

**EXTENT OF
LOCAL AUTHORITY
JURISDICTION IN THE
MARINE ENVIRONMENT**

Report To

**EUROPEAN WILDLIFE DIVISION
DEPARTMENT OF THE ENVIRONMENT, TRANSPORT AND THE
REGIONS**

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List of Acronyms Used in the Report

Glossary

| | |
|------|--|
| ABP | Association of British Ports |
| CCW | Countryside Council for Wales |
| DETR | Department of Environment, Transport and the Regions |
| DTI | Department of Trade and Industry |
| FEPA | Food and Environment Protection Act, 1985 |
| MAFF | Ministry of Agriculture, Fisheries and Food |
| MHWM | Mean High Water Mark |
| MLWM | Mean Low Water Mark |
| MNR | Marine Nature Reserve |
| cSAC | (Candidate) Special Area of Conservation |
| SPA | Special Protection Area |
| SSSI | Site of Special Scientific Interest |
| TCPA | Town and Country Planning Act |

1. SUMMARY AND OVERVIEW

Introduction

- 1.1 This research project was commissioned by the European Wildlife Division of the Department of Environment, Transport and the Regions (DETR). It seeks to establish an authoritative and legally sound understanding of the extent of local authority jurisdiction in the marine environment. [Section 2
The Project Brief]

- 1.2 The research was undertaken jointly by David Tyldesley and Associates, environmental planning consultants and Browne Jacobson, Solicitors. The research involved desk study, library and internet research and a questionnaire survey of every coastal local authority in England and Wales. Over 60% of all authorities responded to the questionnaire. [Section 3
Methodology and
Presentation of
Results
Appendix A
Questionnaire]

Summary of the general position

- 1.3 In general, local authority jurisdiction coincides with the authority's administrative boundary. It is clear, and has been consistently agreed in the past, that coastal local authorities have administrative control and jurisdiction over areas down to low water mark, in the whole of England and Wales. [Section 4
The General
Position
Appendix B
Glossary,
Definitions and
Judicial
Interpretation]

- 1.4 However, in some cases, the administrative boundary, and therefore general jurisdiction, may extend seaward of low water mark, for example in estuaries, bays, inlets, creeks and channels.

- 1.5 In some cases local Acts of Parliament, Byelaws or Ministerial Orders, may extend the seaward boundary for particular purposes, for example, in the case of harbour authorities. [Section 6
Byelaws Local
Acts and Orders]

- 1.6 Furthermore, public general Acts may extend a local authority's jurisdiction, for particular statutory functions, below (seaward of) low water mark, even as far as the limit of coastal or territorial waters. Conversely, public general Acts can specifically restrict jurisdiction to low water mark, for particular purposes, even where a local authority's general jurisdiction might otherwise go beyond it. [Section 9
Examples of Other
Functions
Affecting the
Marine
Environment]

Ownership and Leasehold

- 1.7 Local authorities often own or lease part of the seabed below low water mark. In most cases these are very small areas such as those associated with piers or jetties. Some authorities own or lease larger areas of the seabed and their powers or responsibilities as owner or lessee eg powers to issue licences and permits, extend over such areas as they own or lease. However, proprietary interest in the seabed alone does not necessarily confer on the local authority jurisdiction for other purposes. [Section 5
Ownership and
Leasehold]

Harbour Authorities

- 1.8 Thirty per cent of responding local authorities are the harbour authority for the harbour(s) in their area. A harbour area may, and generally does, extend below low water mark and the harbour authorities' administrative control extends generally over the defined harbour area. However, in order to undertake work and / or exercise other functions or controls beyond Mean High Water Mark (MHW) the express consent of the Secretary of State is required in the form of an empowerment order, revision order or harbour reorganisation scheme. [Section 7
Harbour
Authorities]
- Representation and consultation**
- 1.9 Local authorities can be, and frequently are, represented on Sea Fishery Committees and sometimes other bodies with functions relating to the marine environment. In many cases the local authority makes a significant contribution to the funding of the body and may therefore be able to exert influence over the decisions of such bodies, which may affect areas below low water mark. [Section 8
Local Authority
Representation on
Maritime Bodies]
- 1.10 About 70% of local authorities are regularly consulted by other bodies about areas below low water mark. [Section 13
Consultations with
Local Authorities]
- Waters internal to baseline**
- 1.11 The variable extent of local authority jurisdiction below low water mark in waters internal to baseline, such as estuaries, bays, inlets, creeks and channels, leads to widespread uncertainty, contrasting interpretations and some confusion amongst local authority officers about their jurisdiction over the marine environment generally. [Section 10
Jurisdiction Over
Estuaries, Bays,
Inlets, Creeks and
Channels]
- 1.12 Analysis of the physical characteristics of the coastlines of a sample of the relevant authorities indicated that the responses to the questions about estuaries, bays, inlets, creeks and channels did not correlate with the number, shape or size of these features in the authority's area. There is no pattern or consistency in the perceived extent of jurisdiction. [Section 14
Correlation
Analysis]
- 1.13 Approximately 41% of respondents whose authorities had estuaries, creeks, inlets, bays and channels considered they had some jurisdiction below low water mark over these areas; 59% considered they did not have such jurisdiction. About 28% of respondents considered that their authority had jurisdiction over the whole of an estuary, bay, creek, inlet or channel; 72% considered they did not. Of the 58 respondents who had an estuary in their area, over half considered they had no jurisdiction below low water mark at all. Less than one in five considered they had jurisdiction to the centre line, and just over one quarter considered they had jurisdiction over the whole estuary.
- Non statutory initiatives**
- 1.14 A considerable number of responding local authorities have led or contributed to non-statutory initiatives which involved areas below low water mark including Shoreline Management Plans and Estuary [Section 11
Non Statutory
Initiatives]

Management Plans (95.8%), and Coast and Beach Management Plans (35.3%).

Local authority involvement in marine nature conservation

- 1.15 About half of the responding local authorities were contributing to a Management Plan for a candidate Marine Special Area of Conservation (cSAC). Ten authorities had a Statutory Local Nature Reserve (LNR) and three had a Marine Nature Reserve extending below low water mark. Nine authorities had a Sensitive Marine Area and nine a Voluntary Marine Nature Conservation Area.

[Section 12
Local Authorities
and Marine Nature
Conservation]

Overall conclusions

- 1.16 In general, local authority jurisdiction coincides with the authority's seaward administrative boundary which is usually low water mark. However, administrative boundaries and jurisdiction can, but do not always, extend to waters internal to baseline. Specific statutory provision can also extend jurisdiction, for particular functions, below low water mark. In other cases jurisdiction for particular functions may not extend below low water mark, even where a local authority's administrative boundary does so.

[Section 10
Jurisdiction Over
Estuaries, Bays,
Inlets, Creeks and
Channels]
[Section 14
Correlation
Analysis]

- 1.17 Generally, there is no correlation between a local authority's interpretations of its jurisdiction, or local statutory provisions, or local initiatives, or local practice and the nature of its coastline. This tends to add to the extent of uncertainty about a local authority's jurisdiction in the absence of specific statutory provisions.

- 1.18 Many bodies with analogous jurisdictions are likely to be working with, and consulting, local authorities (and vice versa), in accordance with well established procedures, in respect of specific statutory regimes. However, the variations of interpretation of jurisdiction across England and Wales is likely to mean that practice varies too. Some bodies may be used to the local authority operating in some analogous jurisdictions below low water mark, others will not. Much will depend on the statutory regime being considered, local practice, interpretations and the authority's administrative boundary.

Recommendation

- 1.19 In the interests of legal certainty and consistency, we would advise that if the government wishes to introduce new powers and/or duties in respect of marine nature conservation seaward of low water mark, that would involve local authorities, it will be necessary to introduce specific statutory provision to extend local authority jurisdiction.

2. THE PROJECT BRIEF

- 2.1 Delivery of nature conservation objectives in the terrestrial environment has relied

extensively on use of the planning system and the involvement of local authorities. In the marine environment matters are more complex with overlapping jurisdictions, more statutory regulators and very limited local government jurisdiction.

2.2 The consultation initiated by the Government in 1998, '*Sites of Special Scientific Interest - Better Protection and Management*' [1], contained a proposal to set up a working party to look at options for improving protection of marine nature conservation interests. That Working Group was established in September 1999.

2.3 The Group is charged with, inter alia,

- a) evaluating the success of previous statutory and voluntary marine nature conservation measures between Highest Astronomic Tides and the 12 mile limit of UK territorial waters;
- b) identifying examples of current best practice and existing barriers to successful implementation of marine conservation objectives;
- c) considering recent developments in marine nature conservation thinking and
- d) putting forward practical and proportionate proposals for improving marine nature conservation in England, which may also inform separate proposals for marine conservation in Wales.

2.4 It is expected that the review will be completed early in 2001.

2.5 A paper prepared for the group [2] identified particular issues associated with the management and protection of what it referred to as '*waters internal to baseline*' such as estuaries, bays and channels between islands, where extension of existing local authority jurisdiction might be a way of ensuring appropriate conservation and protection. Subsequent comments on this part of the paper by members of the Working Group revealed a range of views about the extent to which some of these areas already fall within local authority jurisdiction.

2.6 The aims and objectives of this project were, therefore, defined as follows:

"By reference to existing statutes, relevant legal precedents and existing published work on this topic, to prepare a report which

- a) summarises the key considerations;*
- b) sets out a definitive and legally sound understanding of the extent of local authority jurisdiction in the marine environment; and*
- c) considers the implications for such a definition in terms of bodies with analogous jurisdictions."*

3. METHODOLOGY AND PRESENTATION OF RESULTS

Methodology

- 3.1 This project was carried out in two major parts, one comprising a questionnaire survey of all coastal local authorities in England and Wales, and the other a desk study with library and internet research.
- 3.2 In order to ascertain an overall picture of the extent of local authority jurisdiction in the marine environment, it was decided to contact the authorities directly through the use of questionnaire surveys. This was determined to be the most effective way of finding answers to a range of questions and providing examples of current practice, understanding and interpretation, where relevant.
- 3.3 Initially it was considered that a sample of coastal authorities would be selected but, since response rates to questionnaires can be difficult to predict and can sometimes be quite low, it was decided to contact all coastal local authorities in England and Wales. A copy of the questionnaire was sent to both the authority's Solicitor and its Engineer, to cover the broad range of legal and practical issues which the questions covered and to increase the chances of receiving a response from the authority. A copy of the questionnaire is included at Appendix A.
- 3.4 The solicitors were chosen because they were the most likely people to be able to answer questions regarding ownership, leases, Acts of Parliament and bye-laws, for example. The engineers were contacted because of their working knowledge of some statutory duties such as coast protection and their likely involvement in or local knowledge about issues such as management plans, local practices or traditions and special initiatives in which the local authority is involved. Although it was anticipated that the solicitors and engineers would be best placed to answer some specific questions and not others, the same questionnaire was sent to both to avoid confusion and maximise the information return. A copy of the covering letter explaining this is included at Appendix A.
- 3.5 There was some uncertainty in the first instance with regard to contacting the coastal authorities in Wales. In 1999, researchers at the University of Cardiff had been commissioned by CCW to investigate "Options for Improving the Planning and Management of Wales Territorial Sea". In so doing the University had issued a questionnaire to every Welsh coastal local authority. However, on enquiry, it was found that that questionnaire had had a very low response rate. Although covering some similar ground, it was considered to be very different from the questionnaire designed for this project; it had also been sent to the planning officer rather than solicitor or engineer. It was therefore considered to be reasonable to contact all the Welsh authorities again but reference was made to the previous questionnaire in the covering letter.
- 3.6 The same questionnaire was sent to both English and Welsh authorities, and the facility to send and return the questionnaire electronically was offered and taken up by some respondents. It was apparent that many of the questionnaires had been passed to several

departments and officers co-ordinated by one of the original recipients

- 3.7 A period of three weeks, from 21st August to 15th September 2000 was allowed in which to respond to the questionnaires. After this, reminder letters were sent to those authorities who had not responded (i.e. no questionnaire or holding letter), allowing a further two weeks from the original date. Responses continued to be received until the end of October and late responses were taken into account as far as practicable.

- 3.8 Legal research was undertaken in parallel and concurrently with the questionnaire survey. The initial stage collated relevant source documents by way of the following methods:

Cases, statutes and statutory instruments were assembled via searches of the Lexis Database using key words, such as "sea defence" "coastal protection" "water mark" "harbour" etc. This generated a very large amount of documentary sources, comprising five full lever arch files which required rigorous selection to extract the material most likely to be relevant.

Relevant text books and encyclopaedia were identified from the Browne Jacobson library and catalogues at Nottingham University, Nottingham Trent University and the British Libraries, and relevant sections of the available books were assembled.

The opinion of Counsel (Mr Graham Machin of Ropewalk Chambers Nottingham) on the case of R Bv- Secretary of State for Trade & Industry Ex-parte Greenpeace Limited [2000] Env LR 221 and the designation of the River Dee Estuary Site of Special Scientific Interest by English Nature. The authorities referred to in these opinions were also collated.

Enquiries were made of the House of Lords Records Office and the Law Society library in respect of local Acts of Parliament as these may contain provisions extending local authority jurisdiction. Due to the large number of local Acts, three local authorities were targeted but further investigation indicated that these local Acts made little or no reference to limits of jurisdiction.

- 3.9 Various organisations and individuals known to be authoritative or knowledgeable in the subject area were invited to contribute to the research. Responses were received and considered from Kingston Upon Hull City Council, Eastern / Northern and North Wales / Southern Sea Fisheries Committees, Graham Machin of Counsel, Ordnance Survey, Municipal Mutual Insurance Limited and Peter Scott of Toller Beatie, Solicitors.

- 3.10 The legal meaning of terms of reference and their use in various contexts was researched by reference to legal dictionaries as well as the case and statutory material gathered, to

provide a glossary of legal definitions and corresponding diagrams for reference during later research.

- 3.11 Examination of the sources revealed that some local authority functions do extend below mean low water mark (MLWM). Additional research was undertaken to provide brief analyses of local authority jurisdiction for each of the functions identified, including enquiries of selected harbour authorities and sea fisheries committees to obtain Ministerial Orders and Bye-laws of relevance. Authorities cited were assembled for ease of reference.

Response Rate

- 3.12 The response rate to the postal questionnaires was very encouraging, with a reply from 60.5% of all authorities contacted (including 53% from Welsh authorities).
- 3.13 Responses were received from both solicitors and engineers and in many cases the covering letters indicated that the two had co-ordinated a joint response. A number of authorities consulted a variety of other departments before returning the questionnaire. Generally, the questionnaires were fully, or almost fully, completed and all provided important information which has influenced the findings of this project.
- 3.14 The part of the questionnaire which was most frequently incomplete was in relation to the supplementary information. However, there was sufficient information provided overall to usefully illustrate all of the questions asked.

Presentation of Results of the Questionnaire Survey

- 3.15 For the purposes of presentation and analysis of results, the **ANo** responses≡ have not been included. Thus, the analysis concentrates on the proportion of **AYes**≡ and **ANo**≡ answers and the resulting correlations between these.

4. THE GENERAL POSITION

Specific Provisions of the Local Government Act 1972

4.1 Section 72 of the Local Government Act 1972 states that:

A(1) Subject to subsection (3) below, every accretion from the sea, whether natural or artificial, and any part of the sea-shore to the low water mark, which does not immediately before the passing of this act form part of a parish shall be annexed to and incorporated with B

(a) in England, the parish or parishes which the accretion or part of the sea adjoins

In proportion to the extent of the common boundary.

(2) Every accretion from the sea or part of the sea shore which is annexed to and incorporated with a parish ... under this section shall be annexed to and incorporated with the district and county in which that parish ... is situated.≡

Summary of the general position

4.2 In general, local authority jurisdiction coincides with the authority's administrative boundary. It is clear from the above provisions of the Act, and has been consistently agreed in the past, that coastal local authorities have administrative control over the intertidal area down to low water mark, in the whole of England and Wales. A local authority's seaward administrative boundary and jurisdiction, therefore, is generally down to low water mark.

4.3 However, in some cases, the administrative boundary, and therefore general jurisdiction, may extend seaward of low water mark, for example in some (but not all) waters internal to baseline such as estuaries, bays, inlets, creeks and channels (see section 10 below for a more detailed explanation).

4.4 In some cases local Acts of Parliament, Byelaws or Ministerial Orders, may extend the seaward boundary for particular purposes, for example, in the case of harbour authorities (see sections 6 and 7 below).

4.5 Furthermore, public general Acts may extend a local authority's jurisdiction, for particular statutory functions, beyond low water mark, even as far as the limit of coastal or territorial waters. Conversely, general Acts can specifically restrict jurisdiction to low water mark, for particular purposes, even where a local authority's general jurisdiction might otherwise go beyond it, for example in an estuary (see sections 8 and 9 below).

4.6 The meaning of the phrase "low water mark" has been the subject of judicial discussion (see Appendix B below).

- 4.7 With regard to accretions, Barwick Bv- South Eastern and Chatham Railway (1921) 1K.B. 187 held that an area of land (measuring eleven acres) created by reclaiming land in Dover harbour from the sea, was an accretion and part of the parish of Dover.
- 4.8 Blackpool Pier Company Bv- Fylde Union (1877) 41 J.P.344 held that the part of a pier lying beyond low water mark was not part of the parish, within the meaning of the then statutory provision (which was similar to the Local Government Act 1972). However R v Easington District Council, ex parte Seaham Harbour Dock Co. Ltd (1999) 1 L.G.L.R considered a harbour was an accretion under S.72 Local Government Act 1972. The judgment in Blackpool Pier Company was not accepted B an accretion from the sea is properly construed as an accretion into the sea.
- 4.9 Under powers in the Local Government Act 1992 S.14(3) and the Local Government Act 1972 S.71(1) respectively, the Local Government Commission for England and the Welsh Commission may review so much of the boundary as lies below the high water mark of medium tides. Effect may be given to their proposals by order of the Secretary of State.

5. OWNERSHIP AND LEASEHOLD

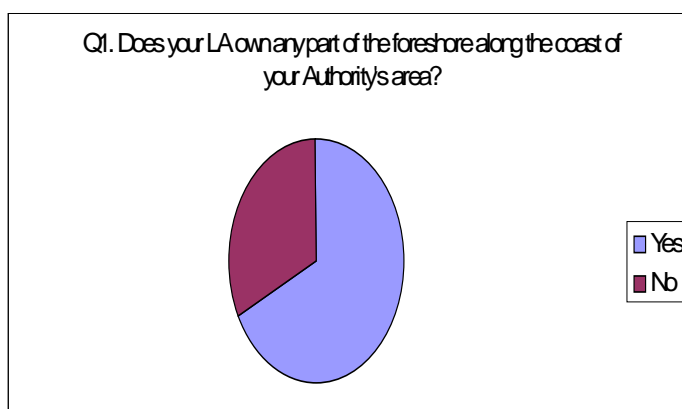
- 5.1 From a legal position, in addition to the foreshore, the land below the low water mark generally vests in the Crown:

"The soil of the sea between the low water mark and extending for twelve miles is within the territorial sovereignty of the Crown" [3]

- 5.2 This land may be leased or sold to a local authority. In most cases this will relate to very small areas and to specific works. The local authority will have proprietary rights and duties over this land. However, these proprietary interests will not necessarily confer jurisdiction for other purposes.

- 5.3 The Crown may have made a grant (prior to Magna Carta 1215) which alienated the ownership of the bed of a tidal river. Such alienations were likely to have been made to the owners of manors. Where such manors abut on tidal waters, which are *intra fauces terrae* (see section 10 below), the proprietary rights of such owners may extend below the low water mark. In some cases they may even extend as far as the centre of the river opposite such manors. Although, in these instances, the Crown has alienated ownership of the river bed this has not affected certain public rights. The public has no rights over the foreshore of a tidal river when it is not covered by the tide except certain rights of fishing and navigation. When the foreshore is covered by the tide it becomes part of the sea and the public have rights of navigation, fishing, and certain other ancillary rights.

- 5.4 The first three questions in the questionnaire related to the ownership and leasehold of the foreshore and seabed by local authorities, in their area. The following series of pie charts illustrate the responses to the questionnaire survey with regard to ownership and leasehold of the foreshore and seabed.



- 5.5 The first chart illustrates the proportion of respondents whose local authority own any part of the foreshore (between Mean High and Low Water) along the coast of their authority's area. This clearly shows that the majority of responding Authorities own part of the foreshore on their coast (67.1%).
- 5.6 The extent of ownership varied greatly between respondents, with some stating that their authority owned just small parcels of the foreshore, simply a matter of a few hundred metres and others stating that lengths of foreshore extending to many kilometres are

owned. In the case of one respondent, the whole of the foreshore in their area is in the ownership of the authority.

- 5.7 The next chart shows that many fewer responding local authorities owned any part of the seabed along the coast of their area, only 23.9%.

- 5.8 The supplementary information in relation to Question 2 was less precise than that in relation to Question 1, with descriptions of the types of areas of seabed in the authority's ownership rather than specific areas. For example, the following were all stated as areas of seabed within the authority's ownership: part of a harbour, the area around the piers, part of the river mouth and an area within a marina.

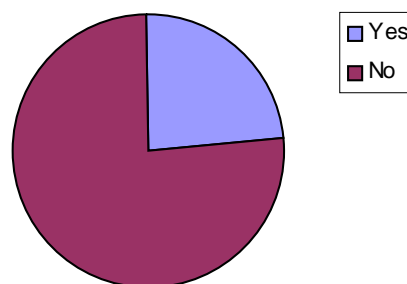
- 5.9 The response to the question as to whether the local authority has any leases from the Crown, or any other party, of the foreshore and / or seabed, was rather evenly divided, with 59.7% of respondents having a lease of some description (Question 3).

- 5.10 The supplementary information provided by respondents indicated a wide range of lessors and types and purposes of the leases. Examples include leases held from the Crown for areas of foreshore, in order to establish a Local Nature Reserve; areas of harbours for amenity and moorings; and leases from the Crown for groynes constructed under the Coast Protection Act, 1949.

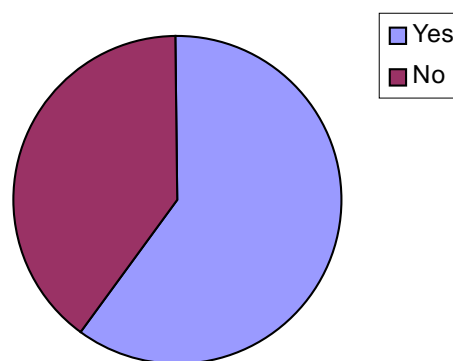
- 5.11 A number of Authorities hold leases of the foreshore from the Duchy of Cornwall. Others have leases from the Port of London Authority, for piers and landing stages. More unusually, one authority leases the foreshore from Associated British Ports (ABP), for the purposes of diverting a creek because it may threaten existing coastal defences.

- 5.12 The size of the areas leased from the different bodies varies greatly, ranging from very small areas to tens of hectares. Some Authorities have more than one lease, sometimes from more than one owner, depending on the area leased and its purpose.

Q2. Does your LA own any part of the seabed along the coast of your Authority's area?



Q3. Does your LA have any leases from the Crown, or any other party, of the foreshore and/or sea bed?



Box 1
Case Study

Ipswich Borough Council v Moore, and Ipswich Borough Council v Duke

The main issues in the case were as follows:

Whether Ipswich BC had title to the river bed and foreshore and if so whether it had the right to withhold consent for the laying and use of deep water moorings, for which the port authority had already given a licence? On being satisfied that the ownership of the freehold title to the soil of the river bed and foreshore vested in Ipswich BC, it was decided that:

Ownership of the soil of navigable water does not of itself carry the right to hold and maintain a harbour there; that is the subject of a separate Crown prerogative. An analogy was drawn with the right to hold a market, which is distinct from the ownership of the land on which the market may be held.

Therefore, while Ipswich BC was entitled to the freehold of the river bed, it was not entitled to require that its separate consent be obtained for the laying or the use of a mooring in the river, if the licence of the Port Authority had been obtained. Lloyd J considered this matter to be simply a question of whether the statutes relating to the regulation of the port conferred on the Port Authority a power which would override Ipswich BC's rights as owner of the soil. In his opinion they did.

Although this case concerned the river bed and foreshore (which as such do not fall below low water mark) it is likely that similar reasoning would be applied in similar circumstance below low water mark.

6. LOCAL ACTS, MINISTERIAL ORDERS AND BYELAWS

6.1 The geographical limits, functions and regulatory controls of local authorities, and other regulatory bodies, may be defined by local Acts of Parliament, or Ministerial Orders, for example, in the case of harbour authorities and sea fisheries committees. They can also be created or extended by byelaws.

6.2 Some examples of these provisions are the best way to illustrate the point.

- a) Under S.8 Countryside Act 1968, local authorities have the power to make byelaws which relate to the construction of recreational works in the sea where it bounds country parks. Following enquiries with some coastal country parks it appears that these powers are not always used.
- b) Under Ss.82 and 83 Public Health (Amendments) Act 1907, local authorities may make byelaws for the prevention of danger, obstruction or annoyance to persons using the seashore. These provisions must be locally adopted to become law. S.82 Public Health (Amendments) Act 1907 states:

"The local authority may for the prevention of danger, obstruction, or annoyance to persons using the seashore make and enforce byelaws to B

Regulate the erection of or placing on the sea-shore, or on such part or parts thereof as may be prescribed by such byelaws, of any booths, tents, sheds, stands and stalls ΨΨΨ and generally regulate the user of the seashore for such purposes as shall be prescribed by such byelaws"

- c) Under S.231 Public Health Act 1936 all local authorities are authorised to make byelaws with respect to public bathing. It states:

"(1) A local authority may make byelaws with respect to public bathing and may by such byelaws B

- (a) *regulate the areas in which, and the hours during which, public bathing shall be permitted*
- (f) *regulate, for preventing danger to bathers, the navigation of vessels used for pleasure purposes within any area allotted for public bathing during the hours allowed for bathing."*

6.3 The area within which a local authority may make such byelaws under S.231 may be extended by S.17 Local Government (Miscellaneous Provisions) Act 1976 which states:

"(1) Where any part of the area of a local authority having power to make byelaws under both section 231 of the Public Health Act 1936 and section 76 of the Public Health Act 1961 (which authorise the making of byelaws about public bathing and pleasure boats) is bounded by or is to seaward of the low water mark, the authority may exercise that power as respects any area of the sea which is outside the area of the authority and within 1000 metres to seaward of any place where that mark is within or on the boundary of the area of the authority."

- d) Under S.76 Public Health Act 1961 local authorities may make byelaws to regulate the speed and use of pleasure boats so as to prevent them being a danger, obstruction or annoyance to bathers in the sea or users of the seashore.
- e) Under the Harbours, Docks and Piers Clauses Act 1847, harbour authorities have a general power to make byelaws for a variety of purposes in relation to the Harbour.
- f) Under the Harbours Act 1964, harbour authorities may carry out works under the powers conferred by revision and empowerment Orders. Such works could (prior to 1964) be authorised by local Acts.
- g) Under the Sea Fisheries Regulation Act 1966 fisheries committees may make byelaws regulating activities within the Fisheries District, as defined by the Ministerial Order creating the Fisheries District.

6.4 A total of 48.5% of respondents to the questionnaire survey stated that they have local Acts of Parliament which are relevant to the coastal / maritime jurisdiction of their authority (Question 5). These covered quite a wide range of topics for a number of different purposes. It is interesting to note the very wide range of dates of these Acts, from quite recent years to Acts of Parliament which are several hundreds of years old.

Box 2

Some examples of local Acts of Parliament

The Essex Act, 1987, regarding provisions for piers, groynes and moorings on the foreshore

The County of Essex Act, 1981, relating to flood defences

The Private Dockyard Act, 1865, relating to the control and management of a harbour

The Sea Sand Act, 1609, providing the right to remove sand for the betterment of land

Box 3 Case Study

Scarborough Borough Council

Scarborough Borough Council included in their questionnaire response, a comprehensive list of local Acts of Parliament relevant to the marine environment, ranging over hundreds of years.

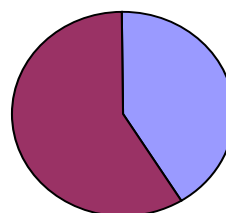
The following examples provide an interesting

history of the extent of jurisdiction over the marine environment at Scarborough. The earliest Acts quoted are The Scarborough Harbour Acts of 1537 and 1732.

Seven local Acts were made in the nineteenth century which included the Whitby Harbour Act, 1827; The Scarborough Harbour Act, 1843 and then 1876; the Harbours and Passing Tolls Act, 1861; and the Piers and Harbour Orders Confirmation Act, 1881.

During the last one hundred years, further Acts have been made, such as the Whitby Urban District Council Act, 1905 which provided for the transfer of the Harbour Undertaking to the Council and the establishment of a Harbour Committee. Amongst other provisions, this Act also gave the Council powers to licence pleasure boats. The most recent Act cited in the response is the Pier and Harbour Order (Scarborough) Confirmation Act, 1935, although there was a Scarborough Harbour Revision Order made in 1969.

Q10. Has your LA made any bye-laws relating to areas below MLWM?



Yes
No

Box 4 Case Study Cardiff County Council

Cardiff County Council has become the successor to Cardiff Bay Development Corporation and as such the Cardiff Bay Barrage Act of 1993 is an important local Act of Parliament which is of relevance to the marine environment within the local authority area. The purpose of the Act is

Ato provide for the construction by the Cardiff Bay Development Corporation of a barrage across the mouth of Cardiff Bay with an outer harbour and for related works; to make provision for the acquisition and use of land for the works; to make provision about the operation and management of the barrage, the outer harbour and the water impounded by the barrage; to make provision for dealing with property damage resulting from any alteration of groundwater levels which may occur in consequence of the construction of the barrage; to enable other protective provisions to be made; and for connected purposes.

The Act makes reference to nature conservation in terms of the works to be carried out by the Cardiff Bay Development Corporation, and now Cardiff County Council. For example, it requires that regard be had *Ato the desirability of developing and conserving flora and fauna* (s. 1 (5)) and states that CCW and the RSPB must be consulted

Ato seek their views as to - (a) whether any works which the Development Corporation propose to execute so as to develop or conserve flora or fauna are appropriate for that purpose, and (b) the measures which may be taken so as to develop and conserve flora and fauna in executing any of the other works authorised by section 1 above (s. 1 (6)).

As would be expected, the Act makes extensive provision for the works to be carried out and the extent of powers on completion.

- 6.5 There were also many common examples given in response to Question 10, relating to local authority bye-laws extending to areas below MLWM. 41.2% of responding local authorities have issued licences or permits below MLWM, as illustrated in the chart, but more had made byelaws extending below MLWM.
- 6.6 By far the most common type of bye-laws relate to seaside pleasure boats and sailboards. From the number of authorities who provided a copy of their bye-laws, it can be concluded that the main purpose is public safety. For example, many of the bye-laws make reference to maximum speed limits, some of which are varied depending upon the time of year, and they also make reference to distance of the boats from the shore.
- 6.7 Other bye-laws related more generally to coastal or beach safety, one relating to dogs on the seashore. This also indicates that some respondents were describing bye-laws that are confined to the beach or foreshore, and do not extend below MLWM. Conversely, one authority stated that they do not have any bye-laws relating to areas below MLWM, but an example of one concerning pleasure boats, which extended in places to 75 yards seaward from the MLWM, was included in their response. The element of confusion in answering this question needs to be borne in mind in considering the responses.
- 6.8 There were also examples of bye-laws which were not principally concerned with safety, such as those relating to piers, wharves and landing stages, the management of harbours and one concerning a foreshore nature reserve.

Box 5
Case Study
Carrick District Council

Carrick District Council provided a selection of examples of bye laws which relate to areas below Mean Low Water Mark. The example chosen as a case study here, was made for the *Aprevention of danger, obstruction or annoyance to persons bathing in the sea or using the seashore*≡. This was made under the provisions of S.76 of the Public Health Act, 1961 and confirmed by the Secretary of State in May 1992.

The bye law relates to the use and navigation of pleasure boats. It imposes restrictions on speed and emission of noise and demands that such pleasure boats be driven or sailed in a manner which is not dangerous and is with reasonable consideration. Provision is made within the bye law for the imposition of a fine, should any person offend against it.

The bye law applies to areas which extend below Mean Low Water Mark in two specific places, one to a distance of 185 metres from Mean Low Water Mark and one to a distance of 350 metres from Mean Low Water Mark.

Box 6
Case Study
New Forest District Council (Formerly the Borough of Lymington)

New Forest District Council have a very similar bye law to the Carrick District Council example. This bye law was confirmed by the Secretary of State in May 1967. It relates to seaside pleasure boats and is made under the provision of S.76 of the Public Health Act, 1961 for the *Aprevention of danger, obstruction or annoyance to persons bathing in the sea or using the seashore*≡.

Again this relates to speed, noise and care in navigating a pleasure boat, with the provision for a fine, if this is not complied with.

In this case the extent of the area covered by the bye law is to a distance seaward of 300 yards from Mean Low Water Mark and includes the shores of creeks and inlets of the sea.

The similarities with the Carrick District Council example in Box 5 will be noted, despite the considerable number of years between the two.

Box 7
Case Study
Portsmouth City Council

Portsmouth City Council sent a copy of one of their bye laws, with their questionnaire response, relating to the Town Camber. This bye law was made under S.83 of the Harbours, Docks and Piers Clauses Act, 1847, the Local Act (2 & 3 Vict. C.72) and the Portsmouth Camber Quays Act, 1868.

This particular bye law was confirmed by HM Recorder for the City of Portsmouth, at the Court of Buckingham Palace, in October 1936 and, although still in use today, relies on 19th Century legislation.

The purpose of this bye law is to regulate the use of the Town Camber, which includes creeks, docks and premises. It refers to specific requirements regarding navigation, mooring, cargo and use of the Town Camber by Petroleum Spirit Vessels and Oil-Fuel Vessels.

7. HARBOUR AUTHORITIES

- 7.1 The statutory definition of "harbour" for the purposes of the Harbours Act 1964 (the main legislation) is very wide: S.57 defines it as

"any harbour, whether natural or artificial, and any port, haven, estuary, tidal or other river or inland waterway navigated by sea going ships, and includes a dock, wharf, ..".

The area of water comprising the harbour must be sufficiently enclosed to enable such vessels to ship or unship goods or passengers. The same definition is adopted in other statutes including the Pilotage Act 1987 and the Ports Act 1991.

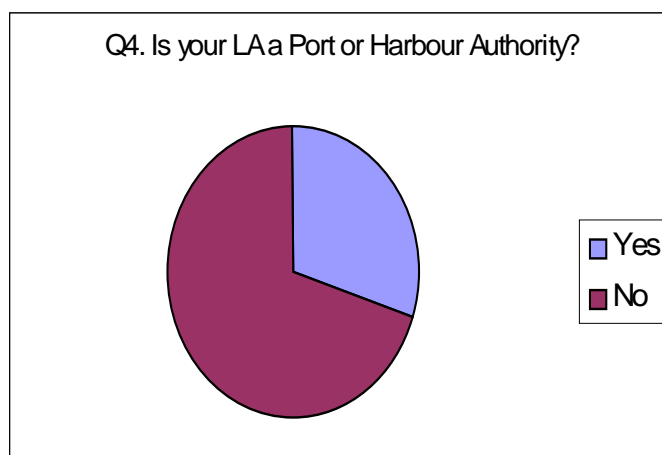
- 7.2 S.57 defines a harbour authority as

"any person in whom are vested under this Act, by another Act or by an Order or other instrument (except a provisional Order) made under another Act or by a provisional Order powers or duties of improving, maintaining or managing a harbour".

This means that harbours have many constitutional forms, and may be put in place by a variety of instruments. Some harbour authorities are companies under the Companies Act 1985 (eg the Tees and Hartlepool Port Authority Limited), some are companies constituted by local Acts of Parliament (eg the Mersey Docks and Harbour Act 1971), some are boards constituted for the purpose (eg the Port of Tyne Authority) by or under statute, and some are local authorities (eg Portsmouth City Council). Constitutionally, the Port of London Authority is unique, being established by a public general Act.

- 7.3 In all, few local authorities in England and Wales are harbour authorities for large commercial harbours. The Environment Agency is the harbour authority for a few small harbours, as is the British Waterways Board. The Crown is the harbour authority for naval dockyard ports.
- 7.4 The instrument which either creates a harbour authority or which establishes an existing body as such will define the harbours which will fall within that body's administrative control. In general the jurisdictional limits of a harbour authority extend to the geographical limits of its harbours, though the instrument may exclude some parts of the harbour, for the purposes of specific functions, for example, The Port of London Act 1968 S.187 Schedule 8)
- 7.5 The jurisdiction of a harbour authority may therefore be contained in a local Act of Parliament or in Harbour Revision Orders, Harbour Empowerment Orders or Harbour Reorganisation Schemes made under the Harbours Act 1964 or its predecessors. The extent of the harbour is described by reference to co-ordinates, which may, and normally do, take the harbour beyond low water mark.

- 7.6 There is a common or public right of navigation which applies in all tidal waters, including tidal harbours (see Appendix B for definitions). This right of navigation includes a right of anchoring, mooring and grounding in the ordinary course of navigation, but does not include a right to permanently occupy part of the waters of a tidal harbour or over the foreshore. The foreshore, the beds of navigable rivers and arms of the sea which are generally owned by the Crown are so held subject to this public right of navigation. Therefore any grant or lease of this land by the Crown to a harbour authority is subject to this public right.
- 7.7 Harbour works may often need to extend below high water mark. Such works may obstruct the public right of navigation, and be an actionable nuisance unless there is statutory authority to do them. There may be a general power to do works under the instrument creating or establishing the harbour authority, or works may be specifically authorised by order. If no such instrument giving authority is in place, prior consent is required by application to the Secretary of State for most works below mean high water springs by virtue of S.34 of the Coast Protection Act 1949.
- 7.8 In response to Question 4 of the questionnaire survey, 30% of respondents stated that their authority is a Port or Harbour Authority. Many of the respondents provided the names of the relevant Port or Harbour Authority, but generally little description was provided. A number of authorities did, however, send a copy of the plan showing the relevant port or harbour area.



8. LOCAL AUTHORITY REPRESENTATION ON MARITIME BODIES

- 8.1 Local authorities can be, and frequently are, represented on Sea Fisheries Committees and sometimes other bodies with functions relating to the marine environment.
- 8.2 Regulation of fisheries is generally the responsibility of the appropriate Minister (MAFF in England and the National Assembly in Wales). The Minister, on an application by a County Council or unitary authority, may by Order create a Sea Fisheries District. The District may comprise any part of the sea within the National or Territorial Waters of the UK adjacent to England and Wales. The Order will define the limits of the District and provide for the constitution of a local Sea Fisheries Committee for the regulation of sea fisheries carried on within the District.
- 8.3 Local authorities are involved in the activities of Sea Fishery Committees to the extent that they are represented on those committees. Indeed, they may have up to 50% of the seats on the Committee.
- 8.4 At the time of setting up the provisions, territorial waters extended to 3 nautical miles from the baseline. (The United Nations Convention on the Law of the Sea states that the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast). However, they have since been adjusted and, since 1992, the seaward limit of the committee's responsibilities have extended out to 6 nautical miles from the baseline.
- 8.5 Amongst the powers conferred on Sea Fishery Committees is the power to make byelaws regulating activity within the limits of a sea fisheries district. Byelaws are enforced by the Sea Fishery Committee. [Sea Fisheries Regulation Act 1966; Southern Sea Fisheries District Byelaws; North Western and North Wales Sea Fisheries Committee Byelaws; Eastern Sea Fisheries Committee Byelaws.]
- 8.6 Local authorities can be represented on other bodies with functions relating to the marine environment. In many cases, such as the Sea Fishery Committees, the local authorities have significant control over decisions and may make a significant contribution to the funding of the body. They are, therefore, able to exert influence over the decisions of such bodies, which affect areas below low water mark, which might not otherwise be in their jurisdiction.

9. EXAMPLES OF OTHER FUNCTIONS AFFECTING THE MARINE ENVIRONMENT

- 9.1 As explained in section 4 above, public general Acts may extend a local authority's jurisdiction, for particular statutory functions, below (seaward of) low water mark, even as far as the limit of coastal or territorial waters. Conversely, public general Acts can specifically restrict jurisdiction to low water mark, or even high water mark, for particular purposes, even where a local authority's general jurisdiction might otherwise go seaward of low water mark, for example in an estuary. Examples of some of these functions and powers, both in terms of the legal position and the responses of coastal local authorities to the questionnaire survey, are discussed below.

Town and Country Planning

- 9.2 Under S.1 Town and Country Planning Act 1990 (TCPA), a local planning authority will generally be the local authority for that area, subject to the division of responsibility between local authorities. The local planning authority has powers under this Act to grant planning permission for the development of land (see s.57 TCPA).

- 9.3 Informed commentary on this provision [4] states the following:

"The extent of the local planning authority's jurisdiction will depend on the administrative boundary of the local authority and on the seaward limits of "land" which may be subject to development control. At present the limit of jurisdiction is the mean high water mark, but may be fixed in some cases by local Act. The Local Government Commission also has powers to review county boundaries and incorporate into them areas of the sea which were not already included."

- 9.4 However, S.72 Local Government Act 1972 (see Section 4 above) automatically annexes to the local authority, areas down to the low water mark. This line is, therefore, accepted by the Secretary of State as the limit of the local planning authority's jurisdiction.

- 9.5 It is not clear, however, whether planning jurisdiction could stretch beyond this point, where the administrative boundary of the local authority goes beyond low water mark.

- 9.6 It is stated in Halsbury's Laws of England [5] that although planning control does not generally extend below the low water mark, it appears that where there is seabed within the jaws of the land (*intra fauces terrae*), this may form part of a local authority's area and, therefore, be subject to planning control.

- 9.7 However, this view was rejected by John Mummery QC (now the Right Honourable Sir John Mummery Lord Justice of Appeal) who considered the Scottish case of Argyll and Bute District Council Bv- Secretary of State for Scotland [(1976) SC 248] to be the position that would be followed in the English Courts. This case stated that planning control never extends below low water mark (the low water mark considered in this case

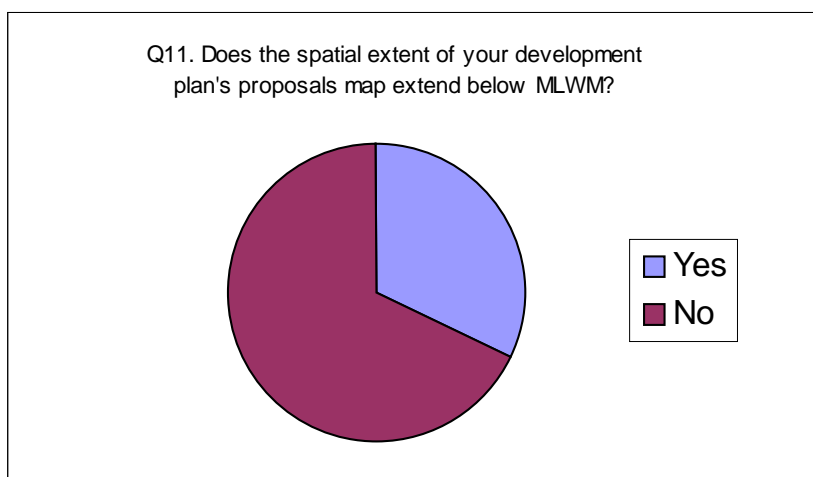
was Mean Low Water Mark Ordinary Spring Tides).

"For statutory planning purposes the limit of the coastal zone in the seaward direction is the Mean Low Water Mark of Ordinary Spring Tides" (even if the local planning authority's area extends beyond it) (see also section 10 below).

9.8 The Argyll and Bute judgment is consistent with S.29 Environmental Protection Act 1990, which defines "land" as follows: *"Land includes land covered by waters where the land is above the low water mark of ordinary spring tides"*.

9.9 PPG 20 [6] states *"for planning purposes ... as a general rule the limit of the coastal zone in the seaward direction is mean low water mark"*. However, in estuaries, the former Department of Environment said that planning jurisdiction extends below MLWM within local authority areas up to the point where the river meets the sea, which is defined by the Ordnance Survey (since 1983) as *"where the surface level of a river reaches the surface level of the sea at low water"*.

9.10 In answer to Question 11 of the local authority questionnaire, 32.4% of responding authorities stated that their development plan proposals map extends below MLWM.



Unfortunately, very few of these respondents included a copy of the map with the response, so it is difficult to ascertain a broad picture of the types of areas which are covered. From the few examples that were sent, it can be concluded that the map was extended to include piers and nature conservation designations such as SPA, cSAC or Ramsar sites. Curiously, one respondent noted that although their proposals map extended below MLWM it was acknowledged that there was no jurisdiction to the extended point.

Land Drainage

9.11 Generally, the primary obligation to drain land lies with the landowner. The provisions mentioned below do not remove these rights and duties, but confer additional powers on certain statutory bodies.

9.12 Local authorities have powers under S.14 Land Drainage Act 1991 in relation to their area for the purpose of preventing flooding or mitigating damage caused by flooding. The local authority is not required to carry out such works and so will not be liable for any

damage caused by a failure to carry out such work. However, local Acts may impose such duties on local authorities, in which case they may be liable.

- 9.13 Schemes may be made under S.18 Land Drainage Act 1991 to enable a local authority to enter on land and carry out drainage works. For these purposes "land" includes land covered by water and "drainage" includes defence against inundation by sea water. However, S.74 Land Drainage Act 1991 states:

"Nothing in this act shall

(3) ΨΨΨ

[c] authorise any person to do any work on, over or under, or to use for any purpose, any tidal lands ΨΨ except with the consent of the landowner and the secretary of state

(6) "in this section "tidal lands" means land below the high water mark of ordinary spring tides Ψ"

- 9.14 The indication, therefore, is that local authorities do not have an inherent jurisdiction below the high water mark of spring tides for this purpose. The permission of the Secretary of State must first be obtained. However, once obtained, the seaward boundary of jurisdiction is not clear for these purposes (unless specified by the Secretary of State).

Coast Protection

- 9.15 There is a general duty on the Crown to ensure the realm is protected from erosion by the sea by maintaining appropriate sea defences. However the common law deals only with cases of neglect of duty or removal of natural barriers. There is not a duty on the Crown to maintain such defences in all circumstances. Statutory powers are conferred on Coast Protection Authorities to undertake works to protect property from erosion of the coastline and flood defence measures (Coast Protection Act 1949).
- 9.16 A coast protection authority means the council of a "maritime district" (S.1(1) Coast Protection Act 1949 / S.272 Local Government Act 1972) and a "maritime district" means a district or unitary authority, including a Welsh county council, any part of which adjoins the sea (Coast Protection Act 1949), thereby making coast protection a function of all coastal local authorities, except the English shire counties.
- 9.17 Other coast protection authorities are the Environment Agency and Internal Drainage Boards. The relevant statutory powers are contained in the Environment Act 1995, Water Resources Act 1991 and the Land Drainage Act 1991.
- 9.18 Under S.4(1) Coast Protection Act 1949, the coast protection authority is authorised to carry out coast protection work that they consider necessary or expedient to protect any land in their area even if those works are in another authority's area. Coast protection works are such works of construction, alteration, improvement, maintenance, repair, demolition or removal that have as their purpose the protection of any land from

encroachment by the sea (S.49 Coast Protection Act 1949).

- 9.19 In this Act "Land" includes land covered by water, however it is not explicit as to the seaward limit of the "area". There is a power under S.18 Coast Protection Act 1949 to make an order (subject to confirmation by the Minister) restricting the excavation and removal of materials on the seashore or lying to seaward of its area but within 3 miles of the baseline. For this purpose therefore Coast Protection Authorities have jurisdiction beyond low water mark.

Country Parks

- 9.20 Local authorities have powers under S.7 Countryside Act 1968 to provide country parks. If a country park is bounded by the sea or by any waterway (not part of the sea) local authorities have wide powers to facilitate the use of the waters (and sea) adjacent to the park for recreational purposes. This includes constructing jetties or other works partly in the sea or other waters.
- 9.21 There is no definition of >the sea= for the purposes of the 1968 Act. The general definition must apply i.e. any area which is submerged at mean high water springs / high water mark of the spring tide. It is not clear whether a local authority can construct works below mean low water under this provision but, on the face of it, it would appear so.

Statutory Nuisance

- 9.22 Local authorities have a duty imposed by S.79 Environmental Protection Act 1990 to inspect their areas for statutory nuisances such as fumes or gases or any accumulations or deposits which may be prejudicial to health. S.79(11) of Environmental Protection Act 1990 states that the:

"area of the local authority which includes part of the seashore shall also include Ψ. the territorial sea lying seawards from that part of the shore."

This therefore extends the jurisdiction of the local authority, for the purposes of the abatement of statutory nuisances, to twelve miles from the baseline.

- 9.23 Under S.259 Public Health Act 1936 the following are statutory nuisances for the purposes of the Environmental Protection Act 1990:

"(a) any pond, pool, ditch, gutter or watercourse which is so foul or in such a state as to be prejudicial to health or a nuisance;

(b) any part of a watercourse, not being a part ordinarily navigated by vessels employed in the carriage of goods by water, which is so choked or silted up as to obstruct or impede the proper flow of water and thereby cause a nuisance, or give rise to conditions

prejudicial to health."

- 9.24 The case of R Bv- Falmouth & Truro Port Health Authority ex parte South West Water Ltd (Court of Appeal) [(2000) 3 All ER 306] considered which bodies of water could be considered to be a "watercourse". The High Court had already ruled that rivers and estuaries could not be included in this definition. The Court of Appeal went on to take a broader approach but the sea, coastal waters and tidal estuaries were still clearly excluded.
- 9.25 An application has been made to the House of Lords to consider this point further; in particular whether "watercourse" encompasses bodies of tidal waters and the territorial sea, where they fall within the jurisdiction of any local authority. This has the potential (depending on the decision of the House of Lords) to extend local authority jurisdiction beyond the low water mark for this purpose.

Port Health Authorities

- 9.26 A local authority may be a port health authority where it is the riparian authority for that particular port health district (as formed by order of the Secretary of State). However, S.1(3) Public Health (Control of Disease) Act 1984 expressly states that:

AA local authority having jurisdiction in any part of the port health district ΨΨ.. shall not discharge in relation to it any functions which are functions of the port health authority≡

- 9.27 Therefore it is possible for a local authority to be a port health authority but these two authorities are mutually exclusive entities. However, where a port health authority is also a local authority it is vested with all the powers and duties as are set out in the Local Government Act 1972.
- 9.28 Port health authorities have jurisdiction over all waters within the port health district. The order constituting the port health district may also confer extra powers to perform functions in relation to Public Health Acts 1875 to 1925 and the Control of Pollution Act 1974.
- 9.29 A function of the port health authority is the abatement of statutory nuisances as defined in S.79 Environmental Protection Act 1990 [see paragraph 9.22 - 23 above]. This extends the port health authority's jurisdiction for this purpose beyond the low water mark.
- 9.30 Under S.9 Public Health (Control of Disease) Act 1984, any vessel lying in any inland or coastal waters (the definition of coastal waters being those which extend 3 miles seaward of the low water mark of ordinary spring tides) comes under the jurisdiction of:
- a) the port health authority for that district; or
 - b) local authority if the waters are within the district of a local authority; or

- c) a local authority as the Secretary of State may direct by statutory instrument or, if no such order is made, the local authority whose district includes that point on land which is nearest to the spot where the vessel is lying.

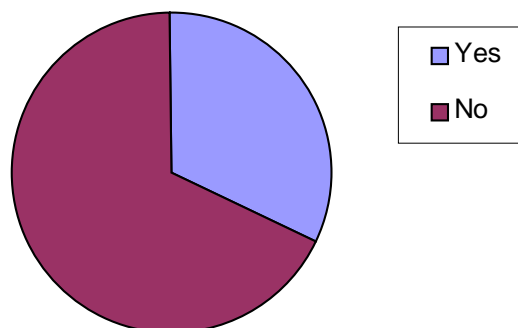
As such, a local authority's jurisdiction over such vessels may extend up to the breadth of the territorial sea.

Licences, Permits and Other Forms of Consent

9.31 Question 9 of the questionnaire survey asked whether the local authority issue any licences, permits or other forms of consent, or whether they operate any other forms of control in respect of areas below MLWM. The pie chart shows that whilst some authorities do have such forms of consent or control, the majority do not.

However, the examples given of the types of licences and consents were quite numerous. The examples included those listed in Box 8 below.

Q9. Does your LA issue any licences, permits or other forms of consent, or operate any other forms of control in respect of areas below MLWM?



Box 8

Examples of Licences, Permits and Other Consents Issued by Local Authorities Below MLWM

Fishing licences
Boatmen's licences
Passenger carrying boats licences
Mooring licences
Consents to water-ski
Local nature reserve management
Marine conservation code of conduct.

Whilst the last two examples given here were only mentioned by one or two respondents, the other licences and consents were given as examples by a number of Authorities.

10. JURISDICTION OVER ESTUARIES, BAYS, INLETS, CREEKS AND CHANNELS

Waters internal to baseline - internal waters

- 10.1 As explained in section 4 above, local authority jurisdiction generally coincides with the authority's seaward administrative boundary which is usually low water mark. However, administrative boundaries and jurisdiction can, but do not always, extend to waters internal to baseline. The United Nations Convention on the Law of the Sea states that the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast. However, where there are indentations in the general line of the coast, the baseline may be drawn as a straight line, for example, across the mouth of a bay or estuary, or along the general line of low water mark along the coast rather than following low water mark into every indentation such as an inlet, creek or channel. Consequently, waters internal (that is, landward) of baseline may include all or parts of estuaries, bays, creeks, inlets or channels which form indentations or intrusions into the general line of the coast. These have been referred to generically as *Awaters internal to baseline* or *Ainternal waters* and may include sub-tidal waters, below low water mark.
- 10.2 *Ainland waters* and *Ainternal waters* have different definitions (see also Appendix B). The United Nations Convention on the Law of the Sea states that the "internal waters" of a state are those which are on the "*landward side of the baseline*" from which its territorial sea is measured. Thus, waters internal to baseline are *Ainternal waters* but may not be inland waters because the definition of inland waters varies.
- 10.3 *Ainland waters* might be expected to refer to freshwater rivers, canals, lakes and reservoirs etc, rather than any coastal waters, but this is not always the case. Indeed, differing definitions of what comprise *Ainland waters* occur in two principal statutes in the same year. The Water Resources Act 1991 defines "Inland water" as meaning:
"any of the following in any part of Great Britain:
any river, stream or other watercourse, whether natural or artificial and whether tidal or not;
any lake or pond, whether natural or artificial, and any reservoir or dock; and
any channel, creek, bay, estuary or arm of the sea."

Whilst the Planning and Compensation Act 1991 defines "inland waters" as waters which *do not form part of the sea or of any creek, bay or estuary or of any river as far as the tide flows*

Both definitions apply only in respect of the specific purposes of the Acts in which they are defined.

Areas *Aintra fauces terrae*

- 10.4 There is a further principle which complicates this discussion, namely that of areas which are described as being *Aintra fauces terrae* which literally means *Awithin the jaws of the land*. There is little judicial guidance as to the meaning or origin of the principle.

10.5 In *The Law of Harbours and Pilotage* [7] RPA Douglas states that:

"where a local authority's area includes the bank of an estuary, it may be arguable, according to the circumstances, that the estuary is intra fauces terrae and that the area extends to the middle of the estuary (or to the whole of it if the banks on both sides are in the area of the authority)"

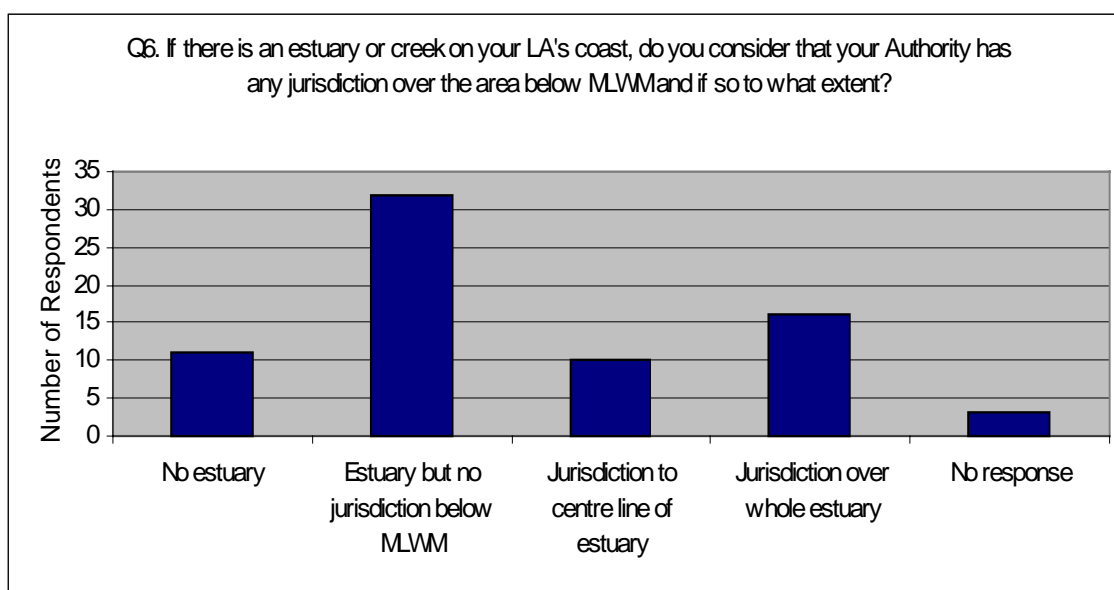
Whilst uncertain, the inference is that even though water within the estuary may be seaward of low water mark, it will still be within the local authority's jurisdiction.

10.6 In the Scottish case of *Argyll & Bute DC Bv- Secretary of State for Scotland* (1976) SC 248, the Appellants argued that planning control was exercisable by the relevant planning authority, over and under the seabed "intra fauces terrae". However, unfortunately for the purposes of this discussion, the Judge found it unnecessary to comment any further stating that: -

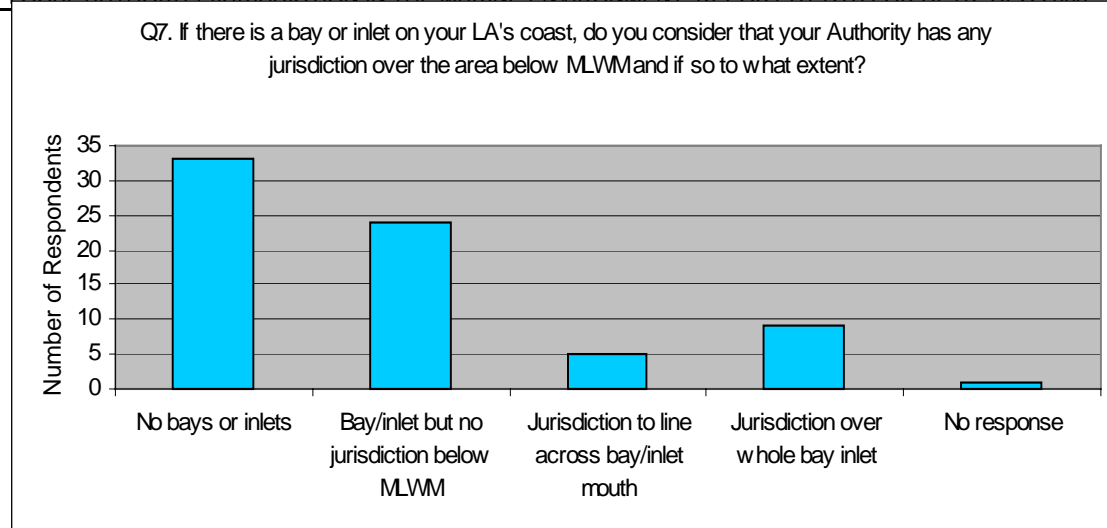
"even on the basis that the jurisdiction of a local authority may extend as far as the appellants submit as a general proposition, its jurisdiction for a particular statutory purpose will depend on the provisions and purpose of that statute, and so its jurisdiction will not be co-terminus for all purposes."

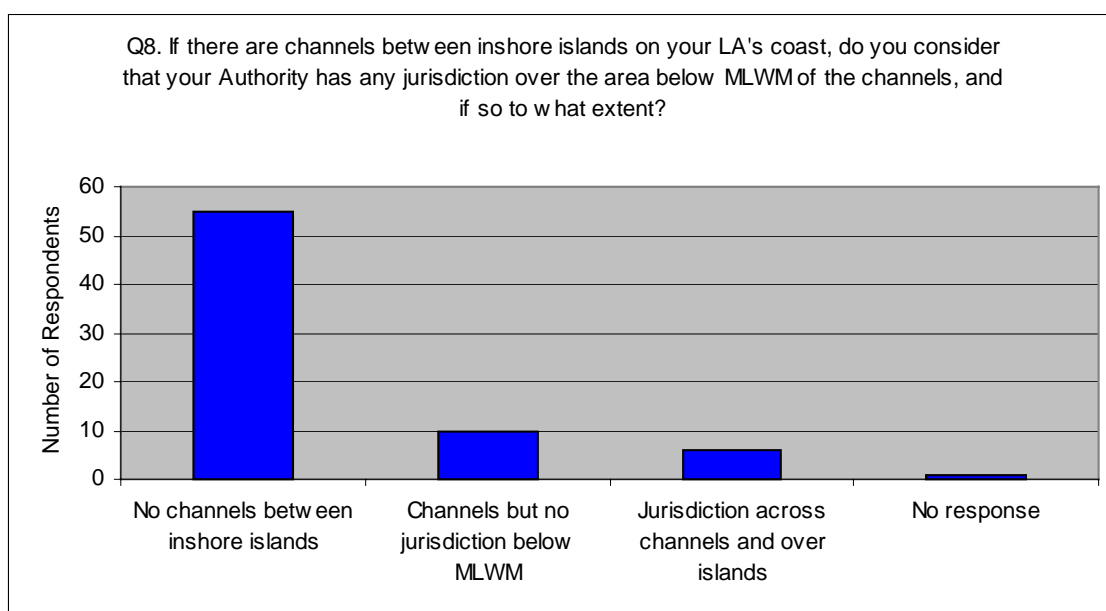
Local authority practice in internal waters

10.7 This section presents the results of the questionnaire survey in terms of responses to three questions regarding jurisdiction over estuaries and bays; creeks and inlets; and channels. Questions 6, 7 and 8 relate to the jurisdiction that the officers of the responding



authorities believe the authority has over these waters which may be internal to baseline.





10.8 Overall, 41.1% of the total number of respondents who have an estuary or a creek, a bay or an inlet, or channel between inshore islands within their area, believe they have a degree of jurisdiction over them. This figure falls to 27.7% when considering jurisdiction over the whole estuary, bay, inlet or channel.

10.9 There is obviously a significant variation in practice between local authorities where

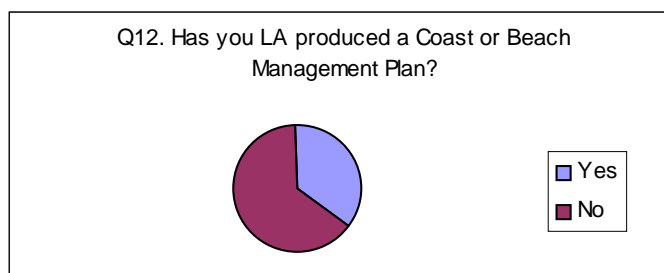
waters internal to baseline, such as estuaries, bays, creeks, inlets or channels are involved.

About half of all coastal local authorities exercise some jurisdiction below low water mark but it is unclear whether they are doing so because they are certain that their administrative area includes internal but sub-tidal waters or whether it is merely convention to consider their jurisdiction extends over areas which are *Aintra fauces terrae*≡.

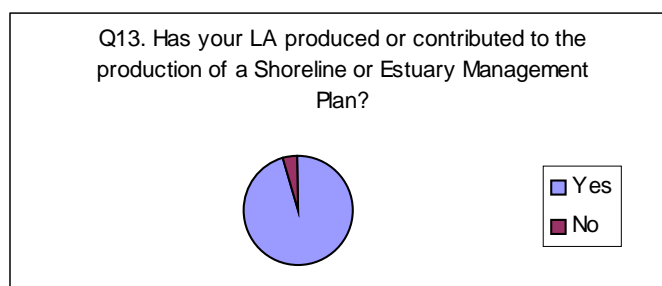
- 10.10 The uncertainty, or at least the wide divergence of practice, illustrated in the graphs above, is almost certainly why local authorities appear to have always obtained a local Act of Parliament where they have sought to extend their jurisdiction, for specific purposes and in particular areas or ways, below low water mark, beyond the powers in public general Acts. Almost half of coastal local authorities have local Acts relating to their jurisdiction for specific purposes, but not generally. These local authorities notably include some that believe they have general jurisdiction below low water mark in estuaries, bays, creeks, etc.

11. NON STATUTORY INITIATIVES AND PRACTICES

- 11.1 There were four questions in the questionnaire survey relating to non-statutory initiatives and practices which were aimed at exploring the extent to which local authorities become involved in marine or maritime issues outside their statutory remits and jurisdictions. These related firstly to coast or beach management plans, secondly to strategic plans, thirdly to local traditions and practices and fourthly to any initiatives aimed at co-ordinating the complex multi-agency controls of the marine environment.



- 11.2 The responses indicated that 35.3% of authorities have produced a Coast or Beach Management Plan.



- 11.3 By contrast, however, 95.8% of authorities have produced or contributed to the production of a Shoreline or Estuary Management Plan.

Box 9 Case Study New Forest District Council Coastal Management Plan

New Forest District Council submitted a Coastal Management Plan dating from 1997. The Plan states that it does not have a specifically defined geographical limit, as it addresses the whole range of activities and interests which affect the coast, whether they be inland or far offshore. It does acknowledge, however, that some of the issues it deals with are beyond the powers of the District Council to control.

The Plan includes policies relating to a wide range of issues, for example, the monitoring of beaches, cliffs and saltmarshes using surveys and aerial photography; seeking to limit increases in the numbers of recreational sailing craft; encouraging sensitive management of public access in order to avoid conflict with nature conservation; and seeking to protect the interests of the shellfish industry around the shores of the district.

In addition to general policies which apply to the whole District, there are also twelve designated coastal zones which have site specific action proposals relating to the particular features of interest in each area. These twelve zones are described in the Plan and the issues relevant to them, clearly set out. It is upon this basis that the proposals for each area are made.

This Coastal Management Plan makes reference to the production of a Shoreline Management Plan, Local Agenda 21 and the Local Plan for the area, demonstrating that it should not be seen in isolation but as part of an integrated suite of documents and initiatives relating to the coastal environment.

Box 10 Case Study

Maldon District Council Estuary Management Plan

Maldon District Council sent a copy of their Blackwater Estuary Management Plan, dated June 1996, jointly prepared by Maldon District Council, Colchester Borough Council, Essex County Council and English Nature. This clearly demonstrates a co-ordinated approach to the estuary.

The Plan addresses a wide range of issues. It first describes the features and characteristics relating to the different topics, and then goes on to set out a number of proposals relating to the landscape and coastal environment, intertidal areas and water quality, nature conservation, agriculture, coastal economy, water recreation, countryside recreation, and education, interpretation and research. These topics deal with both inland and offshore issues. The maps which accompany the plan indicate that some of the proposals extend to areas below Mean Low Water Mark, for example, speed limits for powered boats.

The Plan states how the monitoring of each proposal will be carried out. This is clearly being implemented, as an Issues Paper reporting on achievements so far and adding to the proposals, was produced in October 1999.

- 11.4 40.9% of responding authorities indicated that they were aware of being involved in local practices or traditions relating to maritime areas or issues.

Q17. Are you aware of any local practices or traditions in which your LA has been involved in maritime areas/issues?

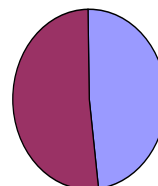


■ Yes
■ No

- 11.5 Many of the examples of local practices involved fishing in one form or another, indeed many Authorities stated such examples as the harvesting of cockles and other shellfish, scallop dredging, shrimping and oyster fishing over which they provide regulation and control. Other examples of local practices and traditions included the administration of moorings, regulations over watermen and, in one case, a Code of Conduct for activities such as water skiing and jet skiing.

- 11.6 47.8% of Authorities have instigated some special initiatives intended to resolve or coordinate the complex multi-agency control of the marine environment.

Q18. Has your LA instigated any special initiatives to seek to resolve or co-ordinate the complex multi-agency control of the marine environment?



■ Yes
■ No

- 11.7 In relation to special initiatives that the authority has instigated there were a number of common themes, but they included the kinds of projects summarised in Box 11 below.

Box 11

Examples of Special Initiatives of Local Authorities to Coordinate Agencies in the Marine Environment

Coastal Forums to discuss coastal issues with interested parties

Working groups to consider the impacts of cSAC and other such designations

A countryside project, regeneration initiative

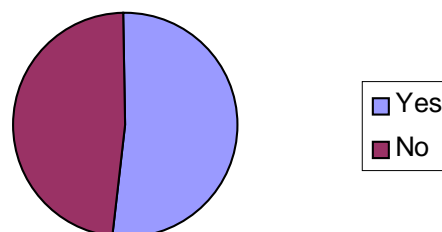
Beach erosion and management initiative

Involvement with SCOPAC.

12. LOCAL AUTHORITIES AND MARINE NATURE CONSERVATION

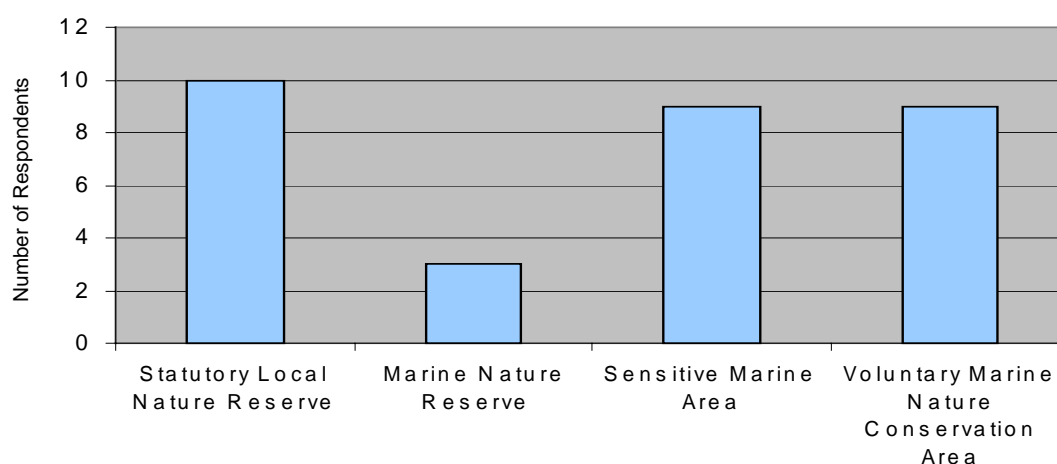
- 12.1 Two questions in the questionnaire survey relate specifically to nature conservation. Firstly, Question 14 asked whether the local authority is contributing to any Management Plan for a Marine (candidate) SAC (Special Area of Conservation under Regulation 33 of the Habitats Regulations, 1994). 51.5% of authorities confirmed that they are involved in such a Management Scheme.

Q14. Is your LA contributing to any Management Plan for a Marine SAC?



- 12.2 Question 15 listed four types of nature conservation area (Statutory Local Nature Reserve, Marine Nature Reserve, Sensitive Marine Area and Voluntary Marine Nature Conservation Area) and asked which, if any, of these are within the local authority area and extend below Mean Low Water Mark.
- 12.3 Only 22 respondents out of the 72 Authorities who completed the questionnaire in time for analysis confirmed that they had one or more of the nature conservation areas which were specified, which extended below MLWM. The relatively low numbers need to be

Q15. Does your Authority have any of these nature conservation areas which extend below MLWM?



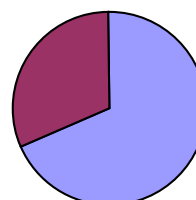
borne in mind when analysing the results and looking for correlations.

- 12.4 The graph above shows the number of local authorities which have the different types of nature conservation areas extending below Mean Low Water Mark in their area. Clearly the most common designation is the statutory local nature reserve. Some authorities had more than one type of nature conservation area within their boundary. Thus, the 22 local authorities had a total of 31 nature conservation areas.
- 12.5 A number of authorities who did not have the areas specified on the questionnaire did make comments about other nature conservation areas which they had. These are not included in this presentation of results because the question was not asked of all the authorities.

13. CONSULTATIONS WITH LOCAL AUTHORITIES

13.1 Since there are a considerable number of bodies with interest in the marine environment, other than the local authorities, Question 16 asked whether the local authority is consulted by any bodies in respect of regulatory controls, powers or issues below MLWM. A large proportion of respondents confirmed that indeed they were, 68.1%.

Q16. Are you aware of your LA being consulted by other bodies in respect of regulatory control, powers or issues below MLWM?



■ Yes
■ No

13.2 As a supplementary part of this question, an indication was given of the bodies consulting local authorities, on a regular basis; these are summarised in Box 12 below

Box 12

Bodies Reported to be Consulting Local Authorities about the Marine Environment

Associated British Ports
CCW
Crown Estate Commissioners
DTI
DETR
English Nature
Environment Agency
Joint Nature Conservation Committee
MAFF
Maritime and Coastguard Agency
Queens Harbour Master
Relevant County Council
Relevant Harbour Authority
Sea Fisheries Committees

14. CORRELATION ANALYSIS

- 14.1 To complete the analysis of the questionnaire results, a correlation analysis was undertaken to identify any significant interrelationships between the responses. For example, the analysis sought to identify whether the types of authority affected the extent of actual or perceived jurisdiction, or whether authorities which held certain perceived ideas about jurisdiction acted differently to those with other opinions as to the extent of jurisdiction.
- 14.2 Overall it is very difficult to identify any consistent patterns or interrelationships. However, there were some correlations which appear to have some significance, statistically, but even here it is difficult to see whether this is based on real differences of approach to jurisdiction or coincidence.

Authorities Considering they had jurisdiction over estuaries and creeks

- 14.3 For example, Question 6 related to the jurisdiction over an estuary or creek (which is illustrated in Graph 1 of Appendix E). The correlation analysis indicated that of those respondents whose authority had at least some jurisdiction over an estuary or creek (either to the centre line or over the whole estuary), there was a substantially higher proportion, than the proportion of authorities overall, answering yes to the following related issues.
- a] 53.8% of those with some jurisdiction also issue licences, permits or consents below MLWM, compared with the overall proportion of 32.4% (Q9);
 - b] 57.7% of those with some jurisdiction also have Local Plan Maps which extend below MLWM, compared with the overall proportion of 32.4% (Q11);
 - c] 53.8% of those with some jurisdiction are also involved in local practices or traditions in maritime issues, compared with 40.9% overall (Q17); and
 - d] 61.5% of those with some jurisdiction have also instigated special initiatives to resolve or co-ordinate the complex multi-agency controls of the marine environment (Q18), in comparison to the overall proportion of 47.8%.

Authorities considering they had jurisdiction over bays or inlets

- 14.4 However, these results are not generally replicated in relation to those authorities who have jurisdiction over a part or the whole of a bay or inlet (illustrated in Graph 2 in Appendix E). The most significant differences between those with some level of jurisdiction over bays or inlets answering AYes≡ to other related questions and the overall proportion of authorities answering AYes≡ is in relation to:
- a] those authorities who are also Port or Harbour Authorities (Q4) at 50% in comparison to the overall proportion of 30%;
 - b] having local Acts of Parliament (Q5), 64.3% of those authorities compared to

48.5% overall;

- c] issuing licences, permits or control, 50% of authorities compared to the overall proportion of 32.4% (Q9);
- d] involved in local practices and traditions, 50% in comparison to the overall proportion of 40.9% (Q17)
- d] involvement in special initiatives regarding the marine environment, 85.7% of those authorities in comparison to 47.8% overall (Q18).

Authorities considering they had jurisdiction over channels and islands

- 14.5 Only 6 Authorities indicated that they had any jurisdiction across channels and over islands and this low number must be borne in mind when considering the proportion of AYes≡ answers to other questions in relation to the overall proportions (the results are shown in Graph 3 of Appendix E).
- 14.6 The most significant differences between overall proportions of AYes≡ answers and those from authorities with this type of jurisdiction are shown below. Of those authorities with jurisdiction over channels and islands:
- a] 50% also own part of the seabed (Q2) in comparison to the overall proportion of 23.9%;
 - b] 66.7% also issue licences, permits and controls relating to areas below MLWM (Q9), compared to 32.4% overall;
 - c] 50% have Local Plan Maps extending below MLWM (Q11), in comparison to 32.4% overall;
 - d] but only 33.3% are also consulted by other bodies regarding the marine environment, compared to 68.1% overall (Q16).
- 14.7 When considering potential correlations between other questions in the survey, it is important to highlight the consistently poor correlation between positive responses to questions 1 to 5 and those with jurisdiction over bays, inlets or channels (and to a lesser extent, over estuaries). This is largely due to the relatively small number of authorities who stated that they had such jurisdiction. For example, just 19.7% of respondents claimed to have any level of jurisdiction over bays or inlets and only 8.5% claim to have jurisdiction over channels.

Authorities with ownership or leases of the seabed or foreshore

- 14.8 Graph 4 in Appendix E illustrates the differences between the overall response rate to questions and those who also own part of the foreshore in their area (Q1). The most significant difference, apart from those mentioned above regarding jurisdiction, is in relation to the instigation of special initiatives (Q18), which can be seen to be much higher for those with foreshore ownership. All of the other responses were within approximately 5% of the overall proportions and cannot therefore be said to be significant.
- 14.9 There were few significant correlations between responses of those authorities who have ownership of parts of the seabed (Q2) and other related questions. A greater proportion of those with seabed ownership issue licences (Q9), have byelaws (Q10), have produced a Coast or Beach Management Plan (Q12) and have instigated special initiatives (Q18), but only between approximately 9 and 12% more. These results are illustrated in Graph 5 in Appendix E.
- 14.10 For those authorities who lease parts of the foreshore or seabed in their area (Q3) the only significant correlation other than those answers regarding jurisdiction over bays, inlets or channels, as discussed above, is in relation to those who have:
- a] byelaws extending below MLWM (Q10), with 13.8% more than the overall proportion and
 - b] those authorities who are involved in local practices or traditions (Q17), with 14.1% more than the overall proportion;
- as can be seen in Graph 6 in Appendix E.
- 14.11 Significantly higher proportions of responding authorities, who are also a Port or Harbour Authority (Q4):
- a] issue licences, permits and control for areas below MLWM (Q9) (24.7% more than the overall proportion);
 - b] contribute to a Management Plan for a Marine cSAC (Q14) with 15.2% more;
 - c] are consulted by other bodies (Q16) with 12.9% more;
 - d] are involved in local traditions (Q17) with 16.2% more;
 - e] have instigated a special initiative (Q18) with 18.9% more than the overall proportion.
- This is illustrated in Graph 7 in Appendix E.
- 14.12 Graph 8 in Appendix E illustrates the differences in proportions of those authorities with local Acts of Parliament (Q5) and some level of jurisdiction over bays, inlets, channels and in this case estuaries and creeks, and the overall proportions. The other significant

differences between those with local Acts of Parliament and the overall response rates are found in relation to questions regarding:

- a] consultation by other bodies (Q16) with a difference of 10.9% above the overall proportion;
- b] instigation of a special initiative (Q18), at 16.2% more;
- c] 11.4% less than the overall proportion in relation to the issuing of licences, permits and controls.

Authorities with nature conservation areas below MLWM

14.13 Question 15 relates to the presence of certain nature conservation areas extending below MLWM and, as previously stated, only a relatively small proportion of authorities have such areas. As can be seen from Graph 9 in Appendix E, the only areas of significant difference between those with the specified nature conservation areas and the overall proportions are in relation to the proportion of those

- a] with byelaws (Q10), as 17.9% more authorities with nature conservation areas have byelaws relating to areas below MLWM compared to the overall proportion;
- b] who are consulted by other bodies (Q16), with 13.7% more consulted who have nature conservation areas.

Examination of coastline type, length and features

14.14 An assessment has also been made of those authorities who have estuaries, creeks, bays, inlets and channels but have no jurisdiction over them, to establish whether any pattern emerged regarding the types of areas providing these responses. The spatial and geographical features of the coastal areas in a sample of such authorities were studied in map form.

14.15 This examination showed no relationship between the length, or type, of coastline, or features, and the presence or lack of any jurisdiction. The absence of jurisdiction over internal waters was found to occur throughout England and Wales and was found in a range of authorities regardless of whether they have long, complex coastal areas or small stretches of shoreline.

15 CONCLUSIONS AND RECOMMENDATIONS

- 15.1 In general, local authority jurisdiction coincides with the authority's seaward administrative boundary which is usually low water mark. However, administrative boundaries and jurisdiction can, but do not always, extend to waters internal to baseline. Specific statutory provision can also extend jurisdiction, for particular functions, below low water mark. In other cases jurisdiction for particular functions may not extend below low water mark, even where a local authority's administrative boundary does so.
- 15.2 The main conclusion that can be drawn from the overall assessment of correlations between related questions in the survey, is that there is no, or very little, pattern or consistency. Generally, there is no correlation between a local authority's interpretations of its jurisdiction, or local statutory provisions, or local initiatives, or local practice and the nature of its coastline. This tends to add to the extent of uncertainty about a local authority's jurisdiction in the absence of specific statutory provisions.
- 15.3 Overall, it is reasonable to conclude that the occurrence of local authority ownership of areas of the marine environment does not correlate with their perceived extent of jurisdiction. Their perceived extent of jurisdiction does not appear to be affected by their status as a Harbour Authority or other statutory duty.
- 15.4 Between officers in different authorities, and in some cases even officers within the same authority, there is a very variable understanding and perception of the authority's jurisdiction in the marine environment. This is clearly demonstrated by one authority who distributed the questionnaire to five officers in different departments for reply. All five replied separately and, without coordination, revealed five different perceptions of the jurisdiction of their authority.
- 15.5 A number of respondents indicated in their questionnaires that the issue is a somewhat Agrey area and that further guidance would be greatly appreciated. Many respondents indicated that they would be very interested in seeing the outcome of the research.
- 15.6 Many bodies with analogous jurisdictions are likely to be working with, and consulting, local authorities (and vice versa), in accordance with well established procedures, in respect of specific statutory regimes. However, the variations of interpretation of jurisdiction across England and Wales is likely to mean that practice varies too. Some bodies may be used to the local authority operating in some analogous jurisdictions below low water mark, others will not. Much will depend on the statutory regime being considered, local practice, interpretations and the authority's administrative boundary.
- 15.7 In the interests of legal certainty and consistency, we would advise that if the government wishes to introduce new powers and/or duties in respect of marine nature conservation, in England and Wales, below low water mark, that might, in any way, involve local authorities, it will be necessary to introduce specific statutory provision to extend local authority jurisdiction for such powers or duties.
- 15.8 In principle, there is no reason why such jurisdiction should not be extended by

Parliament to include all sub-tidal waters out to the extent of coastal waters (3 nautical miles) or territorial waters (12 nautical miles). Statutory precedents for local authority jurisdictions for specific purposes already exist for both limits. Anything less than specific statutory provision would be likely to lead to an inconsistent interpretation and application of the provisions and a perpetuation of the present uncertainty and irregular practice.

APPENDIX A
LOCAL AUTHORITY QUESTIONNAIRE AND COVERING
LETTER

DETR RESEARCH PROJECT EXTENT OF LOCAL AUTHORITY JURISDICTION IN THE MARINE ENVIRONMENT

Please complete as many questions as possible which are relevant to your Authority's area. We have tried to facilitate completion of the questionnaire as quickly as possible. The questions on pages 1 and 2 are designed to have either "yes" or "no" answers, or alternative answers which may be selected usually by ticking a box. However, further clarification of some of the answers would be very helpful and the spaces on pages 3 and 4 are intended to facilitate additional information and comment. Please feel free to provide hand written answers and annotated notes, there is no need to have the answers typed. Copies of plans, maps and other documents are welcomed and may be the easiest way to communicate the information to us.

- | | | |
|----|--|--|
| Q1 | Does your Local Authority own any part of the foreshore (between Mean High and Low Water) along the coast of your Authority's area? | <p style="text-align: right;">Yes / No</p> <p>If yes please briefly describe the nature and extent of the ownership on page 3</p> |
| Q2 | Does your Local Authority own any part of the sea bed along the coast of your Authority's area? | <p style="text-align: right;">Yes / No</p> <p>If yes please briefly describe the nature and extent of the ownership on page 3</p> |
| Q3 | Does your Local Authority have any leases from the Crown, or any other party, of the foreshore and / or sea bed? | <p style="text-align: right;">Yes / No</p> <p>If yes please briefly describe the nature and extent of the lease on page 3</p> |
| Q4 | Is your Local Authority a Port or Harbour Authority ? | <p style="text-align: right;">Yes / No</p> <p>If yes please indicate the name and extent of the port / harbour jurisdiction on page 3</p> |
| Q5 | Are there any (other) local Acts of Parliament , relevant to the coastal / maritime jurisdiction of your authority? | <p style="text-align: right;">Yes / No</p> <p>If Yes please briefly describe the nature and extent of the provisions on page 3</p> |
| Q6 | If there is an estuary or creek on your Local Authority's coast, do you consider that your Authority has any jurisdiction over the area below MLWM and if so to what extent? | <p>No estuary</p> <p>Estuary but no jurisdiction below MLWM</p> <p>Jurisdiction to centre line of estuary</p> <p>Jurisdiction over whole estuary</p> |
| Q7 | If there is a bay or inlet on your Local Authority's coast, do you consider that your Authority has any jurisdiction over the area below MLWM and if so to what extent? | <p>No bays or inlets</p> <p>Bay / inlet but no jurisdiction below MLWM</p> <p>Jurisdiction to line across bay / inlet mouth</p> <p>Jurisdiction over whole bay / inlet</p> |
| Q8 | If there are channels between inshore islands on your Local Authority's coast, do you consider that your Authority has any jurisdiction over the area below MLWM of the channels, and if so to what extent? | <p>No channels between inshore islands</p> <p>Channels but no jurisdiction below MLWM</p> <p>Jurisdiction across channels and over islands</p> |
| Q9 | Does your Local Authority issue any licences, permits or other forms of consent, or operate any other forms of | <p style="text-align: right;">Yes / No</p> <p>If yes please list controls on page 4</p> |

control in respect of areas below MLWM?

- Q10 Has your Local Authority made any **bye-laws** relating to areas below MLWM? Yes / No
If yes please list subjects on page 4
- Q11 Does the spatial extent of your development plan's proposal map (**Local Plan / UDP**) extend below MLWM? Yes / No
If yes please enclose a copy
- Q12 Has your Local Authority produced a **Coast or Beach Management Plan**, and if so, does it extend to areas below MLWM? Yes / No
If yes please enclose a copy of any map in the plan
- Q13 Has your Local Authority produced or contributed to the production of a **Shoreline or Estuary Management Plan** Yes / No
Final / Draft
Date
- Q14 Is your Local Authority contributing to any Management Plan for a **Marine SAC** (Special Area of Conservation under Regulation 33 of the Habitats Regulations 1994)? Yes / No
- Q15 Does your Authority have any of these **nature conservation areas** which extend below MLWM? Statutory Local Nature Reserve
Marine Nature Reserve
Sensitive Marine Area
Voluntary Marine Nature Conservation Area
- Q16 Are you aware of your Local Authority being **consulted** by other bodies in respect of regulatory controls, powers or issues below MLWM? Yes / No
If yes please indicate who consults you on page 4
- Q17 Are you aware of any **local practices or traditions** in which your Local Authority has been involved in maritime areas / issues. Yes / No
If yes please briefly describe them on page 4
- Q18 Has your Local Authority instigated any **special initiatives** to seek to resolve or co-ordinate the complex multi-agency controls of the marine environment? Yes / No
If yes please briefly describe them on page 4

In light of the above questions and answers, would you like to comment further about your perception and understanding of your Authority's jurisdiction?

Q1 Supplementary Information - Foreshore Ownership

We would welcome a brief description of the spatial / geographical extent of any ownership.

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Q2 Supplementary Information - Sea bed Ownership

We would welcome a brief description of the spatial / geographical extent of any ownership and, if known, its origins.

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Q3 Supplementary Information - Foreshore / Sea bed Lease

We would welcome a brief description of the date, principal purpose, and spatial / geographical extent (or a plan) of any lease.

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Q4 Supplementary Information - Port or Harbour Authority

We would welcome a brief description or a copy of a plan showing the area of jurisdiction of the port or the Harbour Order area.

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Q5 Supplementary Information - Local Acts of Parliament

We would welcome a brief description of the date, principal provisions, unusual provisions, and spatial / geographical extent of any local Acts of Parliament extending below MLWM.

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Q9 Supplementary Information - Regulatory Controls over areas below MLWM

We would welcome a list of the controls which the Authority operates below MLWM.

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Q10 Supplementary Information - Bye laws

We would welcome a brief description of the date, principal provisions, unusual provisions, and spatial / geographical extent of any Local Authority bye-laws extending below MLWM.

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Q16 Supplementary Information - Consultations

Please indicate which bodies consult your Authority and why.

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Q17 Supplementary Information - Local Practices and Traditions

We would welcome a brief description of any local practices or traditions involving your authority in the marine environment

Q18 Supplementary Information - Special Initiatives

We would welcome a brief description of any special initiatives which your Authority has instigated.

Thankyou for completing this questionnaire your cooperation is appreciated. Please return it by

15th September 2000

to

DTA

Sherwood House

144 Annesley Road

Hucknall

Nottingham

NG15 7DD

THANKYOU

If you have any queries relating to the completion of this questionnaire please telephone

David Tyldesley, Ben Hunt or Natalie Lavis on 0115 968 0092 (fax 0115 968 0344) or e.mail us at dta@dta.zee-web.co.uk

Our Ref: DT/PJC/1273
17th August 2000

Address

Dear Sir,

Local Authority Jurisdiction in the Marine Environment

We have been commissioned by the Department of Environment, Transport and the Regions, European Wildlife Division, to undertake a research project into the extent of Local Authority jurisdiction in the marine environment. We are working in conjunction with Browne Jacobson, Solicitors, who are specialists in, amongst other things, local government and nature conservation law.

The purpose of the project is to investigate the extent to which Local Authorities have jurisdiction over areas below mean low water mark. The results will be used by the Department to inform the debate generally, and to advise Ministers, about any improvements to the current systems for protecting nature conservation interests within the marine environment.

Delivery of nature conservation objectives in the terrestrial environment has relied mainly upon use of the planning system and the involvement of Local Authorities. In the marine environment matters become more complex with overlapping jurisdictions and more statutory regulators. Generally, between high and low water marks Local Authorities have jurisdiction through the planning system and other procedures. Below mean low water, many Authorities generally have no regulatory powers. However, we are aware that it is not this simple, because some Authorities do have jurisdiction below MLWM, for example, in ports or harbours, estuaries, bays, inlets and other specific areas. We are seeking to prepare a report setting out a definitive and legally sound understanding of the extent of Local Authority jurisdiction.

Whilst our team is able to undertake a wide range of research we are conscious of the fact that this is unlikely to reveal all of the variations in jurisdiction which may occur in England in Wales. Consequently, we have decided to write to the Solicitors (and separately to the Engineers) of each coastal Local Authority in England and Wales to request your help in compiling a complete picture. We are contacting the engineers as well because they often have special knowledge, through their role advising the Council as the Coast Protection Authority. We believe this will be the first project of its kind and the Department intends to facilitate publication of a summary of the results, probably through the DETR web site.

I should be most grateful if you would complete the attached questionnaire. This is the most effective way of assembling the necessary information on a consistent basis. We have tried to enable you to complete the questionnaire as quickly as possible. The questions on the first two pages generally have either a "yes" or "no" answer, or alternative answers which may be selected by ticking boxes. However, you will see that further clarification of some of the answers would be very helpful and the spaces on pages 3 and 4 are intended to allow additional information and comment.

I realise there are many pressures on your time but I hope you will agree this is an important and worthwhile research project and that individual contacts of this kind are the only way that the information can be collected. If it would help, we will be pleased to e.mail the questionnaire to you; simply send an e.mail to dta@dta.zee-web.co.uk and we will return the questionnaire in electronic form promptly.

Should you wish to discuss any aspect of the project with us do not hesitate to contact me, or my Associate, Ben Hunt, or our Assistant, Natalie Lavis.

We should be most grateful if you would return the completed questionnaire to the address below by 15th September 2000 David Tyldesley & Associates Sherwood House 144 Annesley Road Hucknall Nottingham NG15 7DD Thankyou in anticipation of your help which will be greatly appreciated by the Department and ourselves. Yours faithfully, David Tyldesley Principal david@dta.zee-web.co.uk

APPENDIX B

GLOSSARY, DEFINITIONS AND JUDICIAL INTERPRETATION OF

KEY TERMS

This Appendix considers the key terms which are used in relation to local authority jurisdiction in the marine environment. It provides legal definitions of these terms and where relevant any judicial interpretation of them.

Baseline

Some legislation provides seaward jurisdiction from the "baseline". The "baseline" is brought into existence when jurisdiction is conferred over an area described as represented on a map using grid references or co-ordinates. The baseline is the landward extent of such an area.

S.1(b) Territorial Sea Act 1987

The baselines from which the breadth of the sea are measured shall for all purposes be those established by Her Majesty in Council.≡

The United Nations Convention on the Law of the Sea states that the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast.

Beach

From the judgment in the case of Tito -v- Waddell (No 2) [1977] 3 All ER 129

"In the normal use of language I very much doubt whether anyone would now use the term "beach" so as to exclude the sand and shingle which lie immediately above the high water mark..... If one begins at the seaward, I would say that the ordinary low water mark (or possibly the low water mark of spring tides) would normally be regarded as the dividing line between the beach and the sea-bed. From low water mark upwards to high water mark and beyond would all fairly be said to be part of the beach..... Ψ In my judgment, all that lies to the landward of high water mark and is in apparent continuity with the beach at high water mark will normally form part of the beach."

Words and Phrases legally defined (Butterworths 3rd Ed.)

"The seashore, foreshore or sea beach (for in legal parlance these are generally synonymous terms) is that portion of the realm of England which lies between the high water mark of medium high tide and low water mark"

Below Low Water Mark

This expression is used throughout this report and is intended to refer to all areas which lie seaward of the low water mark which is defined below. For the purposes of this report they are essentially the sub-tidal areas as defined below.

Channel

The Treherbert [1934] P31 at 46,47 CA, per Lawrence LJ

The word "channel" denotes a depression between two banks or ridges having a definite boundary on each side, and a narrow channel is a channel in which the two boundaries are close to one another.

Coast

From the case of R v Forty nine casks of Brandy [1836] 3 Hag Adm 257

"Coast is properly not the sea but the land which bounds the sea B it is the limit of the land jurisdiction B the character of this varies according to the state of the tide B must be considered as divisium imperium between high and low water"

Coastal Waters

S.74 Public Health (Control of Disease Act) 1984

In this actΨ *"coastal waters" means waters within a distance of three nautical miles from any point on the coast measured from low water mark of ordinary spring tides."*

S.343 Public Health Act 1936

"coastal waters" means waters within a distance of three nautical miles from any point on the coast measured from low water mark of ordinary spring tides."

The Urban Waste Water Treatment (England and Wales) Regulations 1994

"coastal waters" means the waters outside the low-water line or the outer limit of an estuary;

Creek

Errington Bv- Jessop (1982) 59 SLR 99 at 101, per Forster CJ

A "creek" in Great Britain means a small arm of the sea.

Estuary

Birrel Bv- Dryer (1984) 9 APP CAS 345 at 347, HL, per Lord Selbourne LC

The word "estuary" means the tidal part of a river.

The Urban Waste Water Treatment (England and Wales) Regulations 1994

"estuary" means the transitional area at the mouth of a river between fresh-water and coastal waters, the outer (seaward) limits of which are shown on maps kept in accordance with regulation 12

The dictionary definition is "a water passage where the tide meets a river current; especially an arm of the sea at the lower end of a river" The case of R Bv- Secretary of State for the Environment ex parte Kingston upon Hull City Council; R Bv- Secretary of State for the Environment ex parte Bristol City Council and Another (The Times 31 January 1996) also addressed the issue of "estuarine limits". Harrison J stated that there is no definition of "estuary" in United Kingdom legislation.

Foreshore

Words and phrases legally defined. (Butterworths 3rd Ed.)

"Seaward limit of the foreshore is usually taken to be the low water mark of [ordinary] tides.

The landward limit of the foreshore is the high water mark of ordinary tides, which is the line of medium tide between the spring and neap tides throughout the year."

"It has been held on special facts that "foreshore" means the whole of the shore that is from time to time exposed by the receding tide".

Schedule 1 para. 11 (3) Limitation Act 1980

"Foreshore" means the shore and bed of the sea and of any tidal water, below the line of the medium high tide between the spring tides and the neap tides."

Harbour

S.57 Harbours Act 1964

"harbour" means any harbour, whether natural or artificial, and any port, haven, estuary, tidal or other river or inland waterway navigated by sea-going ships, and includes a dock, a wharf

Harbour Authority

S.57 Harbours Act 1964

"harbour authority" means any person in whom are vested under this act, any another act or by an order or other instrument (except a provisional order) made under another act or by a provisional order powers or duties of improving , maintaining or managing a harbour."

S.108 Explosives Act 1875

The expression "harbour authority" means any person or body of persons...being or claiming to be proprietor or proprietors of or entrusted with the duty or invested with the power of improving, maintaining, managing or regulating any harbour properly so called, whether natural or artificial, and any port, haven, and estuary, or

intrusted with the duty of conserving , maintaining or improving the navigation of any tidal water, and any such harbour, port, haven, estuary, tidal water and any wharf, dock, pier, jetty, and work, and other area, whether land or water, over which the harbour authority Ψ..have control or exercise powers."

Harbour Land

S.57 Harbours Act 1964

"harbour land" means land adjacent to a harbour and occupied wholly or mainly for the purposes of activities there carried on."

High Seas

Halsbury's Laws of England (Vol. 49 (2))

"At common law "high seas" includes the whole of the sea below low water mark Ψexcept for such parts of the sea as are within the body of a county"

High Water Mark

BSAC Sport Diving Manual

The highest level reached by the sea surface during any one cycle.

Inland Waters

Planning and Compensation Act 1991

"inland waters" means waters which do not form part of the sea or of any creek, bay or estuary or of any river as far as the tide flows;

But The Water Resources Act 1991 defines "Inland water" as meaning

"any of the following in any part of Great Britain:

any river, stream or other watercourse , whether natural or artificial and whether tidal or not;

any lake or pond, whether natural or artificial, and any reservoir or dock; and

any channel, creek, bay, estuary or arm of the sea."

Internal Waters

United Nations Convention on the Law of the Sea

Waters on the landward side of the baseline of the territorial sea form part of the internal waters of the State.

Land

S.29 Environmental Protection Act 1990

"includes land covered by waters where the land is above the low water mark of ordinary spring tides"

S.65 Finance Act 1996

"in this section land includes land covered by water where the land is above the low water mark of ordinary spring tides"

S.57 Harbours Act

Aland includes land covered by water."

Low Water Mark

See also ABelow Low Water Mark≅ above. As a matter of fact the low water mark moves constantly as a result of tidal changes. It is not therefore possible to draw a line on a map which will accurately represent "low water mark".

Without further definition the administrative boundary of a local authority extends to the "low water mark" [see S. 72 Local Government Act 1972]

The concept or phrase "low water mark" is not helpful since it is not certain. It is necessary to combine all low water marks once a year to provide the average, which can be found for example on the Ordnance Survey maps (stated to be low water mean meridian tides)

The precise definition of "low water mark" was considered in :- Loose Bv- Castleton [(1978) 41 P & CR 19]; A-G Bv- Chambers [(1954) 4 De GM & G 206] and Scrutton Bv- Brown [(1825) 4 B & C 485].

All of the above cases were considered in Anderson Bv- Alnwick District Council [(1993) 3 All ER 613]. It was the view of Evans LJ in this case that:

"there is no established rule of law that the low water mark is necessarily the line of median low water Nor is there any general rule as to the meaning of "low water line" or "low water mark" which should apply as a matter of law, regardless of context It is also important to recognise that in some contexts it may be necessary to establish a fixed line or even an artificial line."

It was decided on the facts that the low water line meant the low water mark from time to time. Whilst in none of the above cases a definitive interpretation is established, it seems likely that without further clarification "low water mark" can only mean such low water position as is reached in any given tide. It would therefore appear that the seaward administrative boundary of a local authority is constantly fluctuating with the level of low tide.

BSAC Sport Diving Manual

The lowest level reached by the sea surface during any one cycle.

Marine Area

Regulation 2 (1) Habitats Regulations 1994

Any land covered (continuously or intermittently) by tidal waters of any part of the sea up to a seaward limit of territorial waters.

Mean High Water Springs

BSAC Sport Diving Manual

The average height of high water at spring tides throughout the year.

Mean Low Water Springs

BSAC Sport Diving Manual

The average height of low water at spring tides throughout the year."

Nautical Miles

S.1 (7) Territorial Sea Act 1987

Means International nautical miles of 1,852 metres.

Neap Tides

BSAC Sport Diving Manual

When the moon is at right angles to the earth/sun axis, we get the least range between high and low waters known as neap tides."

Those tides of minimum range occurring about twice a month, at or near the first and last quarters of the moon.

Sea

S. 23 Food and Environment Protection Act 1985

Includes any area submerged at Mean High Water Springs and also includes so far as the tide flows at Mean High Water Springs, an Estuary or arm of the sea and the waters of any channel creek, bay or river.

S.20 Sea Fisheries Regulation Act 1966

"sea" includes the coast up to high water mark.

S.12 Dumping at Sea Act

"sea" includes any area submerged at mean high water.

Seashore

Words and phrases legally defined (Butterworths 3rd Ed)

Is that portion of the realm of England which lies between the high water mark of medium high tide and low water mark (but it has been said that all that lies to the landward of high water mark will normally form part of the beach, and it has been held on special facts that "foreshore" means the whole of the shore that is from time to time exposed by the receding tide.)

Coast Protection Act 1949

The bed and shore of the sea, and of every channel, creek, bay or estuary and of every river as far up that river as the tide flows and any cliff, bank barrier, dune, beach, flat or other land adjacent to the shore.

Mellor v Walmesley [1905] 2 Ch 164, CA per Stirling J

"means that portion of the land adjacent to the sea which is vested in the Crown, subject to the rights of the King's subjects of fishing and navigation.

Spring Tides

BSAC Sport Diving Manual

"When the moon is directly between the sun and the earth, the combined pull of the moon and the sun is strongest and we get the highest high waters and the lowest low waters. The change in level between high water and low water (range) is the maximum B these are known as the spring tides. Those tides of maximum range occurring about twice a month, at or near new or full moon."

Sub-tidal Areas

This expression is used throughout this report and is intended to refer to all areas of the sea which lie below the inter-tidal areas, that is, generally seaward of the low water mark which is defined above.

Territorial Sea

S.1 Territorial Sea Act 1987

"Extends 12 Nautical Miles."

Tidal Waters

s. 108 Explosives Act 1875

The expression "tidal waters" means any part of the sea or of a river within the ebb and flow of the tides at ordinary spring tides.

S.108 Explosives Act 1875

"The expression "tidal waters" means any part of the sea or of a river within the ebb and flow of the tides at ordinary spring tides."

APPENDIX C

List of Local Authorities which Responded to the Questionnaire

Wales

Anglesey
Cardiff
Carmarthenshire
Ceredigion
Denbighshire
Flintshire
Monmouthshire
Vale of Glamorgan

England

Adur
Allerdale
Arun
Barking and Dagenham
Barrow in Furness
Blackpool
Blyth Valley
Boston
Bournemouth
Brighton and Hove
Carlisle
Carrick
Chelmsford
Chichester
Christchurch
Cleveland*
Colchester
Dartford
Eastbourne
East Devon
East Lindsey
Ellesmere Port and Neston
Fareham
Forest of Dean
Gosport
Great Yarmouth
Hartlepool
Ipswich*
Isle of Wight
Kerrier
Kingston upon Hull
Lancaster
Liverpool*
Maldon
Medway
New Forest
North Cornwall
North Devon
North East Lincolnshire

North Somerset
Penwith
Plymouth
Poole*
Portsmouth
Purbeck
Redcar*
Restormel
Rochford
Rother
Scarborough
Sedgemoor
Sefton
Southampton
Southend on Sea
South Gloucestershire
South Hams
South Holland
Suffolk Central
Sunderland*
Teignbridge
Tendring
Thurrock
Torridge
Waveney
West Dorset
West Somerset
Weymouth and Portland
Wirral
Worthing
Wyre
Total 79 authorities

* indicates a later response which was taken into account in the overall findings but not in the statistical analysis.

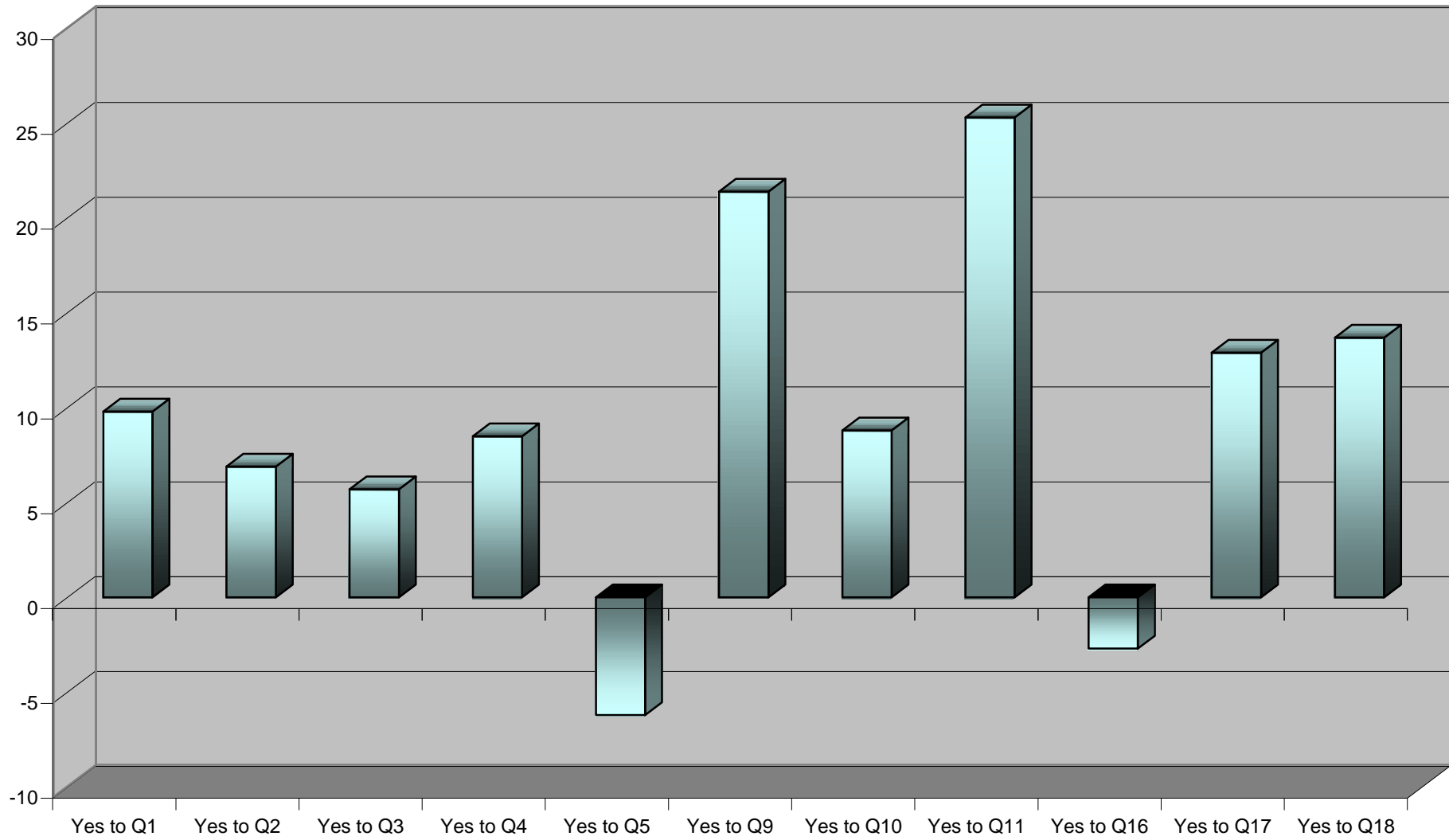
APPENDIX D

REFERENCES

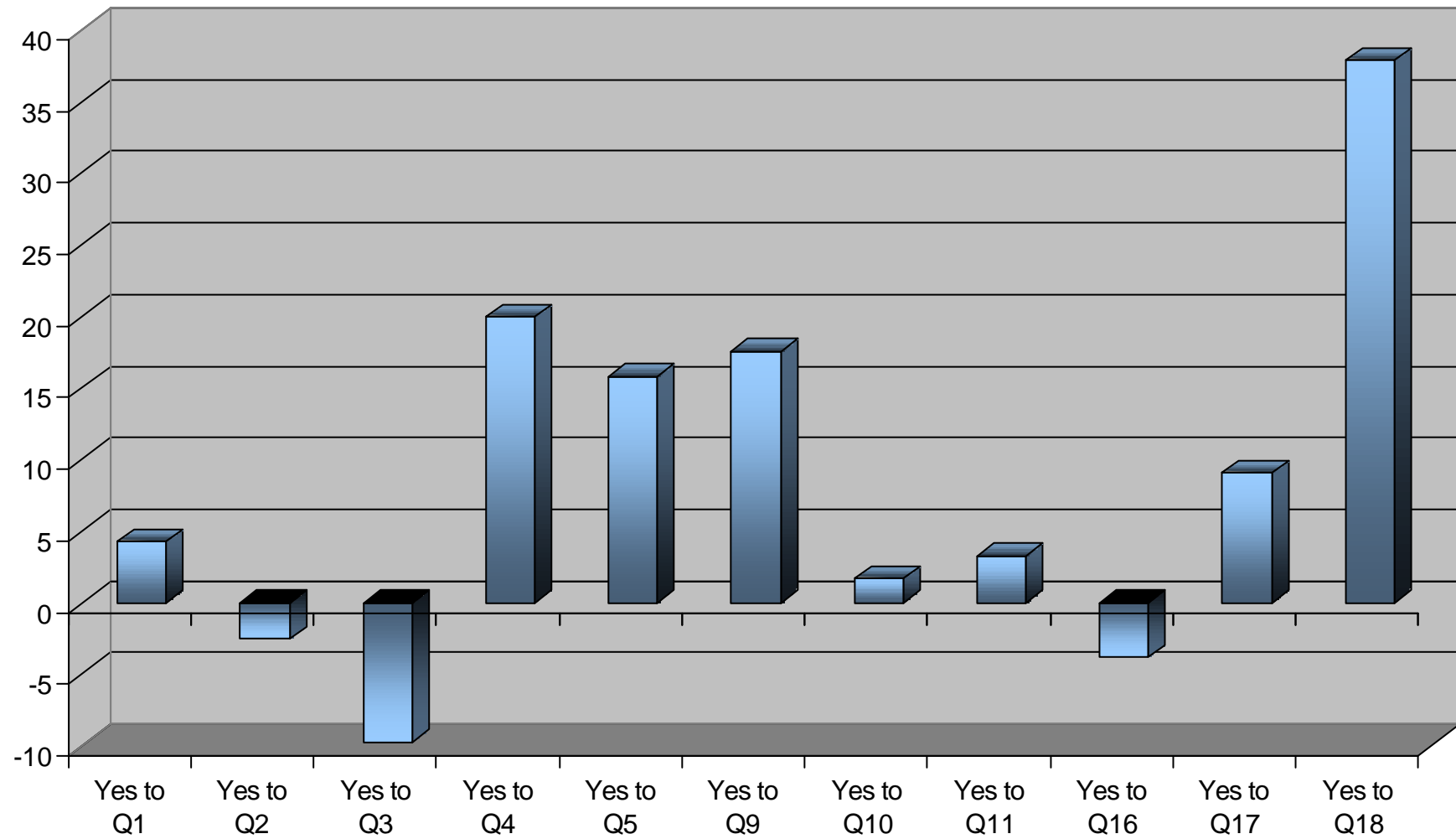
- [1] Department of the Environment, Transport and the Regions, 1998, '*Sites of Special Scientific Interest - Better Protection and Management*' Department of the Environment, Transport and the Regions
- [2] Laffoley, D. d'A, and Bines T. 2000, *Measures to Protect and Manage Nationally Important Marine Habitats and Species*. Prepared by English Nature based on the views of a sample of the members of the DETR Working Group on the Review of Marine Nature Conservation. Peterborough, English Nature.
- [3] Halsbury's Laws of England [(4th Ed. Reissue) Vol.49 (2) para.2].
- [4] Current Law Statutes Annotated Vol 1 ch.8
- [5] Halsbury's Laws of England [(4th Ed.) Vol.36.1 para. 682]
- [6] Department of the Environment and Welsh Office, 1992, *Planning Policy Guidance Note 20 Coastal Planning*, HMSO
- [7] Douglas R.P.A., 1993, *The Law of Harbours and Pilotage*

APPENDIX E
CORRELATION GRAPHS RELATING TO SECTION 14

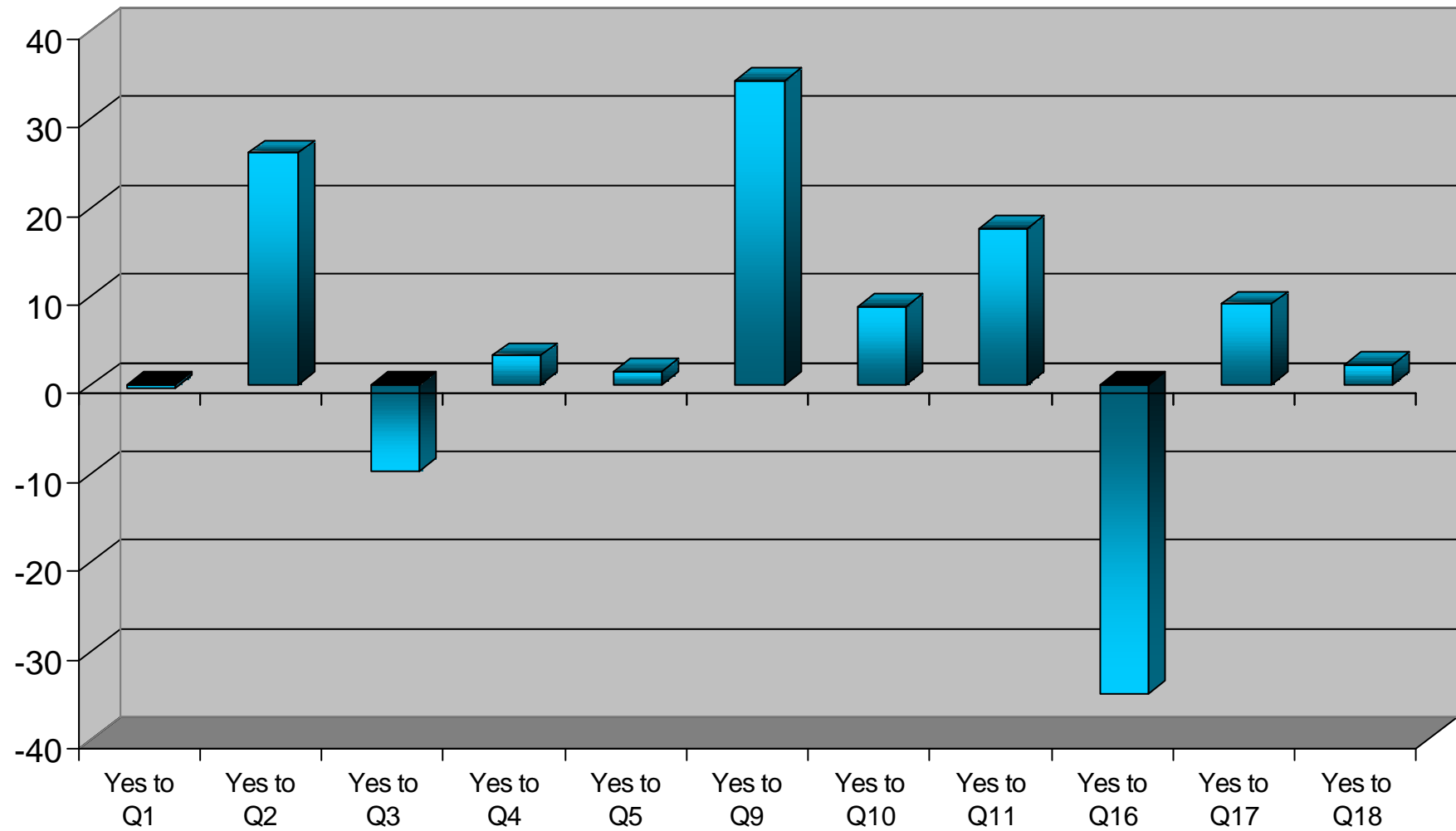
Difference between those who answered "Yes" overall, and those who answered "Yes" to Q6 and related questions



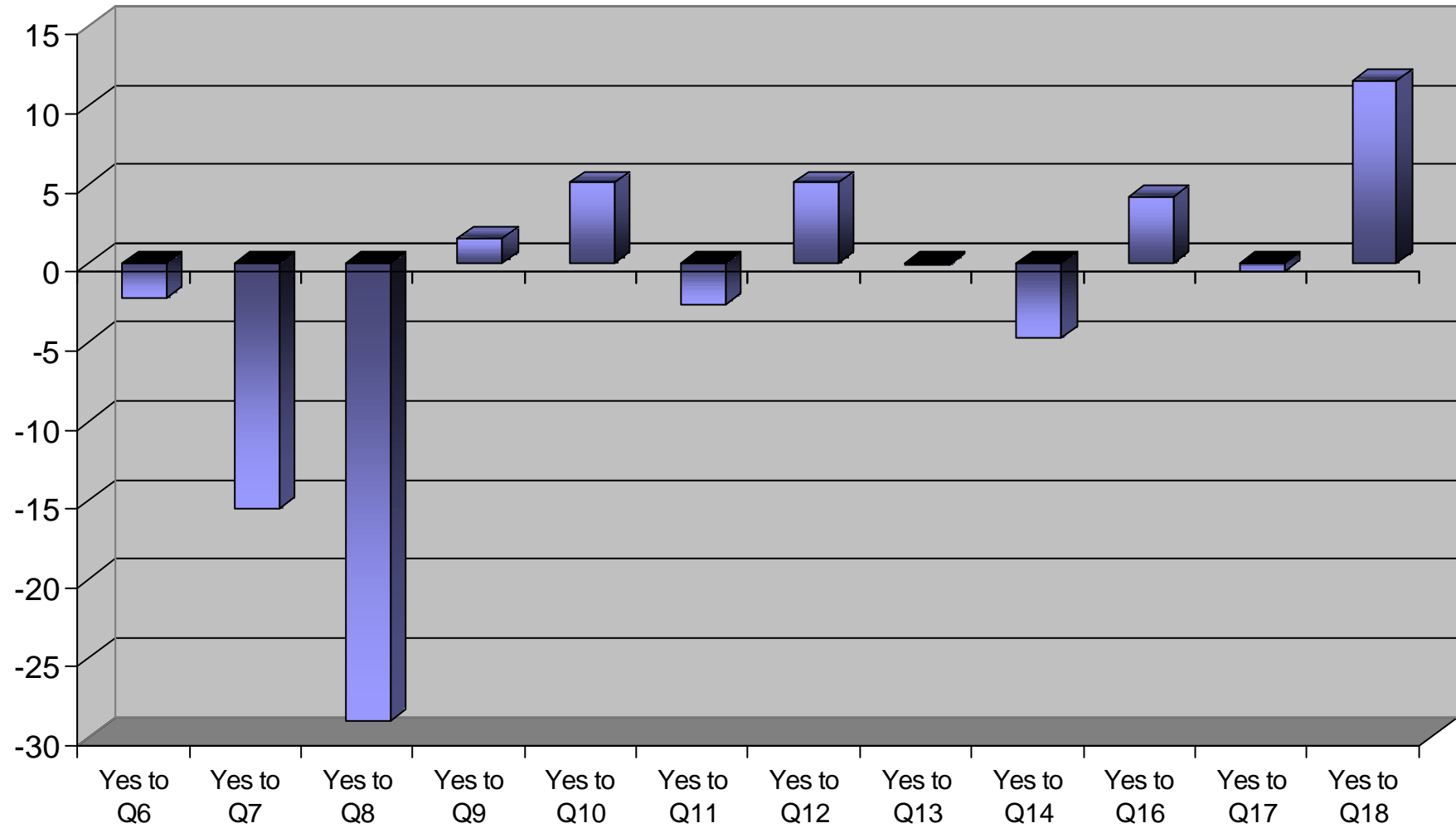
Difference between those who answered "Yes" overall, and those who answered "Yes" to Q7 and related questions



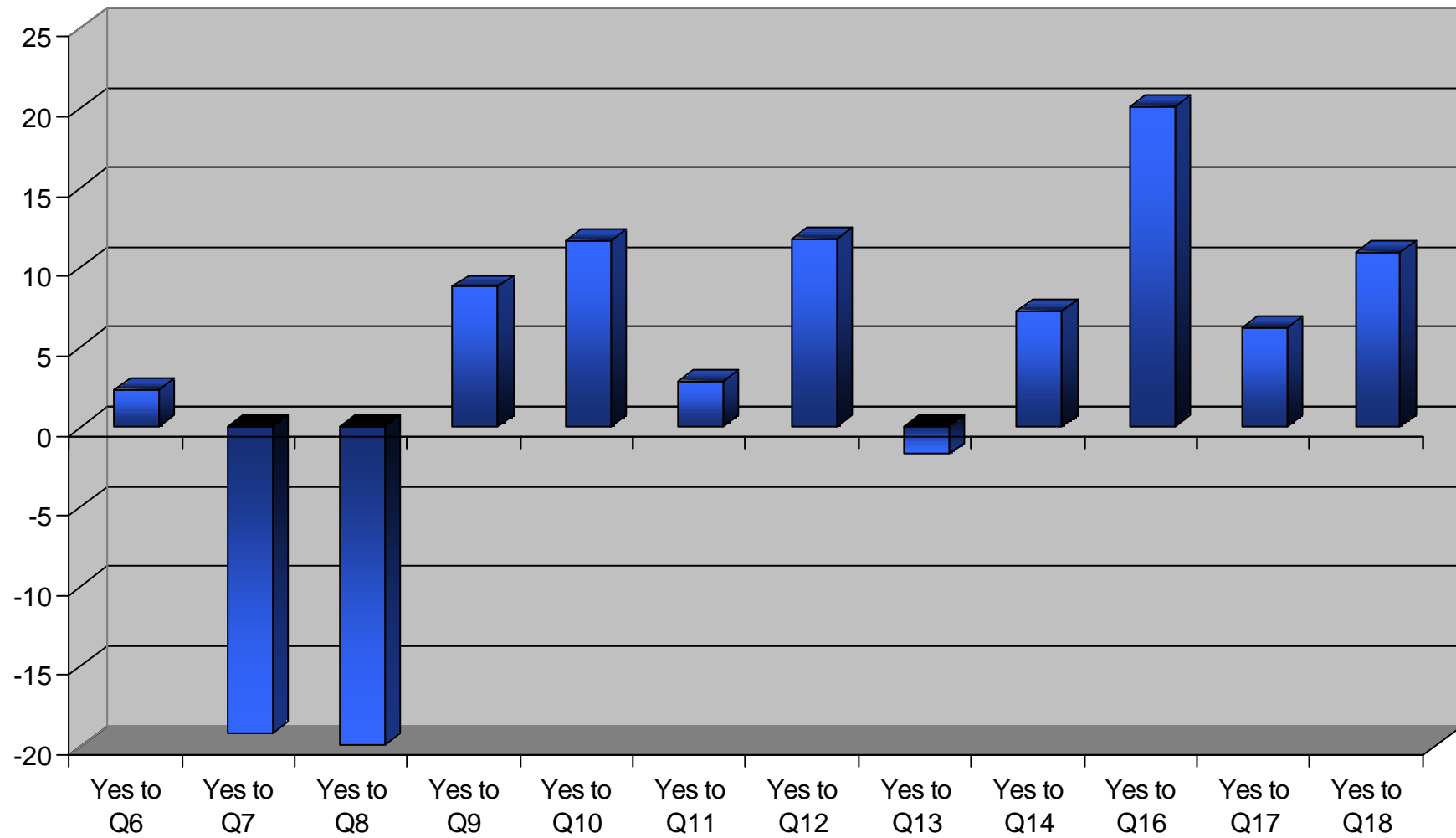
Difference between those who answered "Yes" overall, and those who answered "Yes" to Q8 and related questions



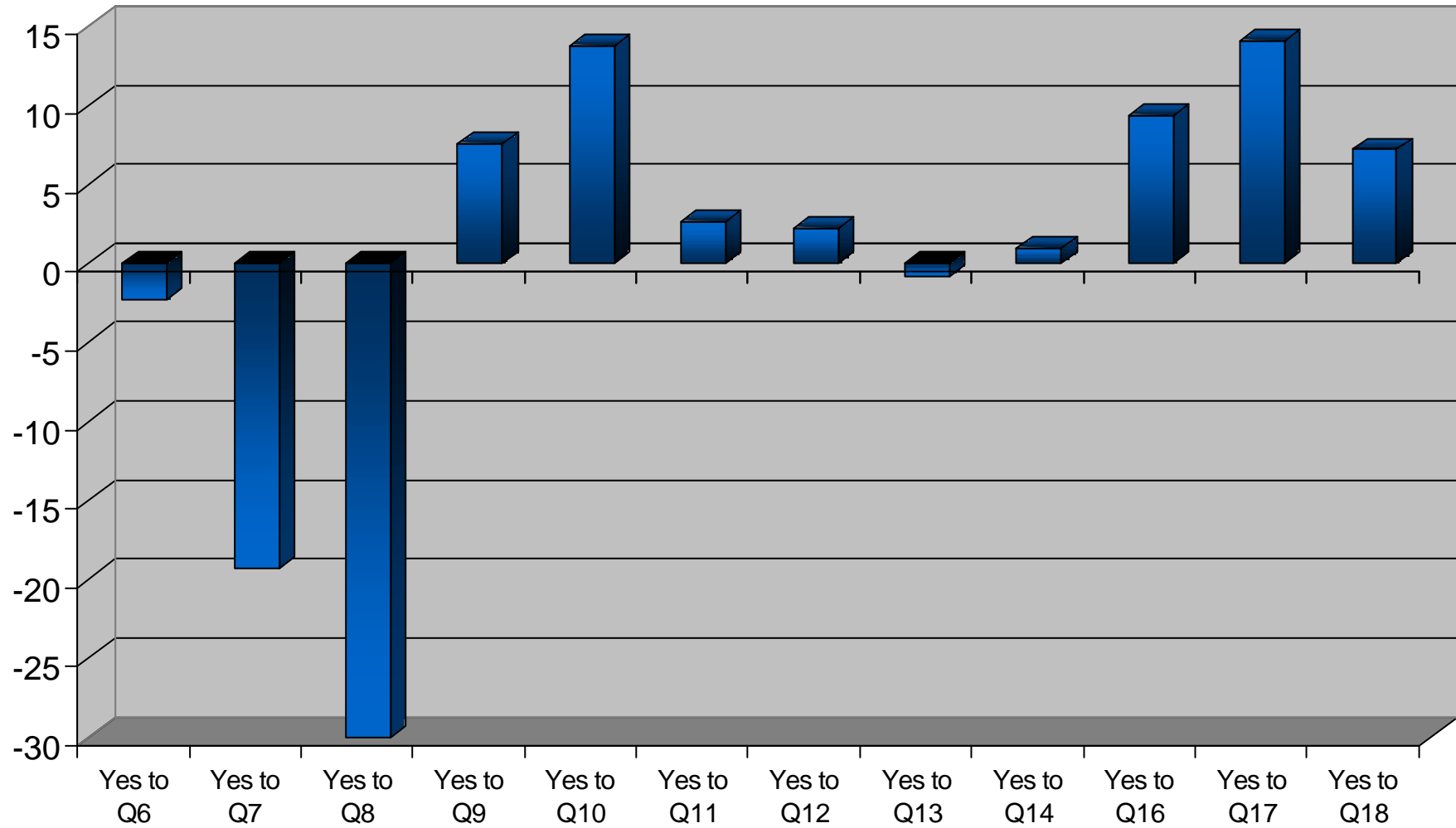
Difference between those who answered "Yes" overall, and those who answered "Yes" to Q1 and related questions



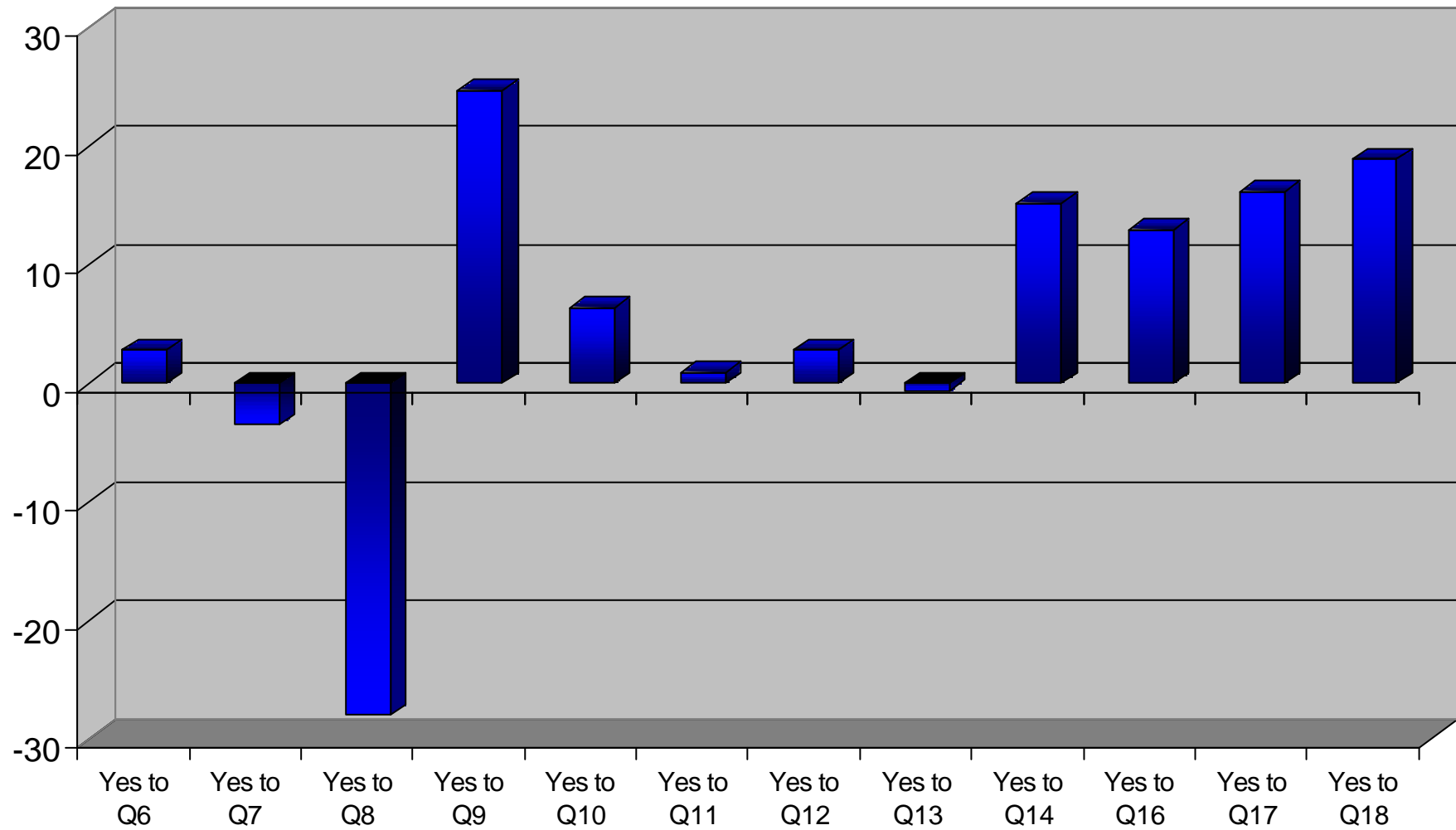
Difference between those who answered "Yes" overall, and those who answered "Yes" to Q2 and related questions



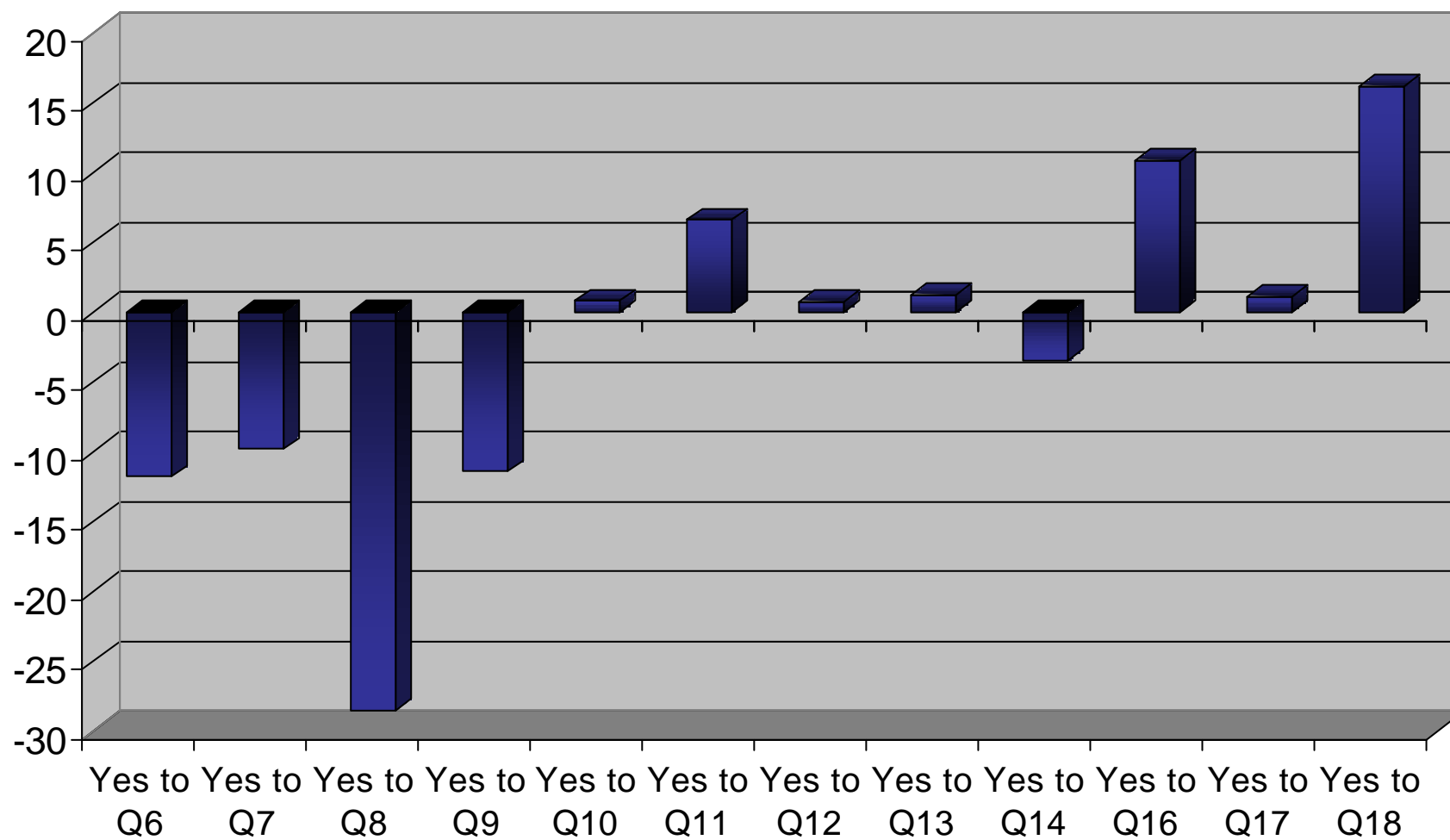
Difference between those who answered "Yes" overall, and those who answered "Yes" to Q3 and related questions



Difference between those who answered "Yes" overall, and those who answered "Yes" to Q4 and related questions



Difference between those who answered "Yes" overall, and those who answered "Yes" to Q5 and related questions



Difference between those who answered "Yes" overall, and those who answered "Yes" to Q15 and related questions

