

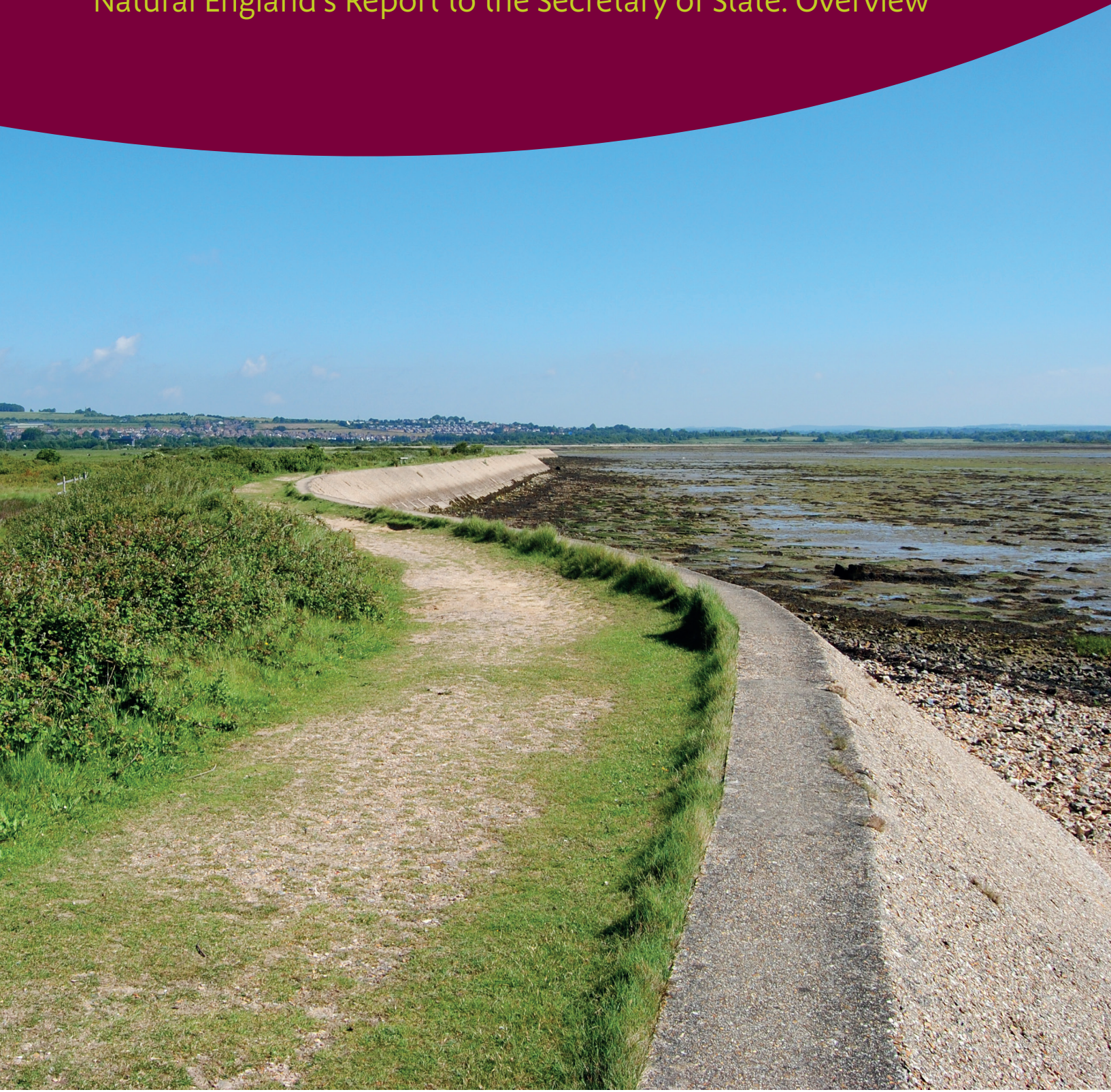
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England Coast Path

Portsmouth to South Hayling

Natural England's Report to the Secretary of State: Overview



Map A: Key map - Portsmouth to South Hayling



Advice on reading the report

This report sets out for approval by the Secretary of State our proposals for the England Coast Path and associated Coastal Margin on this stretch of coast. It is published on our web pages as a series of separate documents, alongside more general information about how the Coastal Access programme works:

Overview

This document is called the **Overview**. It explains the overall context for the report and includes background information which is helpful in understanding our proposals. It also provides key information concerning specific aspects of our proposals, including roll-back and access restrictions or exclusions.

Please read the Overview first – in particular part 3, which includes notes to help you understand the detailed proposals and accompanying maps.

Proposals

Chapters 1 to 3 are called the **proposals**. These set out and explain the access provisions we propose for each length of coast to which they relate.

Each chapter is accompanied by detailed **maps** of the relevant length of coast. The maps are numbered according to the part of the chapter to which they relate. For example, maps 1a to 1c illustrate the proposals in chapter 1.

Using Map A (previous page)

Map A shows the whole of the Portsmouth to South Hayling stretch divided into short numbered lengths of coast, from Old Portsmouth at the western end (Chapter 1) to South Hayling at the eastern end (Chapter 3).

Each number on Map A corresponds to the number of the chapter in our proposals which relates to that length of coast.

To find our proposals for a particular place, find the place on Map A and note the number of the chapter which includes it. Please read the introduction to that chapter first: it will help you to understand the proposals that follow it. Then read the relevant part of the chapter while viewing the corresponding map as indicated.

If you are interested in an area which crosses the boundary between two chapters then please read the relevant parts of both chapters.

Printing

If printing, please note that the maps which accompany chapters 1 to 3 should ideally be printed on A3 paper. If you don't have the facility to print at A3 size, we suggest you print the text of the chapter you are interested in on A4 paper and view the associated map on your computer screen, using the zoom tool to view it at a suitable size.

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Introduction

1. Purpose of the report

Natural England has a statutory duty under the Marine and Coastal Access Act 2009 to improve access to the English coast. The duty is in two parts: one relating to securing a long-distance walking route around the whole coast: we call this the England Coast Path; the other relating to a margin of coastal land associated with the route where people will be able to spread out and explore, rest or picnic in appropriate places. Associated with this duty is a discretion given to Natural England to extend the trail up any river estuary beyond the seaward limit of the estuarial waters¹, on either or both sides as far as the first bridge or tunnel with pedestrian access, or as far as any point between the two.

To secure these objectives, we must submit reports to the Secretary of State for Environment, Food and Rural Affairs recommending where the route should be and identifying the associated coastal margin. The reports must follow the approach set out in our methodology (the Coastal Access Scheme), which – as the legislation requires – has been approved by the Secretary of State for this purpose.

Each report covers a different stretch of coast. This report sets out Natural England's proposals to the Secretary of State under section 51 of the National Parks and Access to the Countryside Act 1949 for improved access along the coast of Hampshire between Portsmouth and South Hayling.

Our proposals would make the following key improvements to the existing arrangements for access to this part of the coast:

- New sections of coastal path would be created in strategic places to link existing coastal paths into a continuous route along this stretch of coast [for the first time];
- For the first time, there would be secure statutory rights of public access to most areas of beach, cliff and other coastal land on this stretch of coast;
- The coastal path would be able to 'roll back' as the cliffs erode or slip, solving long-standing difficulties with maintaining a continuous route on this stretch of coast.

This is a significant opportunity to improve public access to this stretch of coast in these ways, with benefits for residents, businesses and visitors.

Once approved and established, this part of the England Coast Path will be managed as part of the family of National Trails.

2. The determination process

The report is submitted in accordance with our statutory duty under section 296 of the Marine and Coastal Access Act 2009 ('the 2009 Act') to improve access to the English coast.

Publication of the report has been advertised locally and online in accordance with the requirements of the coastal access legislation.

Following publication:

- Any person may make representations to Natural England about the report; and
- Any owner or occupier of affected land may make an objection to Natural England about the report.

In order to be treated as valid, all objections and representations must be received by Natural England no later than the end of the advertised eight week period following publication. The specific closing date appears in the statutory notice for Portsmouth to South Hayling which can be viewed here www.gov.uk/england-coast-path-comment-on-a-proposed-new-stretch together with more information about how to make representations or objections.

Once all representations and objections have been considered, the Secretary of State will make a decision about whether to approve our proposals, with or without modifications. Chapter 3 of our Coastal Access Scheme explains these processes in more detail (see Annex A: Bibliography).

The Secretary of State may confirm the report in full, confirm it with modifications to our proposals, or reject some or all of our proposals. In the latter case we would prepare an amended report for consideration by the Secretary of State, relating to the part(s) of the coast affected by the rejected proposals. The same procedures for representation and objection would apply to the amended report.

Once proposals for the Portsmouth to South Hayling stretch have been confirmed, there will be a preparation period before the new access rights come into force. This period is to enable any necessary physical establishment of the trail to be carried out and to put in any necessary local management arrangements (including any approved local access restrictions or exclusions).

Once the preparation period is complete, the rights will be brought into force on the Portsmouth to South Hayling stretch by order on a date decided by the Secretary of State. We will publicise the commencement of the rights to ensure they are known about and understood locally.

Parts 6 to 8 of the Overview explain more about the arrangements that we envisage will be necessary for the establishment and maintenance of the route and the procedures which we will follow to make any subsequent changes that prove necessary once proposals for the Portsmouth to South Hayling stretch have been approved.

3. Understanding the proposals and accompanying maps

Before looking at the proposals and accompanying maps, it will help you if you read the following notes and then look carefully at the key to the maps.

Our Proposals:

The proposals are divided into 3 chapters, each relating to a particular length of coast on this stretch. Each chapter is accompanied by detailed maps of the relevant length of coast. The maps are numbered according to the chapters to which they relate. For example, maps 1.a to 1.c illustrate the proposals described in chapter 1.

Each **chapter** comprises four parts:

- **Part 1** – This introduces our proposals for that length of coast. It sets the context and summarises any proposed use of our discretion in relation to aligning the route along an estuary, or to recommend changes to the default landward coastal margin. It also summarises the main access management measures that will need to be introduced and the overall accessibility (ease of use for all) of this length of coast, for all users. Additionally, it may identify any future changes of which we are aware that are likely to impact on this part of the coast, and explain how our proposals deal with this change.
- **Part 2** – This contains tables which form the detailed commentary to our formal proposals to the Secretary of State. The tables provide key details about the route sections along that particular length of coast, and should be read in conjunction with the relevant maps as identified:
 - In the first table or set of tables, we set out detailed information for each section of coast under the following column headings:
 - **Map(s)** – This column indicates which of the report maps to view alongside the details in the other columns in the same row.
 - **Route section number(s)** – This is the unique identification number for the route section concerned. In some cases, two or more adjacent route sections will be amalgamated into a single row in the table, if all other displayed details happen to be identical.
 - **Current status of this section** – This describes the current status of the route we have proposed and whether it has any existing access rights. Public highways, including public rights of way such as footpaths, are excepted from new coastal access rights because the existing public rights to use such highways will remain in force, and the trail is able to make use of these.

Other sections of the proposed trail that do not currently have any access rights or where access is currently permitted by the landowner will become subject to new coastal access rights if our proposals are approved. These new rights, and any national or local restrictions on them, will not affect any existing access arrangements for cyclists, horse-riders or other types of recreational user that may currently exist at the local level - for example by formal agreement with, informal permission from or traditional toleration by the owner of the land, or through any type of pre-existing legal right that remains in force.

- **Current surface of this section** – This is a description of the existing surface of the proposed section of the trail.
- **Roll-back proposed?** – This indicates whether we propose that, in the event of significant coastal erosion or other geomorphological processes or significant encroachment by the sea, a section of trail which is subject to significant erosion or other coastal processes or significant encroachment by the sea should be capable of being repositioned in accordance with formal proposals in this report, without needing further confirmation of the change by the Secretary of State. The column also indicates whether the ‘roll-back’ requirement is likely to give rise to a normal or more complex change on this section. (In the case of more complex outcomes, further details are provided in the ‘Roll-back implementation’ table). Section 4.10 of the Coastal Access Scheme explains in more detail how roll-back works.
- **Landward boundary of the margin** – This describes any proposals for the default landward boundary of the coastal margin on this section to be altered or clarified - see iv below in the Notes on Maps. In addition, in the Alternative Routes and Optional Alternative Route Table there are columns that describe the landward and seaward boundaries of the alternative route strip. Alternative routes/optional alternative routes have a default width of two metres either side of the approved line. We propose specific landward and/or seaward boundaries to the route strip where doing so would add further clarity to the extent of access rights along the route, by working with the grain of what is already there. It should be noted that where the alternative route/optional alternative route follows an existing path corridor, the trail may adopt a variable width as dictated by existing physical features.
- **Reason for proposed landward boundary discretion** – This provides an explanation for any such proposal to alter or clarify the default margin on this section. This may be either because we are proposing a clear boundary around land that in our view would be margin by default, because it matches the description of ‘coastal land’ explained at paragraphs 4.8.8 of the Scheme; or because we propose using our discretion to add land to or remove it from the default margin, as described at paragraphs 4.8.11 of the Scheme.
- **Proposed exclusions or restrictions** – This indicates whether, at the time the proposals were prepared, we had identified any requirement for exclusions or restrictions that might affect either the section of trail itself or the adjacent margin. Any such exclusion or restriction identified might either come into force immediately following commencement or at some future date. It will sometimes be necessary to introduce new exclusions or restrictions in the future, even if not identified at the time of preparing our proposals. See Part 10 of this document and Part 2.4 of the approved Coastal Access Scheme for more information.
- In the second table or set of tables for each chapter, we set out any other options that were considered during our initial planning (in relation to the route and the coastal margin), and explain why they did not form part of our proposals.
 - The third table or set of tables for each chapter provides further details of any situation where local circumstances mean that implementation of roll-back is likely to be more complex. We identify the key issue and our expected resolution.

Annotated examples of these various tables are given below, to illustrate how they are used.

- **Part 3** - This sets out our formal proposals to the Secretary of State for which we are seeking approval in relation to the length of coast covered by the chapter. These proposals give legal effect to the position summarised by the preceding tables.

Examples of tables in each chapter, with explanation of their contents:

| | | | |
|--|---|---|--|
| The route section number or numbers (as shown on the accompanying maps). | This column shows whether this route section could be repositioned in future in response to erosion etc without further approval by Secretary of State. See notes to table. | If we have proposed any change or clarification to the landward extent of the margin, this column says why. | This column indicates if we have proposed any restriction or exclusion over trail or margin. |
|--|---|---|--|

2.2.1 Section details - Maps 2a to 2h: Eastney to Langstone

| 1 | 2 | 3 | 4 | 5 | 6a | 6b | 7 |
|--------|-------------------------|--------------------------------|---------------------------------|--|--|---|--|
| Map(s) | Route section number(s) | Current status of this section | Current surface of this section | Roll-back proposed? <small>(See Part 8 of Overview)</small> | Landward boundary of margin <small>(See maps)</small> | Reason for landward boundary discretion | Proposed exclusions or restrictions <small>(See Part 9 of Overview)</small> |
| 2d | PSH-2-S021 | Other existing walked route | Gravel | No | Various | Clarity and cohesion | Margin |
| | PSH-2-S022 | Other existing walked route | Concrete | No | Landward edge of trail (2m) | Not used | Margin |
| | PSH-2-S023 | Other existing walked route | Gravel | No | Landward edge of trail (2m) | Not used | Margin |
| | PSH-2-S024 | Other existing walked route | Bare soil: Compacted | No | Tree line | Clarity and cohesion | Margin |
| 2e | PSH-2-S025 | Other existing walked route | Gravel | No | Landward edge of trail (2m) | Not used | Margin |

| | | | |
|---|--|--|--|
| The relevant map(s) for the route section(s). | This column specifies the current access status of the proposed trail section. | This column specifies existing surface type of the proposed trail section. | This column indicates where the landward boundary of the coastal margin would be, adjacent to each route section. This might be by default, because it meets the description of 'coastal land types' in the Scheme, or because we propose to exercise our discretion to extend or reduce the margin. |
|---|--|--|--|

2.2.3 Other options considered: Maps 2a to 2h: Eastney to Langstone

| Map(s) | Section numbers(s) | Option(s) considered | Reasons for not proposing this option |
|----------|--------------------------|--|--|
| 2a to 2b | PSH-2-S001 to PSH-2-S016 | We considered aligning the trail along the existing Solent Way that follows Henderson Road as shown on the map. | We opted for the proposed route because: <ul style="list-style-type: none"> ■ It is closer to the sea and maintains views of the sea and the harbour |
| 2h | PSH-2-S056 to PSH-2-S058 | We considered aligning the trail along the existing Solent Way, along the Southmoor sea wall, as shown on the map. | We opted for the proposed route because: <ul style="list-style-type: none"> ■ The seawall here has already partially breached and the Eastern Solent Coastal Partnership has no planned maintenance strategy. ■ The proposed route is less vulnerable to flooding and future degradation, therefore is more cost effective to maintain at a National Trail standard. ■ The proposed route maintains views of the sea. ■ We concluded that overall the proposed route struck the best balance in terms of the criteria described in Chapter 4 of the Coastal Access Scheme. ■ That part of the Solent Way would remain available for people to use, but would not form part of the designated trail. |

| | | | |
|---|--|--|---|
| The relevant map(s) for the route section(s). | The trail section number(s) (as shown on the accompanying maps). | This column describes other options we considered for the route or margin for the identified route section(s). | This column summarises the reason(s) that the other options we considered were not preferred. |
|---|--|--|---|

Notes on Maps:

The notes that follow will help explain the maps provided for each chapter.

The proposed route of the trail:

- i The thickness of the line used to depict the proposed route on the maps is intended to make it easy to find on the map and to enable us to differentiate, by shading the line differently, between sections of the route that would use existing rights of way, sections that appear to follow other existing walked lines on the ground, and sections that do neither. The thickness of the line on the map is not an indication of the width of the actual trail on the ground – the proposed route simply follows the centre of the line shown. The legislation makes the default width of the trail four metres, but its actual width varies a good deal in practice according to the detail included section by section in our proposals.
- ii In places there are differences between the line of public rights of way recorded on the local Definitive Map, and paths currently used and managed on the ground as public rights of way. Some of these differences may be attributed to adaptation of the path over time to cope with coastal erosion and other processes, whilst others appear to arise from anomalies in the way the rights were originally recorded on the definitive map. The maps in this report show the public rights of way as recorded on the definitive map, and depict them as accurately as possible at the scale used. See part 4.7 of the Scheme for further information.

The coastal margin:

- iii The proposed route of the trail shown on the maps is important in understanding the extent of the coastal margin to either side of it. Under the legislation:
 - the coastal margin is a single, continuous corridor of land which includes the trail itself;
 - the margin also includes all land seaward of the trail land - although not all of that land would be subject to a new right of access (see point vi below);
 - the landward extent of this margin is by default the trail itself, or the inland edge of any land adjoining the trail on its landward side that is foreshore, cliff, dune or beach, or a bank, barrier or flat, or section 15 land (see Annex B: Glossary of terms).
- iv We have the discretion to propose that the landward boundary of the coastal margin should coincide with a recognisable physical feature on the ground – even if the effect of doing so is to add land into the margin, or to remove land from it. We may use this discretion:
 - to propose that instead of the default trail width of four metres set by the legislation, particular physical features such as walls, fences or pavement edges should be used where appropriate to define the landward extent of the trail land on that section of the route: such features cannot be depicted on the maps at the scale used, but they are described in the formal proposals which accompany each map;

- to clarify or adjust the boundaries of a landward area included by default as margin, in order to create a better ‘fit’ with the circumstances on the ground; or
- to propose in some places that additional areas of land should be added to the coastal margin landward of the trail: land which is affected by such proposals is indicated on the maps with a purple wash and described in the formal proposals which accompany each map.

Further explanation of these powers can be found at part 4.8 of the Coastal Access Scheme. Our proposals take full account of any views expressed by the owner or occupier of affected land about whether the powers should be used in any of these ways.

- v Land which forms part of the coastal margin would be subject to access rights, other than:
 - any **excepted** land, such as land covered by buildings or their gardens or curtilage: Annex C summarises in full the categories of excepted land under the legislation.; or
 - any land where coastal access rights would be **excluded** under our statutory powers: we indicate in the report where we already know of circumstances that make this necessary, and make any proposals accordingly.
- vi **Spreading room** is the term used in the report to describe any land, other than trail land, which would form part of the coastal margin and would have public rights of access. It does not therefore include any excepted land within the margin, or any existing access land on the landward side of the trail that is omitted from the margin.

Annex B (Glossary of terms) includes a full definition of these terms which you may find helpful in understanding the report.

Voluntary access dedication

- vii Land that was previously dedicated as access land under section 16 of the Countryside and Rights of Way Act 2000 (CROW) will become subject to the coastal access regime if it forms part of the coastal margin in any of the ways described above. There is also provision in the legislation for a land owner or long leaseholder to dedicate other land voluntarily as coastal margin if it lies adjacent to it or within it. Dedicating land as coastal margin disappplies the excepted land provisions within it, and may also make provision for the removal or relaxation of specific **national restrictions** that would otherwise apply. Section 4.8 of the Coastal Access Scheme explains these provisions in more detail.

4. Preparation of the report

To secure the twin objectives under the legislation we have followed the approach set out in our Coastal Access Scheme, as approved by the Secretary of State on 9 July 2013. Chapter 3 of this detailed document sets out the stages of implementation we must follow.

In line with this, before making the proposals in this report, we conducted extensive preliminary work in two main stages:

- **Stage 1: Prepare** – defining the extent of the coastal stretch with access authorities and identifying the key issues and opportunities, including sensitive features, in conjunction with key organisations; and
- **Stage 2: Develop** – checking the alignment on the ground, sharing our initial thoughts with land owners and offering to ‘walk the course’ with them, planning for the protection of key features, talking further with key interests and reality checking our proposals.

Stage 1 - Prepare

This stage involved us working closely with access authorities to develop an understanding of the stretch, agree its exact extent and carry out initial familiarisation visits. We held discussions with representatives of national and local organisations with a strategic interest in this stretch of coast. This included discussions with those we are required by legislation to consult at this stage:

- the Hampshire Countryside Access Forum;
- Officers from Hampshire County Council, Havant Borough Council and Portsmouth City Council, including ecology, historic environment, planning, transport and countryside ranger staff;
- local officers from the Eastern Solent Coastal Partnership and Environment Agency, in relation to flood defence and coastal erosion management on this stretch of coast;
- local officers of Historic England, in relation to historic features on this stretch of coast; and
- the Ministry of Defence, in relation to defence interests on this stretch of coast.

We also held discussions with representatives of specific interest groups, including

- the Ramblers Association;
- the National Farmers Union;
- the British Association for Shooting and Conservation, and
- Country Land and Business Association.
- Solent Recreation Mitigation Partnership
- Royal Society for the Protection of Birds

- Hampshire and Isle of Wight Wildlife Trust
- HM Coastguard
- The Ramblers
- Langstone Harbour Board
- Solent Forum

We publicised on our website the start of work on the stretch and provided an opportunity for all other interested parties to submit to us their views on local issues and opportunities.

We also engaged with relevant specialists, both within Natural England and from other organisations, to consider any potential for impacts on key sensitive features. See part 5 below for more information.

In addition to these discussions we took into account a wide variety of information, plans and strategies that we considered relevant to the alignment process. Those that are published on the internet are listed in Annex A: Bibliography.

We then took all reasonable steps to identify owners, occupiers and those with a legal interest in the land which could be affected.

Stage 2 - Develop

This stage involved us contacting, and discussing our initial thoughts with relevant owners, occupiers and other legal interests.

We asked for their views and invited them to join us when we visited the land to ‘walk the course’ so that we could discuss options for alignment based on mapped summaries of our emerging proposals.

In most cases this was done through separate site meetings with the individuals and businesses concerned. In addition, we held three public ‘drop-in’ sessions in March 2016, at the start of the work on this stretch of coast (in Portsmouth, Eastney and Hayling Island), in order to give owners and occupiers a chance to come and discuss the project in more detail and allow us an opportunity to explain how we would be managing the work.

We also took reasonable steps to identify and contact any owners, occupiers or other legal interests who could foreseeably be affected in the future as a result of any roll-back that may prove necessary). See part 9 – Future Change – below.

We then held further detailed discussions with internal and external specialists to refine our thinking on protecting key sensitive features, carrying out any necessary assessments.

After further discussions with key local and national organisations we refined our proposals and checked them on the ground before moving onto Stage 3 – Propose, which is the substance of this report.

General approach

5. Discretion to include part or all of an estuary or estuaries

The proposed stretch contains sections that fall upstream of the seaward limit of Langstone Harbour estuarial waters. Our South Hayling to East Head stretch then includes the adjoining Chichester Harbour, which has many similar characteristics. For the purposes of developing and considering these report proposals, it seems best to view the two harbours as a single estuary system interrupted by Hayling Island and the road bridge onto it.

This Portsmouth to South Hayling stretch report proposes aligning the trail around the Langstone Harbour part of the estuary system, then aligning it on to Hayling Island via the road bridge, and finishing to the east of the Funland Amusement Park on the south of the island. The South Hayling to East Head stretch report will then continue our alignment proposals to identify an appropriate trail for the remainder of Hayling Island, and for Chichester Harbour and beyond.

Because of this close practical relationship between the two estuaries, and the fact that both reports deal with parts of Hayling Island, we recommend that the Secretary of State considers the proposals in both reports simultaneously, rather than determining this report before the South Hayling to East Head report.

a) Introduction

This part of the Overview:

- introduces the core statutory duties and considerations for the national programme as a whole in relation to exercising the discretion to include part, or all, of an estuary within our proposals;
- describes the overall nature of the estuary system(s) found in this part of England, identifying the geographical limits of our discretion to align the trail around Langstone Harbour included within this stretch of coast;
- goes on to explain in more detail how each of the specific estuary considerations set out at section 301 of the 2009 Act affects our view of the options for Langstone Harbour.
- sets out the options for estuary trail alignment which we have identified as a result of this analysis, and;
- describes and explains our chosen proposal.

b) Estuary discretion

Under the 2009 Act there is no requirement for the trail to extend up any estuary further than the seaward limit of the estuarial waters (see 'geographical limits of our discretion' below).

But Natural England has a discretion to propose that the trail should extend from the seaward limit as far as the first bridge over which, or tunnel through which, there is a public right of way, or a public right of access, by virtue of which the public are able to cross the river on foot, or as far as any specified point in between. In exercising its discretion, Natural England must have regard to the core national duties and considerations described in Part B and Chapter 10 of the Coastal Access Scheme.

c) Core national duties and considerations relevant to estuaries

Section 296 of the 2009 Act places a legal duty (the Coastal Access Duty) on Natural England and the Secretary of State to secure a walking route around the whole of the open coast of England, together with an associated margin of land for the public to enjoy either in conjunction with their use of the route, or otherwise.

Section 297 goes on to require both, in discharging this duty, to have regard among other things to the desirability of ensuring that so far as reasonably practicable, interruptions to this route are kept to a minimum. This is a key consideration for the whole of the national delivery programme for coastal access. The whole concept of the England Coast Path relies on delivering continuity of the route so far as reasonably practicable for the whole country. Although proposing a route around each estuary is a discretion rather than a legal duty, if the presence of an estuary would interrupt this **continuity of access** along the open coast then this will constitute a strong prima facie reason for the trail to serve the estuary too, at least to the extent necessary to enable users to continue their onward journey around the coast.

The Scheme notes at paragraph 10.1.4 that because the seaward limit of estuarial waters is an arbitrary point from an access perspective, we are likely to use our discretion at most estuaries to extend the trail upstream to a more convenient point than this seaward limit. Paragraph 10.1.5 then adds “We will always give careful consideration to our option to extend the trail as far as the first bridge or tunnel with pedestrian public access” – both for reasons of continuity, and with a view to any additional recreational benefits that might result within the estuary itself from doing so.

Chapter 10 of the Scheme explains the **statutory estuary criteria** that section 301(4) of the 2009 Act requires to be taken into account in deciding whether or not to include an estuary in our proposals. These are discussed in more detail in subsection ‘e’.

The other key considerations, including achieving a fair balance with the interests of owners and occupiers, are discussed in section 6 of this Overview.

d) Overall nature of estuary systems in this part of England

Langstone Harbour is the only estuarial water within this stretch, however as explained above it sits immediately adjacent to Chichester Harbour.

e) Langstone Harbour

Geographical limits of our discretion

The seaward limit of the transitional waters at Langstone and Chichester Harbours is as shown on Map B and extends from Eastney in the west around to East Head at its western extent. The first bridge with pedestrian access, travelling west to east, is at the A2030 bridge as indicated by the extent of the trail on Map 2.e.

Hayling Island sits within this estuary system, with the public able to access the island on foot from the estuary mainland by means of the connecting bridge. In this situation the two are treated by section 300 of the 2009 Act as an accessible island rather than as part of the estuary mainland – so it is unnecessary for this report to propose the use of the estuary discretion to align the trail around the island.

The statutory estuary criteria

We have considered below each of the section 301 criteria under the headings given in Chapter 10 of the Scheme.

i) Ferry services

There is now a regular ferry service across the mouth of Langstone Harbour, between Eastney and Sinah running a regular summer and winter service. The ferry service was not open when we began developing these proposals in May 2015 but since August 2016 the service has been reinstated. However paragraph 10.3.3 of the Scheme says “even regular ferry services do not rule out taking the trail up to the first public crossing point if the balance between recreational benefit and cost is right, having regard to the other statutory criteria”.

ii) Character of the Estuary

■ Estuary width

The width of Langstone Harbour is variable. At its widest it is more than 2.5 miles wide and very much has the feeling of open coast, with its northern most point some 4 miles from the mouth. The narrow mouth of the Harbour between Portsea Island and Hayling Island is 300m wide, whilst some of the creeks and inlets on the northern side contract to only a few metres wide.

■ Topography of the shoreline

The shoreline of the Langstone Harbour estuary is low lying, with shingle backing onto sea defences, punctuated by the channels that create Portsea Island and Hayling Island, and a number of shingle ridges along its northern and eastern shores. There

are extensive mudflats and saltmarsh, and the harbour is dotted with many small islands visible from the coast. There is also evidence of the areas historical use for salt production.

■ Nature of affected land

The Portsea island side (broadly from Eastney to Hermitage Stream) is predominantly urban and defended, mainly comprising sea walls and promenades with some light industry, fringed by extensive mudflats which are revealed at low tide.

Along the northern sides of Langstone Harbours there is a more rural and natural feel, even within the urban landscape of Portsmouth and its surrounds. The land use is varied, comprising a mix of industrial areas, boatyards/marinas, private houses and gardens but also nature reserves and open fields. Again, there are extensive mudflats that are revealed at low tide.

■ Features of interest

There are many nature reserves around the harbours where visitors are welcome and it is of considerable wildlife interest, especially for bird watchers. There are also interesting historical sites including the old Mulberry Harbour close to the harbour entrance at Eastney. Around the harbour are various visitor attractions and facilities and the harbour is a popular recreational location for water sports.

iii) Recreational Benefit

It is currently possible to walk the entirety of Langstone Harbour and a popular local route is the Waterside Walk, promoted by Langstone Harbour Board. In the main our proposals within this report will follow this route. The route is approximately 14 miles/22 km. There are several circular walks that link up with our proposed route and these provide access to the wider environment and open spaces such as nature reserves, beaches and the coast in general. The relatively rural nature of large parts of this estuary system places an emphasis on enabling people to access the coast locally without the need to rely on transport facilities or travel long distances.

In places there are existing restrictions on shoreline access to consider including controls for wildlife protection, public safety, industrial/port/marina use and privacy.

iv) Excepted land

There are no areas of excepted land that have prevented a coastal route around this section of estuary.

v) Options for Langstone Harbour

Option 1 – align the trail around the harbour. This formalises some of the current access, and is in keeping with the approach being considered around the neighbouring harbour at Portsmouth and with the South Hayling to East Head stretch that should be considered concurrently with this report. It may not result in significant improvements because existing access is already very good, aligned as it is so close to the coast. Walkers would still have the option of taking the ferry across to Hayling Island but also a well signposted and managed route around the harbour.

Option 2 – stop at the mouth of the harbour and resume the England Coast Path at East Head in the west. This would prevent continuous access along the coast for walkers and would not bring the recreational benefit of promoting a well-managed and maintained route around the harbours.

Proposed route of the trail

We consider there should be a well-managed walking trail around the entire estuary system – both Langstone and Chichester harbours – and this report proposes the Langstone Harbour part of that route. This fulfils the core objective of the legislation - to create a continuous route around the coast – in a simple and cost effective way that provides extra and secure public enjoyment of the coast. This route is strongly characteristic of the coast, in particular its views of extensive areas of flats and salt marsh. The route also provides pedestrian links between the coast and large towns and other settlements, transport links and tourist based businesses.

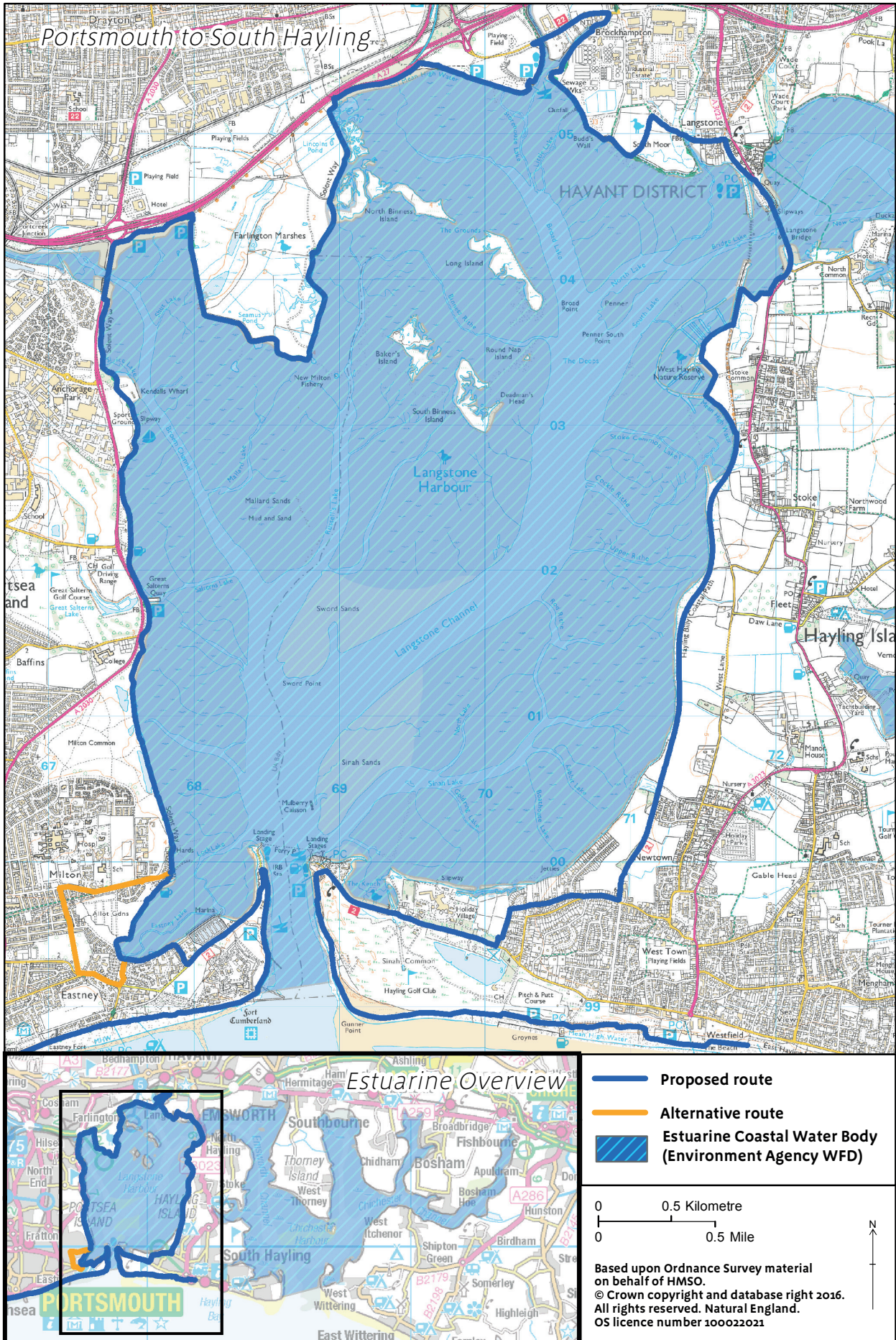
6. Key issues along this stretch

a) Recreational Issues

Map C gives an overview of existing public access to the Hampshire coast between Portsmouth and South Hayling, showing public rights of way, access land and promoted routes along the stretch.

Much of this stretch of coast already has good existing linear access along public rights of way, promoted routes including the Solent Way (SW), Langstone Harbour Waterside Walk, Shipwright's Way, public highways and pavements. The start of this stretch begins in the west at the Round Tower in historic Old Portsmouth, the origins of which date back to Henry V, who ordered a wooden Round Tower to be constructed in 1418. Today Portsmouth City Council promote a walking route through this and many other notable historical features on its coastline, via the Millennium Promenade, which is a 2.6 mile walking route through Old Portsmouth and Southsea. It can easily be followed via a chain-link motif embedded in the pavement. It is a very well walked route through many significant maritime heritage points of interest (Square Tower, Royal Garrison Church,

Map B: Estuarine Water Body Overview



Long Curtain Battery, Spur Redoubt, Southsea Common, Southsea Castle). The Solent Way joins the Millennium Promenade in the east of Old Portsmouth and continues where the former finishes at Southsea Castle, onto the remainder of the Southsea Promenade, offering good coastal access on this stretch.

There is a gap in a continuous coastal route around the Eastney peninsula, where the SW diverts away from the coast and into urban Eastney, re-joining the coast at Milton Lock. The desire for improved access around this area is noted in Portsmouth City Councils' "Right of Way Improvement Plan 2007 – 2017". We propose an improvement here by aligning the trail along the seaward boundary of the Fraser Ranges site to create an continuous coastal route around the Eastney peninsula. At the point where the Hayling Island ferry reaches Eastney the Langstone Harbour Waterside Walk (LHWW - a route promoted by the Langstone Harbour Board which we will be adopting) begins. We will be following this route around Eastney Lake, which is passable at most states of tide except high tide, where we will propose an optional alternative route through urban Eastney on the existing SW.

The SW and LHWW then continue up the western side of Langstone Harbour to Langstone, as can be seen in Map C: Existing public access from Portsmouth to South Hayling. To the west of Langstone we will be diverting away from the SW and LHWW due to a failing seawall at Southmoor where we will instead propose an inland route along an existing permissive route and PROW to bypass this.

There is a small part of Wayfarer's Walk in the north of Langstone Harbour which we will be proposing to adopt. The route also joins the Shipwright's Way and Hayling Billy Line at Langstone where the route of this stretch continues onto Hayling Island, leaving the Solent Way, which continues east to Emsworth. As the island can be accessed by foot from the mainland we have included it in our proposals. The Hayling Billy line is a multiuse leisure trail and forms part of the National Cycle Network. There are a couple of localised areas of erosion on the Hayling Billy line, which is listed as 'no active intervention' on the Shoreline Management Plan. To date, small scale local repairs have been undertaken to maintain this access, and also the utilities which run beneath it. There is a short section where the route diverts inland at the south of the Hayling Billy Line due to a lack of suitable access in front of houses with jetties, so we propose the route aligns over public highway for approximately half a mile, after which the route joins a PROW past Warren close, where there are sea views. The route then passes landward of an adult only hotel complex to join Ferry Road heading west adjacent to the coast, past the Kench Local Nature Reserve (managed by Hampshire County Council). Past Hayling Health Society land on the right, we propose to turn left at the roundabout past the golf course and onto the Sinah Common, following Havant Borough Council promoted beach walks around Sinah Common.

Due to the urban nature of this section of coast there have been few opportunities to include landward spreading room, rather we have used our discretion to align the landward margin boundary to clear and obvious boundaries for the sake of clarity and cohesion. Exceptions include a parcel of land to the south of Sinah Warren Holiday Village on Sinah Common which is a scheduled monument, and a parcel of land east of the Funland Amusement Parks, currently open to access, with existing facilities for picnic and rest.

During Stage 1 of the implementation process we asked interested organisations and individuals to tell us about any relevant issues and opportunities on this stretch. The key opportunities which emerged from these discussion were:

1. As of the 2011 census Portsmouth is the most densely populated city in England and Wales, and is the only city to exceed that of London. There are many health and wellbeing challenges within the city, such as high levels of obesity. It was felt that there is an opportunity to reconnect people to the coast and natural environment to take advantage of the health and wellbeing benefits this may bring.
2. The England Coast Path is seen as a vehicle to join up the variety of historic, natural and other visitor attractions which Portsmouth has to offer and boost the local economy.

The key issues were:

1. Safety of walkers on saltmarsh and mudflats in Langstone Harbour. This issue will be addressed by our proposal to exclude access from much of the intertidal saltmarsh and mudflat under section 25A of the Countryside and Rights of Way Act (2000) (lack of suitability for public access).
2. Use of the Hayling Island Ferry. It was decided that the recreational benefit of walking around Langstone Harbour was very high and that the route had a feel of walking the open coast. It was also in keeping with taking the ECP around both Portsmouth and Chichester Harbours. During Stages 1 and 2 of our implementation process, the ferry service was not operating which also raised concerns over how secure the service would be.
3. Coastal erosion on the Hayling Billy Line. To date action has been taken to shore up the Hayling Billy Line when erosion has occurred. This is a major multi user access route and discussions with the relevant parties indicate a desire to keep it open.
4. Disturbance issues for wildlife, caused by increased numbers of walkers and dogs. In discussing with the local nature conservation organisations and the Solent Recreation Mitigation Partnership (SRMP) we have chosen a suitable alignment and taken necessary measures, which takes into consideration points raised on this subject.
5. How the Ordnance Survey depicts coastal margin on its maps. Specifically that excepted land and directions to exclude access are not displayed.

b) Protection of sensitive features

Data relating to the natural environment was collated following discussions with Hampshire and Isle of Wight Wildlife Trust (HIOWWT), RSPB, SRMP, Langstone Harbour Board and Eastern Solent Coastal Partnership and then assessed by officers from Natural England with knowledge of the conservation objectives of the sites and features under consideration. We looked for evidence of any potential for our Coastal Access proposals to have a detrimental effect on protected sites and species. This included potential effects arising from the works that would be necessary to establish and/or maintain the proposed route and from people's use of the new access rights. The proposals have been thoroughly considered before being finalised and our initial ideas were modified during an iterative design process, with input from people with relevant expertise within Natural England and other key organisations such as the SRMP.

- We paid particular regard to sites with certain key designations for their wildlife and/or geological interest (See Map D: Key statutory environmental designations on Portsmouth to South Hayling stretch) consisting of European sites, including: Special Areas of Conservation (SAC), Special Protection Areas (SPA) and Ramsar sites (see glossary for a fuller explanation of 'European sites'); and
- Sites of Special Scientific Interest (SSSI).

Appropriate separation of duties within Natural England is in place to ensure that impartial judgements can be made in the light of the available evidence about any potential impacts of particular options on key sensitive features before reaching our final decision. This approach ensures that Natural England fully complies with the letter and spirit of the law, throughout the Habitats Regulation Assessment process relating to European sites described below. As a matter of good practice, staff also adopted this separation of roles in assessing the potential for our proposals to affect other protected sites and species.

With regard to European sites, a Habitats Regulations Assessment was carried out on the proposals in this report, using procedures compliant with the associated legislation. Through this we identified specific measures which would in our judgement be necessary to prevent any likely significant effect on the Solent Maritime SAC, Solent and IOW Lagoons SAC, Chichester and Langstone Harbours SPA, Portsmouth Harbour SPA, Solent and Southampton Water SPA, and Solent and Dorset pSPA. These measures have been incorporated into the relevant chapters of the proposals. In summary, the measures include:

- The proposed alignment of the trail in specific locations takes account of the location of sensitive environmental features and avoids these areas.
- Signage will be installed at several locations along the coast, to give information about the presence of and importance of sensitive sites and species, designed in collaboration with the SRMP.

- We have concluded that the majority of saltmarsh and mudflat in Langstone Harbour are unsuitable for access and propose to exclude access to these areas using a section 25A direction. This exclusion would operate year-round and therefore restrict access to these areas which are also very sensitive to disturbance for the bird features.
- Improved fencing will be installed at the Sinah Common dunes and West Hayling Nature Reserve shingle ridges to discourage access to these sensitive features by directing walkers to follow the trail.

With regard to other protected sites and protected species, we concluded that our proposals could be implemented without taking any special measures to protect them.

Once a route for the trail has been confirmed by the Secretary of State, we will work with Hampshire County Council and Portsmouth City Council to ensure any works on the ground are carried out with due regard to the results of the appraisals and that all relevant statutory requirements have been fulfilled

Refer to the Access and Sensitive Features Assessment for more information

c) Landscape

We collated data relating to the sensitive landscape features. This included data about the presence of protected landscapes and Conservation areas on this stretch of coast and specialist advice as to the potential vulnerability of the sites and features to access. The data was then assessed by Natural England in consultation with local authority officers from Portsmouth City Council.

We looked for evidence of any potential for our proposals to have a detrimental effect on sensitive landscape sites or features. This included potential effects arising from the works that would be necessary to establish and/or maintain the proposed route including the use of local vernacular in the design of access signage and furniture, local materials used for path surfacing and alignment of the route to complement any designed and/or protected landscapes.

Our conclusion from this assessment is that our proposals would not undermine the landscape character or the sensitive features within the Portsmouth City Council Conservation Areas.

Once a route for the trail has been confirmed by the Secretary of State, we will hold further discussions with Portsmouth City Council and protected landscape officers about any works on the ground that are necessary to prepare for commencement of the access rights.

d) Historic Environment

Data relating to the historic sites and features was collated, this included data about the presence of historic sites and features on this stretch of coast and specialist advice as to the potential vulnerability of the sites and features to access. The data was then assessed by Natural England in consultation with officers from Historic England. We looked for evidence of any potential for our proposals to have a detrimental effect on protected sites or features. This included potential effects arising from the works that would be necessary to establish and/or maintain the proposed route and from people's use of the new access rights.

We paid particular regard to Scheduled Monuments (See Map D: Key statutory environmental designations on Portsmouth to South Hayling stretch).

Our conclusion from this assessment is that our proposals would not undermine the conservation objectives for the historic environment within the Portsmouth to South Hayling stretch.

In reaching this conclusion we identified specific measures which would be necessary to avoid potential effects on a specific protected site. These measures have been incorporated into the relevant chapters of the proposals and are also summarised at Part 9 below.

- Information signs to raise awareness of the Scheduled Monument and to encourage people to act in ways that will avoid damage to Fort Cumberland (see chapter 2 of the proposals); and
- Guide fencing to prevent people from causing damage to Fort Cumberland Scheduled Monument (see chapter 2 of the proposals).

Once a route for the trail has been confirmed by the Secretary of State, we will hold further discussions with Historic England and local government archaeological officers about any works on the ground that are necessary to prepare for commencement of the access rights.

e) Interests of owners and occupiers

In discharging our coastal access duty we must aim to strike a fair balance between the interests of the public in having rights of access over coastal land, and the interests of owners and occupiers of land over which any coastal access rights would apply. This was a key driver in the design of our proposals, which were discussed in detail with the owners and occupiers of the affected land during 'walking the course' and other processes, and are reflected in the chapters of the report insofar as they were relevant to the individual lengths of coast described.

The Portsmouth to South Hayling stretch is predominantly urban in character, the coastline is dominated by the City of Portsmouth (Portsea Island) and Southsea seafront in the west and Hayling Island in the east, wrapping around Langstone Harbour in the centre. The majority of Langstone Harbour is characterised by mudflats and saltmarsh with a small number of islands, which are managed by the RSPB for nesting birds. Southsea seafront is a well walked promenade leading to the Eastney Peninsula around which we are proposing to open up a continuous route, by aligning in front of Fort Cumberland. This site is currently closed by means of a fence, but has a suitable walking surface already in place.

The route then continues on an existing walked route around Eastney lake, which is dominated by high rise flats and an allotment garden. There is an aggregate wharf which operates from the east coast of Portsea island; we propose that our alignment follow existing walked access to the back of this operation. Our alignment follows the perimeter of the Farlington Marshes, which is an urban Hampshire and Isle of Wight Wildlife Trust reserve in the north of Langstone Harbour. This site has an existing dogs on lead bylaw. The alignment for this stretch then passes in front of a small industrial area, which includes a slip way, another aggregate wharf, and a water treatment works.

The route then becomes urban/rural passing over land with existing access into Langstone, before moving onto Hayling Island and the Hayling Billy Line. Around the West Hayling Local Nature Reserve, opportunities for improving this site for access have been identified with RSPB, the site managers.

The proposed route then aligns away from the coast for approximately one mile due to environmental sensitivities, excepted land, the operational needs of a pony paddock and an adults only hotel in the Sinah Marsh area. The coastal alignment returns at the Kench Local Nature Reserve. Having spoken to a number of stakeholders, who have highlighted nature conservation sensitivities we have chosen to align our route along the road, outside of the reserve, despite the existing access. Sea views will still be maintained. The route then continues past the Hayling Ferry access point and onto Sinah Common SSSI, mostly managed by Hayling Golf club, with well-established access outside of their fenced off operational land. We propose a waymarked route through this parcel of land to direct walkers away from other desire lines, in the interest of safeguarding sensitive habitats.

The proposed route alignment has been carefully discussed with owners and/or occupiers so as to try and minimise any potential disruption to existing land management practices

The issues raised by owners and occupiers on this part of the stretch generally related to the operational needs of businesses or to the privacy of residents. These issues are to a large extent addressed by the provisions in the legislation for particular categories of land to be automatically excepted from the coastal access rights, including land covered by buildings and their curtilage, and land used as a garden. Land which becomes subject to development in the future will also become excepted from the coastal access

rights if it is developed in these ways. Annex C: Excepted land categories sets out these provisions in more detail. In general the existing public access provisions are already managed effectively alongside adjacent land uses,

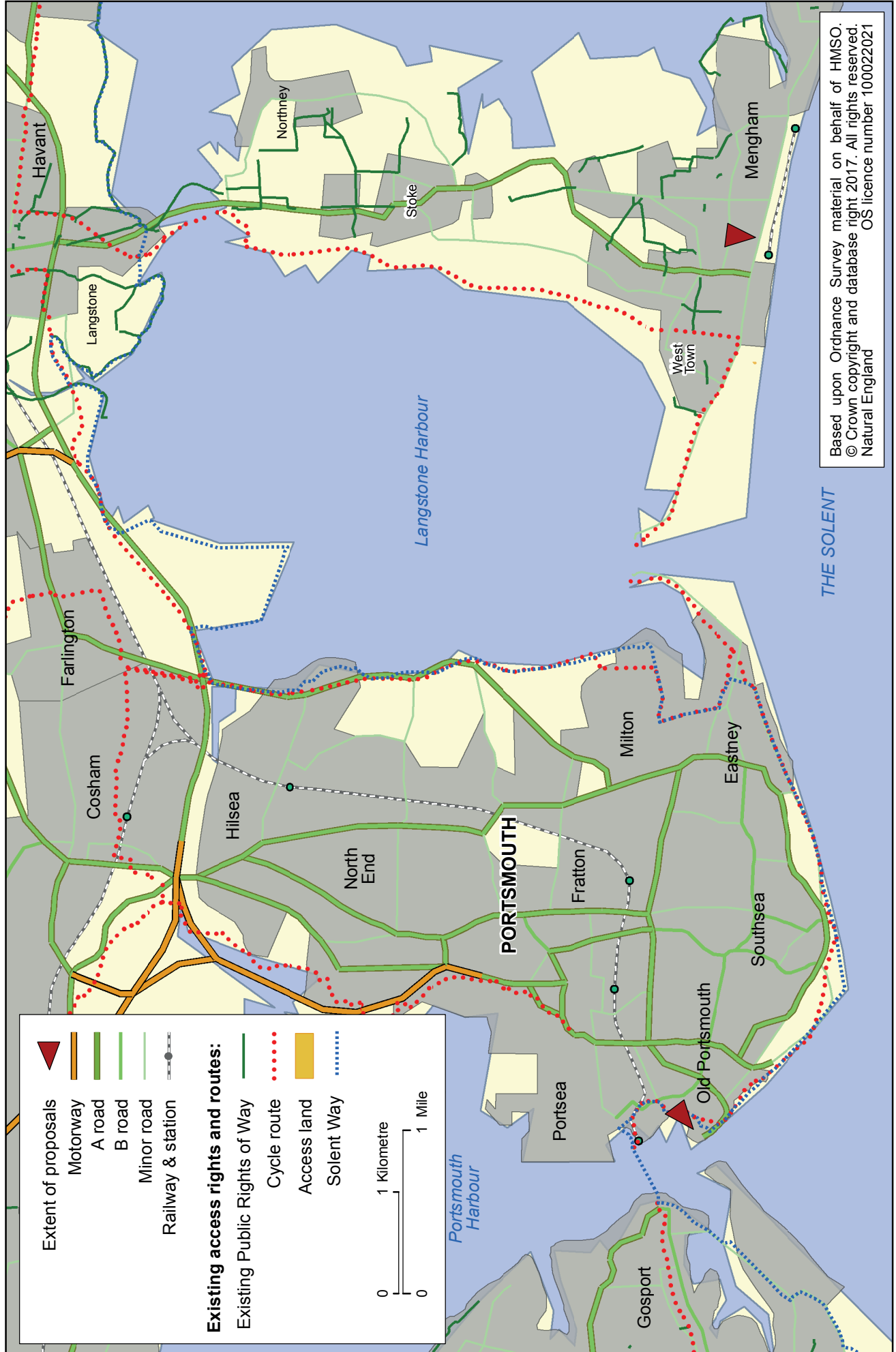
f) Coastal processes

The principal source of information regarding coastal processes on this stretch of coast is the North Solent Shoreline Management Plan (see Annex A: Bibliography), a non-statutory policy document for the management of flood risk and coastal erosion. With reference to this document, and with advice from the Environment Agency and Eastern Solent Coastal Partnership, we have identified the lengths of coast within this stretch which are particularly susceptible to coastal erosion or other geomorphological processes, such as landslips and decided that no provisions for roll back are necessary across this stretch.

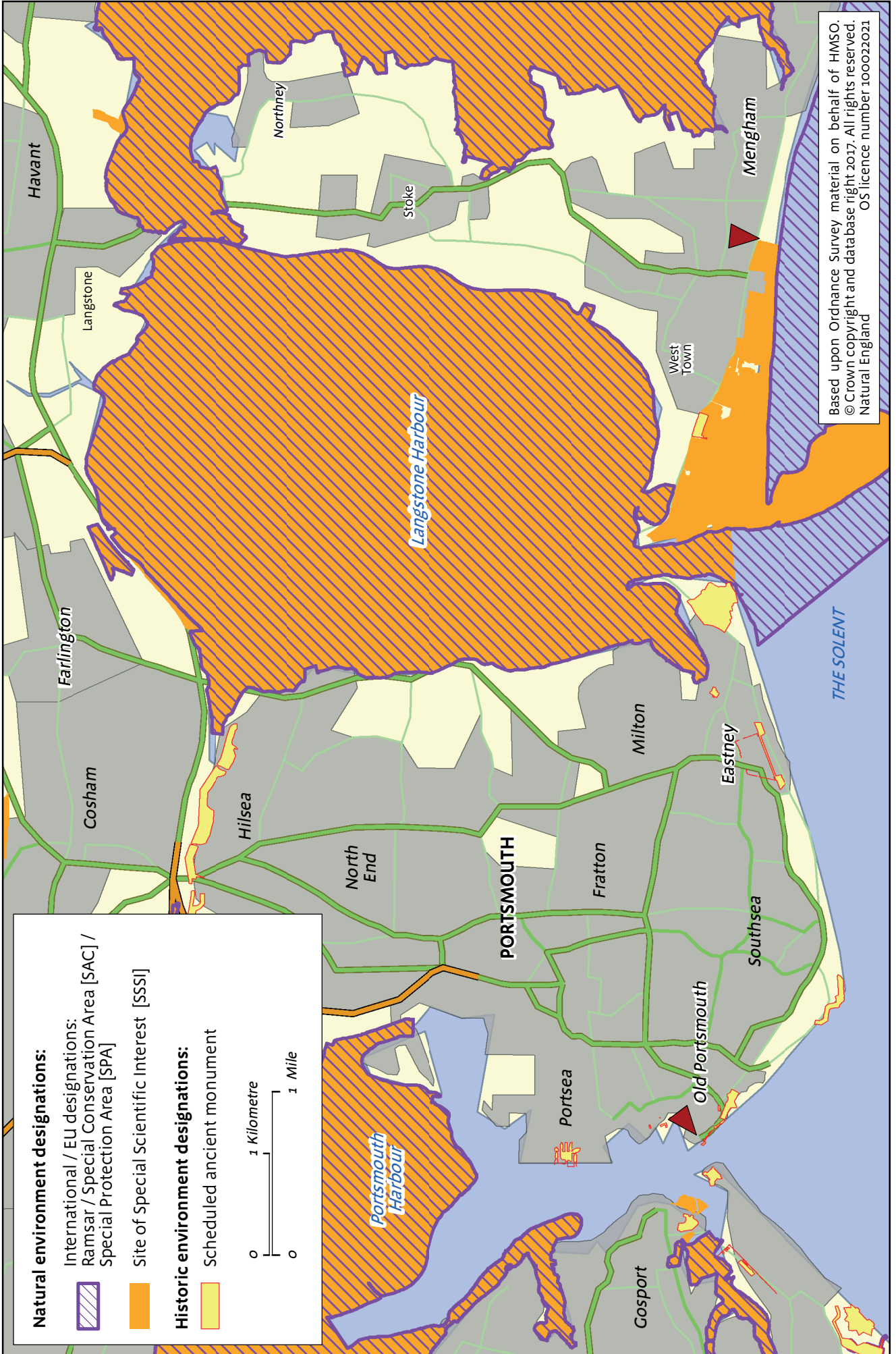
In general where the coast is defended with some certainty, we have not made any specific proposals to enable the trail to adapt to coastal change - for example, where the trail would be:

- on, or on the landward side of sea defences which would protect it; or
- landward of the roads and railway which would be protected under the policies set out in the Shoreline Management Plan 2; or
- on an important multi-use route, such as the Hayling Billy (chapter 3), where there is a local desire to maintain the existing route; or
- on a site where there is consideration of future managed realignment, such as Farlington Marshes and Southmoor (both chapter 2), but plans are at too early a stage that definitive decisions about roll back could be made.

Map C: Existing public access - Portsmouth to South Hayling



Map D: Existing designations - Portsmouth to South Hayling



Implementation of the proposals

7. Physical establishment of the trail

Below we summarise how our proposed route for the trail would be physically established to make it ready for public use before any new rights come into force. There is further detail in the proposals about some of the provisions mentioned here.

The trail would make extensive use of existing coastal paths on the ground, including the existing route of the Solent Way, Langstone Harbour Waterside Walk, and Shipwright’s Way. Our estimate of the capital costs for physical establishment of the trail on the proposed route is £64,215 and is informed by:

- information already held by the access authority, Hampshire County Council,; and
- information gathered while visiting affected land and talking to the people who own and manage it about the options for the rou

There are four main elements to the overall cost:

- A significant number of new signs would be needed on the trail, introducing the National Trail ‘acorn’ branding.
- A number of interpretation panels are required to provide information about sensitive features, and about the restrictions within Langstone Harbour.
- Installation of fencing at specific locations to discourage access to sensitive sites
- Relocation of the existing metal security fence and safety rail at Fraser Range.

Table 1 explains our estimate of the capital cost for each of the main elements of physical establishment described above.

Table 1: Estimate of capital costs

| | |
|--------------------------|---|
| Signs and Interpretation | £24,318 |
| Fencing | £39,897 |
| Total | £64,215 (exclusive of any VAT payable) |

Once the Secretary of State’s decision on our report has been notified, we, or Hampshire County Council/Portsmouth City Council on our behalf, will consult further with affected land owners and occupiers about relevant aspects of the design, installation and maintenance of the new signs and infrastructure that are needed. All such works would conform to the published standards for National Trails and the other criteria described in our Coastal Access Scheme.

8. Maintenance of the trail

Because the trail between Portsmouth and South Hayling will form part of the National Trail being created around the whole coast of England called the England Coast Path, we envisage that it will be maintained to the same high quality standards as other National Trails in England (see The New Deal; Management of National Trails in England from April 2013 at Annex A).

Our estimate of the annual cost to maintain the trail is £13,768.67 (exclusive of any VAT payable).

In developing this estimate we have taken account of the formula used to calculate Natural England's contribution to the maintenance of other National Trails.

9. Future changes

We will normally be required to submit a variation report seeking approval from the Secretary of State in order to make changes to the route of the trail or the landward boundary of the coastal margin - for example if the land was subject to new build development. Such changes would be subject to the same procedures for consultation, representations and objections as our initial reports. Potential developments of which we are already aware that could potentially affect the route on the Portsmouth to South Hayling stretch are summarised below.

1. Southsea seafront sea defence upgrade works
2. Seawall upgrade works at Southern water land, Eastney
3. Farlington managed realignment
4. Southmoor managed realignment
5. Hayling Billy upgrade work

However, even without a variation report:

- i We would be able to impose new or modify existing local restrictions or exclusions on coastal access rights as necessary, and people with a legal interest in the land would be able to apply to us for such directions under certain circumstances – see chapter 6 of the Coastal Access Scheme.
- ii Further work could be carried out where necessary either to establish or maintain the route, or to provide any means of access to the coastal margin, using powers and procedures set out in Schedule 20 of the Marine and Coastal Access Act 2009 and chapter 3 of the Countryside and Rights of Way Act.

iii If at any time the use of affected land should change, the normal rules in relation to excepted land would apply, so for example land covered by buildings and their curtilage, and land in the course of development, would automatically become excepted from the coastal access rights – see Annex C: Excepted Land Categories.

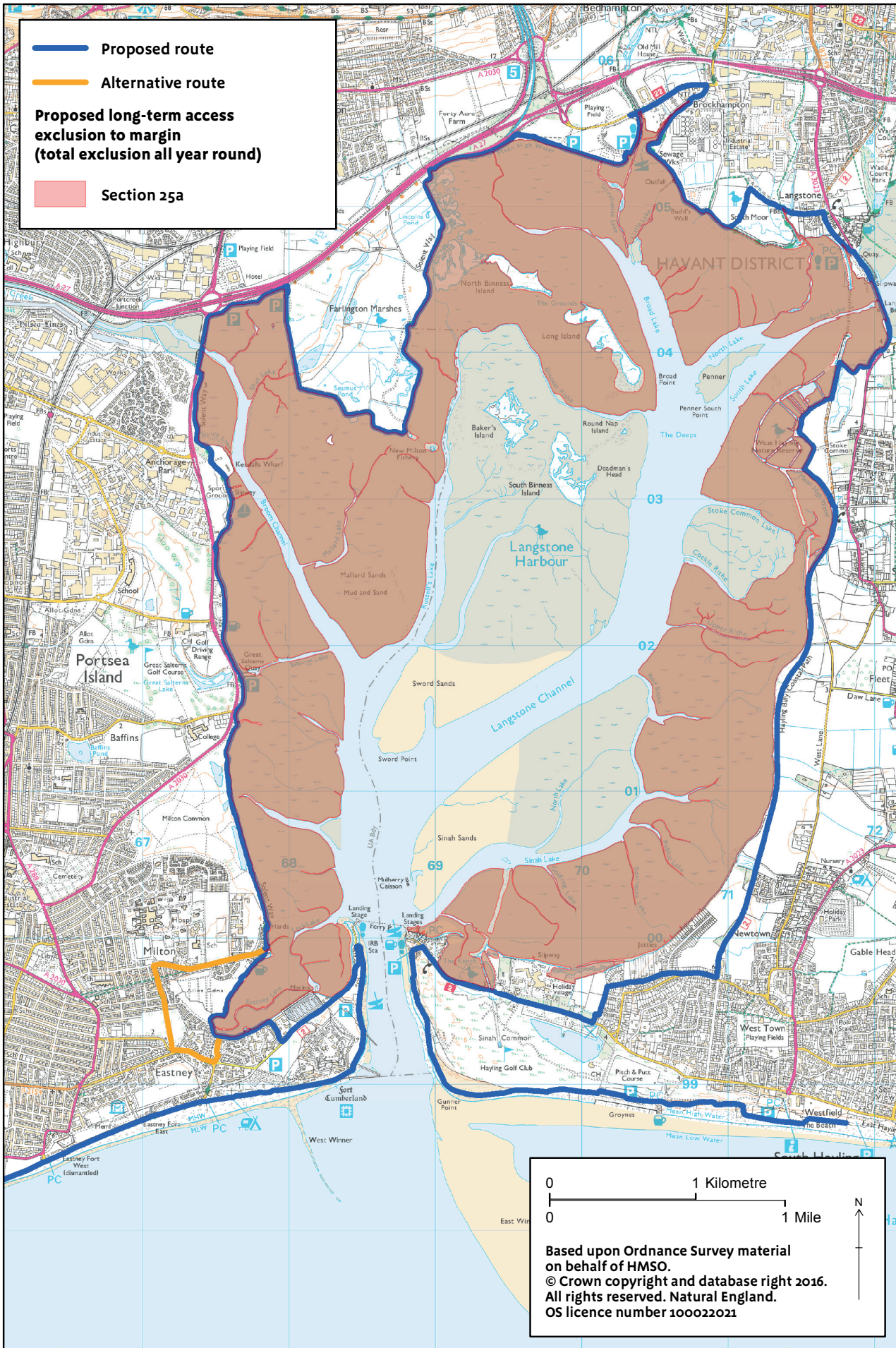
10. Restrictions and exclusions

Below, we provide the details and explain the practical effects of any directions to exclude or restrict coastal access rights proposed by this report.

Refer to Part 6.7 and Figure19 of the approved Coastal Access Scheme for more information.

| Report chapter | Location/extent (see Map D for more information) | Type of restriction | Purpose of restriction | Grounds and relevant section of CROW | Duration |
|------------------------------------|--|---------------------|------------------------------|--------------------------------------|------------|
| 2 and 3 – Eastney to South Hayling | Langstone Harbour mudflat and saltmarsh | No public access | Unsuitable for public access | Salt marsh and flats 25A | Year round |

Map E: Proposed direction under S25A CROW – Total exclusion



Annexes

Annex A: Bibliography

Information about Natural England's coastal access programme:

Natural England

www.naturalengland.org.uk/coastalaccess

Information about the statutory framework for coastal access:

Department for Environment, Food and Rural Affairs

www.gov.uk/government/publications/marine-and-coastal-access-act-2009

Coastal Access Scheme

NE446 - Coastal Access: Natural England's Approved Scheme

Natural England

<http://publications.naturalengland.org.uk/publication/5327964912746496>

Marine and Coastal Access Act 2009

www.legislation.gov.uk/ukpga/2009/23/part/9/crossheading/the-coastal-access-duty

Countryside & Rights of Way Act 2000 [CROW]

www.legislation.gov.uk/ukpga/2000/37/contents

The Access to the Countryside (Coastal Margin) (England) Order 2010

www.legislation.gov.uk/uksi/2010/558/contents/made

National Parks and Access to the Countryside Act 1949

www.legislation.gov.uk/ukpga/Geo6/12-13-14/97

The Coastal Access Reports (Consideration and Modification Procedure) (England) Regulations 2010

www.legislation.gov.uk/uksi/2010/1976/contents/made

Environmental legislation referred to in the report

Strategic Environmental Assessment Directive

(Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment)

European Commission

<http://ec.europa.eu/environment/eia/sea-legalcontext.htm>

Habitats Directive

(Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora)

European Commission

http://ec.europa.eu/environment/nature/legislation/habitatsdirective/index_en.htm

Other published information used in the preparation of the report:

The New deal; Management of National Trails in England from April 2013 (NE426)

<http://Publications.naturalengland.org.uk/publication/6238141>

Annex B: Glossary of terms

The terms and their explanations below are simply for guidance and are not intended to have any legal effect.

Any terms shown in bold type within each explanation are included as a separate entry elsewhere in the glossary.

1949 Act means the National Parks and Access to the Countryside Act 1949. The 1949 Act includes provisions and procedures for the creation of long-distance routes (now more commonly known as National Trails). These provisions were amended and added to by the **2009 Act** for the purpose of identifying the coastal **trail**. See bibliography for publication details.

2009 Act means the Marine and Coastal Access Act 2009. Part 9 of the 2009 Act includes provisions to improve public access to the coast. There are supplementary provisions relating to:

- consideration of coastal access reports, objections and representations by the Secretary of State – in Schedule 1A of the **1949 Act** (inserted by Schedule 19 of the 2009 Act);
- the establishment and maintenance of the English coastal route – in Schedule 20 of the 2009 Act.

Section 1.2 of the Coastal Access Scheme includes a brief overview of the main provisions, which are explained in more detail in subsequent chapters. See bibliography for publication details.

alignment is the term the report uses to describe the choices we make about the proposed route of the **trail** and the landward boundary of the **coastal margin**.

alternative route means a route proposed to the **Secretary of State** as part of our report for a stretch of coast, for use by the public at times when access along part of the normal route is excluded under a **direction**. The associated term **optional alternative route** denotes an alternative route which the public has the *option* to use at times when the normal route (even though not formally closed) is unsuitable for use because of flooding, tidal action, coastal erosion or other geomorphological processes. Figure 17 in chapter 6 of the Scheme explains alternative routes in more detail. Paragraphs 4.10.16 to 4.10.18 of the Scheme explain more about the potential use of optional alternative routes.

appropriate assessment means, for the purposes of the Scheme, an assessment of the implications of a plan or project for a **European site** in view of the site's conservation objectives, made in accordance with Article 6.3 of the **Habitats Directive**. Natural England is required to conduct an appropriate assessment where it concludes that the introduction of **coastal access rights** in the form proposed is likely to have a significant effect on the conservation objectives for a European site. Our proposals to the Secretary of State include as necessary any local measures designed to prevent such a likely significant effect arising from improved access. Section 4.9 of the Scheme explains in more detail how we fulfil this requirement where it is relevant.

Birds Directive means the European Community Council Directive 2009/147/EEC on the conservation of wild birds. See bibliography for publication details.

building has the same meaning given in Schedule 1 of **CROW**, as amended for the coast by the **Order**. The term includes any structure or erection and any part of a building. For this purpose “structure” includes any tent, caravan or other temporary or moveable structure. It does not include any fence or wall, anything which is a means of access (as defined by **CROW** section 34 – for example steps or bridges), or any slipway, hard or quay.

coastal access duty means Natural England’s duty under section 296 of the **2009 Act** to secure improvements to public access to the English coast. It is explained in more detail in 1.2 of the Coastal Access Scheme.

coastal access rights is the term the report uses to describe the rights of public access to the coast provided under section 2(1) of **CROW** as a result of the provisions of the **2009 Act** and the **Order**. Coastal access rights are normally rights of access on foot for open-air recreation. These rights are by default subject to **national restrictions** and may additionally be subject to **directions** which restrict or **exclude** them locally. Section 2.4 of the Coastal Access Scheme explains more about the nature and management of coastal access rights.

coastal margin or margin means a margin of land at the coast falling within one or more of the descriptions given at article 3 of the **Order**. It is explained at section 1.3. Its main component is land subject to the **coastal access rights**, but it also contains other land, including some land that is not accessible to the public. A land owner may also voluntarily include land in the coastal access margin by making a **dedication**. Section 2.3 of the Scheme explains these other categories of land and how they fit in.

coastal processes is a term used in the report to mean coastal erosion, encroachment by the sea or other physical change due to geomorphological processes such as landslip. Where any part of the **trail** could be significantly affected by coastal processes, either directly or because of the need to maintain continuity with a part that is directly affected, we have included recommendations for it to **roll back** in accordance with a description in the report.

CROW means the Countryside and Rights of Way Act 2000. **Coastal access rights** take effect by virtue of CROW section 2(1). Certain provisions in CROW are amended or added to by the **2009 Act** and the **Order** for the purposes of the coast. Chapter 2 of the Coastal Access Scheme provides an overview of how the amended CROW provisions apply to the coast. See bibliography for publication details.

dedicate/dedication means any voluntary dedication of land by the owner or long leaseholder under section 16 of **CROW** so that it will be subject to access rights under that Act. A dedication may also make provision for specific **national restrictions** that would otherwise apply over the affected land to be removed or relaxed.

Land within **the coastal margin** that was previously dedicated as access land under **CROW** becomes subject to the coastal access regime, including the **national restrictions** and the reduced level of liability operating on other parts of the margin with **coastal access rights**. On certain land, a dedication may be used to ‘opt in’ to the coastal access regime land where it would not otherwise apply. Chapter 2 of the Coastal Access Scheme explains these scenarios in more detail.

definitive map means the legal record of public rights of way. It shows public footpaths, bridleways, restricted byways, and byways open to all traffic.

direction means a direction under chapter II of **CROW** Part 1 to impose local restrictions or **exclusions** on the use of the **coastal access rights**.

European site means a site:

- classified as a Special Protection Area (SPA) for birds under the **Birds Directive**; or
- designated as a Special Area of Conservation (SAC) under the **Habitats Directive**; or
- proposed to the European Commission as a site eligible for designation as a SAC for the purposes of Article 4.4 of the Habitats Directive (a candidate SAC).

Natural England is required in the circumstances described under **appropriate assessment** above to conduct such an assessment of the implications of the introduction of **coastal access rights** for European sites. It is Government policy, stated in the National Planning Policy Framework that, whilst not European sites as a matter of law, the following sites should be subject to the same procedures and protection as European sites:

- Any potential SPA or possible SAC;
- Any site listed or proposed as a Wetland of International Importance especially as Waterfowl Habitat under the Ramsar Convention on Wetlands of International Importance 1971 (a Ramsar site); and
- Sites identified, or required, as compensatory measures for adverse effects on European sites, potential Special Protection Areas, possible Special Areas of Conservation, and listed or proposed Ramsar sites.

For this purpose, any reference in the report to a European site or sites should be taken to include all the categories of site above.

excepted land – see Annex C of the Overview.

exclude/exclusion are terms the report uses to refer to local exclusion of the **coastal access rights** by **direction** (as opposed to the **national restrictions** that apply on all coastal access land by default). In this way the use of the rights may where necessary either be excluded completely, or restricted in specified ways by means of a local restriction. Section 6.6 of the Coastal Access Scheme explains the provisions in detail and our approach to their use.

foreshore is not defined in the **2009 Act** or the **Order**. In the report it is taken to mean the land between mean low water and mean high water.

gate is used in several ways in the report:

- 'Field gate' means a wide farm gate, for vehicle access.
- 'Kissing gate' means a pedestrian access gate, sometimes suitable for wheelchairs.
- 'Wicket gate' means a narrow field gate, sometimes suitable for wheelchairs, but unsuitable for larger vehicles.

guide fencing is a term the report uses to describe simple temporary fencing which can be put up and taken down with minimal cost or effort – see figure 18 in chapter 6 of the

Coastal Access Scheme.

Habitats Directive means the European Community Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora. See bibliography for publication details.

the **legislation** is the term the report uses to describe four pieces of legislation which include provisions relevant to the implementation of our proposals: the **2009 Act**, the **1949 Act**, **CROW** and the **Order**. There are separate entries in the glossary which describe each of these in more detail.

local access forum means a local access forum established under section 94 of **CROW**. Natural England is required to consult the relevant Local Access Forum in the preparation of the report, and to invite representations from it on its report – see chapter 3 of the Coastal Access Scheme for details.

national restrictions – see Annex D of the Overview.

National Trail means a long-distance route approved by the Secretary of State under section 52 of the **1949 Act**.

objection means an objection by a person with a relevant interest in affected land to Natural England about a proposal in the report. An objection must be made on certain specified grounds, in accordance with the provisions in Schedule 1A of the **1949 Act** (as inserted by Schedule 19 of the **2009 Act**). Stage 3 of the implementation process described in chapter 3 of the Coastal Access Scheme provides an overview of the procedures for considering objections.

Order means the Access to the Countryside (Coastal Margin) (England) Order 2010 (S.I. 2010/558), made under section 3A of **CROW**. It sets out descriptions of land which are **coastal margin** and amends Part I of CROW in certain key respects for the purposes of coastal access. See bibliography for publication details.

public right of way (PROW) means a public footpath, bridleway, restricted byway or byway open to all traffic. These public rights of way are recorded on the definitive map.

relevant interest means a relevant interest in land, as defined by section 297(4) of the 2009 Act. This is a person who:

- holds an estate in fee simple absolute in possession in the land;
- holds a term of years absolute in the land, or
- is in lawful occupation of the land.

A relevant interest must therefore own or occupy the land in question, rather than simply having some kind of **legal interest** over it.

representation means a representation made by any person to Natural England regarding a proposal in its final report. A representation may be made on any grounds, in accordance with the provisions in Schedule 1A of the **1949 Act** (as inserted by Schedule 19 of the **2009 Act**). Stage 3 of the implementation process described in chapter 3 of the Coastal Access Scheme provides an overview of the procedures for considering representations.

restrict/restriction – see “exclude/exclusion”.

Roll-back is the term the Scheme uses to describe arrangements made under the provisions of section 55B of the **1949 Act**, whereby we may propose to the **Secretary of State** in a **coastal access report** that the route of a specified part of the **trail** which is subject to significant erosion or other coastal processes, or which links to such a section of trail, should be capable of being repositioned later in accordance with the proposals in our report, without further confirmation by the Secretary of State. Section 4.10 of the Scheme explains in more detail how this works.

route section is the term used in the report to describe short sections of the proposed route for the **trail**. Each route section is assigned a unique serial number which we use to refer to it in the proposals and on the accompanying maps.

Scheduled Monument means a site or monument of national importance given legal protection by virtue of being listed on the Schedule of Monuments under section 1 of the Ancient Monuments and Archaeological Areas Act 1979.

section 15 land means land with public access rights under:

- section 193 of the Law of Property Act 1925;
- a local or private Act;
- a management scheme made under Part I of the Commons Act 1899; or
- an access agreement or access order made under Part V of the National Parks and Access to the Countryside Act 1949;

or land subject to, or potentially subject to, public access under section 19 of the Ancient Monuments and Archaeological Areas Act 1979.

Where Section 15 land forms part of the **coastal margin** (which it may do in any of the ways explained in section 4.8 of the Coastal Access Scheme), these rights apply instead of the **coastal access rights**. Figure 6 in Section 2.4 of the Coastal Access Scheme shows the relationship of Section 15 land to the coastal access regime in more detail.

Site of Special Scientific Interest (SSSI) means a site notified under section 28 of the Wildlife and Countryside Act 1981 (as amended) as nationally important for its wildlife and/or geological or physiographical features.

spreading room is the term the report uses to describe any land, other than the **trail** itself, which forms part of the **coastal margin** and which has public rights of access.

In addition to land with **coastal access rights** it therefore includes areas of **section 15 land**. Spreading room may be either seaward or landward of the **trail**, according to the extent of the margin. Section 4.8 of the Scheme explains in more detail the ways in which land may become spreading room. Spreading room may be subject to **directions** that **restrict** or **exclude** the coastal access rights locally from time to time. However, the Scheme does not use the term to describe land which is subject to a direction which excludes access for the long-term. Land is not described as spreading room in the Scheme if it falls into one of the descriptions of **excepted land**, although it may become spreading room if it loses its

excepted status as a result of a change of use, or if the owner dedicates it as coastal margin. Where highways such as roads or public rights of way cross spreading room, they remain subject to the existing highway rights rather than becoming subject to coastal access rights.

statutory duty means the work an organisation must do by order of an Act of Parliament.

strategic environmental assessment means the overall requirements of European Community Council Directive 2001/42/EC. Sections 4.9.9 and 4.9.10 of the Scheme describe the circumstances in which we would conduct a strategic environmental assessment.

stretch is the term the report uses to describe the whole coastline affected by proposals it contains.

temporary route means a diversionary route which operates while access to the trail is **excluded** by **direction**. Unlike an **alternative route**, a temporary route may be specified by or under the direction without requiring confirmation by the Secretary of State in the report, though land owner consent is needed in some circumstances. Figure 17 in chapter 6 of the Coastal Access Scheme explains the provisions for temporary routes in more detail.

the **trail** is the term the report uses to describe the strip of land people walk along when following the route identified for the purposes of the **Coastal Access Duty**: see section 1.2. Following approval by the Secretary of State of the proposals in our coastal access report, the trail along that stretch becomes part of the **National Trail** known as the **England Coast Path**. By default, it is the land within 2 metres on either side of the approved route line, but often it is wider or narrower than this. The trail forms part of the **coastal margin**.

variation report means a report to the Secretary of State under section 55(1) of the 1949 Act. Natural England may prepare a variation report recommending changes to coastal access proposals that have previously been approved. Figure 10 in chapter 3 of the Coastal Access Scheme explains in more detail the circumstances when a variation report is necessary.

A variation report may also be prepared by Natural England (in the context of our recommendations for the **trail** which we have a duty to secure under section 296 of the **2009 Act**) to recommend that the route of another National Trail at the coast is modified.

Annex C: Excepted land categories

The effect of Schedule 1 to the Countryside and Rights of Way Act 2000 is that some categories of land are completely excluded from the coastal access rights, even if they fall within the coastal margin:

- land covered by buildings or the curtilage of such land;
- land used as a park or garden;
- land used for the getting of minerals by surface working including quarrying (except, under certain circumstances, the removal of sand or shingle from an area of foreshore or beach);
- land used for the purposes of a railway (including a light railway) or tramway;
- land covered by pens in use for the temporary detention of livestock;
- land used for the purposes of a racecourse or aerodrome;
- land which is being developed and which will become excepted land under certain other excepted land provisions;
- land covered by works used for the purposes of a statutory undertaking (other than flood defence works or sea defence works) or the curtilage of such land;
- land covered by works used for an electronic communications code network or the curtilage of any such land;
- land the use of which is regulated by byelaws under section 14 of the Military Lands Act 1892 or section 2 of the Military Lands Act 1900;
- land which is, or forms part of, a school playing field or is otherwise occupied by the school and used for the purposes of the school; and
- land which is, or forms part of, a highway (within the meaning of the Highways Act 1980) – see below.

Some other land categories are excepted by default, but we may propose that the trail should cross them on an access strip – in which case the strip itself is not excepted from the coastal access rights. Where land in any of these categories would form part of the coastal margin in proposals, it would therefore be fully excepted from coastal access rights. That includes:

- land on which the soil is being, or has at any time within the previous 12 months been, disturbed by any ploughing or drilling undertaken for the purposes of planting or sowing crops or trees;
- land used for the purposes of a golf course;
- land which is, or forms part of, a regulated caravan or camping site; and
- land which is, or forms part of, a burial ground.

Highways are also excepted from the coastal access rights. This does not prevent the trail from following a public footpath or other highway, and people can continue exercising their rights to use highways that fall within the wider spreading room. Such highways form part of the coastal margin even though the access rights along them are afforded by other legislation.

Land owners may choose, under the legislation, to dedicate excepted land as a permanent part of the coastal margin. These provisions are explained in more detail in chapter 2 of our Coastal Access Scheme.

Annex D: National restrictions

The coastal access rights which would be newly introduced under proposals include most types of open-air recreation on foot or by wheelchair including walking, climbing and picnicking.

The scope of these coastal access rights is normally limited by a set of rules that we call in the Coastal Access Scheme the “national restrictions”.

They list some specific activities not included within the coastal access rights – for example camping, horse riding and cycling. The national restrictions on the coastal access rights are set out on the pages that follow.

The national restrictions do not prevent such recreational uses taking place under other rights, or with the landowner’s permission, or by traditional tolerance – for example on an area of foreshore where horse riding is customary. In particular, these national restrictions have no effect on people’s use of public rights of way or Section 15 land (see the entry for ‘section 15 land’ in the Glossary).

The land owner (or in some circumstances a long leaseholder or farm tenant) also has the option to include such recreational uses within the coastal access rights on a particular area of land, or on his holdings generally. He can do this:

- permanently (i.e. on behalf of himself and future owners of the land), by dedicating such rights under section 16 of the Countryside and Rights of Way Act 2000 (CROW); or
- until further notice, by agreeing that we should give a direction under CROW Schedule 2 paragraph 7 to this effect.

We can provide more information about these options on request.

Countryside and Rights of Way Act 2000

SCHEDULE 2 RESTRICTIONS TO BE OBSERVED BY PERSONS EXERCISING RIGHT OF ACCESS (Section 2)

General restrictions

- 1 (1) Subject to sub-paragraph (2), section 2(1) does not entitle a person to be on any land if, in or on that land, he –
- (a) drives or rides any vehicle other than an invalid carriage as defined by section 20(2) of the Chronically Sick and Disabled Persons Act 1970,
 - (b) uses a vessel or sailboard on any non-tidal water,
 - (c) has with him any animal other than a dog,
 - (d) commits any criminal offence,
 - (e) lights or tends a fire or does any act which is likely to cause a fire,
 - (f) intentionally or recklessly takes, kills, injures or disturbs any animal, bird or fish,
 - (g) intentionally or recklessly takes, damages or destroys any eggs or nests,
 - (h) feeds any livestock,
 - (i) bathes in any non-tidal water,
 - (j) engages in any operations of or connected with hunting, shooting, fishing, trapping, snaring, taking or destroying of animals, birds or fish or has with him any engine, instrument or apparatus used for hunting, shooting, fishing, trapping, snaring, taking or destroying animals, birds or fish,
 - (k) uses or has with him any metal detector,
 - (l) intentionally removes, damages or destroys any plant, shrub, tree or root or any part of a plant, shrub, tree or root,
 - (m) obstructs the flow of any drain or watercourse, or opens, shuts or otherwise interferes with any sluice-gate or other apparatus,
 - (n) without reasonable excuse, interferes with any fence, barrier or other device designed to prevent accidents to people or to enclose livestock,
 - (o) neglects to shut any gate or to fasten it where any means of doing so is provided, except where it is reasonable to assume that a gate is intended to be left open,
 - (p) affixes or writes any advertisement, bill, placard or notice,
 - (q) in relation to any lawful activity which persons are engaging in or are about to engage in on that or adjoining land, does anything which is intended by him to have the effect –
 - (i) of intimidating those persons so as to deter them or any of them from engaging in that activity,
 - (ii) of obstructing that activity, or
 - (iii) of disrupting that activity,
 - (r) without reasonable excuse, does anything which (whether or not intended by him to have the effect mentioned in paragraph (q)) disturbs, annoys or obstructs any persons engaged in a lawful activity on the land,
 - (s) engages in any organised games, or in camping, hang-gliding or para-gliding, or
 - (t) engages in any activity which is organised or undertaken (whether by him or another) for any commercial purpose.
- (2) Nothing in sub-paragraph (1)(f) or (j) affects a person's entitlement by virtue of section 2(1) to be on any land which is coastal margin if the person's conduct (to the extent that it falls within sub-paragraph (1)(f) or (j)) is limited to permitted fishing-related conduct.
- (3) In sub-paragraph (2) the reference to permitted fishing-related conduct is a reference to the person –
- (a) having a fishing rod or line, or
 - (b) engaging in any activities which –
 - (i) are connected with, or ancillary to, fishing with a rod and line, or with a line

only, in the exercise of a right to fish, and
(ii) take place on land other than land used for grazing or other agricultural purposes.

- 2 (1) In paragraph 1(k), “metal detector” means any device designed or adapted for detecting or locating any metal or mineral in the ground.
(2) For the purposes of paragraph 1(q) and (r), activity on any occasion on the part of a person or persons on land is “lawful” if he or they may engage in the activity on the land on that occasion without committing an offence or trespassing on the land.
- 3 Regulations may amend paragraphs 1 and 2.
- 4 (1) During the period beginning with 1st March and ending with 31st July in each year, section 2(1) does not entitle a person to be on any land if he takes, or allows to enter or remain, any dog which is not on a short lead.
(2) Sub-paragraph (1) does not apply in relation to land which is coastal margin.
- 5 Whatever the time of year, section 2(1) does not entitle a person to be on any land if he takes, or allows to enter or remain, any dog which is not on a short lead and which is in the vicinity of livestock.
- 6 In paragraphs 4 and 5, “short lead” means a lead of fixed length and of not more than two metres.
- 6A (1) Whatever the time of year, section 2(1) does not entitle a person to be on any land which is coastal margin at any time if –
 - (a) that person has taken onto the land, or allowed to enter or remain on the land, any dog, and
 - (b) at that time, the dog is not under the effective control of that person or another person.
 - (2) For this purpose a dog is under the effective control of a person if the following conditions are met.
 - (3) The first condition is that –
 - (a) the dog is on a lead, or
 - (b) the dog is within sight of the person and the person remains aware of the dog’s actions and has reason to be confident that the dog will return to the person reliably and promptly on the person’s command.
 - (4) The second condition is that the dog remains –
 - (a) on access land, or
 - (b) on other land to which that person has a right of access.
 - (5) For the purposes of sub-paragraph (4), a dog which is in tidal waters is to be regarded as remaining on access land.
- 6B (1) Section 2(1) does not entitle a person to be on any land which is coastal margin if, on that land, the person obstructs any person passing, or attempting to pass, on foot along any part of the English coastal route, any official alternative route or any relevant temporary route.
 - (2) In this paragraph –

“the English coastal route” means the route secured pursuant to the coastal access duty (within the meaning of section 296 of the Marine and Coastal Access Act 2009);

“official alternative route” has the meaning given by section 55J of the National Parks and Access to the Countryside Act 1949;

“relevant temporary route” means a route for the time being having effect by virtue of a direction under section 55I of that Act to the extent that the line of the route passes over coastal margin.

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