



# Scotland's Hijacked Oil Revenue

Scottish Democratic Alliance

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## Purpose

The purpose of this paper is to urge the Scottish Government to demand that the UK Government provides evidence that all petroleum revenue tax (PRT), corporation tax (CT) and licence Fees derived from oil and gas fields in Scottish waters of the North Sea are allocated to Scotland and included in Scotland's Share of North Sea Revenue in future Government Expenditure & Revenue Scotland (GERS) reports.

Action is required now because past and present revenues generated in a specific section of Scottish waters have not been included in GERS reports, nor will they be included in future GERS reports unless corrective action is taken. This situation has resulted from the UK Government's unwarranted and unconstitutional movements of the Scotland-England border from its legal position. This paper exposes those cynical "stealth" manoeuvres and how they led to the present misallocations of certain North Sea oil and gas revenues attributable to Scotland.

## Background

Scotland's border with England was fixed in the year 1237 by the Treaty of York. That treaty has never been rescinded. There was a tidying-up agreement between the two kingdoms in 1552 about the so-called Debateable Lands in the west, but otherwise the now completely definitive Scotland-England terrestrial border has never legitimately been altered in almost eight centuries. Hence, it was outwith the power of the UK Government to alter the constitutionally fixed terrestrial and sea borders at the mouth of the River Tweed. Berwick

was never English. English law did not apply in Berwick at the time of the Union in 1707. The Treaty and Acts of Union did not in any way change the Scottish-English borders.

The terrestrial border and northern and western sea borders are discussed in more detail in 'Scotland's National Borders', updated in August 2009 and supported with comprehensive references. It is available for download at [scottishdemocraticalliance.org](http://scottishdemocraticalliance.org). Click on 'International', then on 'Scotland's National Borders'.

## North Sea Border

The Scottish sector of the North Sea should constitutionally be defined as that area within British fishery limits and internal waters that lie north of the true Scotland-England North Sea border at latitude 55°45'53"N. That border begins at the centre of the mouth of the River Tweed and continues directly east to the western edge of the Netherlands' North Sea Exclusive Economic Zone (EEZ).<sup>1</sup> The border definitely does not extend from near Lamberton or from latitude 55°50'N north of Lamberton.

The International Law of the Sea states in Article 15, *Delimitation of the territorial sea between States with opposite or adjacent coasts*:

*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].<sup>2</sup>

Scotland certainly has “historic title” to the mouth of the River Tweed. Fishermen have recognised the latitude of the sea 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

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<sup>1</sup> Defined at [http://en.wikipedia.org/wiki/Exclusive\\_Economic\\_Zone](http://en.wikipedia.org/wiki/Exclusive_Economic_Zone). Coordinates of the Netherlands EEZ could not be immediately determined, but the border coordinates were derived from the abutting German EEZ coordinates at:

[un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/deu\\_1994\\_eez\\_proclamation.pdf](http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/deu_1994_eez_proclamation.pdf).

<sup>2</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.

due east from the mouth of the River Tweed at latitude 55°45'53.28"N to the western boundary of the Netherlands' Exclusive Economic Zone (EEZ) about four miles below its border with the German EEZ at 55°50'06"N – 3°24'00"E.

By making the 'Continental Shelf (Jurisdiction) Order 1968', the UK government ignored the true border and set the border latitude at 55°50'N. This Order established the Scottish jurisdiction in the North Sea as being north of a line running due east at 55°50'N. The coordinate was apparently used for administrative convenience to represent the latitude of the coast near Lamberton, which is 55°48'42"N. Such was the UK Government's supercilious attitude toward Scotland.

For whatever reason, the 1968 Order was an unwarranted encroachment on Scottish territory; therefore this movement of the border had, and has, no constitutional validity.

The 1968 Order at least acknowledged Scottish marine jurisdiction (as distinct from the equally illegal 1879 Order, which had applied English Admiralty law to Scottish waters). It also acknowledged that the Scottish-English North Sea 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>3</sup>

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>4</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 relevant tables.

Those tables and additional relevant information are included in the previously cited 'Scotland's National Borders'.

Figure 1<sup>5</sup> shows the true border, the illegal – and illogical – border of 1968, and the very illegal border specified by Statutory Instrument 1999 No. 1126. That 'Instrument' was

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<sup>3</sup> <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/GBR.htm>

<sup>4</sup> Available at <http://www.opsi.gov.uk/si/si1999/19991126.htm>.

<sup>5</sup> Figures are at the end of the text.

purportedly for the purpose of making the fisheries in the affected area subject to English law, but no remotely credible reason was given for that action. In any case, the area was stolen from Scotland.<sup>6</sup>

Note that the above excerpt from Statutory Instrument 1999 No. 1126 states "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...". 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'. 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.***<sup>7</sup> [bolding added]

The "step that was taken" was the Scottish Adjacent Waters Boundaries Order 1999, which illegally moved Scotland's North Sea border still farther to the north than the 1968 Order had done. Thus were some 6,000 square miles of Scottish waters cavalierly transferred to the jurisdiction of English law.

This unwarranted and illegal transfer has become more important in view of the recent discovery of oil in the central North Sea area.<sup>8</sup> Although the 'Catcher' discovery lies north of the stolen sea area, initial tests show that the 'Catcher' field is part of a rich oil formation holding approximately 155m barrels of recoverable oil.<sup>9</sup>

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<sup>6</sup> One definition of "steal" is "to take, get or win artfully or surreptitiously."

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

<sup>8</sup> <http://business.scotsman.com/business/Massive-oil-field-discovery-in.6386682.jp>

<sup>9</sup> <http://www.telegraph.co.uk/finance/newsbysector/energy/oilandgas/7859721/North-Sea-oil-find-cheers-three-UK-explorers.html>

The 'Catcher' discovery site is only 13 miles north of the stolen sea area. That is close enough to increase the probability that more oil will be found within that area.

Figure 1<sup>10</sup> makes it apparent that all waters north of the true border are Scottish. All North Sea revenues from that area should be allocated to Scotland. Figure 2 overlays Figure 1 with the location of the 'Catcher' discovery.

Figure 3 on page 8 is copied directly from Table 5.1 of the 2008-2009 GERS Report. The figure is based on a detailed database of North Sea oil and gas fields. It clearly shows that the stolen sea area is outside the area from which Scottish North Sea revenues currently emanate.<sup>11</sup> Figure 4 is the same basic figure with additional details and an overlay which shows the stolen sea area more clearly.<sup>12</sup> It is copied from page 9 in 'Scotland's National Borders'.<sup>13</sup> Figure 5 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. It also gives an idea of the extent of gas- and oil-related operations in that area.

### **Need for quick action**

The UK government apparently plans to revise the North Sea Order. 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').

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

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<sup>10</sup> Figures are located at the end of the text.

<sup>11</sup> <http://www.scotland.gov.uk/Resource/Doc/133434/0061924.pdf>

<sup>12</sup> Available at <http://www.scotland.gov.uk/Resource/Doc/133434/0061924.pdf>.

<sup>13</sup> The figure originally appeared 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. It is available at <http://www.scotland.gov.uk/Topics/Economy/17858/ScotShareNorthSeaRevenue>

Tribunal, except for “the redactions to be agreed with the Commissioner”, on 10 March 2009 – four years after they were requested<sup>14</sup>.

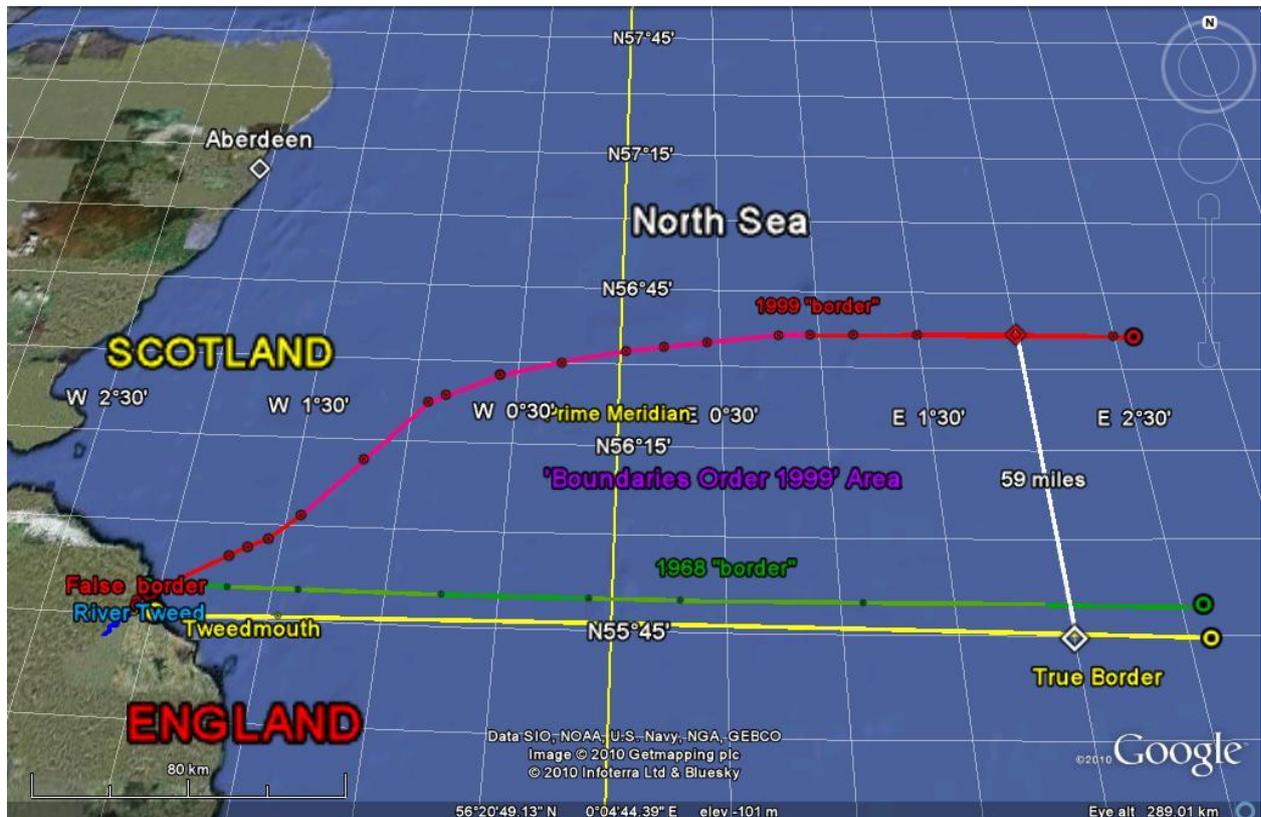
The 'Catcher' discovery is almost certain to accelerate the "active consideration within the UK Government of proposals for a new draft order which would likely be based on the 1999 Order".

### Recommended action

The Scottish Government should take immediate action to ensure that the UK Government credits all revenues which are being or have been generated in the stolen sea area to Scotland.

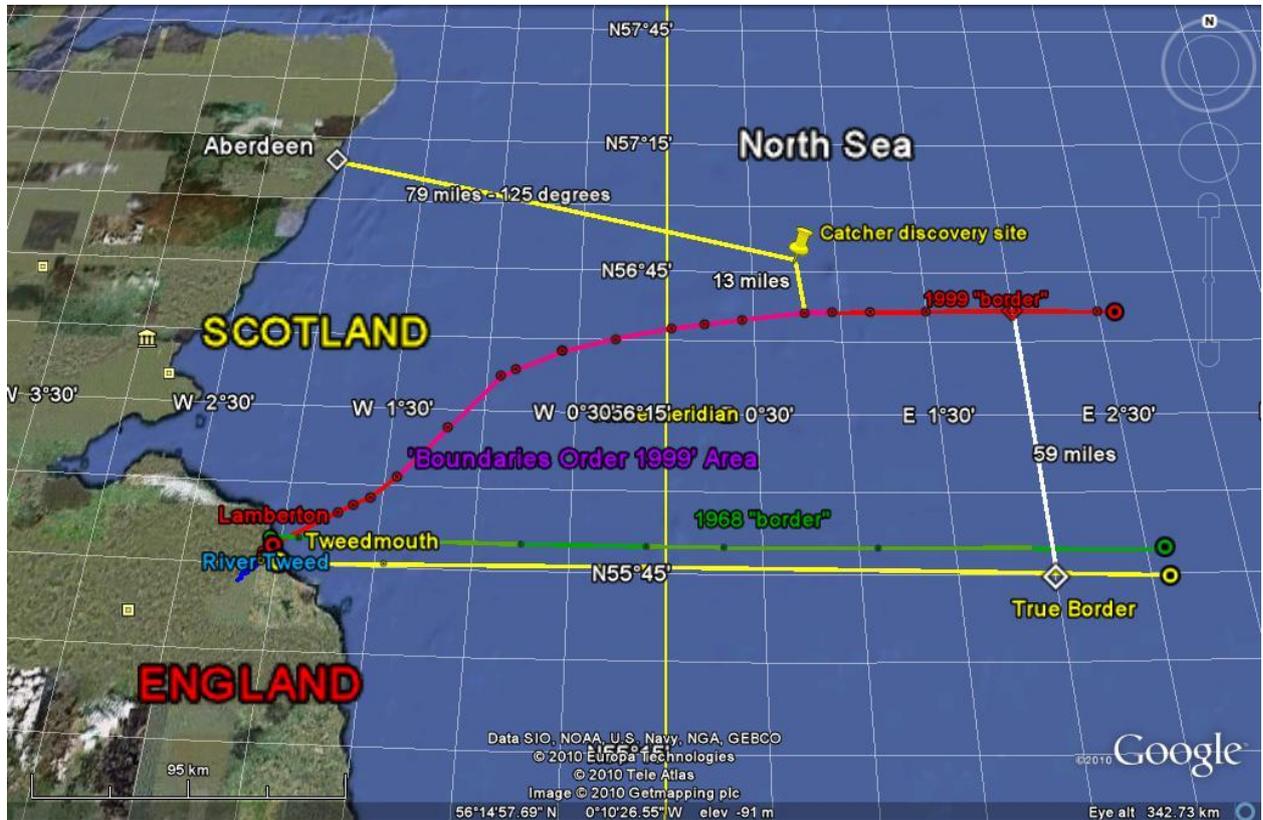
The Scottish Government should take further immediate action to reverse the unconstitutional and illegal encroachments the UK Government has made into Scottish seas.

**Figure 1. True and False Borders: North Sea**

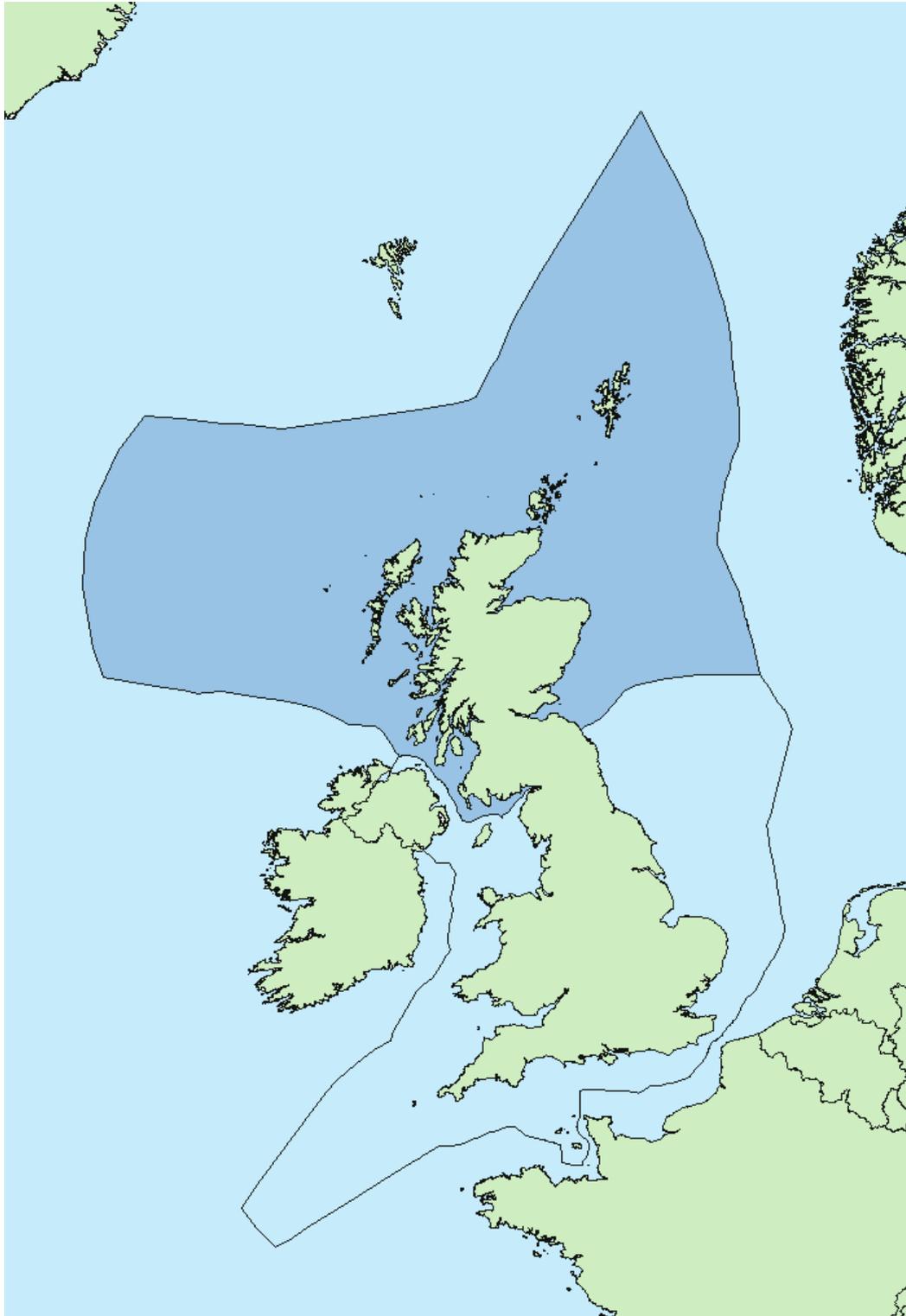


<sup>14</sup> <http://www.ico.gov.uk/upload/documents/decisionnotices/2007/fs50091442.pdf> and [http://www.informationtribunal.gov.uk/DBFiles/Decision/i202/Scotland%20Office%20v%20ICO%20\(EA-2007-0070\)%20-%20Decision%2008-08-08%20+%20Annexes%20A&B.pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i202/Scotland%20Office%20v%20ICO%20(EA-2007-0070)%20-%20Decision%2008-08-08%20+%20Annexes%20A&B.pdf).

Figure 2. Location of the 'Catcher' oilfield



**Figure 3. Source of North Sea revenues currently allocated to Scotland in the 2008-2009 GERS Report**



Source: Scottish Government Marine Directorate.

Figure 4. Detailed map Scottish fishing zone showing boundaries of stolen section of the North Sea

Scottish fishing zone, 0-12 mile limits, ICES Areas and Rectangles

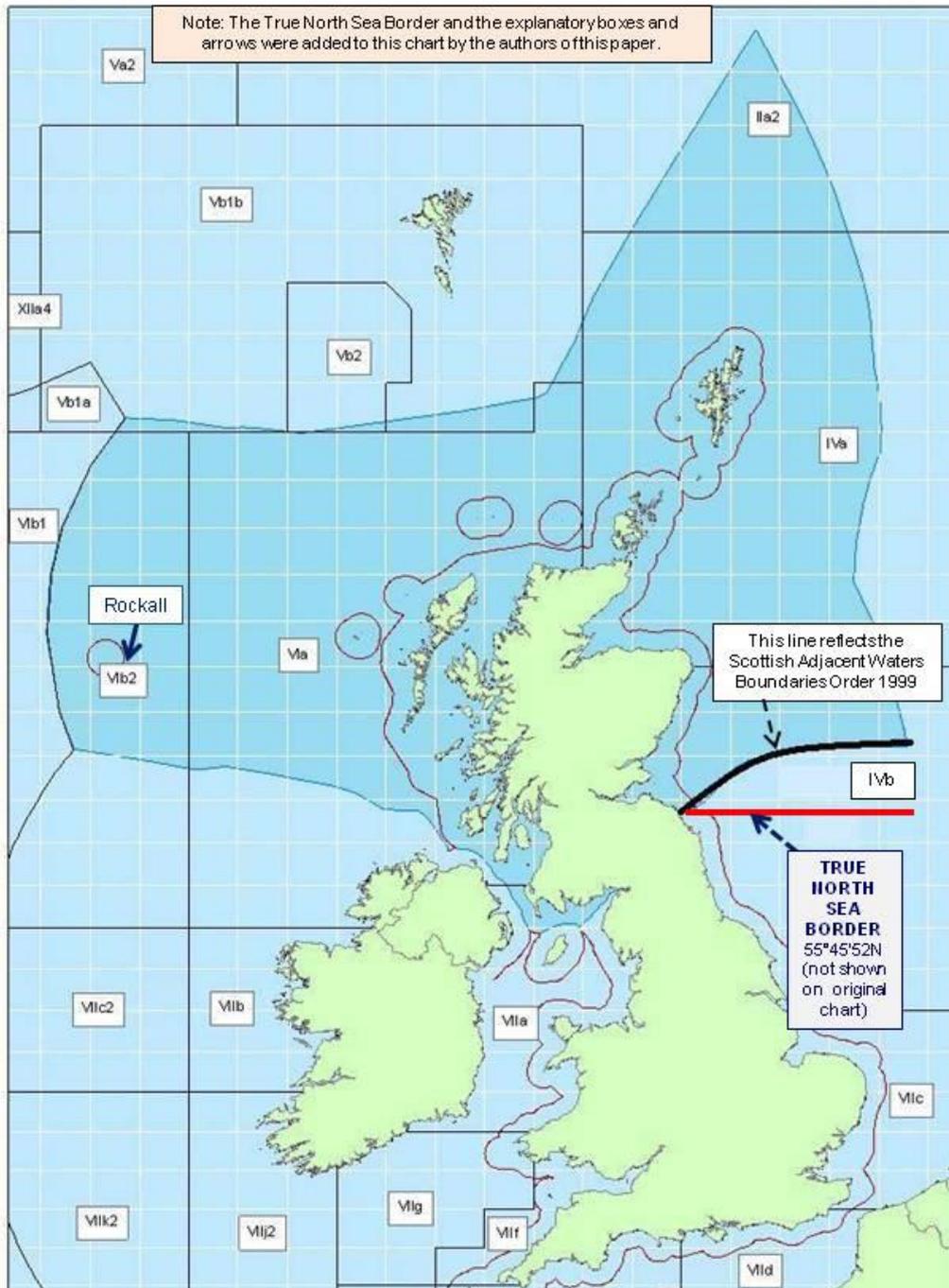
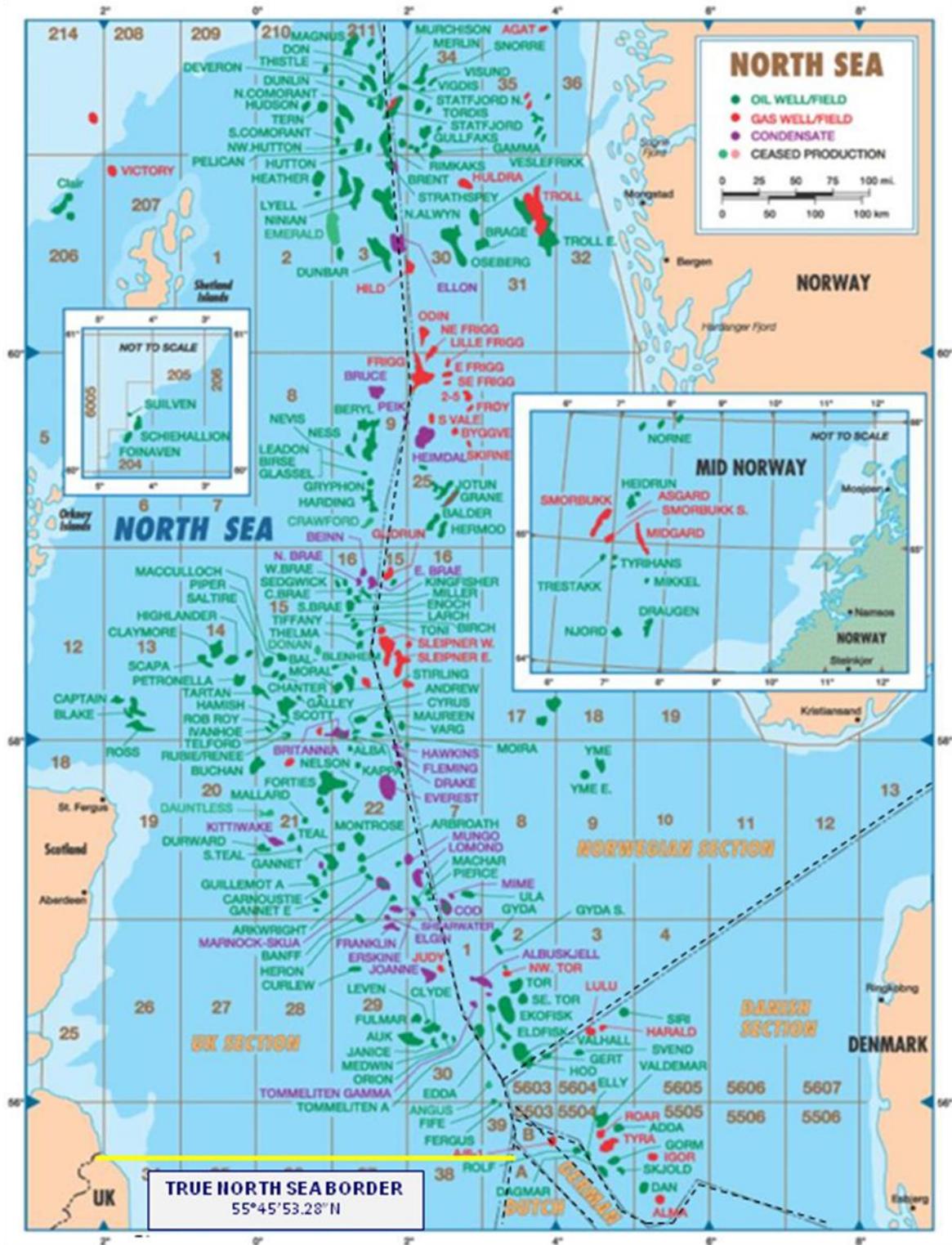


Figure 5. Detailed gas & oil map of the central North Sea<sup>15</sup>



Note: The overlay (dashes, yellow border) accuracy is subject to the limitations of PowerPoint v.12.

<sup>15</sup> As shown on <http://www.acorn-ps.com/web/page/oilgas/nsfields/nnsmap.htm>. Source: [worldoil.com](http://worldoil.com).