The current status of Special Area of Conservation habitat features is deteriorating in UK waters (Article 17 report by the JNCC, 2007). It can be assumed that this assessment is partly due to Competent Authorities not carrying out their statutory duties to maintain site features at favourable Conservation Status. One of the key factors is the lack of controls on commercial fishing operations in SACs.

This was illustrated in 2007-8 by the Cornwall Sea Fisheries Committee, which continued to allow destructive fishing gears (scallop dredgers) to operate within the Fal Bay without an appropriate assessment having been carried out (specifically from September 2006-January 2007). The Sea Fisheries Committee and the fishermen responsible maintained that the fishing activity wasn’t damaging, as it takes place over loose maerl gravel. It also is infrequent, only taking place during strong westerly storms.

By contrast, in the adjacent estuaries where the Environment Agency is the Competent Authority, scallop fishing has been banned since 2005 without recourse to the appropriate assessment process (see below), on the grounds that it is likely to have a significant effect.
A series of video surveys were carried out in Spring and summer 2007 which revealed live maerl beds (a subfeature of ‘sandbanks’) and ‘rocky reefs’ in the two areas of the bay where scallopers wished to continue to fish (see voluntary agreement - appendix 2).

MCS subsequently wrote to the fisheries minister in October 2007 to remind government that an appropriate assessment should be carried out to prove no significant effect of the fishery, quoting article 6(3) of the directive. In the absence of such an assessment, we urged government that a Stop Order be placed on the fishery to prevent further deterioration of the features. Statutory advice from Natural England (October 2007) confirmed the need for an appropriate assessment to be undertaken on the scallop fishery.

Defra banned scallop dredging in March 2008 after advice from lawyers suggested that the European Court of Justice may find UK in breach of the Habitats Directive regards management of fishing in all other English (and perhaps UK) sites.
MCS conclusion

The case highlights the *laissez faire* application of some Competent Authorities to their responsibilities under the Habitats Directive. Even though the opinion of the sea fisheries committee management staff may be that as the fishing had continued for a number of years prior to the site being set up, and their opinion that the habitat itself wasn't likely to be damaged by the activity, this hasn't been proven by independent science.

The appropriate assessment process is simply designed for plans and projects to prove that their activity has no damaging effect on the listed site features. It is clear from our investigations that this isn't an isolated case, and that many activities in SACs continue to be carried out in breach of the articles of the directive, and as a result sites continue to be damaged in UK waters.
Appendix 1:

Case study – fishing in the Fal and Helford Special Area of Conservation using destructive fishing gears – different perspectives

Conservationist’s perspective (Marine Conservation Society)
1. Fishery needs an appropriate assessment to continue as it is potentially damaging to the Special Area of Conservation features. The competent authority needs to deliver this assessment or hold the licensee to account for the assessment.
2. Voluntary agreements don’t hold (refer to St Agnes vNTZ and Lyme Bay scalloping).
3. Whilst recognising the fishermen’s efforts to compromise through voluntary agreement, the passage of a single dredge alone may be devastating to the feature. Live maerl of up to 30% cover on the seabed would indicate that it would likely be damaged by continuous scallop dredging (results from a survey carried out in April 2007).
4. Seafish responsible fishing scheme (which many SW scallopers have signed up to) say that:
   - Fishermen should allow an area to recover before dredging again, and
   - Fishermen should work with Natural England to carry out an appropriate assessment where necessary.

Fishermen’s (scallopers) perspective:
1. Fished the area for 30 years.
2. Grounds have always been maerl gravel – it’s always been coming up in the trawls.
3. Maerl is so prevalent; it actually washes up on the beach, and can be seen in rock pools.
4. The French dredge over much larger areas of maerl in Brittany.
5. We only go in when the weather is bad, and need it as a bolt-hole.
6. Already banned from fishing in the adjacent estuaries (Fal and Helford).
7. Surveys (camera sledge and grab) from University of Wales research vessel shows that as there is live maerl in the fished area, then fishing has no effect.

Sea Fisheries Committee (SFC) perspective:
1. They only go in there when the weather is bad.
2. Only one or two boats usually use the area. SFC tell boats to leave the area if effort increases too much.
3. Large ‘fuel-bunkering’ is carried out in the bay – anchor chains scraping across the seabed – that impact also needs to be addressed.
4. SFC not competent authority as don’t issue the license to fish (scallop dredging only comes in under the general license to fish).

Seafish responsible fishing scheme (Industry spokesperson):
1. Scalloping under the voluntary agreement should continue.
2. Scalloping and dredging of maerl (for fertilizer and beauty products use) occurs in northern Brittany SAC.

Defra perspective:
1. Defra biodiversity division (appears to) want activity stopped.
2. Defra fisheries division are pressured, but trying to find a local compromise. Defra not the Competent Authority – it is the Sea Fisheries Committee.
3. Live maerl in the fished area would suggest fishing isn’t having an effect.
4. Defra realises that legally; an appropriate assessment must be done to show no adverse effect on the site features.
Appendix 2: voluntary agreement.

Fal and Helford Special Area of Conservation (SAC)
Scallop Dredging Voluntary Agreement 2007 (as amended)

Two separate areas amounting to approximately 28.17% of the seaward part (Falmouth Bay) of the Fal and Helford SAC may be used for limited scallop dredging, as described below. The remaining 71.83% of the seaward part of the SAC will not be fished at any time by scallop dredging vessels.

- Shore side of a line drawn from Pendennis Point, to a position 160º (T) x 0.9 nautical miles offshore from Pendennis Point, to Rosemullion Head.

  Except that, where this area is bounded by the coast, no scallop dredging shall take place within the charted 10 metre depth contour, or north of a line drawn between Pendennis Point and Pennance Point.

- An area to the east of Helford River along the inside of a part of the seaward SAC boundary line between Zone Point and Manacle Point, as described below:
  Bounded at the north by latitude 50°07.00’N drawn due west from the seaward SAC boundary line to longitude 005°01.90’W. From this point the western boundary is formed by the white/red light sector line drawn 202º (T) from Saint Anthony Head lighthouse to position 50°06.65’N, 005°02.10’W. Then, from this point a line is drawn due west to longitude 005°03.0’W and thence to position 50°05.6’N, 005°03.65’W, this being the point at which the southern limit is drawn due east, back to the SAC seaward boundary line.

Scallop dredging in the above areas is only permitted during the months of November and December and is restricted to a maximum of 15 days per vessel, per month. Should any of the 15 day entitlement not be used, it shall not be transferable between vessels or carried over into another month.

Explanatory Note

This agreement made in September 2007 amends the original version made in March 2007.

Evidence from survey work conducted within the SAC has led to two further areas which are now voluntarily excluded from scallop dredging.

The waters of the Fal and Helford were prohibited to scallop dredging from October 2003.

The SAC areas of sea now open to limited scallop dredging amounts to 2.8 square nautical miles (975.5 hectares) which is 15.27% of the whole Fal and Helford SAC (20.38 square nautical miles or 6387 hectares).