Oregon
Kate Brown, Governor

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**Catherine Gockel**
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ATTN: Director, Office of Water and Watersheds
SUBJECT: WA/OR Offshore Seafood General Permit Re-Proposal
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December 9, 2016

Re: Preliminary Draft Re-Proposed NPDES permit (WAG5200000) – Offshore Seafood Processors Discharging in Federal Waters off the Washington and Oregon Coast

Dear Ms. Gockel:

The Oregon Department of Fish and Wildlife (ODFW) is in receipt of the Environmental Protection Agency's (EPA) preliminary draft re-proposed permit: *NPDES General Permit for Offshore Seafood Processors in Federal Waters off the Washington and Oregon Coast* (Permit No. WAG520000)

ODFW provided comments on the draft General Permit in October 2015 and we are pleased that many of our concerns are addressed in this preliminary draft re-proposed permit. Our comments below speak to additional needed clarifications and outstanding issues that continue to be of concern to us. Our comments are organized according to the Sections of the draft General Permit.

## III. AREA OF COVERAGE

In this section, we think it is necessary to further clarify and describe the areas authorized and excluded for fish processing waste discharges, and use consistent terminology in order to avoid ambiguity about boundaries of exclusion areas and to ensure compliance during discharges. We offer the following suggested edits to Subsections A and B (new text is underlined).

## A. Areas authorized under this General NPDES Permit

*1. This General Permit authorizes discharges of pollutants into Federal Waters of the United States off the coasts of Washington and Oregon (i.e., seaward of 3 nm from the coastal shoreline of Washington and Oregon), except where noted below. ~~including the contiguous zone and the ocean off the coasts of the states of Washington and Oregon~~,*

*2. Generally, Federal Waters off Oregon and Washington begin 3 nm from the state's coastal shorelines. In the case of offshore emergent rocks and islands, ~~the General Permit's jurisdiction~~ Federal Waters begins 3 nm seaward from the seaward shoreline of offshore rocks and islands ~~for Oregon and Washington~~. The greatest distance is off Orford Reef, where ~~Oregon's Territorial Sea boundary is~~ the boundary between state and Federal Waters begin approximately 8 nm from the mainland shoreline. See Figure 1.*

Figure 1 of this section is a map off Oregon that labels the 3 mile state water line as "*3 Nautical Mile EEZ*". Given the intent of the map is to illustrate the discharge prohibited area and its geographic relationship to state waters, it seems reasonable to label the 3 mile line: "*State Territorial Sea boundary*" or "*State Waters Boundary*".

## B. Areas excluded from authorization under this General Permit

1. *Any state waters:*
    a. *bays, estuaries, rivers, sound*
    b. *ocean waters within 3 nm of the west coasts of Washington and Oregon and within 3 nm of the seaward boundary of emergent offshore rocks and islands.*
2. *Any waters under the jurisdiction of Canada.*
3. *Any waters south of the Oregon / California boarder (42o00" N latitude).*
4. *~~Any state waters~~.*
5. *Waters shallower than 90 meters in depth during the months of May-September off Washington and no shallower than 100 meters in depth during the months of April – September off Oregon, unless the Permittee can demonstrate that its discharge will not contribute to hypoxic conditions, according to Section V.B.7. of this General Permit. See Figure 2 for a visual depiction of the seasonal discharge prohibition.*

Regarding Item #B.5 above, hypoxic conditions are known to be most severe at depths less than 100 meters, yet the proposed exclusion area establishes an exclusion zone in waters less than 90 m. This leaves a substantial area of 'high-risk' waters subject to fish processing waste discharges that could trigger or exacerbate hypoxic conditions. Furthermore, the map in Figure 2 of the draft

permit suggests a simplified, static 90 m contour line for the seaward boundary of the proposed exclusion area. As such, pinnacles and rocky ridges that rise to depths shallower than 100 m seaward of the exclusion area are susceptible to hypoxic conditions and not protected. Also, scientists have found that seasonal low oxygen levels begin to appear in April.

***Recommendation: For the ocean off Oregon, use a minimum of a 100 m depth contour as the seaward boundary of a general seasonal exclusion area from April through Sept. to incorporate the greatest geographic extent and timing of high-risk waters. And, in deeper waters outside the exclusion area where rocky ridges and pinnacles rise to 100 m or shallower, the 100 m minimal depth restriction would apply. The Treaty Tribal Usual and Accustom Area is located offshore of Washington state only, and therefore would not be affected by a deeper exclusion zone off Oregon (Figure 1).***

The areas of greatest concern for large-scale hypoxia are Stonewall Banks and Heceta Banks off central Oregon. Oceanographic processes, retention areas and circulation patterns originating in deep waters set up hypoxic conditions in adjacent shallower waters (approx.. <100 m). Sluggish circulation patterns are well documented at Stonewall Bank and Heceta Bank has year-round low oxygen levels. Scientists are concerned that discharged fish processing waste on and in the vicinity of the Heceta-Stonewall Banks Complex could trigger and/or exacerbate hypoxic conditions there and in adjacent shallow waters.

Concerns for these two mega-reefs were raised by ODFW and oceanographers at Oregon State University and NOAA in response to the General Permit (2015 and 2016) and designated offshore disposal sites for the shore-based processing plant, Trident Seafoods (2013). These important rocky banks support an abundance and diversity of marine life and in turn support Oregon's fisheries. Furthermore, these rocky banks are designated under the Magnuson-Stevens Act (MSA) as Essential Fish Habitat (EFH) for groundfish species, with the added designations of Habitat Areas of Particular Concern (HAPC) and EFH Conservation Areas for the protection of sensitive habitats.

According to Figure 2 of the draft Permit, Heceta Bank is entirely outside the proposed exclusion area and it appears that Stonewall Bank is only partially included in the proposed exclusion area. The "Heceta/Stonewall Bank Complex" is identified in Section V. B.7 of the "*Optional Study*" as areas most at-risk for hypoxia requiring site-specific analyses, should the Permittee request to discharge there (as noted in Section III.B.5 "Areas excluded"). The omission of the Heceta/ Stonewall Banks complex from the map figure may be an unintended consequence of using a simplified 90 m contour boundary line for the exclusion area.

***Recommendation: Designate a year-round exclusion area at Stonewall Bank-Heceta Bank complex, as depicted in the attached map (Figure 2).***

Several additional offshore reefs may be negatively impacted by the accumulation of fish processing waste on sensitive reef habitats. We identified several reefs in previous comment letters and remain concerned that these reefs are still included in the authorized area. These reefs are of ecological significance, supporting an abundance and diversity of species that are partially or entirely dependent on the reef environment for egg-rearing, nursery habitat, feeding, and shelter. Sessile and habitat-forming invertebrates and fish eggs are particularly vulnerable to disturbance and burial under a minimal amount of material as noted in EPA's Ocean Discharge Criteria Evaluation (ODCE). All rocky reefs are designated as HAPC under MSA Essential Fish Habitat and several have the additional designation of EFH Conservation Areas for the protection of sensitive habitats.

***Recommendation: Absent assessment of the effects of fish processing waste on west coast rocky reefs, establish year-round exclusion areas for the following reefs: Nehalem Bank, Garibaldi, Daisy Bank, Hydrate Knoll, Arago Reef, Bandon High Spot, and Rogue Reef. (See Figures 2 and 3a-b).***

## V. LIMITATIONS, MONITORING AND REQUIREMENTS

EPA's Ocean Discharge Criteria Evaluation [ODCE] references a numerical model that estimates the depth of accumulation per discharge at 0.2 inches and the benchmark burial depth for fish egg suffocation is 0.4 inches. To our knowledge, there are no *in-situ* studies on the west coast that have determined the hydro-dynamics of fish waste discharges from west coast processor vessels. The margin of error of 0.2 inches justifies a permit requirement for a constant minimal vessel speed in order to improve the dispersal of waste material in the water column, thus minimizing to the extent possible the potential accumulation on seafloor habitats. We concur with NMFS' ESA Consultation/EFH Response (Dec. 2015) for a minimum vessel speed of 5 knots during discharges.

***Recommendation: Require a minimum vessel speed of 5 knots during discharges.***

## VI. WASTE MINIMIZATION AND REPORTING RESULTS (*Reporting and Monitoring*)

The draft permit requires the location coordinates for a single discharge per day. We are concerned that a single data point per day (reported annually) will not provide adequate monitoring or dissuade effluent discharges in prohibited areas. The draft permit also requires reporting the daily minimum and daily average distance traveled, and the daily minimum and daily average vessel speed (during discharge). To meet these reporting requirements, the vessel captain will need to track and record the distance and vessel speed of each discharge in order to determine the daily 'minimum'. This is not practical for the captain or useful in

determining compliance. And, distance traveled without the corresponding location is not informative. A more reasonable and informative monitoring requirement that will also encourage compliance with designated areas and effluent dispersion is to report the start and end locations and duration (time period) of each discharge event per day. These data are electronically retrieved from the vessels GPS and would not require manual tracking or calculations during vessel operations. The average vessel speed is easily subsequently calculated from GPS location and duration data. The catcher-processor vessels already record location and duration into state-required fishery logbooks so this should not be unfamiliar or burdensome.

***Recommendation: The General permit should include a monitoring plan to ensure that processor vessels are not discharging fish waste inside prohibited areas. Reporting requirements should include: 1) GPS location coordinates of the start and end of each discharge event, 2) the duration of each discharge event, 3) the average vessel speed for each discharge event.***

## XI. DEFINITIONS AND ACRONYMS

- "Contiguous Zone" - Authority was extended from 12 nautical miles to 24 nautical miles in 1999. http://www.gc.noaa.gov/documents/090899-cont_zone_proc_7219_64_48701.pdf

- "Prohibited species" - 50 CFR 679.21(b)(1) addresses prohibited species off Alaska. West coast prohibited species is 50 CFR 660.12(a)(1).

We hope our comments are helpful to EPA. Thank you for requesting and considering our comments.

Sincerely,

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cc: (electronic copy)
ODFW - Braby, Merems, Marion
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DEQ - Wiren

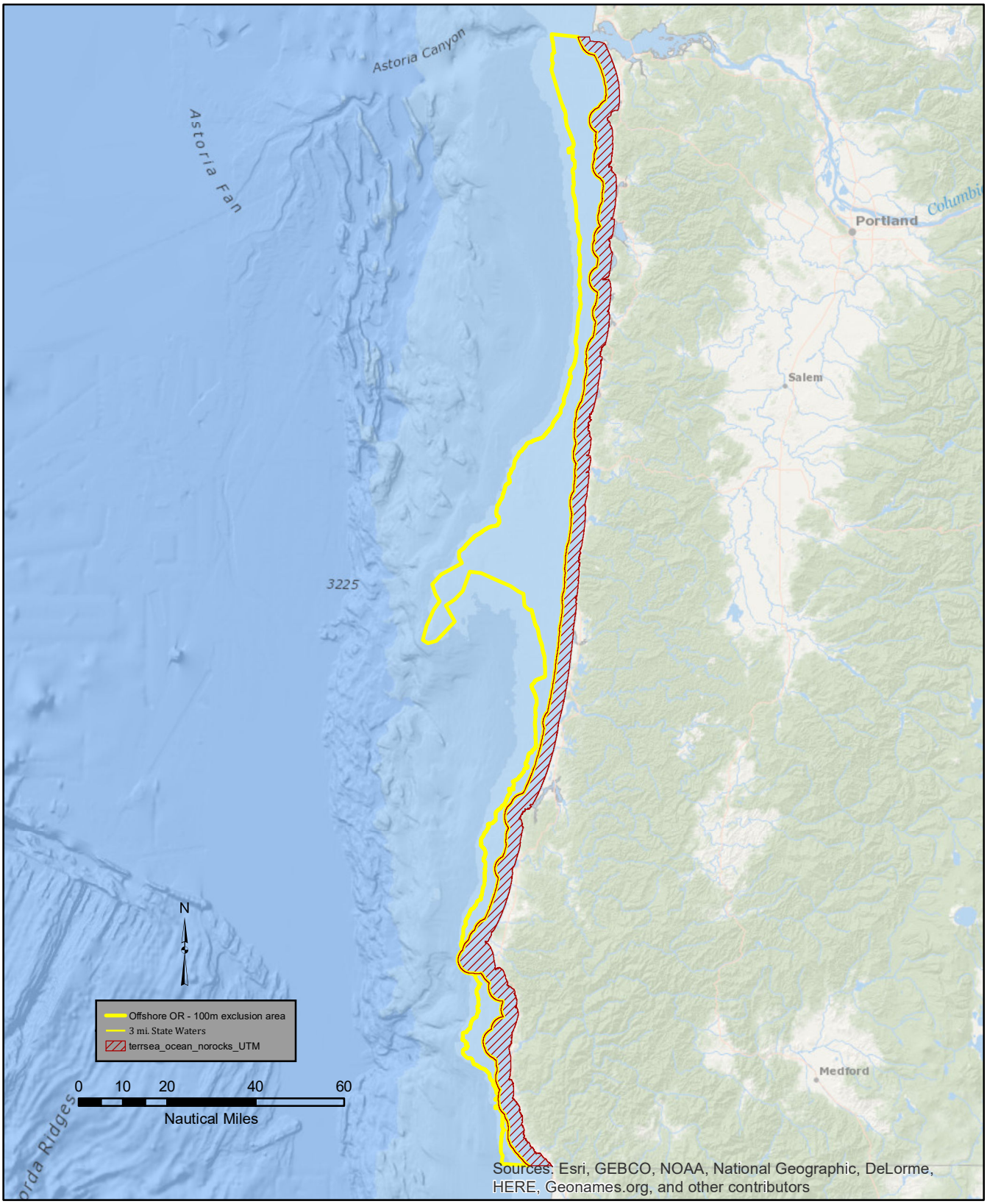


Figure 1. Recommended coastwide depth closure off Oregon to protect the most "at-risk" hypoxic waters coastwide. The closure would extend from the seaward boundary of the Oregon Territorial Sea, to a generalized depth contour of 100m.

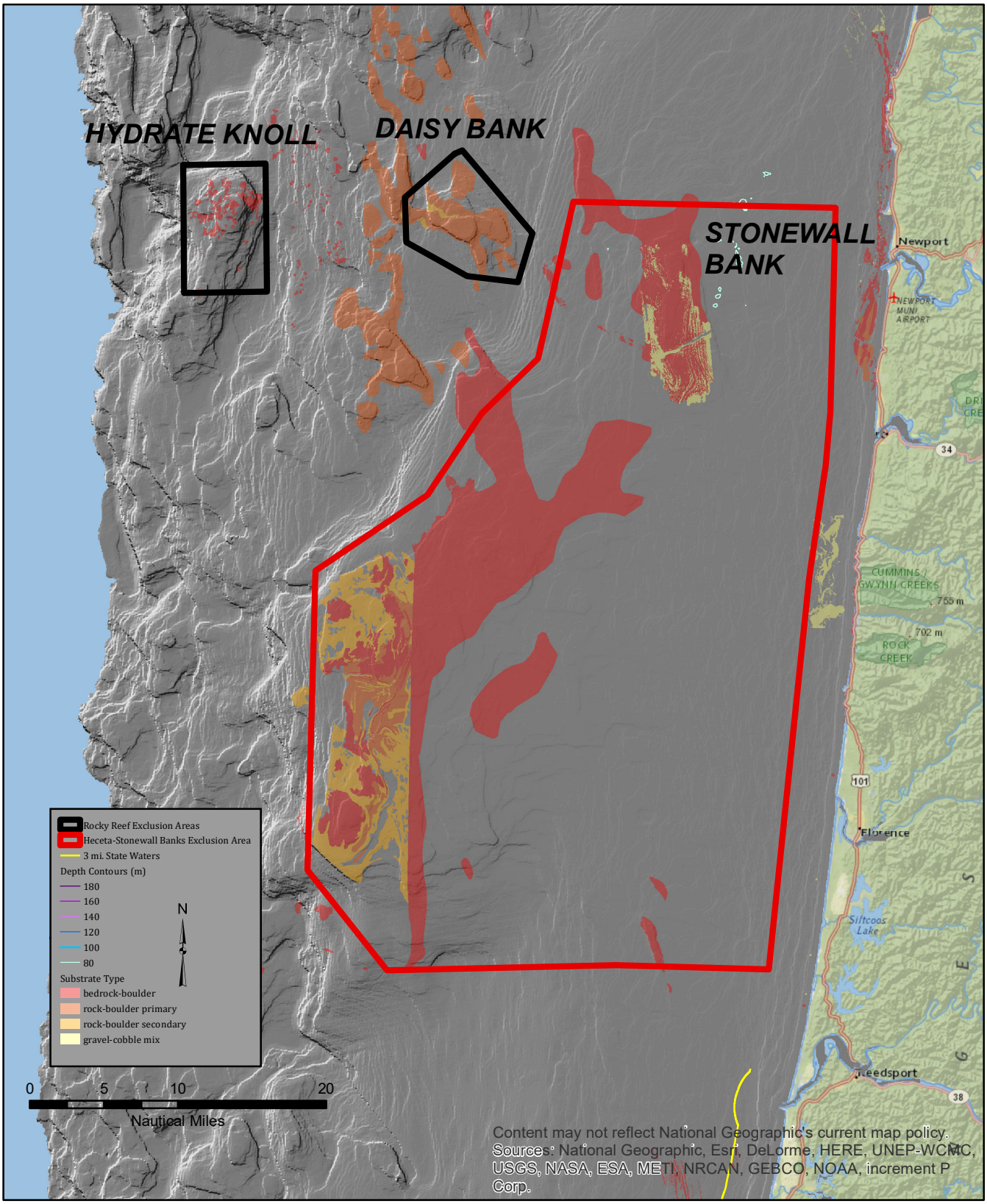


Figure 2. Recommended exclusion area at Stonewall-Heceta Banks Complex, and other sensitive areas.

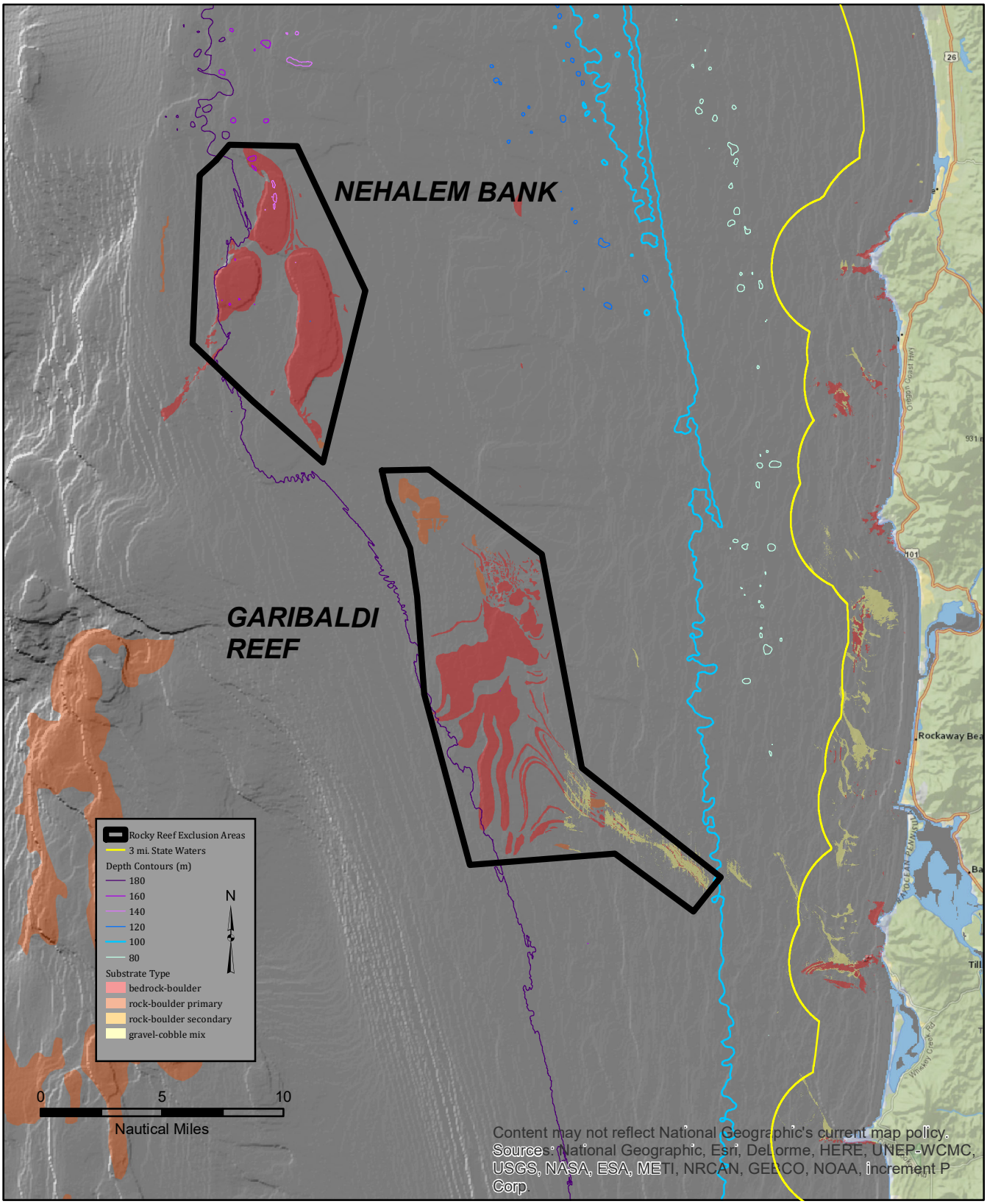


Figure 3a. Northern Oregon offshore rocky reefs recommended as exclusion areas.

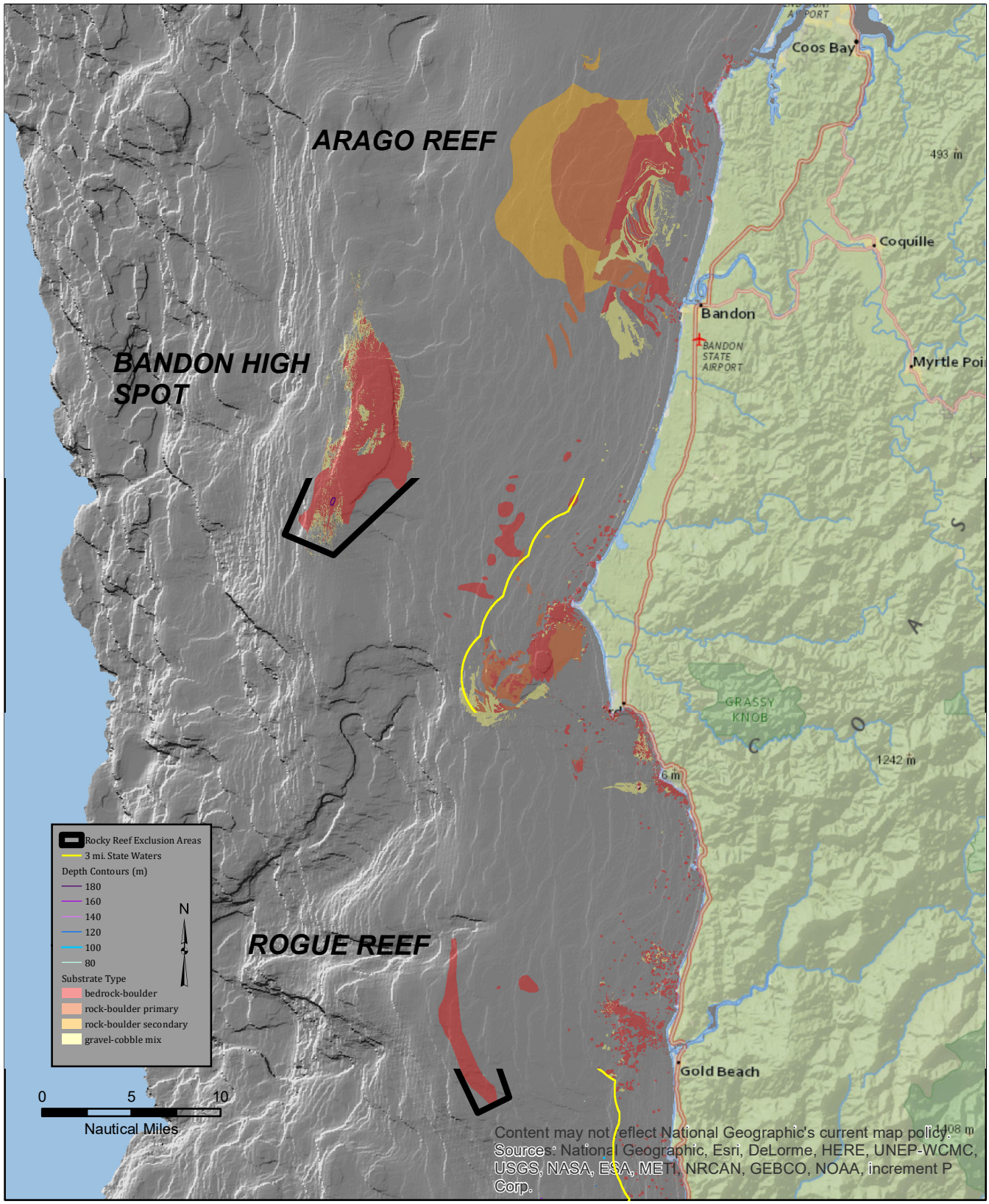


Figure 3b. Southern Oregon offshore rocky reefs recommended as exclusion areas.