APPENDIX - NEARSHORE MANAGEMENT FRAMEWORK

A complex mix of laws, rules, and programs governs the use, conservation, and management of Oregon's marine resources. Other existing plans may affect the management of nearshore resources. Examples include fishery management plans and the Oregon ***Territorial Sea Plan***. Multiple state and federal agencies and other public entities implement and enforce regulations for the comprehensive management of marine resources (Figure 1). In addition, public agencies, private non-profit organizations, volunteer groups, or private citizens undertake non-regulatory or voluntary resource conservation and management actions. State agencies have been established with different jurisdictions and authorities to address specific public needs. For example, ODFW is responsible for fish and wildlife resources, the Oregon Department of Environmental Quality is responsible for air and water quality, and the Department of State Lands is responsible for state-owned lands. The methods and forums for addressing any specific nearshore issue will depend on which state and federal agencies are involved.

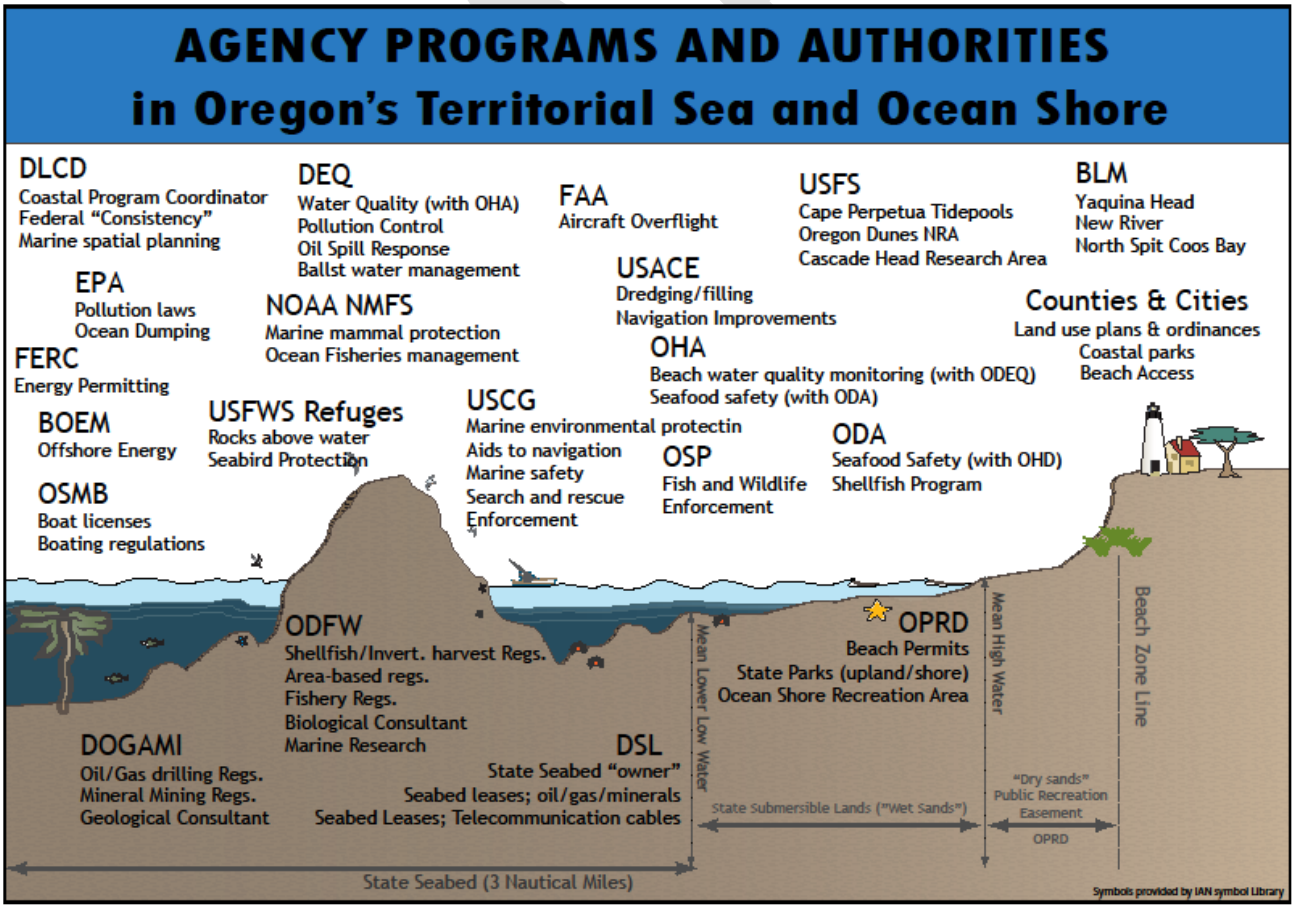

Figure 1: Agency programs and authorities for Oregon's state waters and ocean shores (courtesy Oregon Department of Land and Conservation Development).

THE OREGON DEPARTMENT OF FISH AND WILDLIFE

The Oregon Department of Fish and Wildlife (ODFW) is responsible for managing Oregon's fish and wildlife resources. ODFW's mission is "to protect and enhance Oregon's fish and wildlife and their habitats for use and enjoyment by present and future generations."

Statutory Authority

As with all state agencies, legislatively adopted statutes confer ODFW's authority and jurisdiction (https://www.oregonlegislature.gov/bills_laws/Pages/ORS.aspx). The primary statutes governing ODFW are the Wildlife Code (ORS chapters 469 - 501) and the Commercial Fishing Code (ORS chapters 506 – 513). The Wildlife Code sets law for managing the state's wildlife, which includes mammals, birds, fish, amphibians, reptiles, and shellfish. The Commercial Fishing Code provides law and policy for managing commercial fisheries.

The Wildlife Code establishes and defines the Oregon Fish and Wildlife Commission, establishes and defines the ODFW, sets the overarching wildlife management policy, and defines laws, policies, and programs concerning management of Oregon's wildlife. The state's wildlife management policy balances the need to prevent serious depletion of any indigenous species with the need to provide the optimum recreational and aesthetic benefits for present and future generations of the citizens of this state.

The Commercial Fishing Code establishes jurisdiction over commercial harvest of "food fish", sets forth a food fish management policy, and establishes provisions for commercial fishing licenses, permits, and programs. Food fish include fish, shellfish, and "all other animals living intertidally on the bottom." The food fish management policy balances the need to maintain all species of food fish at optimum levels with the need to provide the optimum economic, commercial, recreational and aesthetic benefits for present and future generations of the citizens of Oregon.

Oregon Fish and Wildlife Commission

The Oregon Fish and Wildlife Commission (Commission) is a governor-appointed public body that provides overall policy guidance to ODFW, reviews and approves administrative rules that govern the implementation of fish and wildlife statutes, and provides a public forum for addressing state fish and wildlife issues. The Commission formulates general state programs and policies concerning management and conservation of fish and wildlife resources and establishes seasons, methods and limits for sport and commercial take. The Commission consists of seven members appointed by the governor for staggered four-year terms. One commissioner must be from each congressional district, one from east of the Cascades and one from west of the Cascades.

ODFW Agency Infrastructure

ODFW consists of the Commission, a commission-appointed director, and a statewide staff of approximately 1,200 permanent employees. The department carries out fish and wildlife laws, rules, policies, and commission actions through programs staffed by biologists, technical experts, and others. The primary programs include Fish Division, Wildlife Division, Habitat Division, Information Systems Division, Information and Education Division, and Administrative Services Division. A program within the Fish Division, the Marine Resources Program, carries out state management actions for Oregon's marine fish and wildlife resources. The SWAP provides a framework for Marine Resources Program's management of fish and wildlife within state ocean waters and estuaries.

ODFW Administrative Rules

State agencies implement statutes by adopting rules that define the details of agency programs and policies. These rules are recorded in a set of public documents referred to as Oregon Administrative Rules or OAR's. The Oregon Fish and Wildlife Commission is the body that defines and adopts ODFW's Administrative Rules. ODFW has numerous administrative rules governing its actions and how people interact with fish and wildlife (http://www.dfw.state.or.us/OARs/index.asp).

Native Fish Conservation Policy

One set of rules particularly germane to the Nearshore is the ***Native Fish Conservation Policy*** (OAR 635-007-0502 through 635-007-0509). This policy provides the overall blueprint for ensuring conservation of native fish in Oregon, which includes marine fish and invertebrates residing in state waters (from shore out to 3 nautical miles). The policy's goals include:

1) Prevent the serious depletion of any native fish species by protecting natural ecological communities, conserving genetic resources, managing consumptive and non-consumptive fisheries, and using hatcheries responsibly so that naturally produced native fish are sustainable;
2) Maintain and restore naturally produced native fish species, taking full advantage of the productive capacity of natural habitats, in order to provide substantial ecological, economic, and cultural benefits to the citizens of Oregon; and
3) Foster and sustain opportunities for sport, commercial, and tribal fishers consistent with the conservation of naturally produced native fish and responsible use of hatcheries.

Definitions:

Native fish: Fish species indigenous to Oregon, not introduced. This includes both naturally produced and hatchery produced fish.

Naturally produced fish: Fish that reproduce and complete their full life cycle in natural habitats.

In 2015, ODFW developed a Marine Fishery Management Plan Framework (ODFW 2015) under the umbrella of the ***Native Fish Conservation Policy***. The Framework provides a transparent and consistent process for developing state fishery management plans for marine fish and shellfish designed to maintain ecosystem integrity and sustainable fisheries. The primary components of marine FMPs under the Framework include: 1) identification and characteristics of the population being managed, 2) description of the current and desired biological status of the population, 3) assessment of factors causing gaps between current and desired population status, and 4) management strategies that address factors and provide metrics to assess the success of the strategies. The full Framework is available on the Marine Resources Program website, as are several plans developed under the framework.

OTHER STATE AGENCIES

Management of the nearshore environment is highly fragmented, with jurisdiction split among multiple state agencies (Figure 2.1). ODFW's legal jurisdiction covers management of fish and wildlife only. While ODFW can take action to control the take or harvest of animals, and has some authority concerning animal habitat, the Department does not have authority over such issues as water pollution, vessel traffic, or access to public lands (except on ODFW-owned land). These and other issues are under the jurisdiction of other state agencies. Those with the greatest connection to the SWAP are listed below.

Department of State Lands (DSL)

The department is the administrative agency of the State Land Board. It manages the state's submerged and submersible land under navigable rivers, lakes, estuaries, and the territorial sea. It also administers a permit program for dredging and filling in state waters, a program for leasing rights to state submerged and submersible lands, and is responsible for managing commercial kelp harvest.

Oregon Parks and Recreation Department (OPRD)

The department has management authority over most of the Oregon coastline through two mechanisms. The OPRD has direct authority to manage activities within state parks, many

of which include sandy or rocky shore areas. In cooperation with DSL, OPRD also manages Oregon's ocean shore—the publicly owned land between the extreme low water line and to the beach zone line (statutory vegetation line) along the entire length of Oregon's coast.

Department of Environmental Quality (DEQ)

The department is a regulatory agency charged with protecting the quality of Oregon's environment. DEQ is responsible for protecting and enhancing Oregon's water and air quality, for cleaning up spills and releases of hazardous materials, for testing toxins in Oregon's environment, including its fish and wildlife resources, and for managing the proper disposal of hazardous and solid wastes. DEQ uses a combination of technical assistance, inspections and permitting to help public and private facilities and citizens understand and comply with state and federal environmental regulations. In addition to local programs, the U.S. Environmental Protection Agency (EPA) delegates authority to DEQ to operate federal environmental programs within the state such as the Federal Clean Air, Clean Water, and Resource Conservation and Recovery Acts.

Department of Land Conservation and Development (DLCD)

The department oversees implementation of the state's land use planning and coastal zone management programs. DLCD provides coordinated management planning for ocean and coastal state agencies through the Ocean Policy Advisory Council, the Oregon *Ocean Management Plan*, the *Territorial Sea Plan,* Estuary Plans and Statewide Planning Goals 16, 17, 18, and 19.

The *Territorial Sea Plan* was established to conserve and protect marine habitat by managing the resources and uses within the state's jurisdiction of the sea. In 2013, it was amended to include policies governing offshore renewable energy siting in state waters.

Oregon State Police (OSP)

The Oregon State Police enforce all laws, including fish and wildlife regulations. OSP's Fish and Wildlife Division works closely with ODFW to identify current issues and set enforcement priorities. Updating the *Cooperative Enforcement Plan* annually is part of this process.

Oregon Health Authority (OHA)

OHA administers public health programs, including making decisions on beach closures due to poor water quality or human food health risks such as biotoxins in shellfish.

Department of Agriculture (ODA)

The department is responsible for testing seafood commodities such as Dungeness crab and razor clams for contaminants. ODA also is responsible for leasing and regulatory functions for oyster and mussel aquaculture and regulates the use of growth-retardant paints on boat hulls. The ODA is responsible for appointing members to various commodity commissions such as the Dungeness Crab Commission, the Salmon Commission, the Albacore Commission and the Oregon Trawl Commission.

Department of Geology and Mineral Industries (DOGAMI)

The department regulates surface mining and oil, gas and geothermal resource exploration. The agency also identifies and maps the state's geology and natural hazards. On the coast this includes tsunami and earthquake hazards, and coastal erosion.

Oregon State Marine Board (OSMB)

The Marine Board regulates boating activities in state waters. Through boater education and publications, the board can create public awareness of wildlife resources affected by boating activity.

LOCAL GOVERNMENTS

Counties/Cities

County and city governments have authority in land use regulation and limited authority in ocean governance through 19 statewide planning goals and various Oregon Administrative Rules. These goals and rules give county governments the ability to direct land use planning, economic and coastal development, estuary use and planning, address transportation concerns and direct local government planning and zoning activities regarding state and local parks. Some enforcement of fish and wildlife laws and marine activities is done by county sheriffs. County commissioners and their constituents often have interest and involvement in ocean governance decisions that could affect local economies.

Port Authorities

Established by enactments of state government, public ports develop, manage and promote the flow of waterborne commerce and act as catalysts for economic growth. Port commissioners and staff often are directly involved in the development and maintenance of ports and promote economic growth and recreational activities. Dredging, construction, security, and port infrastructure improvement is done through port authorities in conjunction with state and federal agencies.

Oregon Coastal Zone Management Association

The Oregon Coastal Zone Management Association is a non-profit organization representing counties, cities, ports, soil, and water conservation districts and the Coquille Tribe on the Oregon coast. The group helps coordinate local government involvement in coastal transportation issues, coastal land use issues, coastal resource management, fisheries (sport and commercial) and develops objective information about the economy of the Oregon coast. It has no statutory or regulatory authority. The group also provides basic information to Congress and the U.S. Army Corps of Engineers regarding maritime traffic to help budget for harbor maintenance.

Oregon Coast Tribal Governments

Tribal government representatives work with the Governor's office, state agencies, local jurisdictions and other coastal program partners to discuss cultural and land use issues related to marine resources. In 2001, the Oregon Legislature enacted Senate Bill 770 which formalized the government-to-government relationship that exists between Oregon's Tribal governments and the State of Oregon. Currently, one seat for "coastal" tribal representation is reserved on the Ocean Policy Advisory Council and gives tribal governments the ability to assist in ocean management. ODFW works in partnership with the nine federally recognized tribes in Oregon and produces annual reports.

FEDERAL AGENCIES

Several federal agencies have management authority over species, activities, or lands in the nearshore area. State and federal agencies share jurisdiction for many resource management activities. Federal agencies whose ocean management jurisdiction has the greatest connection to the SWAP are:

Bureau of Ocean Energy Management (BOEM)

The Bureau of Ocean Energy Management's Renewable Energy Program is authorized by the Energy Policy Act of 2005 to issue leases, easements, and right-of-way grants for production and transmission of energy from renewable sources on the Outer Continental Shelf, such as marine hydrokinetic and offshore wind. BOEM's responsibilities are paired with those of other federal entities; however, BOEM is the lead agency for offshore wind.

Federal Energy Regulatory Commission (FERC)

Under the authority of the Federal Power Act, the Federal Energy Regulatory Commission issues licenses for the construction, operation, and maintenance of most non-federal hydropower projects. This includes marine hydrokinetic projects sited in Oregon's Territorial Sea or the adjacent federal waters of the Pacific Ocean.

National Marine Fisheries Service (NMFS, or NOAA Fisheries)

This branch of the National Oceanic and Atmospheric Administration manages ocean fisheries under the Magnuson Stevens Fisheries Conservation Act, administers the Marine Mammal Protection Act, and co-administers the Endangered Species Act with U.S. Fish and Wildlife Service. Ocean fisheries management occurs through a regional advisory body known as the Pacific Fishery Management Council (see below), which makes recommendations to NOAA Fisheries.

U.S. Fish and Wildlife Service (USFWS)

The USFWS administers the National Wildlife Refuges in Oregon and co-administers several federal laws including the Endangered Species Act. A complex of five National Wildlife Refuges include over 1,800 rocks and islands that are disconnected from the mainland and have land above mean higher high water in Oregon's territorial sea as well as rocky headlands and portions of estuaries. These include Bandon Marsh, Cape Mears, Nestucca Bay, Oregon Islands, Siletz Bay and Three Arch Rocks National Wildlife Refuges.

U.S. Army Corps of Engineers (USACE)

The Army Corps of Engineers is responsible for building and maintaining coastal navigational projects, placement of dredged materials, and administering federal permit programs for construction, dredging, and filling in ocean and other waters.

U.S. Coast Guard (USCG)

The United States Coast Guard is active in the protection of natural resources, including pollution prevention, response, and enforcement; enforcement of fisheries laws, and international agreements and foreign vessel inspections.

U.S. Environmental Protection Agency (EPA)

The EPA is responsible for protecting marine water quality under federal laws and regulates all point-source discharges into rivers, estuaries, and marine waters. The EPA protects coastal marine resources through a watershed approach and its regulatory and cooperative management programs.

U.S. Department of Agriculture (USDA)

The USDA has a number of missions related to aquaculture. These include its food safety in coordination with the OHA and research, education, and economics.

Other Ocean Related Federal Agencies

Other federal agencies that manage coastal lands adjacent to the nearshore area include U.S. Bureau of Land Management (BLM) and U.S. Forest Service (USFS).

POLICY FORUMS AND PARTNERSHIPS

Ocean Policy Advisory Council (OPAC)

The Ocean Policy Advisory Council was established in 1991, by the Oregon Legislature and represents ocean interest groups such as commercial, charter and sport fisheries, counties, port officials, recreationalists, conservation organizations, state agencies, and others. OPAC's purpose is to assist management agencies in discussions, recommendations, and advancement of policies related to the state's three-mile territorial sea. OPAC developed the Territorial Sea Plan to provide guidance for managing activities affecting ocean natural resources. OPAC provides a forum for addressing issues identified in the SWAP that cut across agency jurisdictions.

Oregon Ocean Science Trust (OOST)

The Oregon Ocean Science Trust was established by the Oregon Legislature in 2013 to promote research and monitoring that helps inform our understanding of Oregon's ocean and coastal resources. An Oregon Science Fund was established that is dedicated to funding such projects. The OOST utilizes a competitive grant process to determine which projects to fund. The SWAP is one of the documents that help the OOST evaluate the science and monitoring needs when it creates calls for proposal and funding opportunities.

International Pacific Halibut Commission (IPHC)

The International Pacific Halibut Commission (IPHC) is an international body that is dedicated to research and management of Pacific halibut stocks that occur in both U.S. and Canadian waters. The IPHC consists of three government-appointed commissioners for each country who serve their terms at the pleasure of the President of the United States and the Canadian government respectively.

Pacific Fishery Management Council (PFMC)

This is one of eight regional councils in the U.S. responsible for managing fisheries under the Magnuson Stevens Fisheries Conservation Act. PFMC is responsible for fisheries off of Oregon, Washington, and California. The Council consists of representatives from the west coast states, NOAA Fisheries, tribes, and citizens in, or associated with, commercial and

sport fishing industries. The Council recommends fishery management actions to NOAA Fisheries.

Pacific States Marine Fisheries Commission (PSMFC)

The Pacific States Marine Fisheries Commission (PSMFC) is dedicated to resolving interstate fishery issues. Representing California, Oregon, Washington, Idaho, and Alaska, the PSMFC does not have regulatory or management authority. Rather, it serves as a forum for data collection, information management and discussion, working for coastwide consensus between state and federal fishery management authorities. PSMFC addresses issues that fall outside individual state or regional management council jurisdiction.

Northwest Association of Networked Ocean Observing Systems (NANOOS)

The Northwest Association of Networked Ocean Observing Systems (NANOOS) is the regional association of the Integrated Ocean Observing Systems (IOOS) in the Pacific Northwest, primarily Oregon and Washington. It is a partnership of over 40 entities that include industry, state agencies, local governments, tribes, non-governmental organizations, and educational institutions. It provides data and products that help inform a wide range of decisions about oceans and estuaries. There are several areas of focus for specific user groups that include maritime operations, ecosystem impacts, regional fisheries, and coastal hazards.

Pacific Marine and Estuarine Fish Habitat Partnership (PMEP)

The Pacific Marine and Estuarine Fish Habitat Partnership (PMEP) is one of 20 nationally recognized fish habitat partnerships in the United States. Although PMEP's specific focus is on the estuarine and nearshore marine ecosystems in California, Oregon, and Washington, the partnership also serves to advance the goals of the National Fish Habitat Partnership (NFHP) – to protect, restore, and enhance the nation's fish and aquatic communities through partnerships that foster fish habitat conservation and improve quality of life for all Americans. PMEP provides funding opportunities, published reports, and data products.

Partnership for Interdisciplinary Studies of Coastal Oceans (PISCO)

The Partnership for Interdisciplinary Studies of Coastal Oceans (PISCO) is an academic consortium. They conduct research to advance understanding of coastal ocean in the California Current Ecosystem with a focus on informing management and policy. They conduct long-term and large-scale studies, focusing on biological and ocean drivers of rocky intertidal and kelp forest systems.

MARINE SPATIAL MANAGEMENT

Spatial management and marine spatial planning incorporate science and user needs to address ocean resource management issues in a geographic context. The scope, content and outcome of marine spatial planning can vary from an issue-specific to a broader ecosystem context. The planning process often takes a collaborative, proactive approach that works best with diverse interest groups. Because Oregon has one of the richest temperate marine ecosystems in the world, it is necessary to identify important ecological areas, setting strong ecological resource protection standards in the state's nearshore waters. Oregon has a long history of designating ocean and coastal areas to achieve resource management coals and public use.

The Territorial Sea Plan (TSP) is a multi-part coordination framework of state goals and policies created in coordination with ODFW and other state agencies to provide guidance on resource management within Oregon's territorial sea. Part 5, developed in 2009 and amended in 2019, describes state policies and decision-making processes for the development of renewable ocean energy in the territorial sea. **Two research wave energy research test sites**, PacWave North and PacWave South, are located off the central coast near Newport. In 2024 cables connecting wave energy generating buoys to the power grid were installed at the PacWave South site and testing is expected to start in 2025. In 2024, HB 4080 was passed by the Oregon legislature and tasked DLCD with developing an Offshore Wind Roadmap. The purpose of the Roadmap is to allow the state to look at existing policies related to offshore wind energy development (e.g. TSP) and improve the state's position ahead of any future federal offshore wind energy permitting process, should it be reinitiated. The Offshore Wind Roadmap will be completed in 2026. The Rocky Shores Management Strategy TSP Part 3 was updated in 2023 with revised resource management goals and several new area designations (Figures 2a and 2b).

Outside the TSP process, Oregon has designated five marine reserves and nine associated marine protected areas in 2012 with the help of community groups working in collaboration with state agencies (Figures 2a and 2b). ODFW is the lead agency for managing these areas.

The U. S. Fish and Wildlife Service also manages a complex of National Wildlife Refuges that encompass the more than 1800 islands off the Oregon coast as well areas on the coastal mainland. Federal wildlife refuges are above the mean high tide line. These islands are part of Oregon's nearshore environment and provide breeding and resting habitat for marine mammals and seabirds. Oregon put additional restrictions on boat operations in the waters within 500 feet of the islands at Three Arch Rocks to further protect wildlife from disturbance.

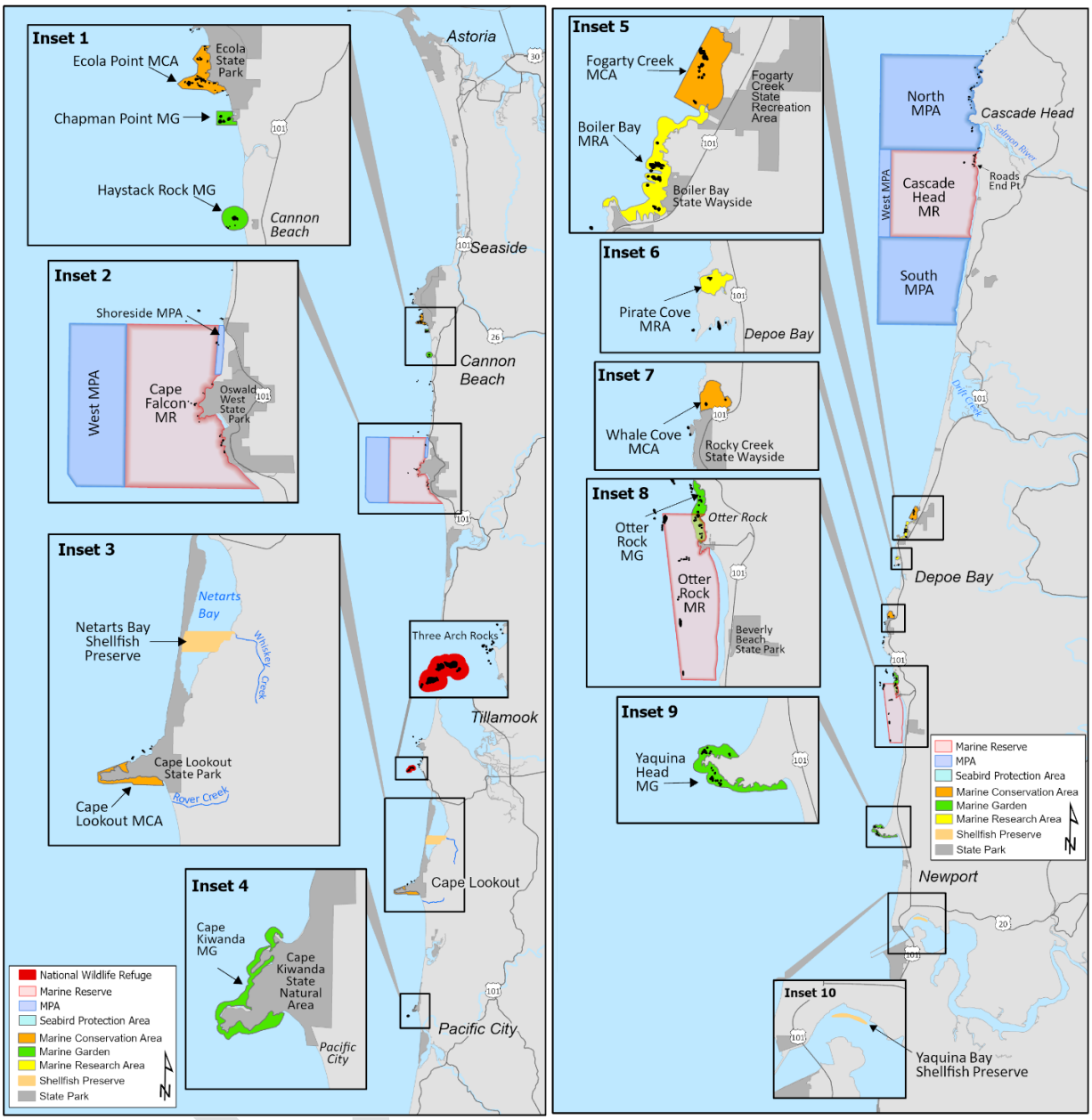

Figure 2a. North Oregon coast Nearshore spatial management areas.

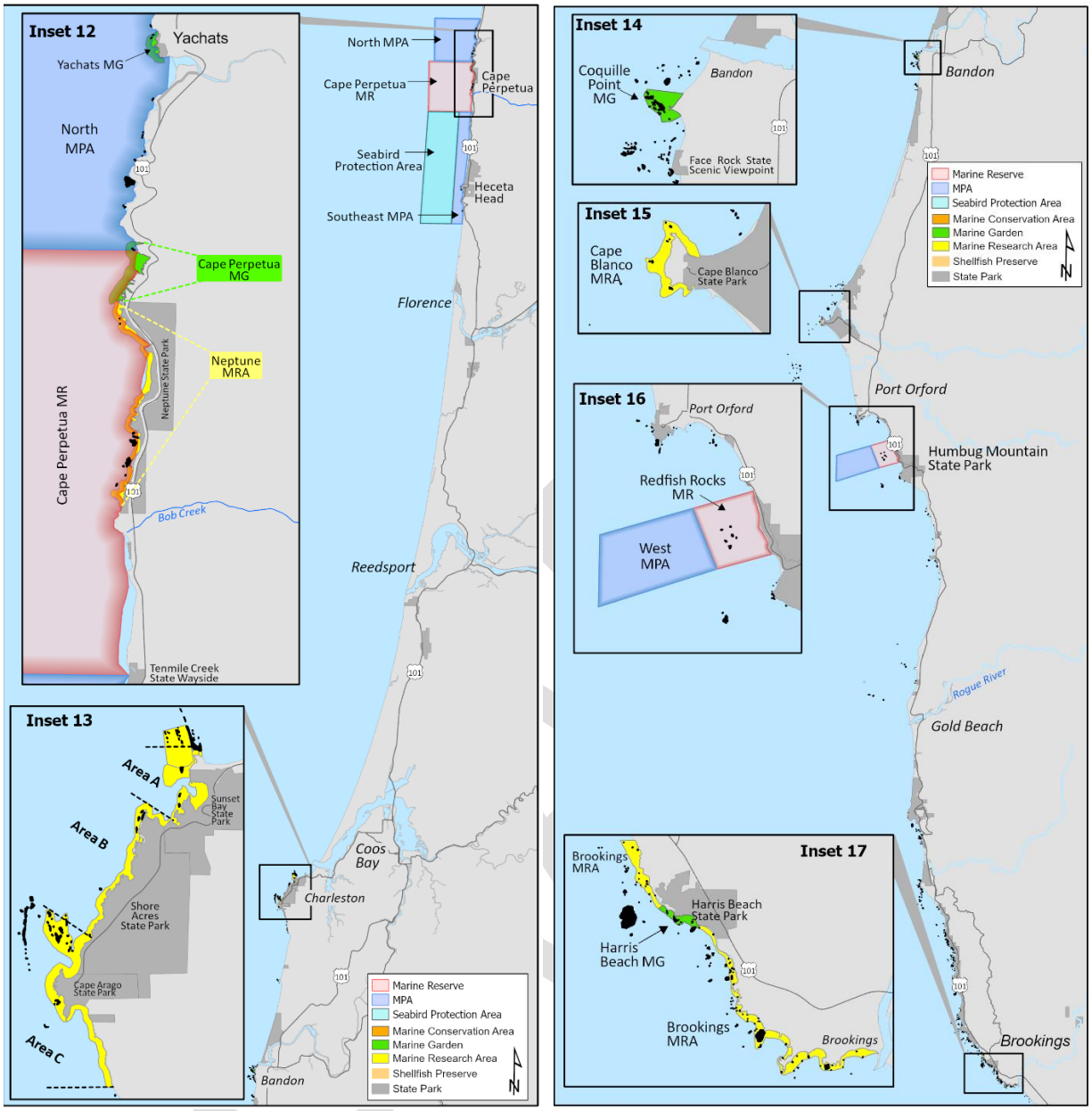

Figure 2b. South Oregon coast Nearshore spatial management areas.