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# HISTORIC ENVIRONMENT SCOTLAND

Advice for the Scottish  
Government on designation of the  
Scapa Flow and Queen of Sweden  
Historic Marine Protected Areas

CONSULTATION ANALYSIS & REPORT  
September 2019

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## **ACKNOWLEDGMENTS**

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# **PART A – CONSULTATION ANALYSIS**

## **1. INTRODUCTION**

### **1.1. Background to the consultation**

Historic Environment Scotland (HES) is the lead public body for Scotland’s historic environment. Part of our role is to list buildings, schedule monuments and designate other types of historic sites and places and to advise on their management. We also provide heritage advice to the Scottish Government on the designation of historic marine protected areas (HMPA) under the Marine (Scotland) Act 2010, to protect marine historic assets of national importance, such as historic shipwrecks. The decision on designation of HMPAs is taken by the Scottish Ministers.

On 20 February 2019, in a keynote address at Scotland’s Marine Conference 2019, the First Minister announced a consultation by Historic Environment Scotland on proposals to designate the following Historic Marine Protected Areas:

- The Queen of Sweden, Shetland
- Scapa Flow, Orkney

The consultation took place over 8 weeks and closed on 17 April 2019.

### **1.2. What is the purpose of this report?**

The purpose of this report is to outline the findings of the consultation and to explain how we have taken these views into account in our advice to Marine Scotland.

The first part of this report (A) describes the HES consultation process, analyses the responses, and summarises the views expressed. The second part of this report (B) describes how these views have shaped our advice to Marine Scotland.

## **2. APPROACH TO CONSULTATION**

### **2.1. How did we distribute, advertise and encourage participation in the consultation?**

Before launching this consultation, we held discussions on both cases to inform preparation of the proposal. A report on the engagement programme undertaken for the Scapa Flow case is available [here](#).

Following the launch of the consultations on 20 February, documents were published on the HES website together with a survey questionnaire hosted by SurveyMonkey consisting of 11 questions. Participants had the opportunity to respond to questions about either Scapa Flow, or the Queen of Sweden proposal, or both. The survey was also provided in other formats upon request (e.g. as pdf and Word documents).

A list of the questions asked is provided in Appendix 1.

A notification was sent by email to 101 interested parties, representing the following types of consultee:

- Academia (6)
- Community groups (11)
- Individuals (2)
- Industry (35)
- Local authority (2)
- Museums (3)
- Other public authority (7)
- Statutory consultees under the Marine (Scotland) Act 2010 (4)
- Statutory Harbour Authority (2)

In some cases, more than one individual from an organisation was contacted – so for example, the email may have been sent to more than one contact within a local authority.

The consultation was promoted on social media (Facebook; Twitter) and through press releases. Information about the consultation was published on the BBC website, the Orcadian, Scottish Field, the Press and Journal, the National, Mail on Sunday, the Daily Record. Historic Environment Scotland staff also gave interviews to Radio Shetland and Radio Orkney.

During the consultation and immediately afterwards, Historic Environment Scotland staff held discussions with several consultees and interested parties about the proposals.

## **2.2. How did we analyse the responses?**

Although most respondents completed the Survey Monkey questionnaire, some consultees chose to respond to our consultation separately, either by letter or email. These respondents have not been included in the statistical analysis for the Survey Monkey questions, but, for completeness, we have integrated the comments in the relevant sections of the analysis report.

Comments given in response to each question were examined to identify emerging themes and similar issues or ideas.

Some questions contained an agree/disagree scale tick box option to allow respondents to indicate their response (typically ranging on a 5 point scale from strongly agree to strongly disagree). Results from these questions are presented in graph format.

The main themes were then looked at in relation to respondent groups to ascertain whether any particular theme was specific to one particular group, or whether it appeared in responses across groups. When looking at group differences however, it must be borne in mind that where a specific opinion has been identified in relation to a particular group or groups, this does not indicate that other groups do not share this opinion, but rather that they have simply not commented on that particular point.

The following sections of this report document the substance of the analysis and present the main views expressed in responses. Sample quotes have been included to illustrate a range of views expressed.

### 3. SUMMARY OF RESPONSES

This section describes how many responses were given to the consultation, respondent group information and a summary of views expressed. This includes a combination of statistical information and emerging key themes.

#### 3.1. How many responses did we receive?

We received 48 responses to our Survey Monkey questionnaire. Of these, 19 respondents indicated their intention to respond only to the Scapa Flow proposal and 8 for Queen of Sweden only. 21 respondents indicated their intention to comment on both the Scapa Flow and *Queen of Sweden* proposals. In the event however, it appears that some respondents who indicated their intention to respond to only one of the proposals, ended up responding to both. In addition, we also received five responses from consultees outside of the SurveyMonkey questionnaire.

The consultation paper and SurveyMonkey questionnaire included a list of organisation and individual groups, and respondents were asked to tick the group most appropriate for themselves or for their organisation. As can be seen in the following table, the groups with the largest number of respondents were individuals (32) followed by those responding on behalf of an organisation, public body or charity (12).

Groups responding to the SurveyMonkey questionnaire	No. of responses	Percentage of responses
Local authority	1	2%
Organisation, public body or charity	12	25%
Private business, such as architect or developer	0	0%
Individuals	32	67%
Other	3	6%
<b>TOTAL</b>	<b>48</b>	<b>100%</b>

The 'Other' responses were provided by Orkney Harbour Authority, ALGAO Scotland, and by an agent of the owner of the following wrecks in Scapa Flow: *Karlsruhe, Konig, Kronprinz Wilhelm* and *Markgraf*.

While the consultation gave all those who wished to comment an opportunity to do so, given the self-selecting nature of this type of exercise, any figures quoted here cannot be extrapolated to the wider population.

A list of those organisations who responded that are content to be identified is included in Appendix 2. The following paragraphs highlight the main themes that emerged in relation to each consultation question.

## 3.2. What did people say?

### Scapa Flow historic marine protected area

- 78% of respondents either 'highly agree' or 'agree' with the proposal. 22% of respondents either 'disagree' or 'strongly disagree' with it, including an objection from an owner of four of the German wrecks currently designated as scheduled monuments.
- Many comments focussed on the detail of the proposal covering the following:
  - *sites included/not included* – the rationale for including the German High Seas Fleet 'scrap areas', and the blockship complexes. On the latter, one individual suggested two additional blockships should be included in the designation (*Clio II*; *Aorangi*) while another considered that the blockships at Barrier 1&2 should not be included at all. Orkney Islands Council indicated its general support for the proposal subject to some minor changes to ensure that the boundaries around the blockships were more tightly drawn around the wrecks, and to exclude the Churchill Barriers.
  - *Site documentation* – the need for clarification of the operational advice in certain areas and a change to the wording of the preservation objectives.
  - *Future management* – Orkney Islands Council advocated the need for beneficial management of the site to follow designation, including the value of a management plan, and continued close working with the Council and community interests.
- No strong view emerged about whether the historic marine protected area proposal should replace the existing scheduling of seven wrecks of the German High Seas Fleet immediately or should work alongside it for a period. However, there were however suggestions by Orkney Islands Council that a staged process might be sensible to 'avoid a cliff-edge' and comments from other respondents to the effect that a transitional period might allow opportunities to educate the public on what changes mean.
- Across the board, responses generally indicate that the Business Regulatory Impact Assessment (BRIA) is considered a sound document. However, individual responses indicate that changes are required to reflect the potential impact of designation on an owners' salvage interests, to reflect updated information regarding commercial fishing activities, and potential impacts of designation on renewables development at Barrier 1 and 2.

### Queen of Sweden

- 92% of respondents either 'highly agree; or 'agree' with the proposal to designate the Queen of Sweden historic marine protected area.
- The comments generally focussed on details in the site documentation covering matters such as the name of the vessel, correct referencing of the location of the wreck, and the need to point to information sources and organisations on Shetland as primary points of local contact.
- Responses indicate that the Business Regulatory Impact Assessment (BRIA) is considered a sound document and no changes were requested.

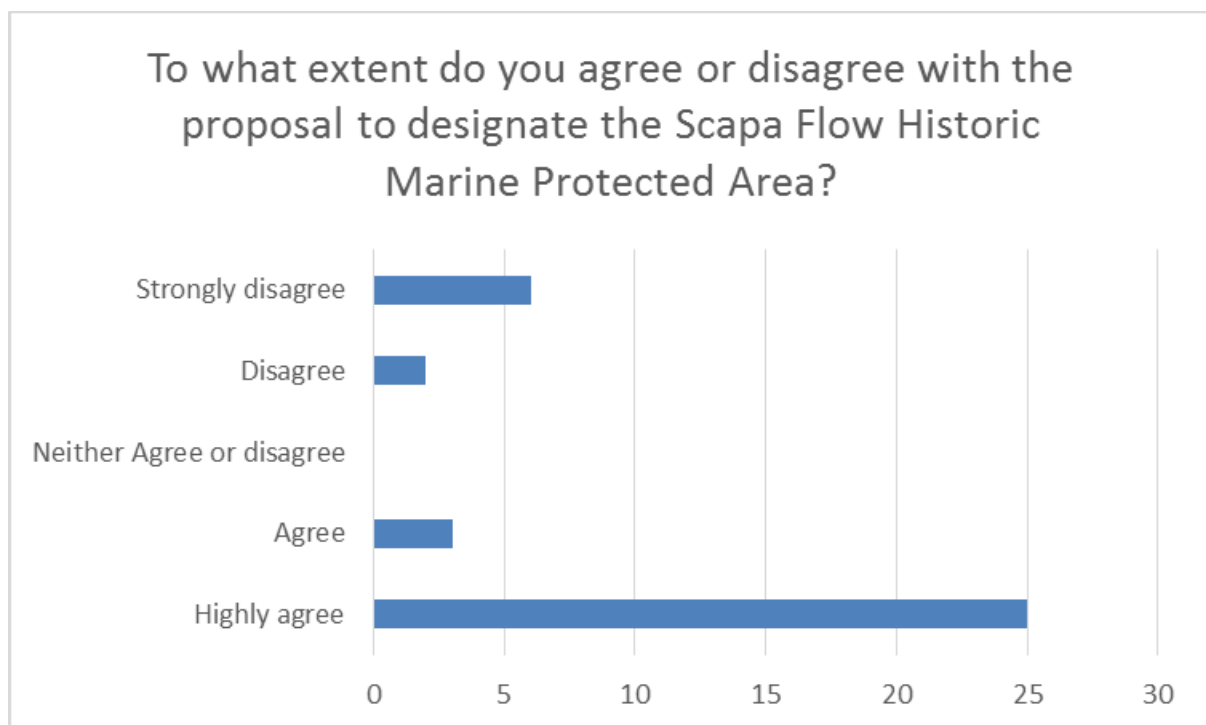
## 4. ANALYSIS OF RESPONSES

Questions 1-3 related to personal information about those completing the survey (name, organisation etc.) as summarised in section 3.

### 4.1. Scapa Flow

Question 4 invited respondents to comment on the extent to which they agreed with the proposal to designate the Scapa Flow historic marine protected area (highly disagree, disagree, neither agree nor disagree, agree, highly agree).

36 respondents answered this question. The graph below, which removes those who expressed no view, indicates an average response of 4.5 – ie between ‘agree’ and ‘highly agree’.



While 78% of respondents either ‘highly agree’ or ‘agree’ with the proposal, 22% of respondents either ‘disagree’ or ‘strongly disagree’ with it.

Question 5 invited comments on the proposal. 20 respondents provided comments.

Those who indicated that they agreed or strongly agreed made general comments such as:

- ‘As a diver I'd like to see these wrecks preserved for future generations to see. Salvage and fishing activity undermines that future’. (Individual).
- ‘I am strongly in favour of protecting all the dive sites within Scapa Flow for future generations of divers to enjoy. It is essential that there are no loop holes for the thieves to exploit.’ (Individual).

- 'I believe it is a brilliant way to continue the protection of, and highlight the value of, Scapa Flow.' (Individual).
- 'We welcome the use of Historic MPAs as a positive development in the protection of underwater cultural heritage.' (Joint Nautical Archaeology Policy Committee)
- The UK Chamber of Shipping stated 'The Chamber supports the proposal as it has no navigational issues which it also feels have been properly considered and scoped into the decision, as shown by consultations with MCA and NLB. The Chamber also supports the move to protect the UK's valuable maritime heritage.'

By contrast, respondents who either 'disagree' or 'highly disagree' with the proposal offered the following comments:

- One individual responded that this is 'inappropriate and unnecessary legislation. Artefacts recovered and declared to the Receiver of Wreck will be available for others to see in the Lyness or Stromness museum. With this legislation they will disappear in a cloud of dust just as the main protected fleet is.' Another individual commented that there is 'no real sense in protecting an area already known as a scrap site.'
- An agent responding on behalf of an owner of some of the wrecks commented 'The wrecks of the Karlsruhe, Konig, Kronprinz Wilhelm and Markgraf were sold outright by the UK Government to be salvaged for scrap metal. With permission from the UK Government Thomas Clark purchased these wrecks in 1981. The premise for both Thomas Clark and the UK Government representative at that time is the wrecks would be wholly or partially removed from Scapa Flow and irretrievably dispersed to Thomas Clark's commercial gain. The UK Government having already made their gain through the initial sale of the wrecks.' This response stated that neither the HMPA proposal, nor the previous decision to schedule these wrecks have taken account of this owner's interests in the wrecks. The response advocated discussions with the owner before any decisions are taken and also indicated concerns that the proposed preservation objectives might constrain the owners ability to sell his interest in the wrecks.

Other comments focussed on the detail of the proposal. Those in support of it offered the following comments to improve the proposal:

- 'As a responsible developer SSEN welcomes any proposals to protect the cultural and historic heritage of Scotland, and as such we welcome the proposals being put forward for the Historic Marine Protected Areas. However, we would be keen to understand as a business the timeframes involved in any assessment regarding works in the vicinity of the MPAs. Due to the nature of our assets we are often required to make emergency interventions, which results in the need for immediate action to be taken. It is these instances that we would be most keen to understand the HES decision making process.' (Scottish and Southern Electricity Networks).



- A respondent on behalf of an organisation, public authority or charity suggested that the risk profile and scale of risk appeared incongruous based on the proposed methodology and that the operational advice needed to be tightened up in places. This response also suggested that the operational advice needed to provide more information on scientific/archaeological investigations, pointing more clearly to archaeological best practice documents, and setting out archiving standards.
- The response from Orkney Islands Council included the interests of Orkney Marine Services as the statutory harbour authority for Scapa Flow. This response welcomed the degree of engagement with the Orkney community in shaping the proposal and considered it an effective means to safeguard the nationally important historic environment assets in Scapa Flow. The response indicated the council's support, subject to agreement on the following: changes to the boundaries around the Churchill Barrier blockships to ensure that the barriers themselves are not incorporated within the HMPA boundary and that the boundaries here and in Burra Sound are drawn as tight as possible to the blockship complexes; minor re-wording of the preservation objectives to focus closely on the assets rather than the area as a whole; provision of additional operational advice to clarify navigation through Burra Sound where some of the wrecks may be partially mobile. In addition, Orkney Islands Council noted that designation by itself would not be optimal and encouraged beneficial management of Scapa Flow's marine heritage in the future. The response encouraged setting up of a steering group early in the life of any new designation in partnership with Orkney stakeholders, and the preparation of a non-statutory management plan to articulate beneficial management of sites within the HMPA. Suggestions as to what this plan could cover included identifying opportunities for interpretation, research, education and promotion, advice on archaeological discoveries/recoveries and conservation of artefacts; guidance for the Harbour Authority regarding the potential impact of mobile marine historic assets on the safety of navigation (e.g. in Burra Sound) and how to ensure that the safe and efficient movement of shipping including ferries can be safeguarded; and to inform the development and implementation of solutions to over-topping of Barriers (e.g. beach re-charge and dredging at Barrier no.2) ensuring that these activities can be carried out in the interests of public safety. The response indicated the council's support for the conclusion of HES that no marine conservation orders are required.

Respondents who 'disagreed' with the proposal offered the following comments to address sites that either were included in the proposal, or not. Two of these comments considered that there were sites included which did not merit designation:

- 'I disagree with the extent of the proposal. The foul ground areas and the majority of small artefacts therein were effectively litter and I see no reason to "protect" them from recovery by divers (with usual reporting to Receiver of Wreck). I would support the protection of larger specifically named artefact sites'. (Individual).

- Two respondents commented on potential impacts of including blockships at barrier 1 and 2 in the proposal. An individual stated ‘Most of the designation is reasonable, but the inclusion of the blockships at Barriers 1 and 2 is inappropriate and likely to be obstructive to future essential activities. The wrecks of the unwanted ships were deliberately placed at these locations, they are of little or no intrinsic of historic value and there are other examples that are better preserved in Barrier 4 and adjacent to Barrier 3. Designation will impede planned works to raise the Barriers or replace them with a low bridge to deal with climate change storm effects’. One of these respondents also raised concerns about designation close to the Barrel of Butter which might potentially sterilise a potential route corridor across Scapa Flow from Orphir to Flotta in relation to energy transmission.

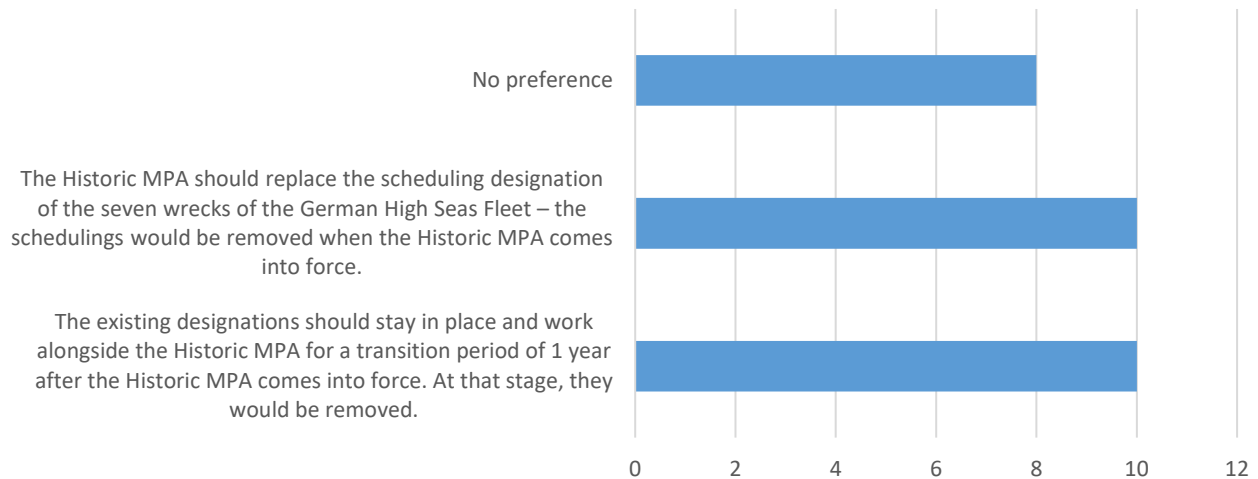
On the other hand, one respondent indicated two sites that should be included in the HMPA:

- ‘*Clio (II)* and *Aorangi* are not part of the proposed HMPAs on the justification that they are no longer in-situ in their intended positions. *Clio (II)* has never been moved; the scuttling charge failed and the intended blockship drifted with the current before finally sinking at its current position. As a result of the failure to scuttle it in the correct position additional alternative resources had to be invested to fill the gap. *Aorangi* was originally scuttled in Kirk Sound on the 10th of August 1915, abutting the *Numidian*. Subsequently re-floated, *Aorangi* was moved and re-sunk in its current position in 1920 to re-open Kirk Sound for fishing. *Numidian* was also re-orientated in 1923 to increase the size of the navigable channel in Kirk Sound. This had serious implications in the Second World War as the gap left by the movement of *Aorangi* and the alteration in the orientation of *Numidian* was used by Prien in U-47 to access Scapa Flow and torpedo HMS *Royal Oak*. These two blockships remain an integral part of the story of the blocking of the eastern entrances into Scapa Flow, they should be respected and protected.’ (Individual).

Finally, although the status of these wrecks does not form part of the HMPA proposal, three respondents mentioned the importance of the ‘war grave’ wrecks of Scapa Flow – HMS *Royal Oak*, HMS *Vanguard*. An individual indicated that divers should be allowed to dive on these sites on a look but don’t touch basis as this would bring extra revenue into the area. However, another individual referred to the sanctity of these sites as a place of loss’.

35 respondents answered Question 6 which sought views on how the proposal should interact with existing protection for the wrecks of the German High Seas Fleet.

Since 2001, the remains of three battleships and four cruisers of the German High Seas Fleet scuttled in Scapa Flow in 1919 have been protected as scheduled monuments. Do you have a view on how the proposed Historic MPA should interact with these existing



Responses to this question are balanced almost evenly across the three options. 6 respondents provided additional comments.

- Two respondents commented that existing protection was sufficient and additional designation could hamper sustainable development in relation to aspects such as renewable energy for tackling climate change.
- Two respondents who supported the idea of a one year transitional period commented that this could provide time to educate the public on the change, thereby avoiding a cliff edge which could be potentially difficult to manage and confusing, requiring a change of advice in some areas (e.g harbour authority dive permits). A phased approach could also allow for a change of approach depending on experiences during the year (for example during this year it might arise that the scheduling was needed in addition to the HMPA).
- One respondent commented that the scheduling should remain in place in perpetuity, in case MPAs are removed. (Individual)

Question 7 invited comments on the business regulatory impact assessment. There were 7 substantive responses to this question.

- The BRIA does not take into account impacts on owners of the wrecks: any limitation of activities that can be performed by the owner may have a significant financial consequence. (Individual).
- 'The chamber is happy that Shipping/ Maritime Traffic/ Navigation has been scoped in' (UK Chamber of Shipping).

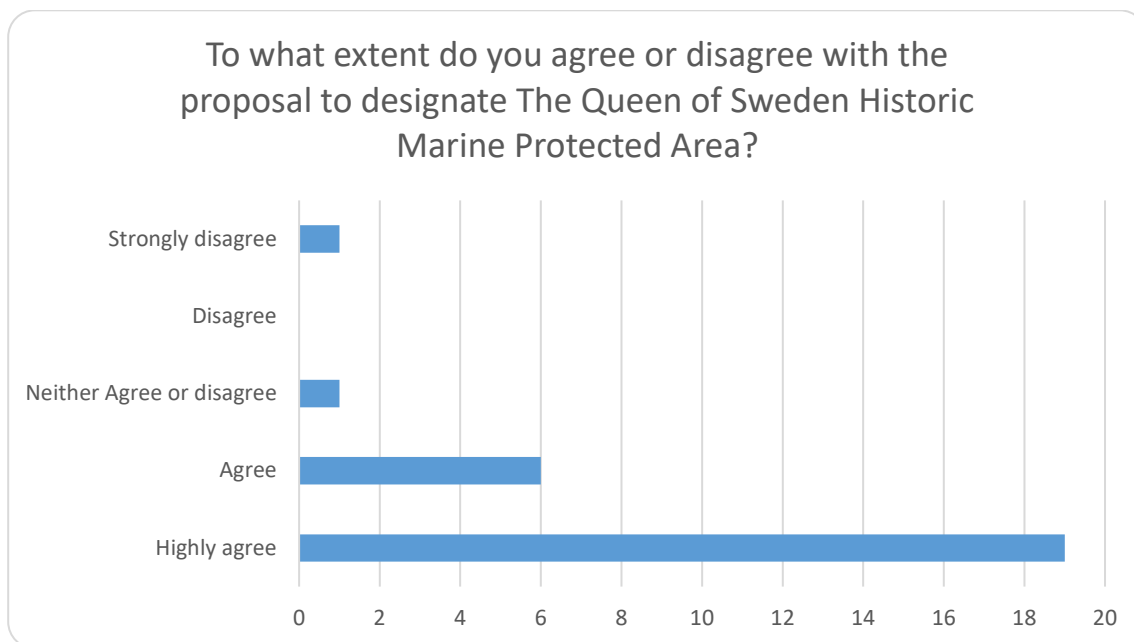
- ‘I disagree with the assessment on Page 5 as to the impact of the designations on the wrecks at Barriers 1 and 2. If a tidal scheme is executed at the barriers then this will require the removal of most of the wreckage at these sites. Designation will therefore be obstructive to undertaking the development of such a scheme. The assessment is flawed in its rather bland conclusions.’ (Individual)
- ‘the Harbour Authority has been fully involved in the development of this work and the BIA is considered to be a sound document. As proposed, the business impact is not significant in any way so long as free passage across the areas remains (and the Harbour Authority remains responsible for this), anchoring in emergencies is understood, small vessel anchoring away from specified artefacts is allowed, diving is permitted and creel fishing is allowed. Dredging and bottom trawling off course would not be allowed.’ (Orkney Islands Council Harbour Authority).
- ‘As a visiting diver for the last 23 yrs, my experience tells me that further protection will drive divers away’. (Individual)
- ‘Keep Scapa Flow as clear as possible from potential damage from future work, industry etc.’ (Individual).

We also received a response from the Orkney Fisheries Association to provide additional information regarding commercial fishing activities within Scapa Flow, namely, that there is a small scale historic fishery by around four local vessels, involving tows using small beam gear for queenie scallops within the proposed boundary area around Cava. The towed gear does not make contact with the wrecks but does go around the wrecks. The Orkney Fisheries Association indicated that it hoped that a mechanism can be found so that this small scale queenie fishery can continue while keeping the features protected.

#### **4.2. Queen of Sweden**

Question 8 asked respondents if they wished to give their views on the Queen of Sweden proposal. 19 responded ‘yes’.

Question 9 invited respondents to comment on the extent to which they agreed with the proposal to designate the Queen of Sweden historic marine protected area (strongly disagree, disagree, neither agree nor disagree, agree, strongly agree). There were 27 responses.



92% of respondents either 'highly agree' or 'agree' with the proposal.

Question 10 invited comments on the proposal.

Those who indicated that they agreed or strongly agreed made comments such as:

- 'As a responsible developer SSEN welcomes any proposals to protect the cultural and historic heritage of Scotland, and as such we welcome the proposals being put forward for the Historic Marine Protected Areas. However, we would be keen to understand as a business the timeframes involved in any assessment regarding works in the vicinity of the MPAs. Due to the nature of our assets we are often required to make emergency interventions, which results in the need for immediate action to be taken. It is these instances that we would be most keen to understand the HES decision making process.' (Scottish and Southern Electricity Networks).
- 'Again we welcome the use of Historic MPAs as they provide protection but also allow responsible diver access.' (Joint Nautical Archaeology Policy Committee).
- 'As the proposal acknowledges the continued importance of responsible recreational diving on a look, don't touch basis, we are in favour of the designation' (Professional Association of Diving Instructors PADI).
- 'The Chamber supports the proposal as it has no navigational issues which it also feels have been properly considered and scoped into the decision, as shown by consultations with MCA and NLB. The Chamber also supports the move to protect the UK's valuable maritime heritage.' (UK Chamber of Shipping).
- 'We need to conserve what we have now before it is too late'. (Individual).
- A respondent commented that the proposed boundary overlaps a seabird monitoring winter boat count area and contains low numbers of wintering seabirds and sea duck. The respondent did not consider that these would be negatively affected by the proposed Historic MPA, and believes there is no conflict between the proposal and the winter monitoring activities. (Shetland Oil Terminal Environmental Advisory Group - SOTEAG).

- ‘The significance of the Queen of Sweden is historic and if properly. preserved and nurtured could provide the area with a tourist destination’. (Individual).
- ‘Swedish East India link means less relevance for Scotland compared to "local" vessels.’ (Individual).
- ‘Designating the wreck would be useful in highlighting the wreck to the public and could be used as a link to Sweden for both diplomatic and Tourism related uses’. (Individual).
- ‘The Queen of Sweden wreck is well known locally and is regularly explored and enjoyed by local dive clubs and visitors. We are aware that there has been removal of artifacts from the wreck, although cannons etc remain untouched. We are not aware of any objectors to this protection.’ (Individual).

An individual questioned the benefits of the designation over the existing management of the site ‘My understanding that this site is already "protected" under legislation enacted by Shetland Islands Council to control usage of certain areas of the seabed which was brought into being simultaneously with action to control oil related developments in the seventies. This was initiated by the late Tom Henderson Curator of Shetland Museum.’

The respondent (ALGAO Scotland) that ‘strongly disagreed’ with the proposal, nonetheless supported option 2 to designate the site, but stipulated that ‘reference should be made to the Shetland Historic Environment Record and the Local Authority Archaeologist being the local point of contact/information repository. A link to the Marine Spatial Planning Advisory Group/board would also be useful.’

Three other respondents requested changes to the documentation to improve the proposal.

- The Shetland Amenity Trust suggested that there should be a signpost within the operational advice to the Shetland Sites and Monuments Records as the local point of contact/local information repository and also as a link to the Marine Spatial Planning Advisory group/board on the basis that people are far more likely to pop into the local office than contact a national body.
- Shetland Islands Council Marine Planning requested minor corrections to the proposal to clarify that the proposed designation lies within the limits of Lerwick Harbour and that the issuing of works licences within the harbour limits is the responsibility of Lerwick Port Authority not Shetland Islands Council. Table 3 should also be corrected in this regard.
- A respondent on behalf of an organisation, public authority or charity suggested that the risk profile and scale of risk appeared incongruous based on the proposed methodology and that the operational advice needed to be tightened up in places. This response also suggested that the operational advice needed to provide more information on scientific/archaeological investigations, pointing more clearly to archaeological best practice documents, and setting out archiving standards.

Separately to the SurveyMonkey questionnaire, we received a response from Shetland Museums and Archives suggesting that references to the name of vessel should use the contemporary Swedish naming *Drottningen af Sverige*.

Question 11 invited comments on the business regulatory impact assessment. Two respondents indicated that they favoured option 2 – ie designation. There other two responses were:

- 'No, it looks balanced and comprehensive.' (Joint Nautical Archaeology Policy Committee).
- 'The Chamber is happy that Shipping/ Maritime Traffic/ Navigation has been scoped in.' (UK Chamber of Shipping).

# PART B – CONSULTATION REPORT

## 5. HES ADVICE TO SCOTTISH GOVERNMENT

This section describes how we have taken the views expressed during consultation into account in our advice to the Scottish Government through Marine Scotland.

### 5.1. How have views and information been taken into account?

#### Scapa Flow

Since the consultation closed, we have held follow up meetings with Orkney Islands Council, Orkney Fisheries Association, and the owner of four German wrecks and his agent, to discuss the Scapa Flow proposal in further detail.

The responses to the consultation were, on the whole, supportive of the principle, content and scope of the proposed designation. The majority of comments focussed on the detail.

Several comments at consultation concerned the blockship complexes. We are recommending retention of blockships adjacent to Barrier 1 and 2 within the proposal as we consider that these sites form a key part of the network of blockship defences. The blockships at Barrier 1 are of particular cultural significance given the history of sinking of HMS *Royal Oak* while those at Barrier 2 are now important visible features of the coastal landscape.

Two respondents commented on the potential implications of the designation of these sites on possible development of renewable energy at Barrier 1&2. If the designation is taken forward, we would encourage early engagement with Historic Environment Scotland through the process of environmental impact assessment and marine licensing to explore potential solutions that can deliver the desired benefits, while supporting/minimising hindrance to the preservation objectives of marine historic assets.

Based on comments at consultation, we are recommending the following changes regarding the boundaries around the blockships.

- Revisions to the polygons for all the blockship complexes adjacent to the Churchill Barriers so that the Churchill Barriers would not be located within the marine protected area boundary, and so that the boundaries are drawn as close as possible around the blockships, thereby avoiding inclusion of unnecessary areas of seabed as is desirable to facilitate proportionate management of these sites.
- Revisions also to the boundary around the blockships at Burra Sound so that these are drawn more closely around the core blockship remains
- We accept the case made at consultation that the blockship wrecks of the Aorangi and Clio II merit inclusion within the MPA. Following discussions with Orkney Islands Council who have not raised any issues, we are recommending addition of two circular protected areas (70m and 60m in radius) to include these sites.



We are not recommending any changes to the boundary around the wrecks and salvage sites for the German High Seas Fleet for the following reasons.

- Firstly, we do not agree with comments that artefacts within this area are ‘effectively litter’. We consider that the remains of the German High Seas Fleet, including salvage sites west of Cava and north of Rysa Little, meet the criterion of national importance required for designation as set out in the statement of national importance, and should be managed accordingly.
- Secondly, we do not agree that existing mechanisms whereby divers can recover artefacts and report these to the Receiver of Wreck are sufficient for sites of national importance. As evidenced by the case of a recently identified German diesel pinnacle, sites continue to be located by recreational divers and artefacts recovered without consideration of the need for recording or conservation, and, we believe, without always the required reporting. We consider that extending the principle of responsible access on a ‘look but don’t touch’ basis strikes the right balance between protection for nationally important marine historic assets in-situ, and sustainable tourism. Should designation be taken forward, it would not prohibit recoveries in all circumstances. It will require that license applications involving activities directed at the marine historic assets, such as for salvage if renewed salvage interest in the wrecks were ever to arise, and recoveries of artefacts, are carefully considered in view of the area’s preservation objectives and, if permission is given, that this work is in line with archaeological standards of best practice. Where applications for a marine licence are refused, an applicant can lodge an appeal with the Sherriff.
- Finally, we consider the boundary to be proportionate. We do not agree that the proposed boundary close to the Barrel of Butter is likely to sterilise potential cable route corridors from future development in connection with energy transmission. Potential route options can be appropriately considered through the development management process.

We are also recommending changes to the preservation objectives to address a point made by Orkney Islands Council regarding what the preservation objectives cover, and a separate point made by an owner of four wrecks that one of the objectives might have prevented the transfer of ownership of the wrecks.

We have updated the documentation that will accompany the designation, including the operational advice, to address the following points:

- Clarification on the timeframes involved in assessments regarding works in the vicinity of the HMPA including emergency interventions where immediate action needs to be taken.
- Advice regarding the continuation of a localised commercial fishery in queenie scallops around Cava.
- Changes to the risk profile and tightening up operational advice in relation to scientific/archaeological investigations, pointing to archaeological best practice documents and the Annex of the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage.

To ensure that Scottish Ministers can consider these issues appropriately before undertaking any further consultation and taking the decision on designation, we have updated the Business Regulatory Impact Assessment (BRIA) with information from our consultation. We have added a new section to address potential impacts of designation on an owner of four wrecks and the currently undesignated site of the *Bayern* turrets, in respect of potential salvage work. We have also reviewed the existing entries in respect of renewable energy development at Barrier 2, and commercial fishing activities around the island of Cava and made some other minor alterations.

Finally, views were mixed on whether the Historic MPA should replace the existing scheduling of the German wrecks, or work alongside it during a transition period. On balance, we think that there may be merit in the transitional period favoured by Orkney Islands Council, amongst others, as this will give stakeholders time to adapt to a new designation and to understand what it means.

### **Queen of Sweden**

No follow up meetings have been held regarding Queen of Sweden.

The responses to the consultation were supportive of the principle, content and scope of the proposed designation. One respondent questioned the benefits of the designation over the existing management of the site whereby Shetland Islands Council is understood to hold a lease from the Crown Estate and considers development-related impacts through works licensing. The view of HES is that this mechanism does not regulate against activities such as recoveries of artefacts. We therefore do not consider that this provides a sufficient level of protection in this case, given the ongoing history of recovery of artefacts from this site. We believe that designation of a historic marine protected area will provide additional recognition for the wreck while adding a measure of protection for it in law in a way that continues to facilitate responsible access to this wreck.

On the basis of consultation responses, we are not recommending any changes to the designation order, but some minor changes to the accompanying documentation:

- the naming of the site and the wreck should be clarified to with references to the wreck of the vessel adopting the contemporary Swedish naming Drottningen af Sverige, while the name of the historic marine protected area should adopt the locally known name Queen of Sweden.
- Addition of reference to the Shetland Historic Environment Record and the Local Authority Archaeologist being, respectively, the local information repository and point of contact on archaeological matters, and the Shetland Islands Marine Planning Partnership Advisory Group (SIMAG) for marine planning matters.
- Clarification that the proposed designation lies within the limits of Lerwick Harbour and that the issuing of works licences within the harbour limits is the responsibility of Lerwick Port Authority not Shetland Islands Council.
- Changes to the risk profile and tightening up of operational advice in relation to scientific/archaeological investigations, pointing to archaeological best practice documents, and setting out archiving standards.

No changes are required to the Business Regulatory Impact Assessment.

## **5.2. What we can't respond to**

Several responses related to the protection and management of HMS *Royal Oak* and HMS *Vanguard*. The historic marine protected area proposal would not affect the management of these wrecks which are designated as controlled sites under the Protection of Military Remains Act 1986. This designation is administered by the Ministry of Defence and any operations, including diving operations, which may disturb the site are illegal unless licensed by the Ministry of Defence.

## Appendix 1: List of questions asked

<b>Q1</b> Are you answering this consultation on behalf of yourself as an individual or in another capacity?
<b>Q2</b> Please provide the name of the organisation, company or local authority you are responding on behalf of.
<b>Q3</b> Please indicate which proposals you would like to answer questions on?
<b>Q4</b> To what extent do you agree or disagree with the proposal to designate the Scapa Flow Historic Marine Protected Area?
<b>Q5</b> Do you have any comments on the proposal?
<b>Q6</b> Since 2001, the remains of three battleships and four cruisers of the German High Seas Fleet scuttled in Scapa Flow in 1919 have been protected as scheduled monuments. Do you have a view on how the proposed Historic MPA should interact with these existing designations if it is approved?
<b>Q7</b> The Business Regulatory Impact Assessment (BRIA) is the document which outlines the reasons for the Historic MPA proposal, the research we have undertaken and the anticipated impacts on stakeholders. Do you have any comments on the BRIA?
<b>Q8</b> Do you wish to give your views on the proposal for the Queen of Sweden Historic MPA?
<b>Q9</b> To what extent do you agree or disagree with the proposal to designate the Queen of Sweden Historic Marine Protected Area?
<b>Q10</b> Do you have any comments on the proposal?
<b>Q11</b> The Business Regulatory Impact Assessment (BRIA) is the document which outlines the reasons for the Historic MPA proposal, the research we have undertaken and the anticipated impacts on stakeholders. Do you have any comments on the BRIA?

## **Appendix 2: Organisations who responded**

Responses to the SurveyMonkey consultation were received from the following named organisations, companies or local authorities:

Scottish and Southern Electricity Networks (SSEN)  
Wessex Archaeology Ltd.  
Joint Nautical Archaeology Policy Committee  
Professional Association of Diving Instructors (PADI)  
Shetland Islands Council (Marine Planning)  
UK Chamber of Shipping  
Scottish Sub- Aqua Club  
Gulberwick, Quarff and Cunningsburgh Community Council, Shetland.  
Shetland Oil Terminal Environmental Advisory Group (SOTEAG)  
Lerwick Community Council  
Shetland Amenity Trust (Archaeology Section)  
Ghost Fishing UK  
Shetland Islands Marine Planning Partnership  
Orkney Islands Council

In addition, the following submitted written responses outside the SurveyMonkey questionnaire:

Royal Yachting Association  
Orkney Renewable Energy Forum  
Scottish Water  
Orkney Fisheries Association  
Shetland Museums and Archives.



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