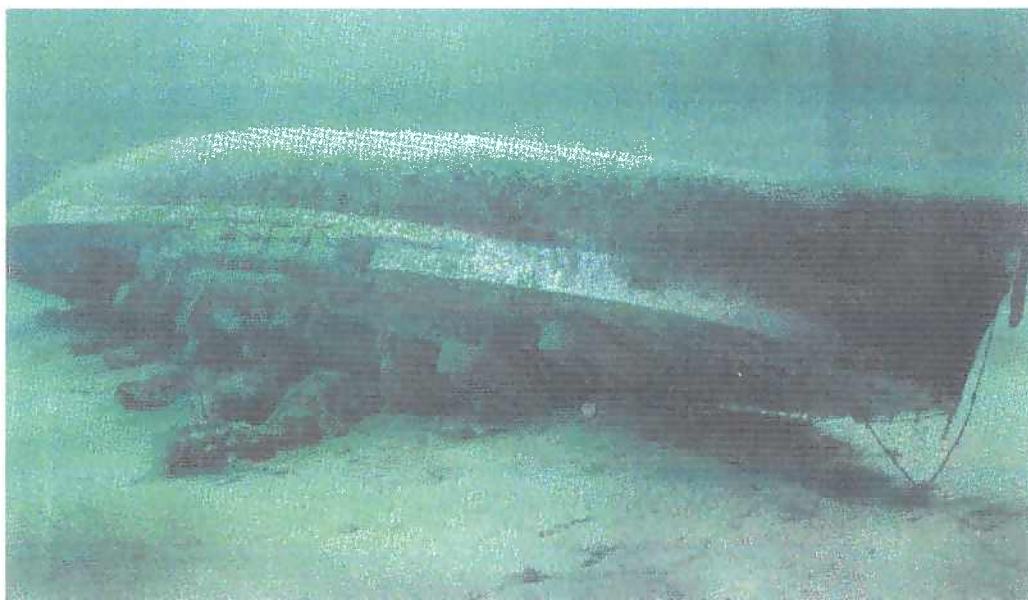


**MILITARY MARITIME GRAVES
AND
THE PROTECTION OF MILITARY
REMAINS ACT 1986**



HMS Royal Oak

**CONSULTATION REPORT
BY
THE MINISTRY OF DEFENCE**



The Ministry of Defence
Metropole Building, Northumberland Avenue,
London

November 2001

EXECUTIVE SUMMARY

Following a public consultation process into the protection provided to wrecked Military vessels, in particular Military Maritime Graves Dr Lewis Moonie, Under Secretary of State for Defence has approved the following recommendations:

- That a limited number of vessels sixteen (16), within UK jurisdiction, which meet the criteria and are representative of all others lost, will be designated as Controlled Sites and five (5) vessels in international waters deemed to be at immediate and significant risk will be designated as Protected Places, and;
- That a rolling programme of identification and assessment against the criteria be established to designate all other British vessels, in military service when lost, as Protected Places.

The overall effect of the above recommendations is that, on completion of the rolling programme, all vessels, in particular all Military Maritime Graves that meet the criteria will be designated. Regardless of whether the designation takes the form of a Controlled Site or Protected Place, all designated vessels will be protected from unauthorised disturbance. It will be an offence to disturb or remove items from or in any way tamper with or remove artefacts from a Controlled Site or Protected Place. In some cases offences could attract fines of £5,000.

The number of Controlled Sites has been determined by geographical location and the practicalities of enforcing UK legislation in international waters; and within UK jurisdiction the effect that imposing exclusion zones would have on commercial and sporting activities, for example fishing, and associated industries.

It is acknowledged that there is a lobby in favour of the designation of HMS Prince of Wales and HMS Repulse and all other vessels as Controlled Sites. Designation in international waters would however, only be enforceable against British citizens and British Flag vessels. The designation of these vessels as Controlled Sites would not restrict or limit the activities of other nationals but may lead to prohibiting relatives who were British citizens from visiting and diving on the sites. It is therefore recommended that when any vessel outside UK jurisdiction is designated that designation take the form of a Protected Place.

- That, in addition to other factors which the Secretary of State may wish to consider when determining the suitability of a military vessel for designation under the PMRA, for example, safety, the following criteria will also be considered:

- a. whether or not lives were lost;
 - b. whether or not there is evidence of sustained disturbance or looting (and the strength of such evidence);
 - c. whether or not designation is likely to curb or put a stop to such disturbance or looting;
 - d. whether or not diving on the vessel or site attracts sustained and significant public criticism;
 - e. whether not the vessel is of historical significance.
- That the criteria will be reviewed periodically and published in guidance notes to divers and other sea users and made available to interested parties.
 - That other designations as Controlled Sites will be made if vessels are subject to sustained disturbance or are considered dangerous.
 - That assessment of applications for licences for activities on Controlled Sites will be made on a case-by-case basis and limited to appropriate activities.
 - That licences will be introduced for activities directed at the small number of proposed Controlled Sites.
 - That licensing charges will be introduced if a significant number of Controlled Sites are designated.
 - That a licensing regime permitting lawful commercial non-diving activities should be established if in the future a significant number of designations as Controlled Sites become necessary.
 - That procedures be set in place for notifying interested parties of forthcoming designations through, for example, media or Royal Naval Association.
 - That the feasibility of supplying information panels at coastal locations providing details of designated Controlled Sites should be examined.
 - That guidance notes to divers and other sea users be published.

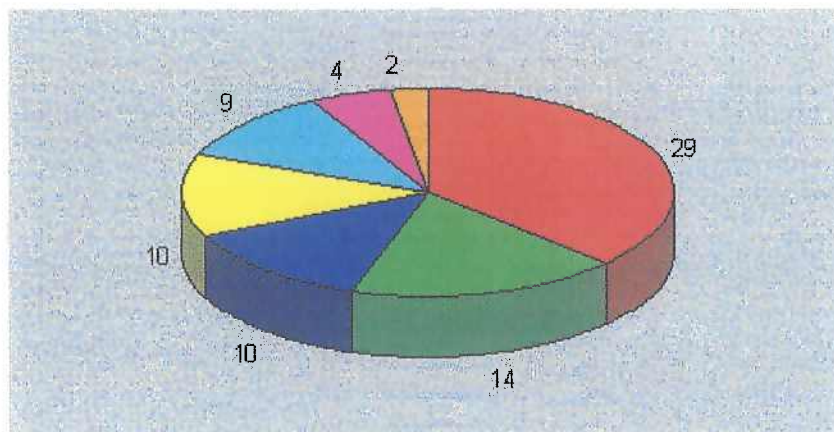
A list of vessels to be designated as Controlled Sites is at Annex B to the Consultation Report.
A full summary of recommendations can also be found at annex A to the Consultation Report.

Introduction

1. The activities of recreational divers and other sea users in the vicinity of wrecked military vessels have recently given rise to an increase in public and Parliamentary concern and MoD decided to review the policy regarding the protection of military wrecks. On the 14 February 2001, the Ministry of Defence published a consultation paper titled "Military Maritime Graves and the Protection of Military Remains Act 1986".

2. Over three hundred copies of the document were distributed to MP's, individuals, groups and organisations that expressed an interest in the subject. Seventy-eight replies were received. The breakdown is as follows:

- 29 representing diving interests
- 14 representing survivor associations/relatives
- 10 representing archaeological interests
- 10 from members of the public
- 09 representing commercial and fishing interests
- 04 from MP's
- 02 from Academic/Law interests



In many cases comments were received from organisations on behalf of their membership. See Annex C.

3. Generally the Consultation Paper was well received and its aims supported although interpretation of the intention of the consultation paper differed greatly. Some sought to draft new legislation whereas others recommended amendments to existing legislation. The majority of those who responded supported the need for the protection of military wrecks and maritime graves. Comments varied significantly however, on the appropriate measures to achieve this goal.

4. A minority of those consulted advocated a blanket ban on all activities in the vicinity of wrecks. Fishing interests were unanimously against any restrictions on their commercial or sporting activities. Recreational divers, whilst fully supporting existing educational initiatives and self regulation, expressed the pragmatic view that some restrictions were inevitable in the aftermath of strong public opposition of their past activities.

5. Unsurprisingly, given the diversity of views, no single solution was identified from contributors that would satisfy all interests.

Current Legislation relating to wreck protection

6. The Protection of Wrecks Act 1973 (PoWA) provides for the pro-active protection of vessels of historical significance over 100 years. The trend within the historical lobby is to seek protection for military vessels outside this period where they are thought to be significant for technological reasons or their association to military endeavours. Unlike PoWA, the Protection of Military Remains Act 1986 (PMRA) provides no powers for a preservation regime. Protection of historical vessels under PMRA would provide only passive measures of protection.

Summary

7. Given the polarised views prior to the consultation process, unsurprisingly, no single solution was identified from the replies that would completely satisfy the expectations of the diverse interest groups who contributed. Some contributors advocated a complete ban on all diving activities around wrecks; others supported no restrictions but promoted self-regulation such as the current "Respect our Wrecks" educational campaign; the majority favoured a compromise position.

8. There was general agreement that the provisions of PMRA should be applied to some if not all wrecked military vessels. Some opinion favoured designation as "Controlled Sites". But there was lack of agreement on the number of vessels to be designated. Others supported designation as "Protected Places".

Recommendation

9. a. that a limited number of high profile vessels (16), which are representative of all others lost, be designated as Controlled Sites (list at Annex B)
- b. that five (5) vessels that lie in international waters be designated now as Protected Places and that a rolling programme of identification and assessment against the criteria be established to designate all other vessels, in military service when lost, as Protected Places.

FINDINGS OF THE PUBLIC CONSULTATION PROCESS

10. In addition to seeking broad comments on the concept of a more proactive protection regime for military wrecked vessels the consultation paper asked for responses to five specific questions:

- a. Criteria for designation
- b. Form of designation
- c. Licensing
- d. Problems of enforcement
- e. Other Sea Users

Criteria for designation (a)

11. The Consultation paper set out criteria, (a) – (d) below, against which future applications for protection could be assessed. The Consultation paper asked for comments on these criteria, including their appropriateness to vessels lying in international waters.

- (a) whether or not human remains are known or likely to be present;
- (b) whether or not there is evidence of sustained disturbance or looting (and the strength of such evidence);
- (c) whether or not designation is likely to curb or put a stop to such disturbance or looting and,
- (d) whether or not diving on the vessel or site attracts sustained and significant public criticism or approval.

Designation where these criteria are not met would be unlikely unless some other compelling reason for designation exists.

Public Response: Criteria for designation

12. Contributors' views remain divided.

13. Where this question was answered the majority of comments supported (a). There was limited support for the presence of human remains being the only criteria. Although criteria (b) – (d) attracted some criticism they gained the majority of support. There was some question of the validity of the statement "human remains present" and the alternative wording of "last resting place" was proposed.

14. Proposals were made to add "of historical significance" to the criteria.

Conclusions

15. When determining the suitability for designation (a) should be a major, but not an exclusive consideration. The Act allows for the designation of a vessel and its remains. Restricting the criteria for assessment for designation to only vessels associated with human remains could be argued as fettering the Secretary of State's discretion to designate vessels where some other compelling reason for designation exists. Therefore the criteria should not be restricted.

Recommendations

16. The following recommendations are made:

- a. that criteria (a) be amended to include the concept of "last resting place" and the phrase "where lives were lost" replace that of "human remains present".
- b. that criteria (b) – (d) should be retained.
- c. that an additional criteria (e) taking into account historical significance should be included, and,
- d. that the criteria should be reviewed periodically and published in guidance notes to divers and other sea users and made available to interested parties.

In addition to the above criteria the Secretary of State for Defence should consider other factors, for example safety, when determining the suitability for designation under PMRA.

Form of designation (b)

17. Under the PMRA, vessels can be designated as either Controlled Sites or Protected Places.

- a. Controlled Site is a restrictive designation, requiring licensing of certain activities within the exclusion zone and knowledge of precise co-ordinates.
- b. Protected Place is one where activities are permitted in the vicinity of a vessel, on a "look but don't touch basis". Knowledge of precise co-ordinates is not required, only the name of the vessel.

Public Response: Form of designation

18. Contributor's views remain divided.

19. By far the majority of comments outside commercial or diving interests supported designation as Controlled Sites over Protected Places. Some contributors proposed the implementation of a "100m exclusion zone around all military maritime graves and a moratorium on diving these sites for 100years" but this attracted limited support. The commercial and sport fishing interests strongly lobbied against additional controls or total exclusion zones around wreck sites.

Conclusions

20. The uncertainty over selective designation is of concern, albeit for different reasons, to the majority of contributors. The views of supporters of "War Grave" status are represented in recent correspondence and these views are reiterated in replies to the Consultation Paper. In turn, the Diving Associations emphasised the contribution that recreational divers can make within the wider picture of identification and reporting on wrecks, which is of considerable value to the UK Hydrographic Office, MoD and historical and archaeological interests. The Diving Associations role, through self-regulation and educational initiatives, has brought about considerable change in current thinking within the sport.

21. The designation of large numbers of vessels as "Controlled Sites" builds an unrealistic expectation that MoD or the civil authorities will be proactive in the application of protection and enforcement measures. Controlled Sites could, by effectively placing off limits a significant number of zones within UK waters, severely effect commercial/sport fishing activities and those indirect industries, especially those in rural communities which are reliant on diving activities.

22. There appears to be a readiness to support the blanket designation of all military vessels if access on a "look but don't touch" basis was permitted to the majority. Permitting the lawful activities of the majority of recreational divers on the maximum number of sites would recognise the contribution made so far by educational initiatives. Furthermore, blanket protection would provide an unambiguous regime of enforcement of offences against the Act.

23. MoD's initial view was that where the site of a vessel was known, that designating the site, as a Controlled Site is preferable to designating the vessel itself because it would be easier to prove an offence in relation to a Controlled Site. However, in the light of comments received this view has been reviewed.

24. There is a significant lobby in favour of the designation of HMS Prince of Wales and HMS Repulse as Controlled Sites. Designation in international waters would only be enforceable against British citizens and British Flag vessels. The designation of these vessels as Controlled Sites, would not restrict or limit the activities of other nationals, for example, from countries who contributed to the vessels loss, but would prohibit relatives who were British citizens from visiting and diving on the sites. It is therefore recommended that when any vessel outside UK jurisdiction is designated that designation take the form of a Protected Place.

Recommendations

25. The following recommendations are made:

- a. that a limited number of vessels (16) within UK jurisdiction, be designated as Controlled Sites. These vessels meet the criteria above; are considered to be at risk from unauthorised or intrusive activities, and are representative of all others lost. A list of proposed sites to be designated as Controlled Sites appears at Annex B.
- b. that other designations as Controlled Sites will be made if vessels were subject to sustained disturbance or are considered dangerous.
- c. that five (5) vessels that lie in international waters be designated now as Protected Places and that a rolling programme of identification and assessment against the criteria be established to designate all other vessels, in military service when lost, as Protected Places.

Licensing (c)

26. PMRA permits the granting of licences for specified activities within a Controlled Site. A licence may be contained within the Statutory Instrument or published separately. It may specify permitted activities such as recreational diving and commercial fishing. A licence regime could impose conditions preventing interference with any remains. There may be exceptional cases where a licence allows the unearthing or removal of parts of a wreck, for example if there are good archaeological reasons to allow an investigation.

Public Response: Licensing

27. Contributors' views remain divided.

28. The extent and restrictions proposed by some contributors that may be contained within a licence is in line with the expectation of the number of vessels to be designated as Controlled Sites. Some contributors, who favoured blanket designation as Controlled Sites, also favoured exceptional and highly restrictive diving activities permitted only under licence. Other interests preferred, where a broad licence was included in the Statutory Instrument, that it be granted in favour of organisations representing commercial and diving interests and permitting a broad range of activities.

Conclusions

29. UK membership of the main diving associations is over 500,000. Wreck diving is the predominate activity of divers in UK waters. There is a potential of over one million wreck dives per year. A system of licensing individuals and encompassing all designated vessels would be a cumbersome and bureaucratic mechanism. Licences granted to groups or organisations raises questions of compliance and enforcement outside the constitution of most diving associations and would not cater for non-association members.

