



**Assessment of Coastal Access proposals under  
regulation 63 of the  
Habitats Regulations 2017 (as amended)  
(‘Habitats Regulations Assessment’)**

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**Assessment of England Coast Path proposals between  
Penzance to St Mawes**

**On Marazion Marsh SPA**

**18 September 2019**



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regulation 63 of the  
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**Contents:**

Summary ..... 3

PART A: Introduction and information about the England Coast Path ..... 6

PART B: Information about the European Site(s) which could be affected ..... 10

PART C: Screening of the plan or project for appropriate assessment ..... 12

PART D: Appropriate Assessment and Conclusions on Site Integrity ..... 15

PART E: Permission decision with respect to European Sites ..... 16

References to evidence..... 17

Appendix 1 Map ..... 18



# Assessment of Coastal Access proposals under regulation 63 of the Habitats Regulations 2017 (as amended) ('Habitats Regulations Assessment')

## Summary

### I) Introduction

This is a record of the Habitats Regulations Assessment ('HRA') undertaken by Natural England (in its role of competent authority) in accordance with the assessment and review provisions of the Conservation of Habitats and Species Regulations 2017 (as amended) ('the Habitats Regulations').

Natural England has a statutory duty under the Marine and Coastal Access Act 2009 to improve access to the English coast. This assessment considers the potential impacts of our detailed proposals for coastal access from Penzance to St Mawes on the following sites of international importance for wildlife<sup>1</sup>:

- Marazion Marsh SPA.

**This assessment should be read alongside Natural England's related Coastal Access Reports which between them fully describe and explain its access proposals for the stretch as a whole. The Overview explains common principles and background and the reports explain how we propose to implement coastal access along each of the constituent lengths within the stretch.**

[www.gov.uk/government/publications/coastal-access-in-cornwall-from-penzance-to-st-mawes-comment-on-proposals](http://www.gov.uk/government/publications/coastal-access-in-cornwall-from-penzance-to-st-mawes-comment-on-proposals)

### II) Background

The main wildlife interests for this stretch of coast are summarised in Table 1 below, (see section B1 for a full list of qualifying features).

Interest	Description
Overwintering and on passage wetland bird species	Populations of over wintering Bittern, <i>Botaurus stellaris</i> and on passage Aquatic Warbler, <i>Acrocephalus paludicola</i> are present on this site. As supporting habitat for the above species, the marsh contains the largest expanse of reed bed habitat in the county.

### III) Our approach

Natural England's approach to ensuring the protection of sensitive nature conservation features under the Coastal Access Programme is set out in section 4.9 Coastal Access: Natural England's Approved Scheme 2013 <http://publications.naturalengland.org.uk/publication/5327964912746496>

<sup>1</sup> Linked assessments have been prepared for other European sites potentially affected by the access proposals for this stretch. These assessments are published as separate documents.



## Assessment of Coastal Access proposals under regulation 63 of the Habitats Regulations 2017 (as amended) ('Habitats Regulations Assessment')

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Our final published proposal for a stretch of England Coast Path is preceded by detailed local consideration of options for route alignment, the extent of the coastal margin and any requirement for restrictions, exclusions or seasonal alternative routes. The proposal is thoroughly considered before being finalised and initial ideas may be modified or rejected during the iterative design process, drawing on the range of relevant expertise available within Natural England.

Evidence is also gathered as appropriate from a range of other sources which can include information and data held locally by external partners or from the experience of local land owners, environmental consultants and occupiers. The approach includes looking at any current visitor management practices, either informal or formal. It also involves discussing our emerging conclusions as appropriate with key local interests such as land owners or occupiers, conservation organisations or the local access authority. In these ways, any nature conservation concerns are discussed early and constructive solutions identified as necessary.

The conclusions of this assessment are approved by a member of Natural England staff who is not a member of coastal access programme team and who has responsibility for protected sites. This ensures appropriate separation of duties within Natural England.

### IV) Aim and objectives for the design of our proposals

The new national arrangements for coastal access will establish a continuous well-maintained walking route around the coast and clarify where people can access the foreshore and other parts of the coastal margin. These changes will influence how people use the coast for recreation and our aim in designing our detailed proposals has been to secure and enhance opportunities for people to enjoy their visit whilst ensuring appropriate protection for affected European sites.

A key consideration in developing coastal access proposals close to Marazion Marsh SPA has been the possible impact of disturbance on overwintering Bittern, *Botaurus stellaris* and passage Aquatic Warbler, *Acrocephalus paludicola*, as a result of recreational activities, and particularly visitors with dogs within the boundary of the site. Therefore, we have ensured that the trail and associated margin remained seaward of the SPA boundary.

Objectives for design of our detailed local proposals have been to:

- Avoid increasing public access within the site and particularly within areas favoured by the notified species.

### V) Conclusion

We have considered whether our detailed proposals for coastal access between Penzance and St Mawes might have an impact on Marazion Marsh SPA. In Part C of this assessment we have confirmed that there are no risks to the relevant qualifying features from the coastal access proposals for this stretch of coast, and so conclude that our proposals for coastal access will have no likely significant effect on the Marazion Marsh SPA site features.



## **Assessment of Coastal Access proposals under regulation 63 of the Habitats Regulations 2017 (as amended) ('Habitats Regulations Assessment')**

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### **VI) Implementation**

Once a route for the trail has been confirmed by the Secretary of State, we will work with Cornwall Council to ensure any works on the ground are carried out with due regard to the conclusions of this appraisal and relevant statutory requirements.

### **VII) Thanks**

The development of our proposals has been informed by input from people with relevant expertise within Natural England and other key organisations. The proposals have been thoroughly considered before being finalised and our initial ideas were modified during an iterative design process. We are particularly grateful to Cormac, the RSPB, Ian Bernalick and Colin French, and to other organisations and local experts whose contributions and advice have helped to inform development of our proposals.



## Assessment of Coastal Access proposals under regulation 63 of the Habitats Regulations 2017 (as amended) ('Habitats Regulations Assessment')

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### **PART A: Introduction and information about the England Coast Path**

#### **A1. Introduction**

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 in appropriate places people will be able to spread out and explore, rest or picnic.

The 2009 Legislation refers to the continuous trail with its associated margin and other access rights as being the England Coast Path. Where appropriate we have used existing established coastal trail routes and these will already be known by different local and regional names, such as the South West Coast Path. However there will be places where the established trail and the proposed new Coast Path route diverge. So to avoid confusion as to which route is being proposed under the 2009 Legislation in this report, it is intended to remain with the terminology used in the Act namely the England Coast Path. It is recognised and welcomed that other local established route names will continue to be used on the ground.

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.

Where implementation of a Coastal Access Report could impact on a site designated for its international importance for wildlife, called a 'European site'<sup>2</sup>, a Habitats Regulations Assessment must be carried out.

The conclusions of this assessment are approved by a member of Natural England staff who is not a member of coastal access programme team and who has responsibility for protected sites. This ensures appropriate separation of duties within Natural England.

Natural England's approach to ensuring the protection of sensitive nature conservation features under the Coastal Access Programme is set out in section 4.9 of the Coastal Access Scheme <http://publications.naturalengland.org.uk/publication/5327964912746496>

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<sup>2</sup> Ramsar sites and proposed Ramsar sites; potential Special Protection Areas (pSPA); candidate Special Areas of Conservation (cSAC); and sites identified, or required, as compensatory measures for adverse effects on European sites are treated in the same way by UK government policy



## Assessment of Coastal Access proposals under regulation 63 of the Habitats Regulations 2017 (as amended) ('Habitats Regulations Assessment')

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### A2. Details of the plan or project

This assessment considers Natural England's proposals for coastal access along the stretch of coast between Penzance and St Mawes on Marazion Marsh SPA<sup>3</sup>. Our proposals to the Secretary of State for this stretch of coast are presented in a series of reports that explain how we propose to implement coastal access along each of the constituent lengths within the stretch. Within this assessment we consider each of the relevant reports, both separately and as an overall access proposal for the Penzance to East Marazion stretch in question.

#### England Coast Path

A continuous walking route around the coast – the England Coast Path National Trail - will be established by joining up existing coastal paths and creating new sections of path where necessary. The route will be established and maintained to National Trail quality standards. The coastal path will be able to 'roll back' as the occasional cliffs on this stretch erode or slip, solving long-standing difficulties with maintaining a continuous route on this stretch of coast.

#### Coastal Margin

An area of land associated with the proposed trail will become coastal margin, including all land seawards of the trail down to mean low water.

Coastal margin is typically subject to new coastal access rights, though there are some obvious exceptions to this. The nature and limitations of the new rights, and the key types of land excepted from them, are explained in more detail in Chapter 2 of our Coastal Access Scheme <http://publications.naturalengland.org.uk/publication/5327964912746496>. Where there are already public or local rights to do other things, these are normally unaffected and will continue to exist in parallel to the new coastal access rights. The exception to this principle is any pre-existing open access rights under Part 1 of the Countryside and Rights of Way Act 2000 (CROW) over land falling within the coastal margin: the new coastal access rights will apply in place of these.

Where public access on foot already takes place on land within the margin without any legal right for people to use the land in this way, the new coastal access rights will secure this existing use legally. Access secured in this way is subject to various national restrictions. It remains open to the owner of the land, should they wish, to continue tolerating other types of established public use not provided for by coastal access rights.

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<sup>3</sup> Linked assessments have been prepared for other European sites potentially affected by the access proposals for this stretch. These assessments are published as separate documents.



## **Assessment of Coastal Access proposals under regulation 63 of the Habitats Regulations 2017 (as amended) ('Habitats Regulations Assessment')**

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### Promotion of the England Coast Path

The Coast Path will be promoted as part of the family of National Trails. On the ground, the path will be easy to follow, with distinctive signposting at key intersections and places people can join the route. Directional way markers incorporating the National Trail acorn symbol will be used to guide people along the route. The coastal margin will not normally be marked on the ground, except where signage is necessary to highlight dangers that might not be obvious to visitors, or clarify to the scope and/or extent of coastal access rights.

Information about the Coast Path will be available on-line, including via the established National Trails website that has a range of useful information, including things for users to be aware of, such as temporary closures and diversions. The route is depicted on Ordnance Survey maps using the acorn symbol. The extent of the coastal margin is also depicted, together with an explanation about coastal access, where they do and don't apply and how to find out about local restrictions or exclusions.

### Maintenance of the England Coast Path

The access proposals provide for the permanent establishment of a path and associated infrastructure. The England Coast Path will be part of the National Trails family of routes, for which there are national quality standards. Delivery is by local partnerships and there is regular reporting and scrutiny of key performance indicators, including the condition of the trail.

### Responding to future change

The legal framework that underpins coastal access allows for adaptation in light of future change. In such circumstances Natural England has powers to change the route of the trail and limit access rights over the coastal margin in ways that were not originally envisaged. These new powers can be used, as necessary, alongside informal management techniques and other measures to ensure that the integrity of the site is maintained in light of unforeseen future change.

### Establishment of the trail

Establishment works to make the trail fit for use and prepare for opening will be carried out before the new public rights come into force on this stretch. Details of the works to be carried out and the estimated cost are provided in the access proposals. The cost of establishment works will be met by Natural England. Works on the ground to implement the proposals will be carried out by Cornwall Council subject to any further necessary consents being obtained, including to undertake operations on a SSSI. Natural England will provide further advice to the local authority carrying out the work as necessary.

### Local context

The 2009 Legislation refers to the continuous trail with its associated margin and other access rights as being the England Coast Path. Where appropriate we have used existing established coastal trail





## **Assessment of Coastal Access proposals under regulation 63 of the Habitats Regulations 2017 (as amended) (‘Habitats Regulations Assessment’)**

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routes and these will already be known by different local and regional names, such as the South West Coast Path (SWCP). However there will be places where the established trail and the proposed new Coast Path route diverge. So to avoid confusion as to which route is being proposed under the 2009 Legislation in this report, it is intended to remain with the terminology used in the Act namely the England Coast Path. It is recognised and welcomed that other local established route names will continue to be used on the ground.



## Assessment of Coastal Access proposals under regulation 63 of the Habitats Regulations 2017 (as amended) ('Habitats Regulations Assessment')

### PART B: Information about the European Site which could be affected

#### B1. Brief description of the European Site and its Qualifying Features

Marazion Marsh SPA was designated in August 2001. The site is located on the south coast of Cornwall to the east of Penzance at the head of Mounts Bay. The marsh is at the mouth of a wide coastal valley, separated from the sea by a shingle bar with fringing sand dunes. Streams, pools and reedbed grade into dense willow carr, with some unimproved grassland and scrub on drier margins of the site. The marsh is important for breeding, passage and wintering birds associated, in particular, with the extensive reedbed. The notified features of the SPA are detailed below:

**Table 1 Qualifying features**

Qualifying feature	Marazion Marsh SPA
A021 <i>Botaurus stellaris</i> ; Great bittern (Non-breeding)	✓
A294 <i>Acrocephalus paludicola</i> ; Aquatic warbler (Non-breeding)	✓



## Assessment of Coastal Access proposals under regulation 63 of the Habitats Regulations 2017 (as amended) ('Habitats Regulations Assessment')

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### **B2. European Site Conservation Objectives (including supplementary advice)**

Natural England provides advice about the Conservation Objectives for European Sites in England in its role as the statutory nature conservation body. These Objectives (including any Supplementary Advice which may be available) are the necessary context for all HRAs.

The overarching Conservation Objectives for every European Site in England are to ensure that the integrity of each site is maintained or restored as appropriate, and that each site contributes to achieving the aims of the Habitats Regulations, by either maintaining or restoring (as appropriate):

- The extent and distribution of their qualifying natural habitats,
- The structure and function (including typical species) of their qualifying natural habitats,
- The supporting processes on which their qualifying natural habitats rely,
- The supporting processes on which the habitats of their qualifying features rely,
- The population of each of their qualifying features, and
- The distribution of their qualifying features within the site.

Where Conservation Objectives Supplementary Advice is available, which provides further detail about the features' structure, function and supporting processes mentioned above, the implications of the plan or project on the specific attributes and targets listed in the advice will be taken into account in this assessment.

In light of the European Sites which could be affected by the plan or project, this assessment will be informed by the following site-specific Conservation Objectives, including any available supplementary advice;

[Conservation Objectives and Supplementary Advice package for Marazion Marsh SPA](#)



## Assessment of Coastal Access proposals under regulation 63 of the Habitats Regulations 2017 (as amended) ('Habitats Regulations Assessment')

### PART C: Screening of the plan or project for appropriate assessment

#### C1. Is the plan or project either directly connected with or necessary to the (conservation) management (of the European Site's qualifying features)?

The Coastal Access Plan is not directly connected with or necessary to the management of the European site for nature conservation listed in B1 above.

**Conclusion:**

As the plan or project is not either directly connected or necessary to the management of all of the European Site qualifying features, and/or contains non-conservation elements, further Habitats Regulations assessment is required.

#### C2. Is there a likelihood [or risk] of significant [adverse] effects ('LSE')?

This section details whether those constituent elements of the plan or project which are (a) not directly connected with or necessary to the management of the European Site features and (b) could conceivably adversely affect a European Site, would have a **likely significant effect**, either alone or in combination with other plans and projects, upon the European sites and which could undermine the achievement of the site's conservation objectives referred to in section B2.

In accordance with case law, this HRA has considered an effect to be 'likely' if it '*cannot be excluded on the basis of objective information*' and is 'significant' if it '*undermines the conservation objectives*'. In accordance with Defra guidance on the approach to be taken to this decision, in plain English, the test asks whether the plan or project '*may*' have a significant effect (i.e. there is a risk or a possibility of such an effect).

This assessment of risk therefore takes into account the precautionary principle (where there is scientific doubt) and **excludes**, at this stage, any measures proposed in the submitted details of the plan/project that are specifically intended to avoid or reduce harmful effects on the European site(s).

Each of the project elements has been tested in view of the European Site Conservation Objectives and against each of the relevant European site qualifying features. An assessment of potential effects using best available evidence and information has been made.

## C2.1 Risk of Significant Effects Alone

The first step is to consider whether any elements of the project are likely to have a significant effect upon a European site ‘alone’ (that is when considered in the context of the prevailing environmental conditions at the site but in isolation of the combined effects of any other ‘plans and projects’). Such effects do not include those deemed to be so insignificant as to be trivial or inconsequential.

In this section, we assess risks to qualifying features, taking account of their sensitivity to coastal walking and other recreational activities associated with coastal access proposals, and in view of each site’s Conservation Objectives.

**Table 2 Feature sensitivity**

Feature	Relevant pressure	Sensitivity to coastal access proposals	Assessment of risk to site conservation objectives	LSE alone?
A021 <i>Botaurus stellaris</i> ; Great bittern (Non-breeding)	Disturbance to feeding or resting birds as a result of recreational activities	May be sensitive to changes in the pattern or level of use of the area for recreational purposes.	The access proposals affect land near to the site but not the site directly, due to the presence of the Penzance to Marazion road that runs between the proposed trail and the seaward boundary of the designated site. There is no reason to conclude that the proposed trail and associated margin would result in an increase in usage on or close to the site, due to the level of public access already seen within the Mounts Bay area.	No
A294 <i>Acrocephalus paludicola</i> ; Aquatic warbler (Non-breeding)	Disturbance to feeding or resting birds as a result of recreational activities	May be sensitive to changes in the pattern or level of use of the area for recreational purposes.	The access proposals affect land near to the site but not the site directly, due to the presence of the Penzance to Marazion road that runs between the proposed trail and the seaward boundary of the designated site. There is no reason to conclude that the proposed trail and associated margin would result in an increase in usage on or close to the site, due to the level of public access already seen within the Mounts Bay area.	No



## Assessment of Coastal Access proposals under regulation 63 of the Habitats Regulations 2017 (as amended) ('Habitats Regulations Assessment')

### Conclusion:

The plan or project alone is unlikely to have a significant effect on the following qualifying features:

- A021 *Botaurus stellaris*; Great bittern (Non-breeding)
- A294 *Acrocephalus paludicola*; Aquatic warbler (Non-breeding)

### C2.2 Risk of Significant Effects in-combination with the effects from other plans and projects

The need for further assessment of the risk of in-combination effects is considered here.

Natural England considers that it is the appreciable risks of effects (from a proposed plan or project) that are not themselves considered to be significant alone which must be further assessed to determine whether they could have a combined effect significant enough to require an appropriate assessment.

No appreciable risks arising from the access proposals are identified in C2.1 that have the potential to act in combination with similar risks from other proposed plans or projects to also become significant. It has therefore been excluded, on the basis of objective information, that the project is likely to have a significant effect in-combination with other proposed plans or projects.

### C3. Overall Screening Decision for the Plan/Project

On the basis of the details submitted, Natural England has considered the plan or project under Regulation 63(1)(a) of the Habitats Regulations and made an assessment of whether it will have a likely significant effect on a European site, either alone or in combination with other plans and projects.

#### In light of sections C1 and C2 of this assessment above, Natural England has concluded:

As the plan or project is unlikely to have significant effects (either alone or in combination with other plans or projects) on any Qualifying Features of the European Site, no further appropriate assessment is required.



**Assessment of Coastal Access proposals under  
regulation 63 of the  
Habitats Regulations 2017 (as amended)  
(‘Habitats Regulations Assessment’)**

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**PART D: Appropriate Assessment and Conclusions on Site Integrity**

Not applicable



## Assessment of Coastal Access proposals under regulation 63 of the Habitats Regulations 2017 (as amended) ('Habitats Regulations Assessment')

### PART E: Permission decision with respect to European Sites

Natural England has a statutory duty under section 296 of the Marine and Coastal Access Act 2009 to improve access to the English coast. To fulfil this duty, Natural England is required to make proposals to the Secretary of State under section 51 of the National Parks and Access to the Countryside Act 1949. In making proposals, Natural England, as the relevant competent authority, is required to carry out a HRA under Regulation 63 of the Habitats Regulations.

We, Natural England, are satisfied that our proposals to improve access to the English coast between Penzance to St Mawes are fully compatible with the relevant European site conservation objectives.

It is open to the Secretary of State to consider these proposals and make a decision about whether to approve them, with or without modifications. If the Secretary of State is minded to modify our proposals, further assessment under the Habitats Regulations may be needed before approval is given.

### Certification

<b>Assessment prepared by:</b>	Hugh Tyler	Cornwall Team Adviser
<b>Date:</b>	4 <sup>th</sup> July 2019	
<b>HRA approved by:</b>	David Marshall	Senior officer with responsibility for protected sites
<b>Date:</b>	4 <sup>th</sup> July 2019	





## Assessment of Coastal Access proposals under regulation 63 of the Habitats Regulations 2017 (as amended) ('Habitats Regulations Assessment')

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### References to evidence

1. NATURAL ENGLAND. 2013. Coastal Access Natural England's Approved Scheme 2013. Published by Natural England Catalogue Code: NE446



<http://publications.naturalengland.org.uk/publication/5327964912746496?category=50007>

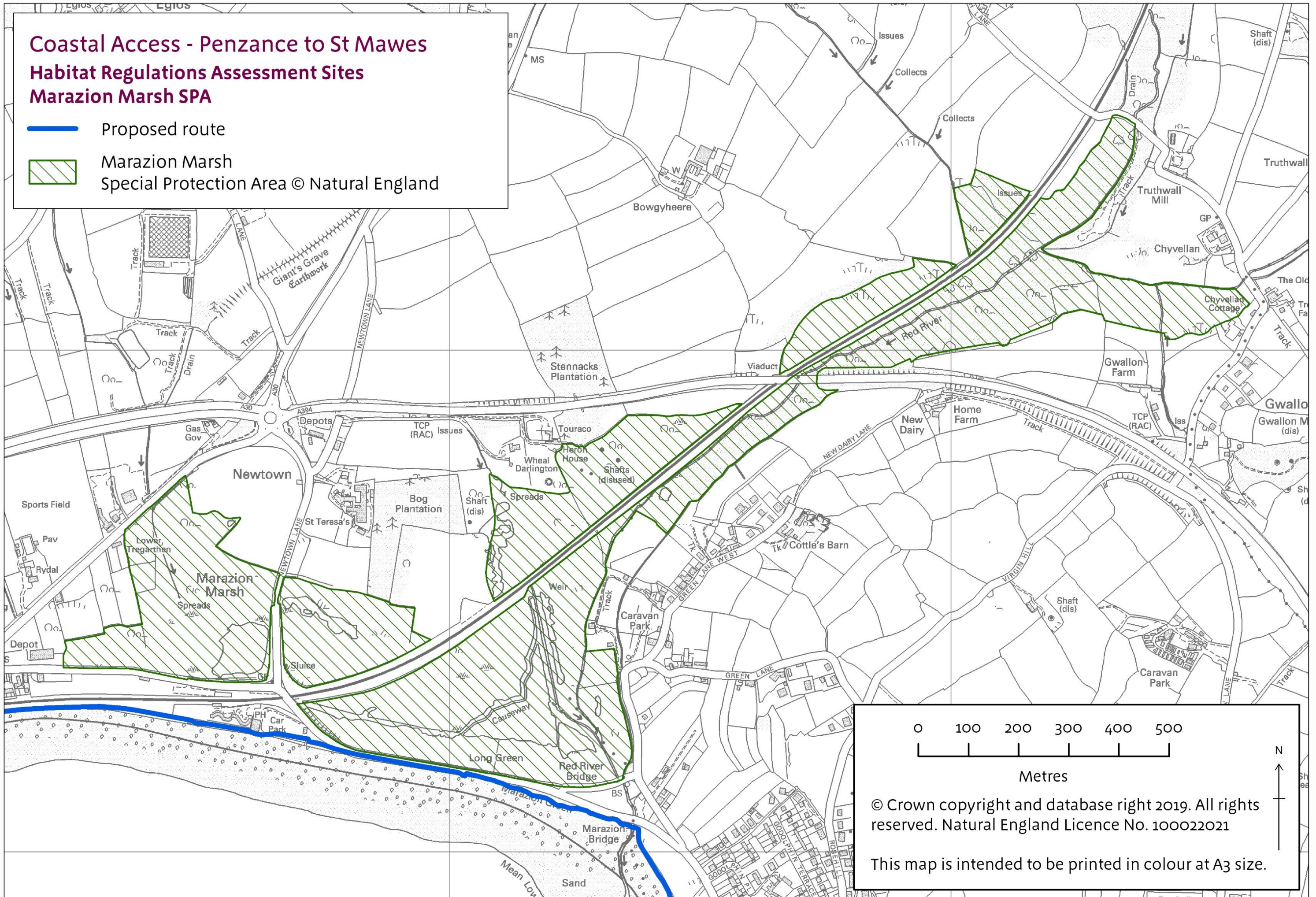
2. European Site Conservation Objectives: Supplementary advice on conserving and restoring site features Marazion Marsh Special Protection Area (SPA) Site code: UK9020289. Published 8<sup>th</sup> February 2019

<http://publications.naturalengland.org.uk/publication/5423819107860480>



**Coastal Access - Penzance to St Mawes  
Habitat Regulations Assessment Sites  
Marazion Marsh SPA**

-  Proposed route
-  Marazion Marsh  
Special Protection Area © Natural England



0 100 200 300 400 500  
Metres

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This map is intended to be printed in colour at A3 size.