EXPLANATORY MEMORANDUM TO

THE PROTECTION OF WRECKS (DESIGNATION) (ENGLAND) ORDER

2017 No. 773

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:

- two distinct sites of the wreck of an unknown vessel or vessels on the seaward side of Chesil Beach in Dorset, comprising eight cannon cast between 1650 and 1725 and seven cannon cast in the second half of the C17 century, known collectively as the *Chesil Beach (Cannon Site)*;
- the site of the wreck of the *UC-70*, a First World War German U-boat, that was sunk off Overdale Wyke near Whitby, North Yorkshire;
- the site of the wreck of *HMS Colossus*, a Nelsonian warship that grounded off Samson Island, Isles of Scilly in 1798*; and

  (*This Order has the effect of increasing the size of the restricted area around the wreck site of HMS Colossus in order to include related archaeological material formerly contained in the ship which is now known to lie outside of the present restricted area).
- the site of the wreck of the *Hazardous*, an English Third Rate warship that was beached in Bracklesham Bay, off West Sussex, in 1706**.

  (**This Order has the effect of increasing the size of the restricted area around the wreck site of the Hazardous in order to include related archaeological material formerly contained in the ship which is now known to lie outside of the present restricted area).

2.2 This Order also revokes:

- the Protection of Wrecks (Designation) Order 2001 (S.I. 2001/2403), which designated the present restricted area surrounding the wreck site of HMS Colossus*;
- the Protection of Wrecks (Designation No.1) Order 1986 (S.I. 1986/1441) and the Protection of Wrecks (Designation No.1 Order 1986) (Amendment) Order 1988 (S.I. 1988/287), which designated the present restricted area surrounding the wreck site of the Hazardous**; and
- the Protection of Wrecks (Designation No.1) Order 1983 (S.I. 1983/1400), which designated a restricted area adjacent to the Brighton Marina Western Breakwater.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

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

4. Legislative context

4.1 Section 1(1) of the 1973 Act provides that where the Secretary of State is satisfied that there is, or may prove to be, the site of a vessel lying wrecked on or in the sea bed in UK waters and that the site ought to be protected from unauthorised interference on account of the archaeological, historical or artistic importance of the vessel, or of any objects contained or formerly contained in it which may be lying on the seabed in or near the wreck, she may by order designate an area around the site as a restricted area. Under section 1(3) it is a criminal offence for a person to engage in specified activities in a restricted area, except under the authority of a licence granted by the Secretary of State.

4.2 Section 1(4) of the 1973 Act requires the Secretary of State to consult with such persons as she considers appropriate before making a designation order. Historic England, on behalf of the Secretary of State, has carried out the necessary consultations.

4.3 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.

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

5. Extent and territorial application

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is England only.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

7.1 Underwater cultural heritage is a devolved subject area, for which the Department for Digital, Culture, Media and Sport has responsibility in England. Currently 52

wreck sites around the English coastline are designated under the Protection of Wrecks Act 1973**.**

7.2 The Order designates as restricted areas:

- two circular areas of radius 30 metres surrounding material from an unknown wreck off the Dorset coast referred to as the Chesil Beach (Cannon Site);
- a circular area of radius 30 metres surrounding the wreck of the UC-70 off the North Yorkshire coast;
- a rectangular area of 800m by 300m surrounding the wreck of HMS Colossus in the Isles of Scilly; and
- a circular area of radius 150 metres surrounding the wreck of the Hazardous off the West Sussex coast.

7.3 The Order also de-designates the restricted areas presently surrounding the wreck sites of HMS Colossus, the Hazardous, and the 'Brighton Marina' wreck. These proposals have arisen from Historic England's national overview of Early Ships and Boats: prehistory to the 1840s.

Unknown Wreck: Chesil Beach (Cannon Site)

7.4 The site lies on the seaward side of Chesil Beach in Dorset. It was discovered in 2010 and comprises two distinct areas of wreck, termed the inshore and offshore sites.

7.5 The inshore site comprises eight heavily concreted cast iron cannon identified as English 24-32 pounders cast between 1650 and 1725, plus a scatter of cannon fragments, iron shot and other concretions. The most likely explanation for their presence is that the guns comprise the remains of an outbound cargo, being carried on a merchant ship which was driven onto the beach and wrecked during the late C17 or early C18 centuries. The offshore site consists of seven very heavily concreted cast iron English cannon, one of which is probably a six pounder, cast in the second half of the C17 century. It is not clear whether the guns were being carried as defensive armament or as cargo/ballast.

7.6 There is presently no indication of a debris trail linking in the inshore and offshore sites, suggesting that they may represent the remains of two separate shipwrecks. However, it is possible that the two cannon assemblages derived from a single shipwreck event dated to around 1700. In either case they comprise evidence of an important aspect of English trade in a period in which global British trading networks were becoming established. Historic England recommends that the remains of the unknown wreck referred to as Chesil Beach (Cannon Site) should be designated under the Protection of Wrecks Act 1973 because of its historical and archaeological importance, based on the following principal reasons:

- **Rarity:** the overall assemblage is one of the few known archaeological wrecks representative of late C17/early C18 date;
- **Group value:** the cannon assemblages are part of the rich archaeological heritage off Chesil Beach and has group value with the designated wreck site off West Bay;
- **Survival:** areas of potential survival have been identified and there is potential for buried artefacts and deposits to be preserved, particularly under the guns;
- **Potential:** the assemblages have the potential to enhance our understanding of merchant ships and seafaring trade during the mid to late C17. The remains have

significant potential for further study and comparison with other designated cannon sites such as those at West Bay and Salcombe;

- **Vulnerability:** the site remains vulnerable to souvenir hunters and uncontrolled salvage.

UC-70

7.7 Following restrictions imposed on offensive U-boat operations in the summer of 1915, the significance of the mine-laying U-boat became more prominent. Newer and larger than previous U-boats, the UC II class of minelayer U-boats were double-hulled with improved range and sea-keeping. They carried 7 torpedoes and up to 18 mines. Two engines increased their reliability and meant that the whole British coast was within their range. If judged by the numbers of enemy vessels destroyed, the UC II is considered to be the most successful submarine design in history (estimates indicate that they sank more than 1,800 enemy vessels).

7.8 The UC-70 was part of the Flanders II Flotilla and was tasked to mine England's east coast when it was bombed, and later depth-charged, by HMS Ouse on 28 August 1918, some 5.2km north-west of Whitby, North Yorkshire. There were no survivors from the 31 officers and crew on board. Since coming into service in November 1916, it had conducted 10 patrols, sinking / damaging 40 ships.

7.9 Remote sensing and diving investigations in 2016 revealed that the wreck of the UC-70 lies in an upright position with a slight list to port. Its outer pressure hull is corroded away in places, but its inner hull appears to be largely intact. The 88mm deck-gun is still intact and in place, and the openings of the six mine-laying tubes are visible on the upper surface of the hull. The conning tower plating has fallen to the port of the submarine, but the two periscopes are still visible and in situ. Human remains have been observed at an exposed section at the stern.

7.10 Historic England recommends that the remains of the UC-70 should be designated under the Protection of Wrecks Act 1973 because of its historical and archaeological importance, based on the following principal reasons:

- **Historic:** the UC-70 is representative of the Type UC II class of submarines; the most successful submarine design in history, and has a clearly understood history of service and loss
- **Archaeological:** major component parts of the submarine remain in-situ, both internally and externally, including the presence of skeletal human remains
- **Vulnerability:** component parts of the submarine, artefacts and its crew remain vulnerable to uncontrolled salvage.

HMS Colossus

7.11 HMS Colossus was a 74-gun third rate ship-of-the-line built at Gravesend, and launched in 1787. Its last naval engagement was at the Battle of Cape St Vincent (1797), during the course of which she was badly damaged. The Colossus was subsequently stripped of her stores to repair the serving ships, and ordered to return to England, carrying wounded from the battle, along with prize items and part of a collection of Greek antiquities amassed by Sir William Hamilton. However, while taking shelter from a gale in St Mary's Road in the Isles of Scilly on 10th December 1798, the main anchor cable parted, and the ship dragged her remaining anchors to come aground on Southward Well Rocks. The Colossus was subject to extensive salvage in the year following her wrecking, before breaking up. Investigations funded

by the British Museum had recovered more than 30,000 shards of Greek pottery by 1984.

7.12 The wreck of HMS Colossus has a complex designation history. The present site, to the north-east of the original designated area, and believed to represent the stern of the wreck, was designated in 2001 (SI 2001/2403). It includes a large section of ship structure, cannon and other items, including muskets, mizzen chains, a rudder gudgeon, ropes and pulley sheaves. The current restricted area also includes a substantial 'debris' area of material, such as shot, timbers, cannon and small artefacts (a carved figure from the port side of the stern of the vessel was also identified, excavated and recovered). Following a re-examination of the wrecking process of HMS Colossus, coupled with the identification of related archaeological material now known to lie outside the restricted area, Historic England has advised that the current restricted area should be extended to form a rectangular area 800m long by 300m wide, orientated NE-SW, to incorporate the material lying outside the existing restricted area.

7.13 Historic England recommends that the site of the wreck of HMS Colossus continues to merit designation under the terms of the Protection of Wrecks Act 1973 because of its historic and archaeological importance, based on the following principal reasons:

- **Rarity:** the 74-gun Third Rate ship of the line was a naval development wholly characteristic of the later C18 and the Colossus is the only designated example of a Third Rate of its generation;
- **Potential:** the vessel has considerable potential for providing insight into late C18 construction materials and techniques;
- **Vulnerability:** the wreck remains vulnerable to souvenir hunters and uncontrolled salvage;
- **Documentation:** the importance of this vessel is considerably enhanced by the information obtained from archaeological survey and surviving Admiralty records, and;
- **Historic:** the Colossus is associated both with significant naval actions and characters of the late C18, as well as with the age of the Grand Tour and the transport of antiquities to Britain.

Hazardous

7.14 The Hazardous was formerly the French vessel Le Hazardeux, built in Port Louis as a 50-gun Third Rate ship of the line. She was badly damaged then captured in 1703 by the Warspite and Orford in company with other ships, but was subsequently refitted for service in the Royal Navy as the Hazardous, her armament increasing to 54 guns. In September 1706, the Hazardous sailed from Chesapeake Bay (America) together with three other warships escorting a convoy of 200 ships to the Thames Estuary. On reaching the southern tip of the Isle of Wight in November bad weather forced her to run before a gale into shore. Trapped on a lee shore, the Hazardous' captain, Lieut. John Hares, ran her ashore at high water to save his crew.

7.15 The wreck of the Hazardous was originally designated in 1986 (SI 1986/1441), following the discovery of guns protruding from the seabed in 1977, the subsequent recovery of late seventeenth / early eighteens century artefacts, then survey and excavations in the early 1980s. These investigations established that the lower hull of the Hazardous survived in two parts in a general sea bed depth of 7 metres. The

radius of the protected area around the wreck was subsequently extended in 1988 (SI 1988/287). Following the identification in 2014 of a cannon believed to be associated with the Hazardous some 25m east of the current restricted area, plus the recent discovery of bar shot and a lead scupper some 20m to the west of the restricted area (with other remains believed to lie beyond this), Historic England has advised that the current restricted area should be extended to form a circular area of radius 150m to incorporate this material.

7.16 Historic England recommends that the site of the wreck of the Hazardous continues to merit designation under the terms of the Protection of Wrecks Act 1973 because of its historic and archaeological importance, based on the following principal reasons:

- **Archaeological:** The Hazardous is a rare survival of a 54-gun Ship of the Line;
- **Historical:** The ship is a rare survival of a naval vessel directly associated with the convoying of goods direct from Chesapeake Bay (America) to England during the early Colonial Period of American history;
- **Vulnerability:** Component parts of the warship and its artefacts remain vulnerable to uncontrolled salvage.

Brighton Marina

7.17 A disarticulated assemblage of archaeological material was found by members of Basildon's Black Cat Sub-Aqua Club in 1975, adjacent to the western breakwater of the newly-built Brighton Marina. Items of ordnance, suggestive of a late C15 / early C16 date, were recovered before the site was designated as a protected wreck site in 1983. However, no archaeological remains have been seen or recorded on the seabed in the restricted area since at least 1986. Indeed no evidence of ship structure has ever been recorded within the current restricted area or formally reported from within the marina, leading a licensed survey in 1991 to suggest that the previous finds may have represented objects jettisoned by a ship in distress rather than an actual wreck site

7.18 In 2016, Historic England commissioned Cotswold Archaeology to undertake remote sensing within the restricted area to identify the presence/absence of archaeological material associated with a C15/C16 wreck. The survey, comprising multibeam bathymetry, side-scan sonar and magnetometer sensing, identified a single anomaly. This was subsequently investigated by Wessex Archaeology but discovered to be a single length of modern metal tubing and therefore un-related to any historic wreck site.

7.19 Historic England concludes that, while it seems that a C15/C16 wreck lay in the general area of Black Rock, it is highly likely that the main site lay in an area now covered by the marina and seems to have been destroyed and removed during the marina's construction. It suggests that disarticulated archaeological material and isolated objects discovered and systematically recovered by divers from Basildon's Black Cat Sub-Aqua Club in the restricted area most likely removed all evidence for the wreck's debris trail. Historic England therefore recommends that the present restricted area off the western arm of the breakwater wall surrounding Brighton Marina no longer merits designation under the terms of the Protection of Wrecks Act 1973

8. Consultation outcome

Unknown Wreck: Chesil Beach (Cannon Site)

8.1 In respect of the Chesil Beach (Cannon Site) assemblages, views have been invited from such persons and bodies as are considered appropriate. These were Dorset County Council, the Dorset Historic Environment Record, Trinity House, the Marine Management Organisation, the UK Hydrographic Office, the British Sub-Aqua Club, the Crown Estate, the Receiver of Wreck, Historic England Marine Planning Unit, Wessex Archaeology, and the Shipwreck Project. The owner of the wreck is unknown.

8.2 The only response came from the UK Hydrographic Office, which sought to confirm the location of the wreck but did not comment on the merits of the designation

UC-70

8.3 In respect of the UC-70 wreck site, views have been invited from such persons and bodies as are considered appropriate. These were the applicant, the Ministry of Defence, the Marine Planning Unit (Historic England), the Receiver of Wreck, Maritime Archaeologist (HE), the Association of Protected Wreck Licensees, the British Sub-Aqua Club, the Nautical Archaeology Society, North Yorkshire County Council, the Crown Estate, the Marine Management Organisation, Natural England, Trinity House, the UK Hydrographic Office, the German Embassy in London, and the North Eastern Inshore Fisheries & Conservation Authority.

8.4 The only responses came from:

- the Ministry of Defence, which confirmed that it is content for the UC-70 to be designated under the terms of the Protection of Wrecks Act 1973;
- the Naval Attaché at the German Embassy in London, who indicated that the German Foreign Office supports the proposed designation, particularly as there are videos online of divers on the wreck, despite it being considered by Germany to be a 'sea grave'; and
- the North Eastern Inshore Fisheries & Conservation Authority, which acknowledged that the wreck has significant historic and societal value on both a regional and national basis.

HMS Colossus

8.5 In respect of the HMS Colossus wreck site, views have been invited from such persons and bodies as are considered appropriate. These were the applicant, the Professional Boatmen's Association, St Mary's Harbour Master, the Marine Management Organisation, the Receiver of Wreck, Natural England, Anna Cawthray, Chris Linzell, David McBride, Jolene Williams, the UK Hydrographic Office, Chris Pritchard, Dan Pascoe, the Crown Estate, the Nautical Archaeology Society, Richard Larn, the Ministry of Defence, Tim Allsop, Todd Stevens, the British Sub-Aqua Club, Isles of Scilly Police, Kevin Camidge, Isles of Scilly Council, and the Inshore Fisheries & Conservation Authority.

8.6 Seven responses to the consultation were received. Three respondents (a current Licensee, the British Sub Aqua Club and the Council of the Isles of Scilly) were supportive of the recommendation to amend the restricted area. Two respondents (the Crown Estate and the local Constabulary) had no comment to make, while one (the Marine Management Organisation) requested that it be notified should eelgrass be identified during archaeological investigations. One respondent (a licensee) suggested that a circular restricted area might be preferable to a rectangular one, but did not oppose re-designation.

Hazardous

8.7 In respect of the Hazardous wreck site, views have been invited from such persons and bodies as are 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.

8.8 Two responses to the consultation were received. The Crown Estate indicated that it had no comment to make regarding the proposed amendment, while the current licensee revealed the hitherto unknown presence of archaeological material lying beyond the western extent of the current restricted area, referred to above.

Brighton Marina

8.9 In respect of the Brighton Marina protected wreck site, views have been invited from such persons and bodies as are considered appropriate. These were the applicant, Brighton Marina, the Marine Management Organisation, Trinity House Lighthouse Service, the Receiver of Wreck, the UK Hydrographic Office, Historic England Planning Department, Dave Parham, the Crown Estate, the Nautical Archaeology Society, Cotswold Archaeology, Terence Newman, the Inshore Fisheries & Conservation Authority, Wessex Archaeology, Alison James, the British Sub-Aqua Club, Julie Satchell, Brighton Archaeological Society, Brighton City Council, and East Sussex County Council.

8.10 Six responses to the consultation were received, five of which (including Brighton Marina Co Ltd., the Nominated Archaeologist, current Licensee and British Sub Aqua Club) were supportive of the recommendation to de-designate the Brighton Marina site. One respondent (the Head of Research from the Maritime Archaeology Trust at the National Oceanography Centre) did not feel able to comment on Historic England's opinion that there is no reasonable likelihood of substantial archaeological remains in the area, based on the information given.

9. Guidance

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

10. Impact

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

10.2 The impact on the public sector is not significant.

10.3 An Impact Assessment has not been prepared for this instrument as no significant impact is foreseen on the private, voluntary or public sectors.

11. Regulating small business

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

11.2 No specific action is proposed to minimise regulatory burdens on small businesses.

11.3 The burden for small businesses is a need to be licensed to carry out diving operations at the wreck sites. There is no fee for obtaining a licence.

11.4 The legislation applies to all sea users and businesses of all sizes equally since, potentially, the impact of small businesses on wreck sites can be just as detrimental as that of large businesses. As with all applications for licences to access a restricted area, it is for the Secretary of State to consider each application on its merits, having taken into account all material considerations.

12. Monitoring & review

12.1 The condition of protected wreck sites in English waters is monitored as part of Historic England's Heritage at Risk programme. Historic England receives reports from licensees and from inspections undertaken by the Government's contractor for archaeological services in support of the 1973 Act.

12.2 Historic England is progressively implementing conservation statements and management plans for each of these protected wreck sites.

12.3 Parliamentary Under Secretary of State, John Glen, has made the following statement regarding a review provision:

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

13. Contact

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