

EA statement on private defences for North Solent SMP July 2009

1. Public funding for maintaining private defences to protect transitional habitats

Where a private defence protects a European-designated habitat and that defence deteriorates to the extent of damaging the habitat behind, then the Environment Agency, as a competent authority under the Habitat and Birds Regulations and Directive, would have a duty to take action to prevent further deterioration of the site. This could include exercising permissive powers to maintain or improve the defence which is protecting the habitat. Works in these circumstances would normally be eligible for public flood and coastal risk management (FCRM) funding as a legal obligation rather than be required to satisfy benefit/cost criteria. However, all works are subject to adequate funding availability. Where European-designated habitat exists both in front and behind defences, and one or other is likely to be damaged, the Environment Agency will follow Natural England's advice in determining the most appropriate course of action.

The Environment Agency would wish to avoid investing public funds in maintaining defences and habitats in unsustainable locations. The Habitat Creation Programme (HCP) will therefore use the outputs of the Shoreline Management Plan to identify where transitional habitats are at risk and seek to establish replacement habitats in more sustainable locations. This will allow a transition to a more sustainable coastline whilst meeting the obligations set out in the Habitats and Birds Directive.

2. Compensatory habitat for private defences

The EA's Habitat Creation Programme (HCP) aims to provide strategic delivery of compensatory habitats as identified through Appropriate Assessments undertaken for all Flood & Coastal Risk Management plans and projects that will/may potentially affect European designated nature conservation sites.

In addition, it has also been agreed that the HCP will deliver the necessary compensatory habitats required to offset the losses due to coastal squeeze caused by the continued maintenance of existing third party defences. The latter will be triggered by the estimate of coastal squeeze within the appropriate assessment, which will be based on the final SMP policies adopted following consultation. It is expected that the policies proposed for consultation will be based on the SMP objective-led approach, but that the consultation process will identify frontages where private landowners intend to maintain their defences. The final SMP policies will reflect these intentions and the implications on habitat will be estimated on this basis.

Examples of work that could be classed as 'maintenance' include:

- vegetation management and tree removal;
- replacing block-work;
- raising a low part of an embankment or wall to the level of the adjacent bank or wall;
- repairing slips or erosion of an earth embankment;
- small scale repairs to damaged bank revetments;
- repairs to footpaths on top of banks;
- maintenance and repairs to sluice doors, hinges, seals, and so on.

If third parties (i.e. private land owners) propose to make improvements to their existing defences, such improvements would be considered engineering works and require planning permission and other consents, as is currently the case. Examples of improvements could include:

- raising the overall level of a defence,
- widening a defence, or
- changing the shape or the composition (material) of a defence.

As the works would be considered a plan or project, an Appropriate Assessment would be required in order to comply with the Habitats and Birds Directive. Each proposal would be assessed and considered on a case-by-case basis. Third parties will not be required to compensate for 'maintenance' coastal squeeze losses already being delivered by the HCP, and these are unlikely to increase if the standard of an existing defence is increased. Third parties will be responsible for compensation for any increased coastal squeeze losses due to lateral extension of defences and any direct impacts of their proposed works (e.g. increased footprint of the structure) on a designated site.

Land owners may be able to avoid an adverse effect through the design of their proposed works, either by avoiding an increased footprint or by a modest realignment of their defences within their own landholding. They could be eligible for Environmental Stewardship payments for any inter-tidal habitat that is created as a result of their works. The HCP may be able to provide compensatory habitat in return for an appropriate financial contribution, but this would depend on sufficient compensatory habitat being available, as priority would be given to compensatory habitat required for publicly-funded flood and coastal risk works.

The HCP will be looking for opportunities to create habitat within the Solent. This offers interested landowners the potential for joint schemes with the Environment Agency, where the Environment Agency fund the engineering works necessary to create the habitat, which may include an improved flood defence, and the landowner becomes eligible for Environmental Stewardship payments through Natural England.

3. Public authorities as private landowners

All public bodies have a responsibility to comply with the Habitats and Birds Directive as they are competent authorities. As such, the arrangements set out above for compensatory habitat for maintaining private defences do not apply to publicly-owned land.

It would generally be expected that a public body would support the objective-led derived policy for a frontage. Where a Local Authority has reason to pursue a different policy for a frontage, it would need to ensure that any investment represented value for money for the taxpayer, including the costs of any obligations arising from the application of the Habitat and Birds Regulations. As with private landowners, the HCP may be able to provide compensatory habitat in return for an appropriate financial contribution, but this would depend on sufficient compensatory habitat being available, as priority would be given to compensatory habitat required for flood and coastal risk works funded from the FCERM budget.