**EXPLANATORY MEMORANDUM TO**

**THE PROTECTION OF WRECKS (DESIGNATION AND AMENDMENT) (ENGLAND) ORDER**

**2022 No. 535**

## 1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Digital, 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 site of a C17 armed vessel located off the Isle of Wight, known as the *Shingles Bank Wreck NW68*;
- the site of a late C15 or C16 merchant vessel located off the Isle of Wight, known as the *Shingles Bank Wreck NW96*;
- the site of the remains of a C13 cargo vessel located in Poole Bay, known as the *Mortar Wreck*;
- the site of the remains of the *Hanover*, a C18 English brigantine located in Hanover Cove, Cornwall.*

  (*This Order has the effect of relocating and decreasing the size of the restricted area currently surrounding the wreck site of the *Hanover* in order to better reflect the extent of its surviving physical remains).

2.2 This Order also:

- revokes the Protection of Wrecks (Designation No. 3) Order 1997 (S.I. No. 1718), which designated the restricted area presently surrounding the wreck of the *Hanover*;
- corrects a factual error in the Protection of Wrecks (Designation) (England) (No. 2) Order 2017, which designated a restricted area in Bracklesham Bay, West Sussex, to protect the wreck of *The Hazardous,* a C17 British Third Rate ship of the line.

## 3. Matters of special interest to Parliament

***Matters of special interest to the Joint Committee on Statutory***

3.1 None.

## 4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England only.

## 5. European Convention on Human Rights

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

## 6. Legislative Context

6.1 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, she may by order designate an area around the site as a restricted area. 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.

6.2 Section 3(2) of the 1973 Act requires the Secretary of State to revoke an order designating a restricted area if she is of the opinion that there is not, or is no longer, any wreck in the restricted area which requires protection.

6.3 The Secretary of State also has powers to protect wreck sites located in UK territorial waters adjacent to England by designating them as a Scheduled Monument under the terms of section 1 of the Ancient Monuments and Archaeological Areas Act 1979. However, use of the 1973 Act is usually preferred if the site in question is located below the level of mean low water spring tides and if it is desirable to regulate access to it.

## 7. Policy background

***What is being done and why***

7.1 The Department for Digital, Culture, Media and Sport has responsibility for the powers provided by section 1 of the Protection of Wrecks Act 1973 in respect of wreck sites located in UK territorial waters adjacent to England. Currently 54 wreck sites are protected by restricted areas designated under these powers**.**

7.2 The Order designates as restricted areas:

- a circular area of radius 75 metres surrounding the Shingles Bank Wreck NW68;
- a circular area of radius 50 metres surrounding the Shingles Bank Wreck NW96;
- a circular area of radius 50 metres surrounding the Mortar Wreck; and
- a circular area of radius 150 metres surrounding the wreck of the Hanover.

7.3 The Order also

- de-designates the restricted area that presently surrounds the wreck of the *Hanover*;
- revises the coordinates of the centre point of the circular restricted area of radius 150 metres intended to surround the wreck of *The Hazardous*.

***Shingles Bank Wreck NW68***

7.4 This site was discovered by divers in 2018 and is located 1.7 km south-west of Hurst Castle, on the Shingles bank, in the Needles Channel, Isle of Wight. It comprises three cannons (one iron and two bronze) together with outlying features including concreted iron objects and a large anchor. Investigations suggest that ship structure may survive buried under the seabed, while sonar anomalies in the vicinity suggest other related features may survive on the seabed a short distance from the main

wreck. Initial assessment of one of the bronze canons have confirmed that it is a Dutch gun cast in Amsterdam between 1621 and 1661 and Historic England has suggested that the wreck may be associated with the Battle of Portland (1653), and that it may have become stranded on the bank before dragging its anchor and sinking.

7.5 Historic England has recommended that the site should be designated under the terms of section 1 of the Protection of Wrecks Act 1973 for the following principal reasons:

- **Period:** Initial interpretation indicates this wreck comprises the remains of a C17 Dutch vessel related to the period when the Netherlands became the foremost maritime and economic power in the world.
- **Rarity:** The discovery of a previously unrecorded shipwreck site in the Solent is a rare occurrence. Ships predating 1700 are extremely rare.
- **Potential:** The recent discovery of this wreck is suggestive of a long period of burial which indicates that the wreck has potential for the survival of a range of small finds, organic material and hull fragments.
- **Vulnerability:** Elements of the wreck exposed on the seabed remain vulnerable to uncontrolled salvage and theft.
- **Group value:** The wreck has group value with *Shingles Bank Wreck NW96* (see below).

***Shingles Bank Wreck NW96***

7.6 This site was discovered by divers in 2018 and is located 3.1 km south-west of Hurst Castle, on the Shingles bank, in the Needles Channel, Isle of Wight. It was discovered by divers in 2018 and comprises a coherent group of 50+ large lead ingots with unidentified markings, together with 12+ stone cannon balls and other material. Sonar survey suggests a number of related features survive on the sea bed a short distance from the main wreck. Initial assessment, based on the casting of the ingots. and the presence of stone cannon balls, has led Historic England to suggest that the site is C16 or very late C15 in date, and that the wreck may have a connection with Southampton and its out-ports, which had a monopoly of English lead export until 1531 – though the possibility remains that it could have been a stray blown in from the English Channel.

7.7 Historic England has been consulted. It agrees that the site should be designated under the terms of section 1 of the Protection of Wrecks Act 1973 for the following principal reasons:

- **Period:** The wreck predates 1580, and hence is a key survival of an early merchant ship.
- **Rarity:** Ships predating 1700 are extremely rare.
- **Potential:** The wreck has potential for surviving structure under the cargo mound, for the survival of small finds and organic remains, to inform on C16 lead manufacture and trade and the nature and construction of C16 merchant ships.
- **Documentation:** The importance of this wreck is enhanced by the information obtained from geophysical data and sonar survey.
- **Vulnerability:** Elements of the wreck exposed on the seabed remain vulnerable to uncontrolled salvage and theft.

- **Group value:** The wreck has group value with *Shingles Bank Wreck NW68* (see above).

***Mortar Wreck***

7.8 This site was discovered by divers in 2019 and is located on the western side of the Swash Channel on the approaches to Poole Harbour, Dorset. It comprises the partially exposed remains of a wooden shipwreck including clinker-built hull planking, other disarticulated wooden remains (including a large timber interpreted as the stempost), a large mound (c. 1m high x c. 8m in diameter) comprising unworked quarried stones thought likely to be Purbeck stone, several Purbeck stone mortars and three dressed and decorated Purbeck stone grave slabs. Initial assessment, based on dendrochronological analysis of hull planking which derived from Irish oak trees, plus interpretation of the finds assemblage, has led Historic England to suggest that the wreck is the remains of a C13 cargo vessel that foundered while outward bound with a cargo of worked and quarried stone from the Purbeck region of Dorset.

7.9 Historic England has been consulted. It agrees that the site should be designated under the terms of section 1 of the Protection of Wrecks Act 1973 for the following principal reasons:

- **Period:** Dendrochronological analysis and interpretation of the finds assemblage indicates that the wreck is the remains of a C13 outgoing cargo vessel carrying worked and quarried stone from the Purbeck region.
- **Rarity:** Ships predating 1700 are extremely rare. There are no known wrecks of seagoing vessels from the C11 to the C14 known to survive in English territorial waters (though fragmentary remains of timbers from vessels of this date have been discovered).
- **Potential:** The wreck still contains a portion of its cargo, and has potential to inform about the Purbeck stone trade during the C13.
- **Vulnerability:** Elements of the wreck and mobile artefacts exposed on the seabed remain vulnerable to uncontrolled salvage and theft.
- **Group value:** The wreck shares group value with the nearby C16 Studland Bay wreck, and the C17 Swash Channel wreck, all three wrecks together helping us to better understand the types of vessels used in maritime trade off the coast of southern England.

***Hanover***

7.10 This site was discovered in 1994 and is located in the eponymously named Hanover Cove, a small bay on the North Cornish coast. It comprises the remains of the Hanover, an English brigantine packet ship that operated between Falmouth and Lisbon from 1757 to 1763. On 13 December 1763 a SSW gale that veered NNW drove the Hanover into the bay, where it struck rocks and broke up. Only three people survived out of its 27 crew and 33 passengers.

7.11 Post Office Packet ships were used to carry mail packets to and from British embassies, colonies and outposts. In addition to passengers, they carried bullion and private goods. The Hanover was carrying between £17,000 and £60,000 in gold coin and valuables at the time of its loss, though contemporary newspaper reports state that the majority of the bullion was recovered shortly afterwards.

7.12 Identification of the wreck site in 1994 was supported by a bronze bell inscribed 'The Hanover Paquet 1757', and a ring identified as belonging to the captain of the ship, that were reported as having come from the site. Designation of the current restricted area in 1997 took place after a salvage rig had been positioned on site and 60 cannon and a fragment of hull raised. Very little recording was carried out during these works, and while it was possible to locate the rough location of the excavation site, the exact location of the wreck is not known.

7.13 Packet ships were under standing orders to out-sail rather than to engage with an enemy and post-excavation analysis of the salvaged cannon showed that only one was likely to have formed part of Hanover's armament. The remaining 59 guns were a variety of aged, worn out and non-naval guns. Historic England suggests that they had probably been carried as ballast.

7.14 In 2016, Historic England commissioned Cotswold Archaeology to undertake remote sensing and foreshore metal-detecting within the current restricted area. This found the beach to be largely devoid of sand and the area described as containing the most wreck material in 1997 (and previously described as being buried under 2-5m of sand) is now similarly exposed. No wreck material was observed during this part of the survey, but remote sensing (comprising magnetometry and multibeam bathymetry) recorded a large cluster of buried ferrous material located at the western edge of the current restricted area. In Historic England's opinion no structural remains survive in the area excavated in 1997 and this cluster reflects the currently surviving physical remains of the Hanover (there are no records of finds suggesting the presence of a second wreck in Hanover Cove).

7.15 Historic England has been consulted. It agrees that the current restricted area should be revoked in favour of designating a new restricted area under the terms of section 1 of the Protection of Wrecks Act 1973 focused on the cluster of buried ferrous material for the following principal reasons:

- **Rarity:** As the only known surviving example of a packet ship (albeit in wreck form).
- **Period:** For its association with HM Post Office Packet Service.
- **Potential:** For its potential to inform on the build, nature and cargo of packet ships and C18 merchant ships.
- **Documentation:** For its C18 documentary history, particularly that detailing its wrecking and subsequent salvage, and for its recent archaeological documentation.

***The Hazardous***

7.16 Built in 1698 in Port Louis, France, The Hazardous (originally Le Hazardeux, a Third Rate ship of the line with 50 guns) was loaned to de Beaubriand of St Malo for use as a privateer in 1703. She was spotted by three British ships led by Admiral Sir Cloudesley Shovell, and after six hours of fighting was taken as a prize then refitted for service in the Royal Navy. In company with several other ships inbound from America, the Hazardous was coming to anchor off Portsmouth in November 1706 when she missed stays twice in a gale. Forced to run before the gale into shore. Trapped on a lee shore, the captain, Lieut John Hares, ran the ship ashore at high water to save his crew.

7.17 The Hazardous was first protected by a restricted area under the terms of section 1 of the Protection of Wrecks Act 1973 in 1986. This size of this area was subsequently expanded twice, firstly in 1988 then again in 2017. In April 2021 remote sensing was undertaken by MSDS Marine, which identified that due to a change in the coordinate reference system detailed within the statutory instrument, the current restricted area does not align with the archaeological remains on the seabed. The Latitude/Longitude stated for the centre of the designation has not changed in either of the re-designations of the site. However, the 2017 re-designation includes the footnote "The positions of the sites identified in Schedule 1 are defined by co-ordinates of latitude and longitude according to the World Geodetic System 1984 (WGS84), as revised in 2004." The coordinate reference system for the position used in the original designation, and the subsequent amendment is not specified on the Statutory Instrument, however it is believed to be OSGB36. Redefining the position as being in the WGS84 coordinate reference system, will have the effect of shifting the centre point by approximately 130m to the south-east. As a result, the exposed archaeological remains would not be contained fully within the current restricted area. Therefore, this order amends the 2017 order to ensure the accuracy of the restricted area.

## 8. European Union Withdrawal and Future Relationship

8.1 This Order does not relate to withdrawal from the European Union.

## 9. Consolidation

9.1 The Department currently has no plans to consolidate any of these Orders.

## 10. Consultation outcome

***Shingles Bank Wreck NW68***

10.1 In respect of *Shingles Bank Wreck NW68*, views have been invited from such persons and bodies as are considered appropriate. These were the applicant for designation, the Marine Management Organisation, the UK Hydrographic Office, Trinity House, the Receiver of Wreck, the Protected Wreck Association, the Nautical Archaeology Society, The Crown Estate, the Southern Inshore Fisheries and Conservation Authority, Wessex Archaeology, Natural England, the British Sub-Aqua Club, the Maritime Archaeology Trust, the Isle of Wight Archaeological Centre, the Joint Nautical Archaeology Policy Committee, Navy Command, and the Dutch Heritage Agency Rijksdienst voor het Cultureel Erfgoed (RCE).

10.2 The finder, the Maritime Archaeology Trust, the British Sub Aqua Club and Navy Command replied to support designation of the wreck. The Joint Nautical Archaeology Policy Committee replied to support designation and noted that the presence of Dutch cannon on the wreck does not mean that the vessel itself was necessarily of Dutch origin. RCE replied to support designation and indicated that they would be interested in a joint project to investigate the site in future. The Crown Estate acknowledged our consultation, but made no comments on the proposed designation.

***Shingles Bank Wreck NW96***

10.3 In respect of *Shingles Bank Wreck NW96*, views have been invited from such persons and bodies as are considered appropriate. These were the applicant for designation, the Marine Management Organisation, the UK Hydrographic Office, Trinity House,

the Receiver of Wreck, Protected Wreck Association, the Nautical Archaeology Society, The Crown Estate, the Southern Inshore Fisheries and Conservation Authority, Wessex Archaeology, Natural England, the British Sub-Aqua Club, the Maritime Archaeological Trust, the Joint Nautical Archaeology Policy Committee and the Isle of Wight Archaeological Centre.

10.4 The applicant, BSAC, the Maritime Archaeological Trust and the Joint Nautical Archaeology Policy Committee responded to support the designation of the wreck. The Maritime Archaeological Trust suggested that the proposed restricted area might be increased to radius 75m rather than 50m, however, there is no direct evidence to justify this at the present time. The Southern Inshore Fisheries and Conservation Authority and the Crown Estate responded to acknowledge receipt of the consultation. No other responses were received.

***Mortar Wreck***

10.5 In respect of *Mortar Wreck*, views have been invited from such persons and bodies as are considered appropriate. These were Bournemouth University, Trevor Small of Rocket Charters, the Marine Management Organisation, the UK Hydrographic Office, Trinity House, the Receiver of Wreck, the Historic England Listing and Planning Teams, the Protected Wreck Association, the Nautical Archaeology Society, the Crown Estate, the Southern Inshore Fisheries and Conservation Authority, Natural England, the British Sub-Aqua Club, Poole Harbour Commissioners, Navy Command, Dorset Council, and the Joint Nautical Archaeology Policy Committee.

10.6 Trevor Small of Rocket Charters, Bournemouth University, Dorset Council and the Joint Nautical Archaeology Policy Committee replied to support the designation of the wreck. The Dorset Historic Environment Record provided details of its record for the site. The UK Hydrographic Office replied to provide details of the site from the UKHO wreck record. Poole Harbour Commissioners replied to state that it believed the wreck to be far enough away from the Swash Channel not to affect or be affected by commercial shipping movements.

***Hanover***

10.7 In respect of the *Hanover*, views have been invited from such persons and bodies as are considered appropriate. These were the Marine Management Organisation, the UK Hydrographic Office, Trinity House, the Receiver of Wreck, Historic England Planning Team, Protected Wreck Association, the Nautical Archaeology Society, The Crown Estate, the Cornwall Inshore Fisheries and Conservation Authority, Cotswold Archaeology, the British Sub-Aqua Club, the Maritime Archaeology Trust, the Joint Nautical Archaeology Policy Committee, Cornwall County Council and two archaeologists employed by DCMS in 1997 to advise on the site investigations.

10.8 One of the archaeologists formerly employed by DCMS replied to state that the length and tonnage of the vessel were not known, and that the dimensions stated in the consultation draft came from later documents. The other archaeologist formerly employed by DCMS replied to suggest a course of action for designation. The Joint Nautical Archaeology Policy Committee replied to support designation.

***The Hazardous***

10.9 In respect of The *Hazardous* wreck site, consultation was undertaken when the Protection of Wrecks (Designation) (England) Order 2017 was laid. Views were invited at that time from such persons and bodies as were considered appropriate.

These were Historic England (Listing), the current licensee, Historic England (MPU), Natural England, the Association of Protected Wreck Licensees, the Crown Estate, the Marine Management Organisation, Sussex Inshore Fisheries & Conservation Authority, Historic England (Protected Wreck Licensing), the British Sub-Aqua Club, and West Sussex County Council.

10.10 Two responses to the consultation were received. The Crown Estate indicated that it had no comment to make regarding the proposed amendment, while the licensee at that time revealed a previously unknown presence of archaeological material lying beyond the western extent of the prior restricted area.

10.11 In respect of this Order, no consultation was undertaken in respect of The Hazardous because it is a correction to deficient legislation and protecting this wreck from unauthorised activity is considered to be a matter of immediate urgency.

## 11. Guidance

11.1 There is no proposal to lay guidance with the Order.

11.2 Details of wreck sites in English waters that have been protected under the terms of the Protection of Wrecks Act 1973 can be found on the National Heritage List for England (https://historicengland.org.uk/listing/the-list/) hosted by Historic England, as well as in Mariner Notices and Admiralty Charts issued by the UK Hydrographic Office and on the Receiver of Wreck website.

## 12. Impact

12.1 The impact on business, charities or voluntary bodies is not significant.

12.2 The impact on the public sector is not significant.

12.3 A full Impact Assessment has not been prepared for this instrument because no significant impact is foreseen on the private, voluntary or public sectors.

## 13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 Small businesses will need to apply to the Secretary of State for a license to undertake proscribed activities in a restricted area.

## 14. Monitoring & review

14.1 The approach to monitoring of this legislation is as follows. The condition of protected wreck sites located in UK territorial waters adjacent to England is monitored as part of Historic England's Heritage at Risk programme. Historic England also receives reports from licensees.

14.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Parliamentary Under Secretary of State, Nigel Huddleston, 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."

## 15. Contact

15.1 Anishaa Aubeeluck at the Department for Digital, Culture, Media and Sport (Telephone:07772883466; Email: Anishaa.Aubeeluck@dcms.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Fazima Osborn, Deputy Director for Heritage, at Department for Digital, Culture, Media and Sport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Parliamentary Under Secretary of State, Nigel Huddleston at the Department for Digital, Culture, Media and Sport can confirm that this Explanatory Memorandum meets the required standard.