



Case studies of good practice

Name of initiative: Fal and Helford Special Area of Conservation 2006-2008

Name of Organisation: Marine Conservation Society

Nature of organisation: MCS is the UK charity dedicated to the protection and recovery of UK shores, seas and wildlife

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Brief description of initiative:

What issue/s was/were addressed?

UK government introduced a network of UK Marine Protected Areas ('European Marine Sites') in the 2004 that included a large number of shallow inlets, bays and near-shore coastal habitats. These sites included the ria (drowned river valley system) of the Fal and Helford, which contains the largest existing maerl bed in southern UK waters. The Fal and Helford estuaries inside the Special Area of Conservation were immediately protected from scallop dredging in 2004 by the Environment Agency, but not in the outer bay, where fishing activities are regulated by the Cornwall Sea Fisheries Committee. MCS learned of scallop dredging in Fal Bay between September 2006 and January 2007, and subsequently investigated the management measures within the protected area that exist to ensure habitats and features within the site were protected. MCS appealed to both the Cornwall Sea Fisheries Committee and Defra to ensure that the fishery was excluded to conserve the maerl (sandbank) habitats in the wider bay. Initially local fishermen were supported by Seafish to create a voluntary agreement to fish a part of the wider bay, but surveys carried out in Summer of 2007 revealed extensive maerl banks in the area fished. As such, the Marine Conservation Society wrote to both Defra and the Cornwall SFC to show that a breach of the habitats directive was likely taking place in the outer bay. Eventually a statutory order was made by Defra in March 2008 to restrict bottom towed fishing gears from the entire estuary.

What was the objective of the initiative?

The objective of our work was to ensure that damaging bottom fishing activities were restricted from the area where vulnerable features in the SAC were present.

Furthermore, we wanted to ensure that these measures became a measure of best practice around the entire UK, and to ensure that there were statutory orders in place to restrict all potentially damaging activities for existing vulnerable SACs.

Start/finish date

September 2006 (date of first instance of scallop dredging in the Special Area of Conservation reported to the Marine Conservation Society).

March 2008 (Statutory Instrument from Defra banning all demersal fishing gears in the wider Special Area of Conservation).

<http://www.defra.gov.uk/foodfarm/fisheries/fishmanagement/ei.htm>

Who did the work (own staff, consultants, did it involve volunteers, or local stakeholder representatives)?

MCS internal staff started the discussions which subsequently involved Cornwall Sea Fisheries Committee (a competent authority that regulates inshore fisheries). This discussion was then referred to Defra, as they are the licensors of the scallop dredgers, and thereby license the plan or project. Bangor University were also contracted by Cornwall Sea Fisheries Committee to undertake surveys of Fal Bay in summer 2007 in order to understand the extent of the conservation feature(s) of the site in the vicinity of the scallop dredging.

How was it funded (central budgets, or did you receive grant aid or other external support)?

MCS has been funded by Esmee Fairbairn Foundation at the time of this work.

Specific features of the work:

Central aspects of the work

One of factors that is of concern to commercial industry is the actual location of conservation features within SACs. Unfortunately the location of these features for the outer Fal weren't clearly understood by local fishers, and some competent authorities. MCS suggested that the absence of evidence of specific location of conservation features shouldn't preclude managing damaging activities *before* the damaging activities are permitted. In any case, the sea fisheries committee commissioned surveys in the summer of 2007 which revealed that maerl habitat on sandbanks was present in the areas in which both the scallop dredgers were seen to be operating, and in the areas they proposed they continue to operate under the terms of their own voluntary agreement.

The biggest problem for the management of UK Special Areas of Conservation appears to be the lack of application of the precautionary principle. Activities which are potentially damaging to the conservation features of SACs are still permitted in some SACs, because competent authorities often don't undertake precautionary management. Management of fisheries in particular is often *post-hoc*, after damage has been done, and is often voluntary. There is a natural resistance to managing the activity at all in the first place by sea fisheries committees (which is not surprising given their membership), and there is considerable concern that sites continue to be damaged unless third parties (such as conservation NGOs) have evidence of damage, or activities, that prompt them to write to competent authorities reminding them that a breach of the habitats directive is taking place.

Article 6(2) and 6(3) of the Habitats Directive require that any activity undertaken in a Special Area of Conservation should be subject to an Appropriate Assessment. No damaging activities can occur unless proven to have no significant effect on the conservation feature of the site. Scallop dredging clearly contravenes the advice from Natural England of what causes a likely significant effect to the conservation features of SAC benthic communities. As such, during this process NE was compelled to give statutory advice that it couldn't be sure (under article 6(3)) that the scallop dredging activity wasn't likely to cause significant effect to the sandbank features of the SAC.

Any site specific details (for example highlight where the initiatives would only really be applicable to other sites with similar specific factors e.g. activities, local environment, or specific biological features)

The key message from this case study is to ensure that competent and regulatory authorities preserve the conservation features of the sites. The SNCOs have provided information on potentially damaging activities that could cause significant effect in all UK Special Areas of Conservation. As a result of this case study Defra reminded the UK sea fisheries committees of their duties under the Habitats Directive to conserve SAC conservation features. However, MCS believes that there should be a blanket national approach to the management of potentially damaging activities in SACs from more damaging fisheries. This has already happened in Wales with the Scallop Order 2010, which has excluded scallop dredging from all sensitive SACs - particularly Pembrokeshire, Cardigan Bay, and the Pen Lynn Sarnai SAC. These areas were extensively dredged in 2008 and 2009 without restriction that led to subsequent management because of a number of complaints submitted to the European Commission. However, MCS sees a continuation of this problem in the future unless there is a top down approach to control damaging fisheries in all UK SACs.

Particular successes and difficulties

Successes include the permanent and comprehensive protection of Fal Bay from damaging fishing gears. Wider ramifications from this and other activities have led to some significant controls in certain SACs from similar fisheries.

However, some difficulties still persist in some administrations (Northern Ireland, Scotland in particular) to ensure that their SACs restrict damaging activities from vulnerable Special Areas of Conservation. There are also questions about further damaging bottom-fishing techniques in all the Welsh SACs which aren't regulated (beam and otter trawls), which have been earmarked by CCW as having a potential effect on SAC conservation features. A UK-wide strategic statutory mechanism is needed to control activities.

It is still questionable how competent authorities trigger appropriate assessments for wild capture fisheries, particularly using towed gears. The Wadden Sea case illustrated that annually permitted licensed cockle dredging required an appropriate assessment. The same reasoning was behind the Cornwall Sea Fisheries Committee NOT to trigger an appropriate assessment, as it is Defra (now the MMO) which issues the general fishing license. As such, MCS believes that the MMO has a statutory duty under the Directive to proactively regulate damaging fishing in European and the general fishing license is the perfect place to do this.

Lessons learned:

1. Appropriate assessments aren't automatically used as the required tool to investigate the potential nature of damaging fishing activities in European Marine Sites, where there is a potential threat to conservation features.
2. Regulation, controls, by-laws and management occurs on a piecemeal basis, often after the threat of complaint to the European Commission of infraction of the law, and often after investigation by third parties (e.g. individuals and NGOs), rather than by competent authorities themselves.
3. There is a role for the MMO (and equivalent licensor) to regulate damaging fishing in SACs by using the fishing license. The fishing license is used to control gear type, quota allocation, and on a spatial basis. It is therefore a relevant tool to use to control potentially damaging fisheries in MPAs.
4. Rigorous scientific assessment of the extent and conservation status of features within European marine sites is lacking.
5. The absence of scientific evidence of the presence of conservation features shouldn't be a reason to delay precautionary management measures being put in place in European Marine Sites.
6. The Habitats Directive is a powerful piece of legislation. However, competent authorities often wait for a potential threat to arise, or physical damage to occur before acting. Sadly this has led to a decline in the extent and quality of habitats.
7. Prescriptive management measures should be obligatory for upcoming Marine Conservation Zones in UK waters in order future sites to be better managed.

Outputs:

Statutory Order banning mobile fishing gears in the outer Fal Bay area of the Fal and Helford Special Area of Conservation. WAG scallop order 2010.

Outcomes:

This case highlights to competent authorities and fishers that the law requires the precautionary approach unless appropriate assessments are undertaken to prove no significant affect of damaging activities on site conservation features. As such, it was as much an exercise in raising awareness (particularly in the local fishing community), as applying the law in a correct fashion.

To a certain this case has probably led to better application of the law as it applies to a number of other European Marine Sites (e.g. scallop dredging in Wales), and concentrated some management decisions to be more pro-active in eliminating damaging activities.