

# Scotland's National Borders

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Scotland's national borders comprise one terrestrial border with England and sea borders, two with England and several with other countries. The western sea border with England extends seaward from the Solway Firth. The eastern border extends into the North Sea from the mouth of the River Tweed.

The government of the United Kingdom has attempted to make unwarranted changes to the east end of the terrestrial border and to the entire North Sea border. The purpose of this paper is to expose these cynical "stealth" manoeuvres and to provide the Scottish people with additional information on Scotland's borders.

## Terrestrial Border

Scotland's terrestrial border with England was fixed in the year 1237 by the Treaty of York, and 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 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 altered in almost eight centuries.

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. See Figures 2 and 3 for the true and false borders.
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>1</sup> did not in any way change the Scottish-English Border.
4. The UK government's Wales and Berwick Act 1746, section 3, formally – and 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).
5. The entire Wales and Berwick Act 1746 was repealed by the Interpretation Act 1978<sup>2</sup>. Nevertheless Berwick remains a separate enclave under administration by the English County of Northumberland. The drafters of several pieces of UK legislation simply assumed in error that the *administrative boundary* near Lamberton represents the border.
6. None of this intermediate 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 is headquarters of the King's Own Scottish Borderers, a major Scottish regiment, and home headquarters for its new position 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>3</sup>.
8. When independence happens, the Scottish-English terrestrial border will be 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 Changes to the Terrestrial Border**

The UK government has made unwarranted attempts to redefine the last few miles of the eastern part of the border, which is the centre of the River Tweed. The coordinates of the Tweedmouth harbour light are 55°45'53.28"N–1°59'03.12"W. The harbour wall was presumably built to deepen the river for navigation by narrowing it and thereby increasing the flow. The

satellite image in Figure 1 shows quite clearly that the wall ends almost exactly in the middle of the natural channel of the estuary, so that the harbour light on its end can be taken to be the end of the Scotland-England terrestrial border, and the starting point of the maritime border.

The UK government arbitrarily redirected the constitutional border. At  $55^{\circ}45'43.55''\text{N}$ – $02^{\circ}05'08.42''\text{W}$  the border line was redirected toward the north and subsequently eastward to the coast at  $55^{\circ}48'42''\text{N}$ – $02^{\circ}01'54''\text{W}$  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 this movement has no constitutional validity.

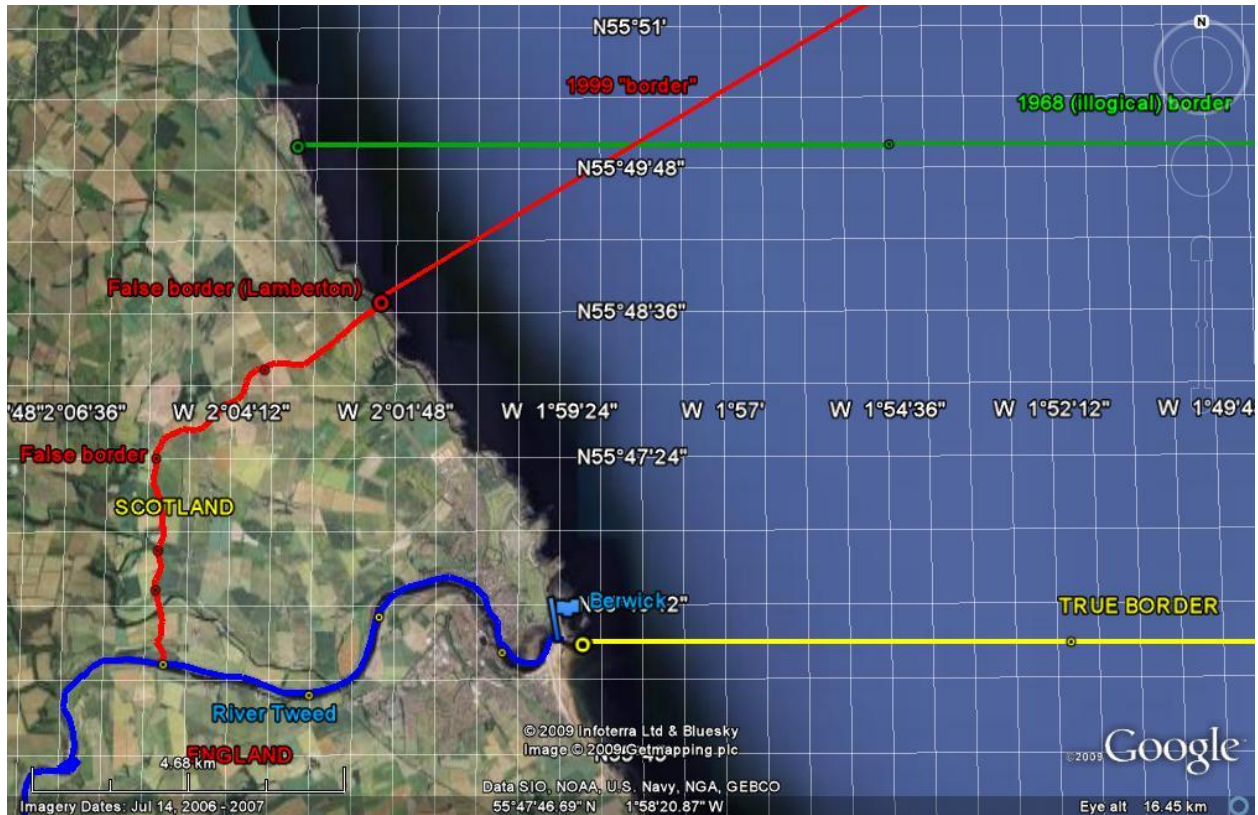
**Figure 1. The true border at the mouth of the River Tweed**



## Marine Borders

There are three Scotland-England borders in the North Sea, but two of them were illegally constructed by the UK government and are therefore false. The sea borders are discussed after Figure 3.

Figure 2. True & False Borders: Eastern Terrestrial and Coastal North Sea



Scotland's constitutional marine 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 in Article 15, *Delimitation of the territorial sea between States with opposite or adjacent coasts*<sup>4</sup>:

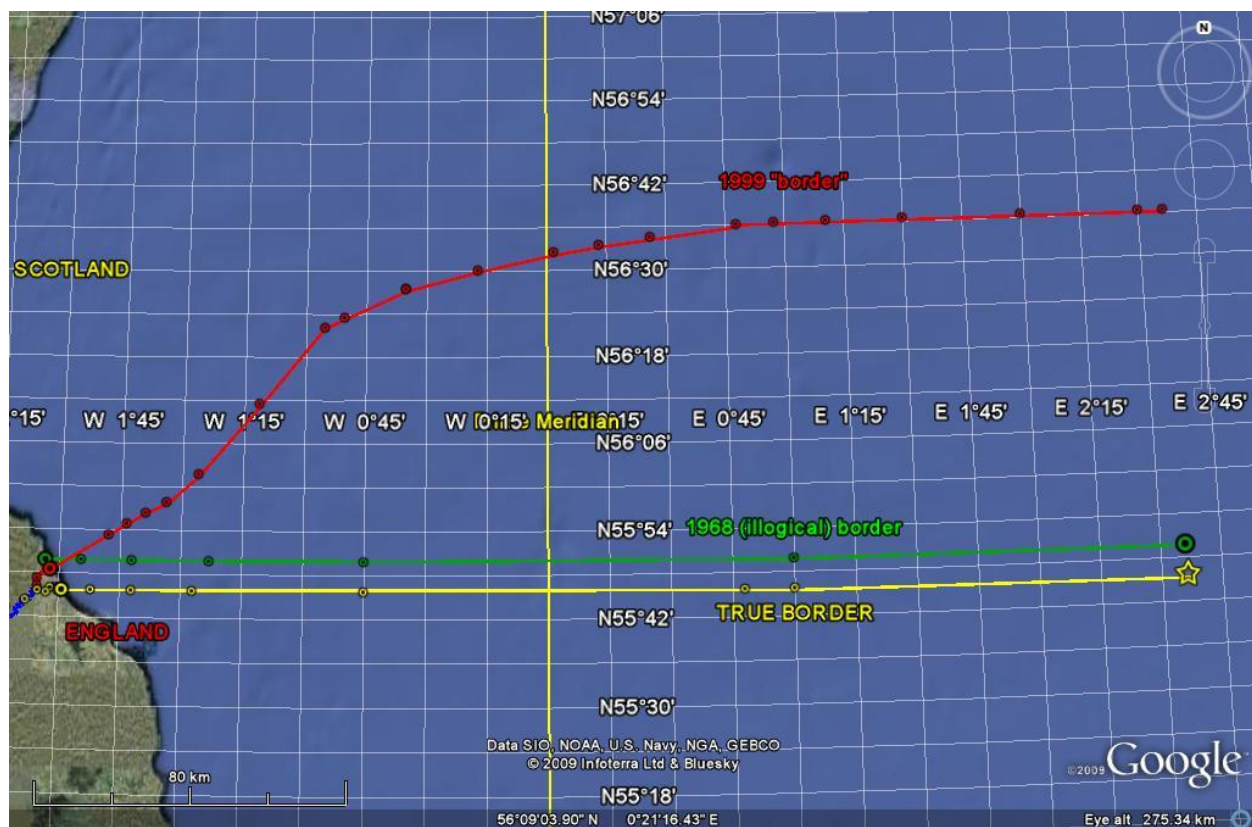
*Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the 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 the mouth of the River Tweed at latitude  $55^{\circ}45'53.28''\text{N}$  until it ends at the boundary with another country's territorial sea.

**Figure 3. True and False Borders: North Sea**



The UK government ignored the true border and set the border latitude at  $55^{\circ}50'\text{N}$  by the Continental Shelf (Jurisdiction) Order 1968. This Order established the 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  $55^{\circ}48'42''\text{N}$ .

The importance of 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<sup>5</sup>.

## **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>6</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.

Note that the above excerpt from the Order states "For the purposes of the Scotland Act 1998...". However, 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>7</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 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 6,000 square miles of Scottish waters to English jurisdiction.

The tables specified for the new North Sea boundary are presented on page 7. They are followed by a chart which shows the border defined by the Statutory Instrument. The chart was included in 'The Hypothetical Scottish Shares of Revenues and Expenditures from the UK Continental Shelf 2000 – 2013' by Professor Alexander G. Kemp and Linda Stephen of the University of Aberdeen, June 20, 2008<sup>8</sup>.

The Order does not appear to have changed the western Scottish-English sea boundary. However, some activities in progress at the United Nations might lead to future extensions of the Scottish western sea boundary. These will be discussed in the section on Rockall below.

The (pre-Devolution) Scottish Office internal correspondence concerning the development of the Order was recently released under the Freedom of Information Act (FOI) and posted on the (post-Devolution) Scotland Office website<sup>9</sup>. The documents repeatedly state that construction of sea borders by using the equidistance principle is “the fairest and most transparent method”. It is ironic to note what the situation would be if the method 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).

The UK government apparently does plan to revise the North Sea Order, however. On 9 March 2005 Richard Lochhead MSP [now Cabinet Secretary for Rural Affairs and Fisheries 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”).

### 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
21	56° 36' 31"N	02° 36' 26"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



[illegible]

9

**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 to be agreed with the Commissioner”, on 10 March 2009 – four years after they were requested<sup>10</sup>.

The "new Order" being referred to will undoubtedly incorporate oil, gas and other minerals into the 1999 Order.

### **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>11</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”. (Actually that was an oversimplification, as the chart on a preceding page shows; however, that does not detract from the substance of the article.)

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>12</sup>. It also stated:

“The former boundary between English and Scottish waters ran due east from Berwick to a median line between the UK and Norway...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>13</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 noddled 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].”

## **Rockall<sup>14</sup>**

Rockall is an isolated granite rock located at 57°35'48"N–13°41'19"W, about 230 miles west of North Uist. 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)<sup>15</sup>. 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 territorial waters extending for 12 nmi around it<sup>16</sup>. Furthermore, the United Kingdom and Ireland have signed a boundary agreement which includes Rockall in the United Kingdom area.

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>17</sup>. The latest information about this subject is posted on a UN website<sup>18</sup>.

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>19</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 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.

## Notes and references

<sup>1</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.opsi.gov.uk/RevisedStatutes/Acts/aep/1706/caep\\_17060011\\_en\\_1](http://www.opsi.gov.uk/RevisedStatutes/Acts/aep/1706/caep_17060011_en_1).

<sup>2</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.

<sup>3</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>

<sup>4</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 and 9.

<sup>5</sup> <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/GBR.htm>.

<sup>6</sup> Available at <http://www.opsi.gov.uk/si/si1999/19991126.htm>.

<sup>7</sup> <http://www.timesonline.co.uk/tol/news/uk/scotland/article5728477.ece>.

<sup>8</sup> Available at <http://www.scotland.gov.uk/Topics/Economy/17858/ScotShareNorthSeaRevenue>.

<sup>9</sup> <http://www.scotlandoffice.gov.uk/scotlandoffice/11266.141.html?tlD=11702&mon=apr>. Navigate to Latest Releases>Apr>09 Apr 2009> Adjacent Water Boundaries. There are 6 parts to this document.

<sup>10</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>11</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>12</sup> [http://www.oilofscotland.org/scotlands\\_stolen\\_sea.html#herald1](http://www.oilofscotland.org/scotlands_stolen_sea.html#herald1). Scroll to find.

<sup>13</sup> [http://www.oilofscotland.org/scotlands\\_stolen\\_sea.html#herald1](http://www.oilofscotland.org/scotlands_stolen_sea.html#herald1). Scroll farther to find.

<sup>14</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>.

<sup>15</sup> The territorial waters of Rockall appear as Area VIb2 in the Scottish Fishing Zone chart.

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<sup>16</sup> Under the law of the sea, an Exclusive Economic Zone (EEZ) is a seazone 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. 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>17</sup> <http://www.guardian.co.uk/environment/2007/sep/22/oilandpetrol>.

<sup>18</sup> The latest information, from the eighteenth meeting of States Parties to the United Nations Convention of the Law of the Sea was held at United Nations Headquarters from 13 to 20 June 2008. See: [http://www.un.org/Depts/los/meeting\\_states\\_parties/eighteenthmeetingstatesparties.htm#Decisions\\_of\\_the\\_Meeting\\_\(not\\_yet\\_issued\)](http://www.un.org/Depts/los/meeting_states_parties/eighteenthmeetingstatesparties.htm#Decisions_of_the_Meeting_(not_yet_issued)).