 and 76 of the 2010 Act will ensure that persons likely to be affected by the designation will be made aware of the resulting course of action.

### Post-implementation review

HES will keep the designation and its implications under review over the first 2 years of its use and propose amendments if and when appropriate.

### Summary and recommendation

The recommended option is to designate the wreck of Queen of Sweden as a Historic MPA. This option takes forward the policy decisions approved by the Scottish Parliament in enacting the Marine (Scotland) Act 2010, and ensures a common approach to the protection of Scotland's outstanding marine natural and cultural heritage, affording additional protection for this nationally important site to that currently available through local mechanisms (e.g marine planning). Alignment with the new marine planning/licensing system helps to minimise duplication of effort on consenting regimes and therefore costs to both industry and government.

### Summary costs and benefits table

Option	Benefits	Cost
1 – Do nothing – Do not designate	No benefits	No cost
2 – designate as an Historic MPA	Site has statutory protection  Aligns with marine planning/licensing arrangements;  Common enforcement powers for all Marine Protected Areas	Ongoing monitoring cost (estimated at £30k every 5 years) to Historic Environment Scotland  Advice to Marine Scotland on marine licensing (average £200 per annum for 1 application cost to SG/Historic Environment Scotland)  Costs of enforcement are uncertain at the current time but considered likely to be significantly <£12k per annum.  Some costs to industry where archaeological considerations need to be made prior to consenting of activities in the area and immediate vicinity.

**Declaration and publication**

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

**Signed:**

**Date:**





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## Purpose and intended effect

### Background

The Marine (Scotland) Act 2010. The 2010 Act includes powers to conserve Scotland's outstanding marine natural and cultural heritage through a single system of Marine Protected Areas, with Historic MPAs used to protect 'marine historic assets' of national importance. Schedule 4 part 2 (4) of the 2010 Act provides powers to repeal section 1 of the 1973 Act through commencement order procedure.<sup>a</sup>

### Objective

Historic Scotland's *strategy for the protection, management and promotion of marine heritage 2012-15* ('the *Marine Strategy*') established an objective of delivering a well-managed group of Historic Marine Protected Areas, designated under the Marine (Scotland) Act 2010. As part of work to deliver this objective, Historic Scotland committed to considering a small number of currently undesignated sites for protection on the basis of 'national importance'. This work is being continued by Historic Environment Scotland, since its establishment on 1 October 2015 as the new lead public body for the historic environment, and advisor to Scottish Government on Historic Marine Protected Areas. This BRIA assesses the impact of the proposed designation of the wreck of the *Queen of Sweden*, Shetland.

### Rationale for Government intervention

The proposed action follows an application made by a third party to Historic Environment Scotland in April 2015, to assess the wreck of Queen of Sweden as a Historic Marine Protected Area. Historic Environment Scotland have completed their assessment and, as advisor to Scottish Government on marine heritage issues, provided advice to the Scottish Government.

This work by Historic Environment Scotland forms part of a programme of work to help protect and, where appropriate, enhance our most important marine heritage assets in such a way that they can be valued, understood, and enjoyed. By delivering its objective and aligning marine heritage protection within the Scottish Government's overall approach to the management of the marine environment, Historic Environment Scotland will be helping to support the Scottish Government's vision for a 'clean, healthy, safe, productive and biologically diverse marine and coastal environment that meets the long term needs of people and nature', including the development of a network of Marine Protected Areas in the seas around Scotland. In so doing, Historic Environment Scotland is also contributing to the Scottish Government's National Performance Framework's Strategic Objectives:

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The step proposed is in line with the UK Marine Policy Statement<sup>b</sup> and the Historic Environment Policy for Scotland<sup>c</sup>. It also helps to deliver international obligations under the European Convention on the Protection of the Archaeological Heritage – more commonly known as the 'Valetta Convention' – which requires that the historic environment, on land and under water, is protected.

### Consultation

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### Options

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b <http://www.scotland.gov.uk/Resource/Doc/295194/0115242.pdf>

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Option 2 - designate the site as a Historic MPA. This is the preferred option as Historic Environment Scotland's review of the information relating to the historic wreck *Queen of Sweden* has concluded that the site meets the criteria of national importance to merit statutory protection (see Annex B) and that it is desirable to take forward designation as a Historic MPA. Designation takes forward the policy decisions approved by the Scottish Parliament under the Marine (Scotland) Act 2010 and contributes to the objective of establishing a well-managed group of Historic MPAs in the seas around Scotland to help protect Scotland's most important marine historic assets in such a way that they can be valued and enjoyed. Protection is achieved by virtue of a single system for Marine Protected Areas to protect Scotland's outstanding marine natural and cultural heritage that is aligned with the new marine planning/licensing system. This option delivers additional controls in respect of activities, such as salvage, that may continue to be targeted at this site.

*Evidence base for the impact of the options*

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Energy Generation and Transmission	No current generation activity or planned generation activity is in the area. No cabling is known to run through the area (either power or communications).
Fisheries	Discussions with stakeholders on Shetland indicate that, due to location of the wreck (inside the harbour limits and close to the shore) and nature of the seabed (rock and reef), scallop dredge activity does not take place in the designation area. Limited creeling activity is understood to take place around the wreck, particularly during winter months. The assessment hasn't obtained precise figures of the number of creeling vessels using the area but estimates suggest this may be up to 6.
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Gathering / Harvesting	Sea angling is understood to take place in the vicinity of the wreck. There are currently no proposals for seaweed harvesting.
Marine Traffic	The site lies within the area of responsibility of Lerwick Harbour Authority. The main ferry and shipping route into the harbour lies around 200-300m to the east. An automated navigation light stands on land at Twageos Point. The harbour handles over 5,000 vessels annually including ferries, cruise ships, large fishing vessels, oil and gas supply ships and vessels engaged in decommissioning work.

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**Table 1 – socio-economic activities at the wreck site of Queen of Sweden (data from National Marine Planning Interactive (<http://marinescotland.atkinsgeospatial.com/nmpi/>) and obtained during discussions with interested parties on Shetland.**

#### Costs

##### Costs to industry

Option 1 – There would be no additional costs to industry.

Option 2 – Under this option, activities that might affect the preservation objectives for the Historic MPA will be considered through marine licensing or planning processes. However, as the area proposed for designation is very small and will in most instances be able to be avoided by developers and sea-users, it is not considered that designation will place a significant burden on marine stakeholders beyond some possible additional costs where assessment of archaeological impacts is required prior to consenting.

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Option 1 – there are no costs to the Scottish Government.

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#### *Economic Impact Assessment*

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**Signed:**

*Fiore Anghelescu*

**Date:**

*30<sup>th</sup> October 2019*