



## The National Borders of Scotland

Updated July 2011

Scotland's national borders comprise one terrestrial border with England and several sea borders, two with England and several with other countries (the Isle of Man, Ireland, Faeroes, Norway, Denmark, Germany and the Netherlands). The government of the United Kingdom has attempted to make unwarranted and illegal changes to both the terrestrial and the North Sea borders between Scotland and England. All these purported changes have been unfavourable to Scotland.

The purposes of this paper are:

- To provide the Scottish people with complete information on Scotland's true national borders, including information on historic illegal attempts to change them;
- To expose the UK Government's recent and current bad-faith manoeuvres to change the true national borders;
- To expose the Scottish Government's dereliction of its duty to the people of Scotland by not taking constant and unceasing official action against those illegal UK Government actions;
- To expose the European Union's undemocratic, bureaucratic, imperialistic and often recklessly incompetent intrusions into Scotland's territorial waters.

This paper is a substantial update and extension of 'Scotland's National Borders', originally published by the SDA in August 2009.<sup>1</sup> It also incorporates some material from 'Scotland's Hijacked Oil Revenue', published in September 2010. This paper adds significant relevant material which has recently come to

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<sup>1</sup> The Scottish Democratic Alliance (SDA) is registered with the Electoral Commission (Edinburgh 9/07/09) as a political party. It currently operates as a think tank to prepare itself for the Scottish election in 2016.

light, and examines some of the ramifications of the European Union's Lisbon Treaty and alternatives to Scotland's remaining in the European Union.

## Terrestrial Border

Scotland's terrestrial border with England was fixed on 25 September 1237 by the Treaty of York, signed by Alexander II of Scotland and Henry III of England. Even after the 1707 union it remained the boundary between two distinct and independent legal systems. It runs from the Solway Firth in the west to the mouth of the River Tweed in the east, mostly using rivers, mountain ridges and other natural features. There was a tidying-up agreement between the two kingdoms in March 1552 on the largely featureless so-called Debateable Lands between the rivers Sark and Esk in the west, but otherwise the now completely definitive Scotland-England terrestrial border has never been legally altered in almost eight centuries.

With this, Scotland gave up a good deal of territory further south, including the town of Carlisle, where the first Scottish Royal Mint had been set up by King David I in 1136. The loss of Scottish territory was the price Alexander paid for the firm and now legally unalterable establishment of the Scottish/English border on its present line, including the Tweed estuary south of Berwick.

Figure 1 depicts the true terrestrial border. Figure 2 depicts the area north of that border that the UK government unlawfully claims is part of the County of Northumberland, England.

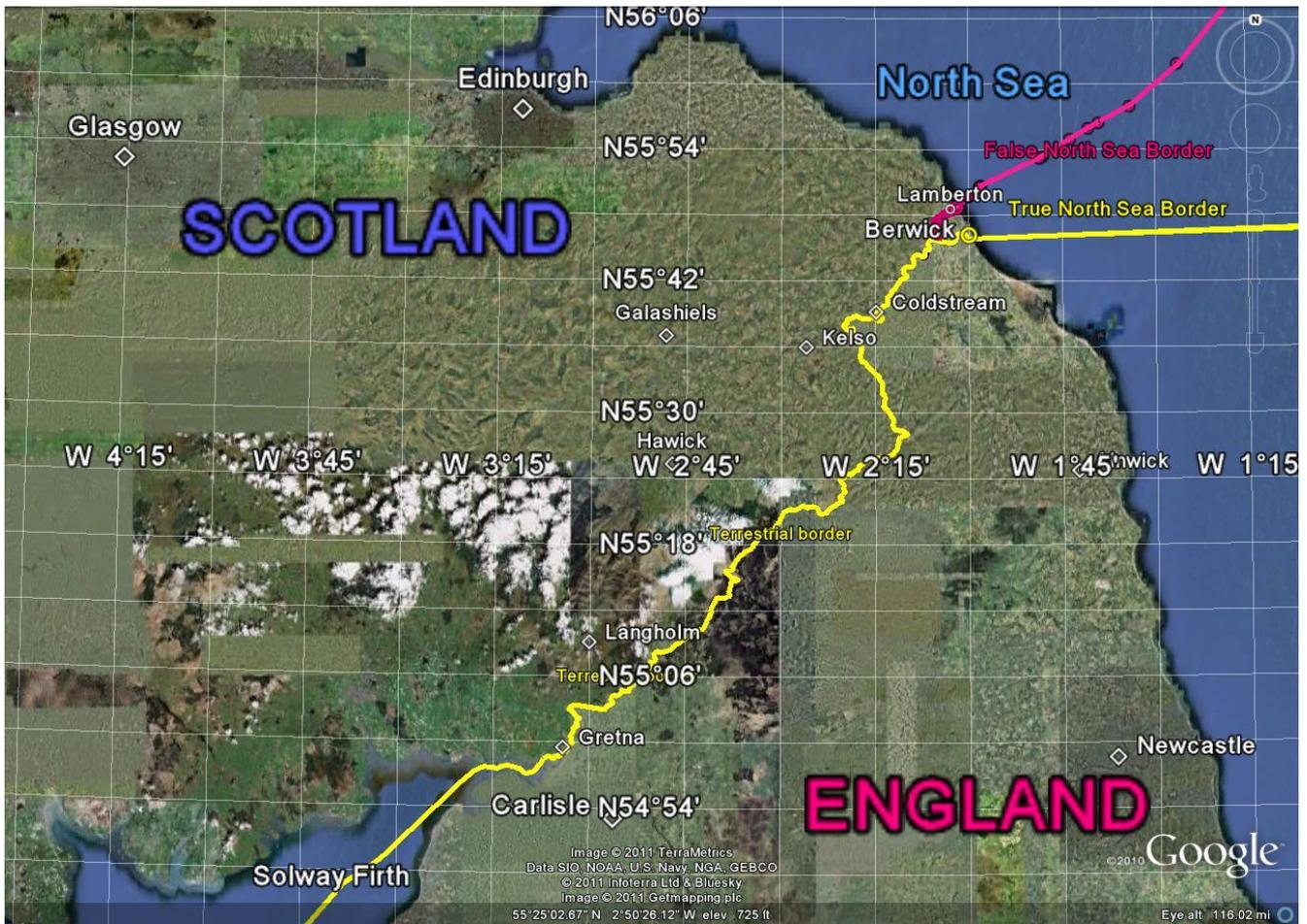
Following is a summary of the history of the terrestrial border:

1. The English invaded Scotland and unlawfully occupied the Scottish Royal Burgh of Berwick on Tweed on a number of occasions between 1296 and 1482. Berwick had received its founding royal charter from Scotland's King David I in the year 1124. The town did not simply "change hands", as has been alleged, for even then its Scottish status was never in doubt. These invasions were military aggression with no constitutional force, and furthermore were in violation of the 1237 Treaty of York, which established the border at the River Tweed.
2. The subsequent compromise, under the 1502 Treaty of Perpetual Peace, of leaving Berwick under English administration *while remaining part of Scotland*, did not alter the Tweed border.
3. English law did not apply in Berwick at the time of the Union in 1707. The recognition of the Church of England in the Acts of Union by both the Scottish and English Parliaments<sup>2</sup> did not in any way change the Scottish-English Border.

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<sup>2</sup> Respectively, [http://www.opsi.gov.uk/RevisedStatutes/Acts/asp/1707/casp\\_17070007\\_en\\_1](http://www.opsi.gov.uk/RevisedStatutes/Acts/asp/1707/casp_17070007_en_1) and <http://www.legislation.gov.uk/aep/Ann/6/11/contents>.

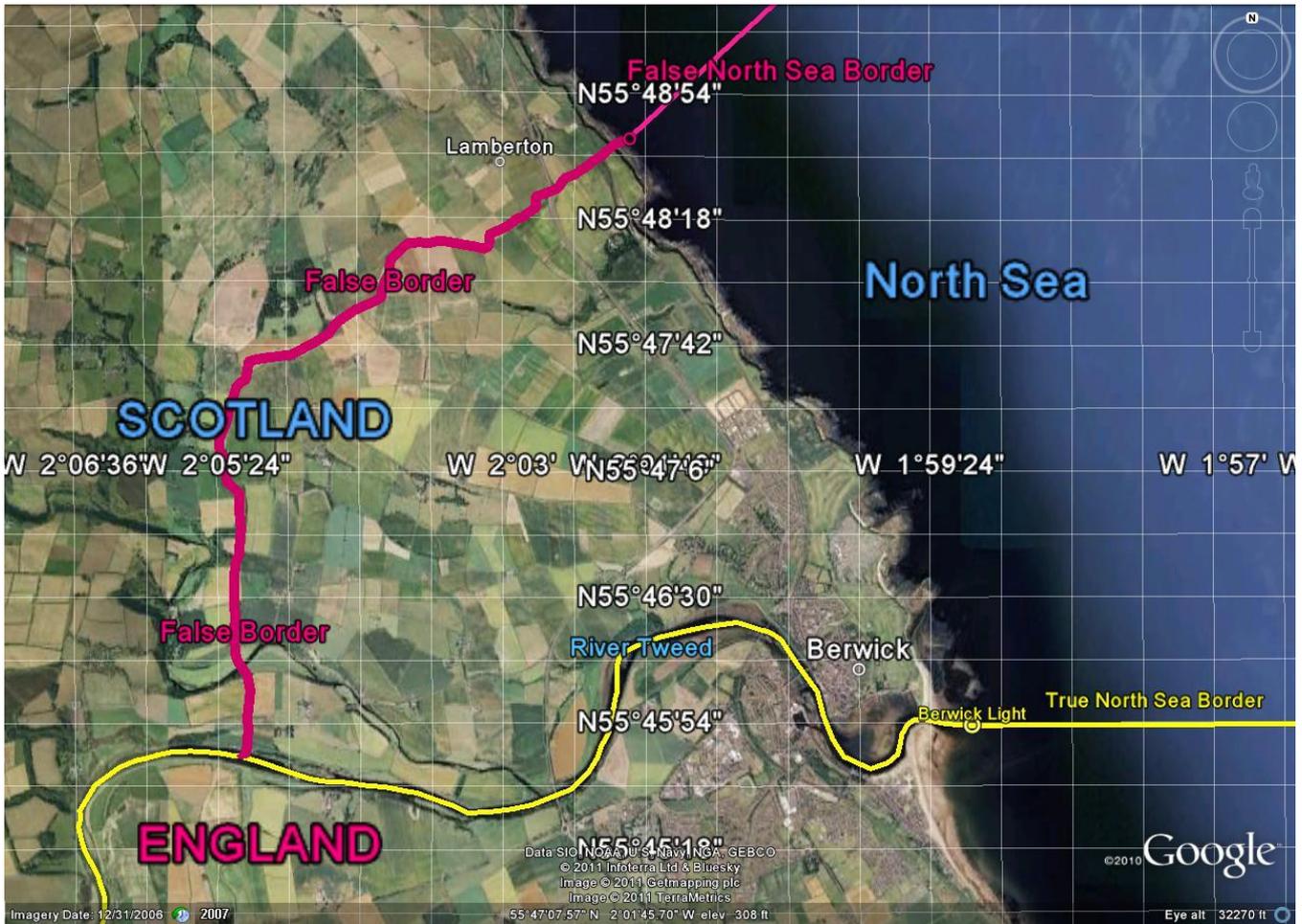
Figure 1. The Scotland-England Terrestrial Border



4. The UK government's Wales and Berwick Act 1746, section 3, unconstitutionally ordained that henceforth English Law would apply in Berwick-upon-Tweed. It did not incorporate Berwick into England. The 1746 act was a panic measure in reaction to the 1745/46 Jacobite scare (like banning tartan and bagpipes). In August 1850 Queen Victoria underlined the permanent constitutional validity of the Tweed border when she opened the Royal Border Bridge, which crosses the Border (the River Tweed) into Berwick.
  
5. The entire Wales and Berwick Act 1746 was repealed by the Interpretation Act 1978<sup>3</sup>. Berwick remained a separate enclave under English administration. However, in 2009 the Borough of Berwick upon Tweed was abolished and the enclave was amalgamated with the English County of Northumberland, thereby losing its identity for the first time in eight centuries. This unconstitutional gesture has no bearing on Berwick's status as an English-administered part of Scotland's territory. The actual structure of that administration is an English internal matter that does not affect the constitutional reality.

<sup>3</sup> [http://www.opsi.gov.uk/acts/acts1978/pdf/ukpga\\_19780030\\_en.pdf](http://www.opsi.gov.uk/acts/acts1978/pdf/ukpga_19780030_en.pdf), Schedule 3.

Figure 2. Area of Unlawful English Incursion into Scotland



6. The drafters of UK legislation have repeatedly assumed in error that the administrative boundary near Lambertton represents the border. None of this legislation (including the Scottish Adjacent Waters Boundaries Order 1999, which will be discussed later) is of any relevance to the status of Berwick in the event of Scotland becoming independent.
7. Berwick has never ceased to be the natural centre for Berwickshire and the eastern Scottish Borders. It is very remote from all the major English population centres and remains oriented towards Edinburgh and the north. Berwick houses the Home HQ and museum of the King's Own Scottish Borderers, formerly a Scottish regiment which is now 1<sup>st</sup> Battalion of the Royal Regiment of Scotland (Royal Scots Borderers) in the reorganised Army structure. Berwick's football team plays in the Scottish league, the local accent sounds Scottish, and a poll in 2008 showed that 80% of the population would prefer to come under Scottish government.<sup>4</sup>

<sup>4</sup> <http://www.timesonline.co.uk/tol/news/politics/article3359670.ece> and <http://www.telegraph.co.uk/news/uknews/1578418/Berwick-upon-Tweed-in-Scottish-border-clash.html>

8. When independence happens, the Scottish-English terrestrial border will remain on the line that existed at the moment of union on 1 May 1707, i.e. from the middle of the Solway Firth to the middle of the Tweed estuary – a border that has stood for almost eight centuries.

### **Attempted illegal changes to the Terrestrial Border**

The UK government has made unwarranted and illegal attempts to redefine the last few miles of the eastern part of the border, which is the centre of the River Tweed. The true border was redirected at 55°45'43.55"N–02°05'08.42"W. The border line was redirected toward the north and then eastward to the coast at 55°48'42"N–02°01'54"W near Lamberton (see the red line in Figure 2). However, since the Treaty of York was never rescinded, it was not possible to alter the constitutionally fixed border at the mouth of the River Tweed; therefore the border movement has no constitutional validity.

The coordinates of the Tweedmouth harbour light are 55°45'53.28"N–1°59'03.12"W. The breakwater wall was built in 1810-11, presumably to deepen the river for navigation by narrowing it and thereby increasing the flow. The satellite image in Figure 3 shows quite clearly that the wall ends almost exactly in the middle of the natural channel of the estuary<sup>5</sup>, so that the harbour light on its end, built in 1826, can be taken to be the end of the Scotland-England terrestrial border, and the starting point of the North Sea border as shown in Figure 3.

### **North Sea Border**

Scotland's constitutional North Sea border starts from the centre of the mouth of the River Tweed, the true border, and not from near Lamberton. The international law of the sea states the following in Article 15, *Delimitation of the territorial sea between States with opposite or adjacent coast*.<sup>6</sup>

*Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. **The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith** [bolding added].*

Scotland certainly has “historic title” to the mouth of the River Tweed. Moreover, the sea border has been recognised by fishermen as the latitude of the border for hundreds of years – probably since the 14<sup>th</sup> century. These are obviously “special circumstances”. So the true North Sea border extends due east from

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<sup>5</sup> [http://www.portofberwick.co.uk/index.php?option=com\\_content&view=article&id=99&Itemid=138](http://www.portofberwick.co.uk/index.php?option=com_content&view=article&id=99&Itemid=138) .

<sup>6</sup> [http://www.un.org/Depts/los/convention\\_agreements/texts/unclos/part2.htm](http://www.un.org/Depts/los/convention_agreements/texts/unclos/part2.htm), particularly articles 5, 7 & 9.

the mouth of the River Tweed at latitude  $55^{\circ}45'53.28''\text{N}$  until it ends at the boundary with the Netherlands Exclusive Economic Zone.<sup>7</sup>

Figure 3. The True Border at the Mouth of the River Tweed



In 1968 the UK government ignored the true border and set a false border at latitude  $55^{\circ}50'\text{N}$ , near Marshall Meadows about a mile south of Lamberton, by imposing the Continental Shelf (Jurisdiction) Order 1968<sup>8</sup>. This Order established the Scotland-England border and Scottish legal jurisdiction in the North Sea as being north of a line running due east at  $55^{\circ}50'\text{N}$ . The coordinate is actually erroneous, and was apparently used just because it is a round figure purportedly representing the latitude of the coast near Lamberton, which is  $55^{\circ}48'42''\text{N}$ .

<sup>7</sup> Under the law of the sea, an Exclusive Economic Zone (EEZ) is a sea zone over which a state has special rights over the exploration and use of marine resources. It stretches from the edge of the state's territorial sea out to 200 nautical miles from its coast unless terminated at the boundary of another nation's EEZ. In casual use, the term may include the territorial sea and even the continental shelf beyond the 200 mile limit. See [http://en.wikipedia.org/wiki/Exclusive\\_Economic\\_Zone](http://en.wikipedia.org/wiki/Exclusive_Economic_Zone).

<sup>8</sup> [http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/GBR\\_1968\\_Order892.pdf](http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/GBR_1968_Order892.pdf). This was probably done to make the 1968 false border consistent with the UK government's 1968 submission to the United Nations Convention on the Law of the Sea (UNCLOS).

The 1968 false border lies about 4.08 nautical miles (4.7 statute miles) north of the true border. No reason was given for this illegal move, but it probably had something to do with the increasing oil and gas activity in the North Sea area after 1964.<sup>9</sup>

The importance of citing the 1968 Order is that it acknowledged Scottish marine jurisdiction (as distinct from the 1879 Order, which applied English Admiralty law to Scottish waters), and also acknowledged that the Scottish-English North Sea marine border lies east-west along a parallel of latitude. The Order was confirmed and archived by the 1968 UK submission to the United Nations on the law of the sea.

### **Imposition of the Scottish Adjacent Waters Boundaries Order 1999**

On 13 April 1999 the UK government promulgated Statutory Instrument 1999 No. 1126, purported to be Constitutional Law and entitled 'The Scottish Adjacent Waters Boundaries Order 1999'.<sup>10</sup> The document states:

*Boundaries - internal waters and territorial sea*

*3. For the purposes of the Scotland Act 1998, the boundaries between waters which are to be treated as internal waters or territorial sea of the United Kingdom adjacent to Scotland and those which are not, shall be...*

...and then specifies the tables in Schedule 1 Part I and Schedule 2 Article 4 as defining the new North Sea boundary.

The document also states:

*4. For the purposes of the Scotland Act 1998, the boundaries between waters which are to be treated as sea within British fishery limits adjacent to Scotland and those which are not, shall be...*

...and then refers to the boundary specified above.

Very conveniently, nothing in that document limits its applicability to fisheries. That lack of limitation was not accidental. On 24 February 2009 The Times published 'Secret plan to deprive independent Scotland of North Sea oil fields'.<sup>11</sup> It stated, in part:

*Documents detailing secret government plans in the 1970s to prevent Scotland laying claim to North Sea oil have been seen by The Times. They show the extraordinary lengths to*

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<sup>9</sup> See [http://en.wikipedia.org/wiki/North\\_Sea\\_oil](http://en.wikipedia.org/wiki/North_Sea_oil), Section 1.2.

<sup>10</sup> Available at <http://www.opsi.gov.uk/si/si1999/19991126.htm>. There is a research note which outlines the background to this document at [http://www.scottish.parliament.uk/business/research/pdf\\_res\\_notes/rn99-06.pdf](http://www.scottish.parliament.uk/business/research/pdf_res_notes/rn99-06.pdf). The following statement was made on 23 March 1999 in the UK Parliament by Henry McLeish, who at that time was UK Minister for Home Affairs and Devolution, Scottish Office: "The boundary set out in the draft order will not change the common law border". That statement was patently not true.

<sup>11</sup> <http://www.timesonline.co.uk/tol/news/uk/scotland/article5728477.ece>.

*which civil servants were prepared to go to head off devolution, which was seen then as inevitably leading to independence.*

*The proposals included suggesting to Labour ministers, for whom devolution was a manifesto commitment, that progress towards a referendum should be delayed, in the hope that enthusiasm north of the Border would wane.*

*Treasury officials also advised that the boundaries of Scotland's coastal waters should be redrawn and a new sector created to "neutralise" Scotland's claim to North Sea oil – a step that was taken.*

The "step that was taken" was the Scottish Adjacent Waters Boundaries Order 1999, which illegally moved Scotland's North Sea border to the north, thereby transferring some 6,255 statute square miles (5,540 nautical square miles) of Scottish waters to English jurisdiction (see Figure 5).

Boundaries Order 1999 was quietly rushed through the UK Parliament without regard to serious reservations raised by MPs. For example, Mr. Archy Kirkwood, MP for Roxburgh and Berwickshire, stated the following on 20 July 1999:

**I beg to move that leave be given to bring in a Bill to require the Government to consult interested parties on whether to designate the coastal waters off Berwickshire as Scottish internal waters and to report to Parliament; and for connected purposes.**

**I seek leave to introduce a Bill whose purpose is to reopen the consultation process undertaken prior to the implementation of the Scottish Adjacent Waters Boundary Order earlier this year. I am particularly interested in the section of the order which affected 6,000 square miles of what was previously understood to be Scottish waters off the coast of Berwickshire. By virtue of the order, the area--known locally as the Berwickshire bank--now comes under the legal jurisdiction of England.**

**The Bill, if enacted later this Session, would require the Secretary of State for Scotland to reopen the formal process of consultation with fishing and other interested parties, and report back to Parliament. It may be unusual to introduce a parliamentary Bill for this purpose, but I believe that that is the only option open to Ministers--I note with satisfaction that the Under-Secretary of State for Scotland [Henry McLeish] is in his place--if local people in Berwickshire, and the Scottish Fishermen's Federation, are to have a meaningful chance to have their views considered and heard properly.**

**The Scottish Adjacent Waters Boundary Order 1999 was introduced to create a Scottish zone within British fishery limits. Scots law for sea fisheries applies within the zone created by the order. The order was an integral part, and inevitable consequence, of the overall political settlement enshrined in the Scotland Act 1998. It sets out the boundaries by listing the necessary Ordnance Survey co-ordinates in schedules attached to the order. It was debated in Committee on Tuesday 23 March 1999.**

...

**I further believe that the Standing Committee was not in full possession of all the principles and facts used internationally in deciding boundary questions between competing jurisdictions. Moreover, because of a lack of adequate notification, the Committee could not possibly have known of the strength of local feeling against the proposals. ... The Eyemouth and District Fishermen's Association and the Scottish Fishermen's Federation are very angry that the order was made without any of the usual consultations that are held between the Scottish Office and fishermen's organisations. When, for example, the Scottish Office undertook a review of controls of inshore fishing in Scotland, numerous organisations were personally contacted. The Government maintained, however, that the arrangements in the order involved nothing very significant, and that that had been pointed**

out by the former Scottish Office Minister, the hon. Member for Central Fife (Mr. McLeish), who, in Standing Committee, said:

"I fear that hon. Members are reading a bit too much complexity into the matter and suggesting that there is something either sinister or cynical about the measure."--[Official Report, Third Standing Committee on Delegated Legislation, 23 March 1999; c. 14.]

Additionally, the Secretary of State for Scotland, in his letter to the Scottish Fishermen's Federation, dated 13 July [1999], said "decisions on the location of these"-- boundaries-- "are matters solely for the UK Government". He went on to say that "the location of the boundary line has no substantive impact on the rights of Scottish fishermen to operate throughout UK waters."

Fishermen's organisations, and the fishermen who fish off the Berwickshire bank, do not agree with those propositions.

...

My hon. Friend the Member for West Aberdeenshire and Kincardine (Sir R. Smith), who was a Committee member when it considered the order, said that he was unaware that there had been no consultation with the Scottish fishing industry. He has subsequently asked the Government to reconsider the order and review the east coast boundary.

In the Standing Committee, my right hon. Friend the Member for Berwick-upon-Tweed (Mr. Beith) was not alone in expressing concern about the implications of what the Committee was being asked to decide. He said: "I retain a certain nervousness. I want to be sure that the principles that he"-- the Minister [Henry McLeish] -- "describes have been applied correctly and that, if they prove to have been in error, it is recognised that we shall have to return to the issue, if necessary with a modified order."--[Official Report, Third Standing Committee on Delegated Legislation, 23 March 1999; c. 11.]

Therefore, in common with other hon. Members in the Standing Committee, my right hon. Friend the Member for Berwick-upon-Tweed was totally unaware that the Government had failed to consult properly any of the fishermen's organisations.

Secondly, there are also important questions of international law. The Secretary of State for Scotland has argued that median lines are the commonly accepted approach, used internationally, to determining boundaries. On further investigation, however, and with the help of the Library, I have discovered that the main court in adjudicating disputes on maritime boundaries--the International Court of Justice--has never accepted that equidistance should be an absolute rule. Indeed, in the recent dispute on which it adjudicated-- between Denmark, Holland and Germany--it was established that the overriding principle should be equitable settlement, rather than strict geometric equidistance.

...

Significantly, equitable settlement allows for resource and historic use considerations to be taken into account. Therefore, if a truly equitable settlement is to be reached in this case, a proper statutory period of consultation must now occur.

...

The order creates the absurd situation of there being two quite distinct jurisdiction boundaries in the sea area east of Scotland and England, off the coast of my constituency. Consequently, fishing vessels operating between those lines, if fishing, would be in England, whereas they would be in Scotland if engaged in non-fishing activities. That is exactly the type of nonsensical situation that Standing Committee members, when considering the order, wished to be assured would be avoided.

Berwickshire fishermen certainly believe that the boundary has always--for at least the past century--been at Marshall meadows. Conventionally, the sea boundary went due east from that point, and, 30 years ago, that was confirmed by the definition of the oil fields' location.

The purpose of the Bill, therefore, is to try to reflect the view of local people and of fishermen's organisations that the issue is serious and that it will not go away. If it is not addressed now, it could produce difficult situations in the future. If it is not dealt with in a constructive and conciliatory manner, the sense of betrayal that local people feel will grow.

**Fishermen in Scotland are looking to the Secretary of State to engage in meaningful, fresh consultation. This ten-minute Bill would allow for fishermen's demands to be considered and addressed, and I commend it to the House.**<sup>12</sup>

Apparently nothing further was done about Mr. Kirkwood's concerns.

Besides being a clear violation of the Treaty and Acts of Union, this transfer has a direct deleterious effect on the finances of the Government of Scotland in that no taxes or licence fees derived from activities in the illegally transferred area are credited to Scotland in the periodic Government Expenditure and Revenue Scotland (GERS) reports.

Figure 4 presents the coordinates of the 'border' specified by the 1999 Order. Note the distinction between the "sea boundary" and the "territorial waters" boundary. "Territorial waters" are the waters within 12 nautical miles (nmi) of the nearest coast. The "sea boundary" as used here means the boundary between the territorial boundary and the remainder of the EEZ. The innermost coordinates of the sea boundary are identical to the outermost coordinates of the territorial waters. The distinction is principally for the purpose of defining fishing rules.

**Figure 4. Boundaries Order 1999 – Coordinate Specifications**

**SEA BOUNDARY OFF THE EAST COAST OF GREAT BRITAIN**

1	55° 55' 01"N	01° 43' 32"W
2	55° 56' 00"N	01° 40' 35"W
3	55° 56' 30"N	01° 38' 54"W
4	55° 58' 01"N	01° 33' 49"W
5	56° 01' 54"N	01° 26' 02"W
6	56° 11' 41"N	01° 11' 20"W
7	56° 22' 16"N	00° 55' 04"W
8	56° 23' 39"N	00° 50' 28"W
9	56° 27' 10"N	00° 38' 41"W
10	56° 27' 40"N	00° 35' 11"W

11	56° 30' 12"N	00° 17' 09"W
12	56° 32' 41"N	00° 01' 51"E
13	56° 33' 38"N	00° 13' 13"E
14	56° 34' 39"N	00° 26' 10"E
15	56° 36' 13"N	00° 47' 53"E
16	56° 36' 26"N	00° 57' 24"E
17	56° 36' 32"N	01° 10' 34"E
18	56° 36' 37"N	01° 30' 00"E
19	56° 36' 39"N	02° 00' 00"E
20	56° 36' 33"N	02° 30' 00"E

**TERRITORIAL WATERS BOUNDARY OFF THE EAST COAST OF GREAT BRITAIN**

1	55° 48' 42"N	02° 01' 54"W
2	55° 49' 47"N	01° 59' 58"W
3	55° 50' 40"N	01° 58' 09"W
4	55° 50' 44"N	01° 57' 55"W
5	55° 53' 17"N	01° 48' 28"W
6	55° 53' 27"N	01° 47' 54"W
7	55° 55' 01"N	01° 43' 32"W

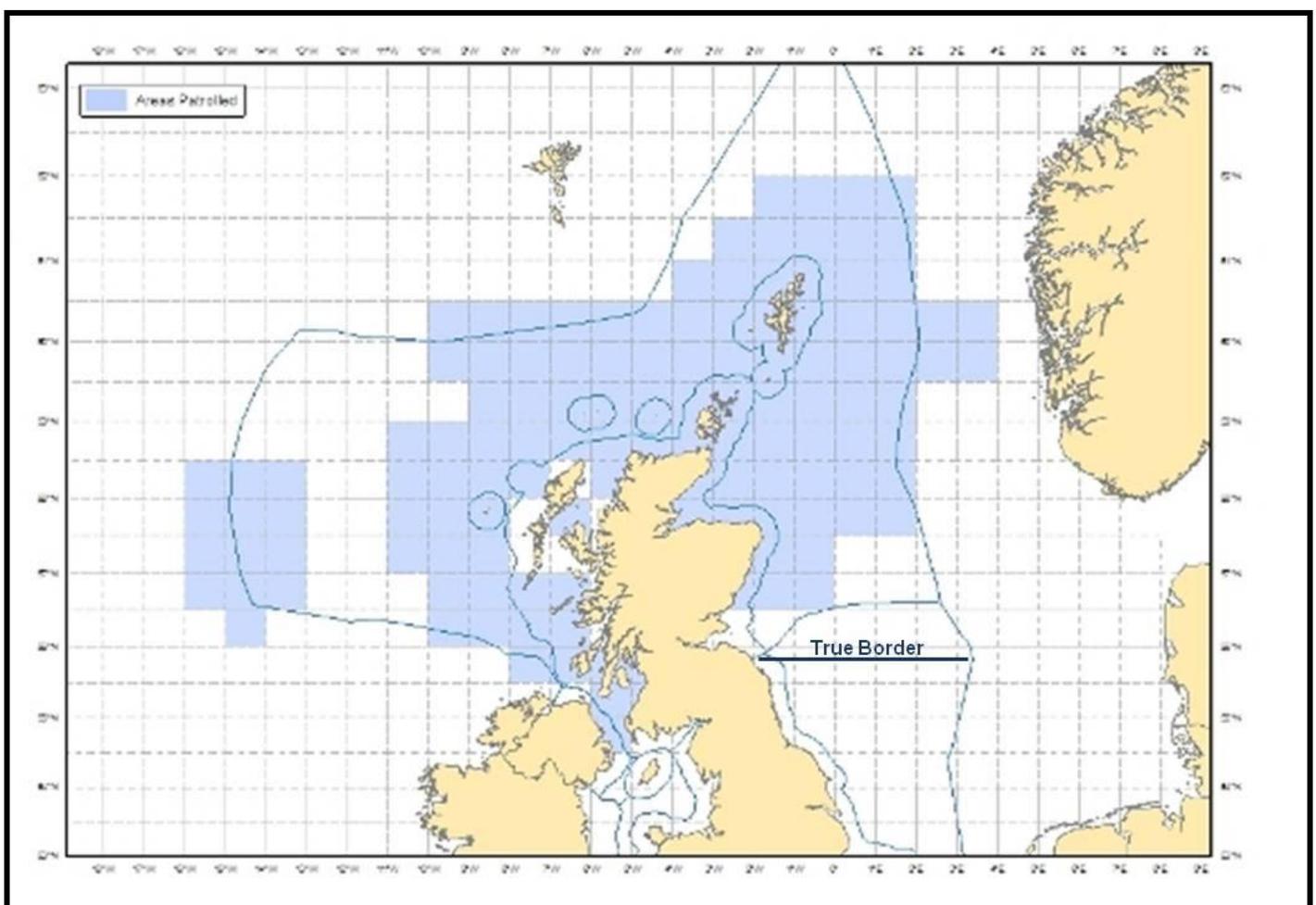
<sup>12</sup> The bolding in this excerpt was added by the authors of this paper. The complete testimony is available at <http://www.publications.parliament.uk/pa/cm199899/cmhansrd/vo990720/debtext/90720-06.htm>

Figure 5 presents the sea and territorial waters boundaries of Scotland. The (pre-devolution) Scottish Office internal correspondence concerning the development of the 1999 Order was released in or before 2009 under the Freedom of Information Act and posted on the (post-Devolution) Scotland Office website.<sup>13</sup> The documents repeatedly state that construction of sea borders by using the “equidistance principle” is “the fairest and most transparent method”. That may indeed be true provided the parties on both sides agree to the location of the base points. But there was no such agreement in this situation.

The Order very conveniently does not identify the base points, but it can be easily shown through use of 'Google Earth' that the baseline extends from St Abbs Head in the Borders to Bamburgh Head in Northumberland. All points on the border shown in the chart are equidistant from these base points.

### Figure 5. Sea and territorial waters boundaries of Scotland

The shaded sea area is the area patrolled by air by the Scottish Fisheries Protection Agency



Source: Scottish Fisheries Protection Agency.

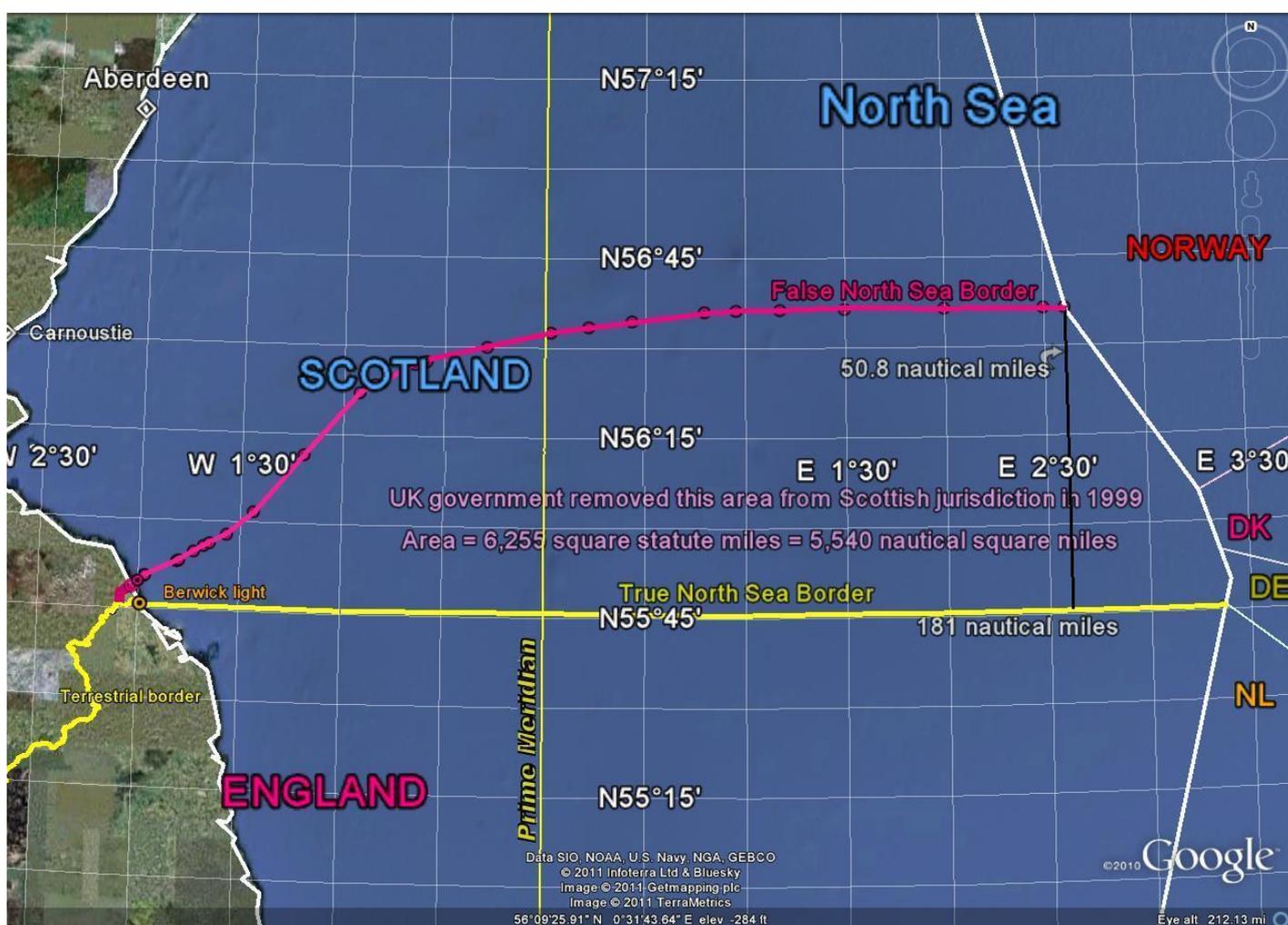
True Border added by Scottish Democratic Alliance

<sup>13</sup> These documents are no longer posted on the Scotland Office website. An author of this paper requested access to the documents twice in March and April 2011 using the official S.O. email enquiry form at <http://www.scotlandoffice.gov.uk/scotlandoffice/58.html>. He received no response either time. His first request was not even entered in the S.O. enquiries log. After his unacknowledged second request he tried to check the log again, but it had mysteriously disappeared from the website. He later found the documents in the SDA files. They are a series of *Hansard* reports of UK parliamentary committee debates on the 1999 Order. They are good background but not otherwise useful.

It is ironic to note what the situation would be if the equidistance principle were applied at the true border. The baseline would have to be drawn between the outermost low water points on each side of the mouth of the River Tweed and the border projected from the midpoint of the baseline. Depending on the exact location of the low water marks, the border would be projected at a bearing of between 105 degrees (the direction of Hamburg) and 130 degrees (the direction of Amsterdam). In either case the Scottish North Sea area would be increased, not decreased.

Figure 6 shows the true Scottish North Sea border in relation to the Exclusive Economic Zones of other nations in the central and northern sections of the North Sea.

**Figure 6. True and False Borders: North Sea**



### Effect on Scottish Government Revenue

What goes into Government Expenditures and Revenues Scotland (GERS) reports is important. Until the SNP succeeded to the Scottish Government in 2007, the UK government prepared these reports. Strangely, all of them showed Scotland in deficit. This aroused the suspicions of respected forensic accountant Niall Aslen, who decided to analyse them. Mr. Aslen's analysis exposed the UK government's

egregious misallocation – to Scotland’s serious disadvantage – of revenues (not just oil revenues) and expenditures. If a private firm had cooked its books half as outrageously as the UK government did in its GERS reports, its directors would be in jail.<sup>14</sup>

Figure 7 shows, in dark blue, the sea area from which tax and licence revenues from oil and gas production are credited to Scotland. Notice that the stolen sea area is excluded. There are at least twelve producing oil and gas fields in the stolen North Sea area. These are listed in Figure 8 and shown on the map in Figure 9.

**Figure 7. Source of sea revenues currently allocated to Scotland**



<sup>14</sup> Available as downloadable attachments from the bottom of the page at [http://scottishdemocraticalliance.org/attachments/article/13/The\\_Great\\_Deception\\_GERS\\_2005\(2\).pdf](http://scottishdemocraticalliance.org/attachments/article/13/The_Great_Deception_GERS_2005(2).pdf) and [http://scottishdemocraticalliance.org/attachments/article/13/The\\_Great\\_Obfuscation\\_GERS\\_2006.pdf](http://scottishdemocraticalliance.org/attachments/article/13/The_Great_Obfuscation_GERS_2006.pdf)

Each of these oil or gas fields sends taxes and licence fees to the UK Treasury. Not one penny of this money is credited to Scotland, thus the GERS report results are understated – to the disadvantage of Scotland, as customary.

**Figure 8**  
**Producing oil and gas fields in the stolen North Sea area**

Name	Latitude	Longitude	Producing since
	deg-min	deg-min	mo-yr
Fulmar	56-29N	2-13E	Feb-82
Auk	56-24N	2-05E	Dec-75
Clyde	56-27N	2-17E	Mar-87
Janice	56-24 N	2-10E	Feb-99
Angus	56-03N	3-08 E	Dec-91
Fife	56-00N	3-12E	Aug-95
Leven	56-28N	2-14E	Sep-92
Fergus	55-58N	3-15E	Sep-96
Medwin	56-26N	2-22E	Mar-94
Orion	56-25N	2-33E	Sep-99
Judy	56-43N	2-18E	Oct-95
Curlew	56-43n	1-16E	Nov-97

Source: <http://www.acorn-ps.com/web/page/oilgas/nsfields/nnsmap.htm>

Of course HM Treasury does not publish information in sufficient detail to permit calculation of the understatement. Even a request under the Freedom of Information Act would likely be denied on the grounds that such information is commercially confidential.

On 23 March 2011 the UK government raised a supplementary tax on production of oil and gas to 32% from 20% – a 60% increase. Scotland will get no benefit from this for oil and gas produced in the stolen sea area. Moreover, Scotland will certainly be adversely affected if the oil and gas producers cut back on their investments anywhere in the Scottish seas. Some threatened cutbacks have already been announced and others are under consideration.<sup>15</sup>

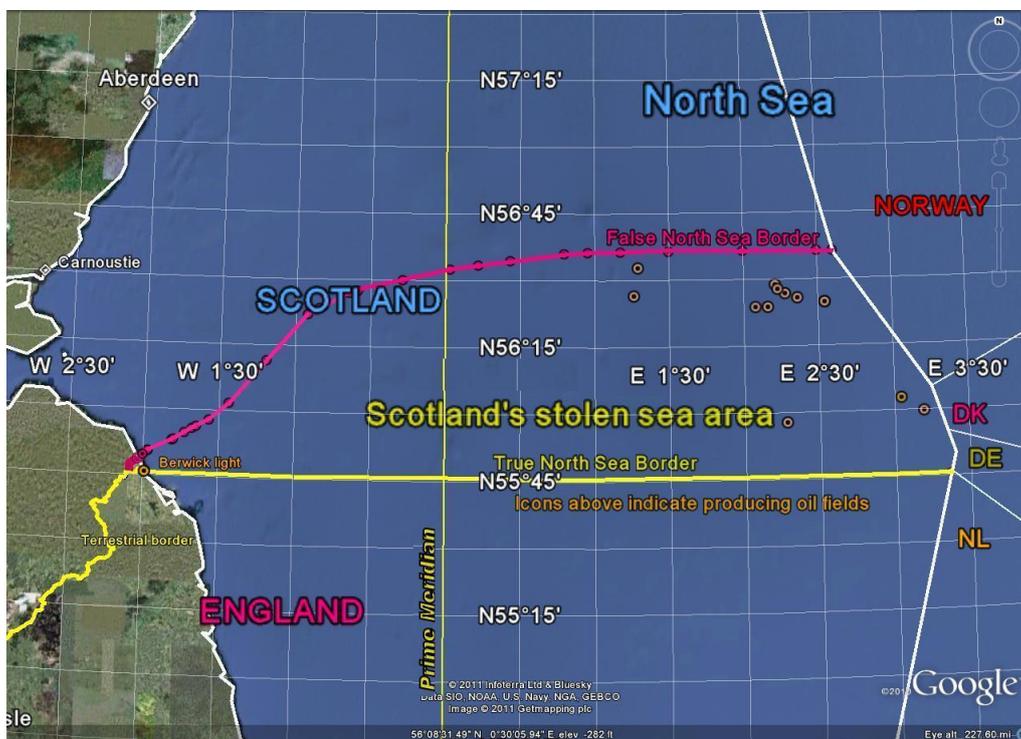
### **The ‘Catcher’ discovery**

The illegal border created by Order 1999 has become even more important in view of the discovery in 2010 of oil in the central North Sea area. Although the ‘Catcher’ discovery site (56°46.934’–0°45.824’) lies north of the stolen sea area, initial tests show that the ‘Catcher’ field is part of a rich oil formation holding

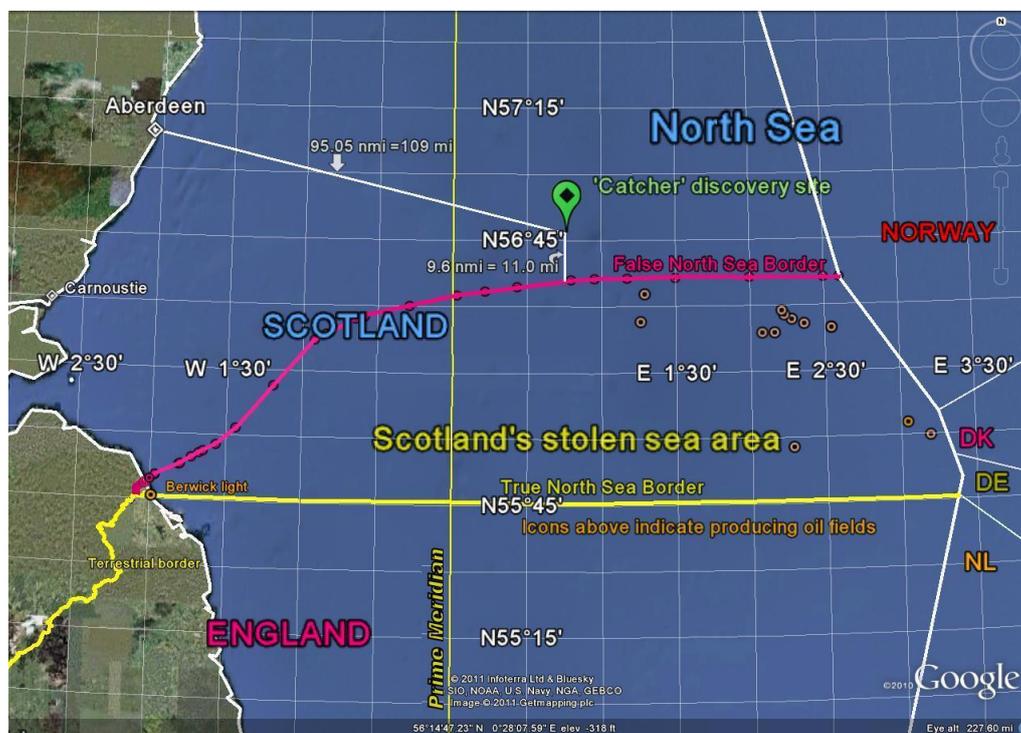
<sup>15</sup> <http://www.guardian.co.uk/business/2011/mar/29/statoil-north-sea-windfall-tax>. For an important development on 18 April 2011, see <http://thescotsman.scotsman.com/politics/US-oil-giant-attacks-Osborne39s.6754173.jp?articlepage=1>

approximately 155m barrels of recoverable oil.<sup>16</sup> The 'Catcher' discovery site, shown in Figure 10, is only 11.0 mi (9.6 nmi) north of the false border. That is close enough to increase the probability that more oil will be found south of the false border, i.e. in Scotland.

**Figure 9. Producing Oil Fields in the stolen sea area**



**Figure 10. Location of the 'Catcher' oil discovery site**



<sup>16</sup> <http://business.scotsman.com/business/Massive-oil-field-discovery-in.6386682.jp>

## Probable attempt to revise the Scottish Adjacent Waters Boundaries Order 1999

The UK government apparently does plan to revise the Boundaries Order. On 9 March 2005 Richard Lochhead MSP [now Cabinet Secretary for Rural Affairs and Environment in the Scottish Government] made a request to the Scotland Office under the Freedom of Information Act 2000 (“FOIA”). He requested copies of all the relevant government papers and correspondence between UK Ministers and also between the UK Government and both the Scottish Executive and former Scottish Office in connection with the Scottish Adjacent Waters Boundaries Order (SI 1999/1126) (the “1999 Order”).

The Scottish Office and its successor the Scotland Office blocked Mr. Lochhead’s request because, among other reasons, “**...at both the time of the original FOI request and now there was and is active consideration within Government of proposals for a new draft order that would likely be based on the 1999 Order. In our view the release of information relating to the 1999 Order would prejudice the development of the new Order**”[bolding added]. The documents were finally made available by the Information Tribunal, except for “the redactions<sup>17</sup> to be agreed with the Commissioner”, on 10 March 2009 – four years after they were requested.<sup>18</sup>

The "new Order" being referred to will undoubtedly be expanded to incorporate oil, gas and other minerals.

## Earlier Reaction to the North Sea Border Relocation

On 26 April 2000 the *BBC* published an online article headlined ‘Reid [John Reid, who was Scottish Secretary at the time] asked to settle the boundary row’.<sup>19</sup> The request was made by MSPs after the North Sea fishing boundary had been “formalised” so that “the responsibilities of each parliament could be clearly defined”. But “the line was not drawn at the historical boundaries and 6,000 [square] miles of traditional Scottish waters came under English jurisdiction”.

The article further stated: “Scottish fishermen had worked for years on the understanding that the boundary extended east from Berwick, and they were naturally infuriated”, but “Scotland’s fisheries minister John Home Robertson said the position of the boundary did not create any disadvantages”. The article goes on to say that “the agreed border was moved 60 miles north in line with Carnoustie”.<sup>20</sup>

On 23 May 1999 *The Herald* “revealed” that Henry McLeish (Scottish Enterprise Minister at that time) was the man who "quietly moved" England's North Sea fisheries boundary 60 miles north.<sup>21</sup> It also stated:

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<sup>17</sup> For example, the names, positions and other details of the perpetrators.

<sup>18</sup> <http://www.ico.gov.uk/upload/documents/decisionnotices/2007/fs50091442.pdf> and [http://www.informationtribunal.gov.uk/DBFiles/Decision/i202/Scotland%20Office%20v%20ICO%20\(EA-2007-0070\)%20-%20Decision%2008-08-08%20+%20Annexes%20A&B.pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i202/Scotland%20Office%20v%20ICO%20(EA-2007-0070)%20-%20Decision%2008-08-08%20+%20Annexes%20A&B.pdf)

<sup>19</sup> [http://news.bbc.co.uk/2/hi/uk\\_news/scotland/726244.stm](http://news.bbc.co.uk/2/hi/uk_news/scotland/726244.stm).

<sup>20</sup> Actually it was moved farther north than the latitude of Carnoustie, as Figure 8 shows; however, that does not detract from the substance of the article.

<sup>21</sup> [http://www.oilofscotland.org/scotlands\\_stolen\\_sea.html#herald1](http://www.oilofscotland.org/scotlands_stolen_sea.html#herald1). Scroll down to find this item.

“The former boundary between English and Scottish waters ran due east from Berwick to a median line between the UK and Norway<sup>22</sup>...The boundary shift was established by an order carried out at Westminster under the Scottish Adjacent Boundaries Order (1999). The order was passed by the House of Lords and the Committee on Delegated Legislation on March 23, but **was not openly debated in the Commons** ... A Scottish Office spokesman said the change in the fishing boundary – which did not come to light until early last week – was necessary as a result of Scottish devolution. However, **the spokesman could not explain the constitutional logic of the boundary alteration** [all bolding added].”

On 30 July 2008 *The Herald* published a letter<sup>23</sup>, which states, in part:

“Equally shocking is the as yet unexplained and largely secret and unknown move of Scotland's marine boundary from Berwick to Carnoustie, losing Scotland 6,000 square miles of the North Sea, **proposed by Westminster in 1999 and nodded through by the treacherous Lib/Lab coalition in Holyrood - refusing a debate ... The suspicious reasons behind this move, requested under the Freedom of Information Act, have been denied to the SNP government as "it would not be in the public interest"**. Whose public interest do they refer to? One can only hazard a guess at what that means. Admittedly, it is only the fishing boundary that has been moved so far, but expert legal opinion declared the move illegal on three grounds and it is widely felt that it is **"a likely marker for oil and gas"** in the future [all bolding added].”

## **Dereliction of Duty by the Scottish Government**

As far as is publicly known, the Scottish Government has not undertaken any recent action to have the Scottish Adjacent Waters Boundaries Order 1999 rescinded. Given the revenue loss to the Scottish GERS accounts, the Scottish Government's lack of ongoing action is indefensible. Moreover, **the stolen sea area was illegally made subject to English law**. That in itself should be a prima facie case for renewed action.

**THE 1999 ORDER APPLIES ONLY TO FISHERIES.** It gives the UK Government no authority to introduce English law, or to allocate the oil or any other revenues from the stolen sea area to the rest of the United Kingdom. Moreover, as Henry McLeish himself pointed out, the Order does not alter the common law border in any other respect. As explained earlier in this paper, the common law border runs due east from the town of Berwick. Thus the diversion of the revenues from the stolen sea is unacceptable false accounting, otherwise known as “cooking the books”.

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<sup>22</sup> That is incorrect: the median line terminates at the Netherlands EEZ. However, that does not detract from the substance of the article.

<sup>23</sup> [http://www.oilofscotland.org/scotlands\\_stolen\\_sea.html#herald1](http://www.oilofscotland.org/scotlands_stolen_sea.html#herald1). Scroll farther to find.

Because it has not lodged an official protest with the UK Government about the latter's illegal actions, the Scottish Government is derelict in its duty to the Scottish people.

This dereliction has been compounded by the Scottish Government's tacit acknowledgement of the UK Government's illegal action. On 16 March 2011 the Scottish Government published a comprehensive Marine Atlas<sup>24</sup> and a map purported to be 'Scotland's Sea'<sup>25</sup>. The map, although beautiful, is a disgrace to the Scottish Government because it does not show the stolen sea area as being in Scotland where it belongs. This omission is a serious inaccuracy. Again, as Henry McLeish himself pointed out, the Scottish Adjacent Waters Boundaries Order 1999 does not alter the common law border in any respect other than that of fishing, and that border still runs due east from the town of Berwick. **The stolen sea area is therefore still under Scottish jurisdiction for ALL purposes of marine policy, including oil and gas, with the single exception of fishing** – and even then only if the 1999 Order is regarded as valid.

There is therefore no legal justification for omitting the area from any Scottish Government publication, including GERS reports as well as the Marine Atlas. Tacit acknowledgement of an illegal act can make it much more difficult to force the perpetrator to withdraw it. The Scottish Government should begin legal action immediately on both the Berwick and the North Sea issues.

## **Rockall<sup>26</sup> and the Western Seas**

Rockall is an isolated granite rock located at 57°35'48"N–13°41'19"W, about 230 miles west of North Uist. Its position is illustrated in Figure 10. It is the summit of the eroded core of an extinct volcano. The rock is about 83 feet wide at its base and rises sheer to a height of approximately 72 feet. It is regularly washed over by large storm waves, particularly in winter.

The UK formally claimed uninhabited Rockall on 18 September 1955. Since it is within 200 nautical miles of both St. Kilda and North Uist, Rockall falls within the UK Exclusive Economic Zone (EEZ). However, as Rockall lies within 200 nautical miles (nmi) of both St Kilda and North Uist, the island itself remains within the EEZ of the United Kingdom and as such, under international law the UK can claim "... control of all economic resources within its exclusive economic zone, including fishing, mining, oil exploration, and any pollution of those resources" of the rock itself and an area of 12 nmi territorial waters which surround it.

Furthermore, the United Kingdom and Ireland have signed a boundary agreement which includes Rockall in the United Kingdom area.

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<sup>24</sup> See <http://www.scotland.gov.uk/Topics/marine/education/atlas>

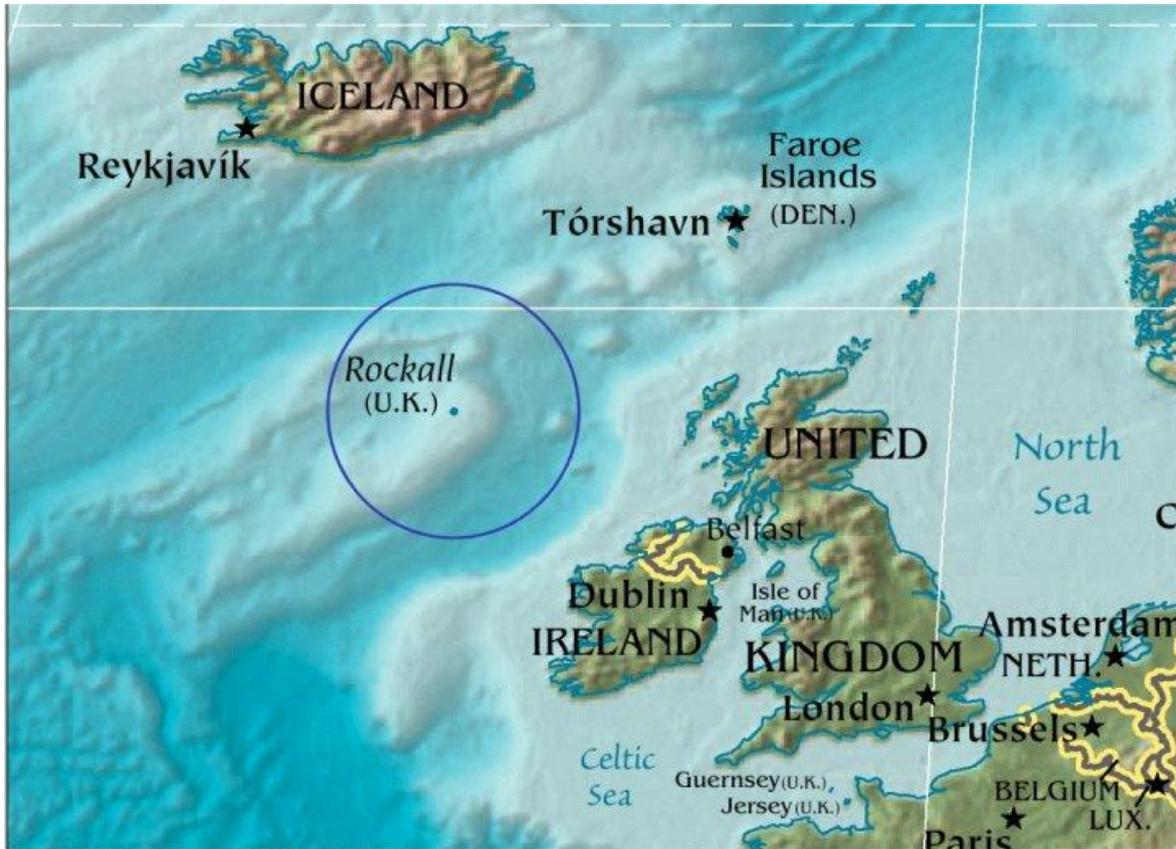
<sup>25</sup> The map can be downloaded at <http://www.scotland.gov.uk/Publications/2011/03/16182005/0>. Be advised that it is 1.4 MB and sized for A3 paper.

<sup>26</sup> There is a comprehensive, well-documented description of Rockall, including its legal status, in the Wikipedia at <http://en.wikipedia.org/wiki/Rockall>. Some pictures and interesting recent developments are at <http://www.therockalltimes.co.uk/rockall/picture-gallery.html>.

Some activity in progress in the United Nations could produce major changes in the international law of the sea. Proposed changes could extend the territorial waters of Rockall – and possibly the rest of Scotland.

The proposed changes were well summarised in the 22 September 2007 *Guardian*.<sup>27</sup> The latest information about this subject is posted on a UN website.<sup>28</sup>

**Figure 10. Location of the Island of Rockall**



Source: [http://en.wikipedia.org/wiki/File:Map\\_location\\_rockall.jpg](http://en.wikipedia.org/wiki/File:Map_location_rockall.jpg)

The Wikipedia entry states that Rockall, and a large sea area around it, were declared as coming under the jurisdiction of Scots law under the Scottish Adjacent Waters Boundaries Order 1999. However, that document – the same Order that moved the Scottish-English North Sea boundary – contains no such explicit declaration. Rockall became subject to Scots law under the Island of Rockall Act 1972.<sup>29</sup>

The Island of Rockall Act 1972 was "An Act to make provision for the incorporation of that part of Her Majesty's Dominions known as the Island of Rockall into that part of the United Kingdom known as

<sup>27</sup> <http://www.guardian.co.uk/environment/2007/sep/22/oilandpetrol>.

<sup>28</sup> The 20th Meeting of States Parties to the United Nations Convention on the Law of the Sea was held in July 2010. The report at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/447/68/PDF/N1044768.pdf?OpenElement> contained nothing specific about Rockall or its surrounding waters. The (delayed) 21<sup>st</sup> Meeting was held in June 2011. Items 8-10 of the provisional agenda (<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/225/23/PDF/N1122523.pdf?OpenElement>) might be relevant.

<sup>29</sup> <http://www.legislation.gov.uk/ukpga/1972/2>.

Scotland, and for purposes connected therewith.” It also incorporated Rockall into the County of Inverness, but was amended to incorporate Rockall into the Western Isles (Eilean Siar) when they were detached from Inverness-shire.<sup>30</sup>

Following is a quote from the inaccurate Wikipedia article that muddies the waters:

*The ownership of Rockall is disputed, as are the exploration and fishing rights on the [surrounding Rockall Bank and Trough](#), and the [Rockall Plateau](#). The islet is claimed by [Denmark](#) (for the [Faroe Islands](#)), [Iceland](#), [Ireland](#) and the [United Kingdom](#). All four governments have made submissions to the commission set up under the [United Nations Convention on the Law of the Sea](#). The issue will be included in the provisional agenda of the next meeting of the commission to be held in New York from 7 March to 21 April 2011 and recommendations pursuant to Article 76 of the Convention will be made.*<sup>31</sup>

Rockall is becoming increasingly important to Scotland. On 20 August 2010 *The Scotsman* published an article, ‘Tiny, remote Rockall given special conservation status to protect coral’.<sup>32</sup> A ‘Special Area of Conservation (SAC) is being established on and over “4,365 square kilometres of seabed, roughly the size of the Scottish Borders” to preserve the diverse marine life and rare cold-water reefs in the area. Similar protection is being given to a 45-mile long rocky ridge on the seabed 180 miles north of Lewis that was formed by icebergs at the end of the last Ice Age.

The article also states that the plans “have been submitted, as part of a UK package, to the European Commission for inclusion in the European Natural 2000 network.” Let us hope the EU will do a better job protecting sea life and reefs than it did in “managing” its Common Fisheries Policy, which virtually destroyed the Scottish fisheries industry and the many coastal communities that depended on it.<sup>33</sup>

## West of Shetland

The sea west of Shetland is not the North Sea, as sometimes thought; it is the Atlantic Ocean. The Scottish EEZ abuts the Faroe EEZ, as may be seen on Figure 11.

On 21 March 2011 the *Financial Times* published an article which mentioned recent developments in the area.<sup>34</sup> It stated:

“People are waking up to West of Shetlands. Profits are being recycled in exploration and suddenly it’s become somewhere [where companies] realise they can make a lot of money,”

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<sup>30</sup> <http://www.legislation.gov.uk/ukpga/1972/2> Amendment F2.

<sup>31</sup> The meeting referred to was postponed until June 2011 as noted in footnote 27. Results will probably be published several months later.

<sup>32</sup> <http://news.scotsman.com/scotland/Tiny-remote-Rockall-given-special.6485023.jp>

<sup>33</sup> This EU-caused disaster is well-documented in *The Sea Clearances*, by David B Thomson, ISBN 0-9544073-0-X, November 2002.

<sup>34</sup> <http://www.ft.com/cms/s/0/01519612-50fa-11e0-8931-00144feab49a.html#axzz1JFbSX5BI>

says Peter Hitchens, an analyst at Panmure Gordon, the stockbroking and investment banking group.

...

That is part of the reason why the UK government last year announced a tax allowance worth up to £160m (\$258m) per field to help catalyse development.

That *FT* article was published two days before the UK government imposed the 60% increase in the tax on the production of oil and gas. Mr. Hitchens of Panmure Gordon has probably reconsidered his opinion following that bombshell.

The *FT* article also stated:

On the gas side, France's Total received regulatory approval for its Laggan and Tormore gas fields last year, a £2bn (\$3.2bn) development that would bring gas to a processing plant on the Shetland Islands by 2014 and then into the UK grid.

Total has published interesting articles about its operations west of Shetland<sup>35</sup> and its Laggan-Tormore project<sup>36</sup> in particular. Figure 11 is a map of the area.

## The European Union Menace

The UK's membership of the European Union has been a disaster for Scotland. The European Union has effectively owned Scotland's seas since the imposition of the Common Fisheries Policy (CFP) in 1973. It subsequently virtually destroyed the Scottish demersal fisheries industry and the many coastal villages and larger communities that were dependent on it.<sup>37</sup> Under the Lisbon Treaty, which is already in force, the EU controls all the "marine biological resources" (i.e. from whales and basking sharks down to the last frond of seaweed) in Scotland's Exclusive Economic Zone seas. Under existing EU secondary legislation, all national waters right up to the beaches are due to come under exclusive EU fisheries competence from the end of 2012, and will be regulated under EU law and not Scots law. Since the Lisbon Treaty also transfers powers over energy to Brussels, fishing is obviously only the thin end of a wedge that will eventually see all marine resources coming under Brussels control.

So much for "It's Scotland's oil..."

(The EU's Common Agricultural Policy (CAP) has also been disastrous for Scotland. That is off the subject for this paper. More information is available at the SDA website.<sup>38</sup>)

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<sup>35</sup> [http://www.uk.total.com/activities/west\\_of\\_shetland.asp](http://www.uk.total.com/activities/west_of_shetland.asp)

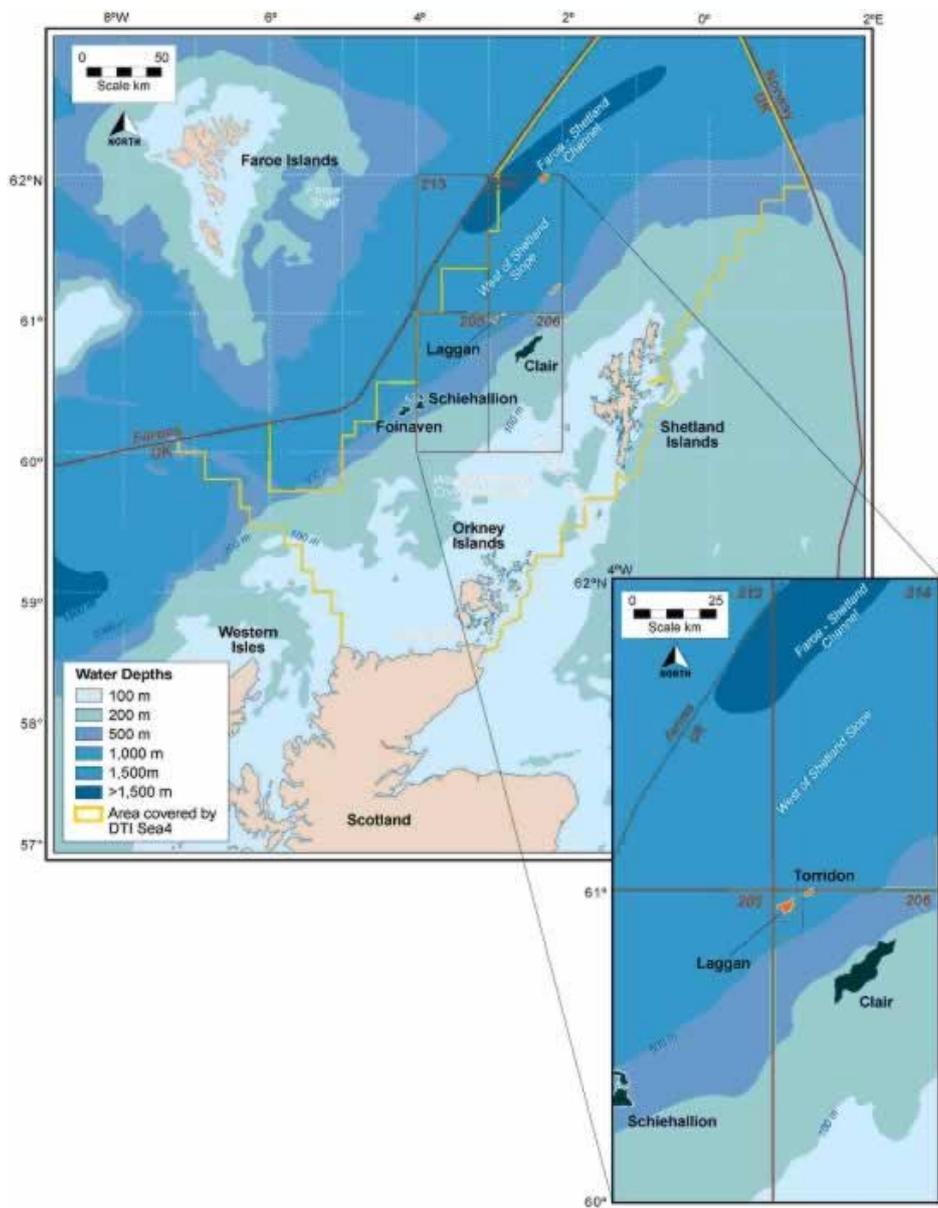
<sup>36</sup> <http://www.uk.total.com/activities/Laggan-TormoreProject.asp>

<sup>37</sup> See <http://scottishdemocraticalliance.org/attachments/article/2/Fisheries%20Background.pdf> and [http://scottishdemocraticalliance.org/attachments/article/2/Fishing%20-%20Executive%20Summary .pdf](http://scottishdemocraticalliance.org/attachments/article/2/Fishing%20-%20Executive%20Summary.pdf)

<sup>38</sup> [http://scottishdemocraticalliance.org/attachments/022\\_Website%20-%20Scotland%20in%20Europe\\_2\\_3\\_.pdf](http://scottishdemocraticalliance.org/attachments/022_Website%20-%20Scotland%20in%20Europe_2_3_.pdf)

The EU has already cleared the way for its further imperialistic and profoundly undemocratic plans. The Lisbon Treaty, which thanks to Gordon Brown, the British were not permitted to vote on, has a provision for self-amendment without further reference to the people. In other words, the EU has ensured that there will never be a need for a public referendum. Even worse, Article 48 of the Lisbon Treaty gives the EU Council authority to alter even the most fundamental constitutional law without reference to any democratic process or national parliament.<sup>39</sup> Since the EU Court has ruled that EU law (acquis communautaire) is superior to all national constitutional law, absolutely nothing in the Scottish legal tradition is sacred. The imperialist EU will be able to do anything it likes, thereby perpetuating its bureaucratic and often incompetent existence.

**Figure 11. Gas operations west of Shetland**



Source: TOTAL S.A.

<sup>39</sup> <http://www.lisbon-treaty.org/wcm/the-lisbon-treaty/treaty-on-european-union-and-comments/title-6-final-provisions/135-article-48.html>

When Scotland becomes independent, it must not become a member of the EU. The Scottish Democratic Alliance advocates Scottish membership of the 30-member European Economic Area (EEA) and the European Free Trade Association (EFTA). This will give Scotland all the economic and trading advantages of European cooperation while avoiding the worst of the EU's centralist mismanagement and inappropriate regulations.<sup>40</sup>

The Scottish Democratic Alliance is working toward real independence for Scotland. That means independence from the UK and the EU. Without real independence Scotland will have no control over its borders.

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<sup>40</sup> See [http://scottishdemocraticalliance.org/attachments/022\\_Website%20-%20Scotland%20in%20Europe\\_2\\_3\\_.pdf](http://scottishdemocraticalliance.org/attachments/022_Website%20-%20Scotland%20in%20Europe_2_3_.pdf)