

Part Five Appendix C: Enforceable Policies Subject to Federal Consistency

This Appendix lists the provisions of Part Five that constitute the “enforceable policies” for Federal Consistency purposes, under the federal Coastal Zone Management Act (CZMA) and pursuant to the Federal Consistency Regulations at 15 CFR Part 930. The language below includes only the language that meets the standards of an enforceable policy under the CZMA. The full-text of each policy is found in the main text of Part Five and the full-text still applies for state purposes.

The CZMA requires that certain federally permitted or licensed activities that affect coastal uses or resources must be conducted in a manner consistent with the enforceable policies of a state’s federally approved coastal management program. When reviewing federal decisions to permit or license renewable energy facilities for consistency with the Oregon Coastal Management Program, the Department of Land Conservation and Development will apply the following text from sections B and D of Part Five as enforceable policies. In addition to the following text from sections B and D listed below, all of Part Five, Appendix A – Definitions and Terms, and all of Part Five Appendix B – Map Designations are also enforceable policies for Federal Consistency purposes.

B. Implementation Requirements

4. Resource and Use Inventory and Effects Evaluation and Special Resource and Use Review Standards

An applicant must provide the regulating agencies the data and information to complete the Resource and Use Inventory and Effects Evaluation and apply the Special Resource and Use Review Standards, prior to the regulating agencies making any decision.²³

b. Sufficiency of Resource and Use Inventory and Effects Evaluation

An applicant must provide information and data to complete the Resource and Use Inventory and Effects Evaluation and apply the Special Resource and Use Review Standards that is sufficient to identify and quantify the short-term and long-term effects of the proposed renewable energy facility on the affected marine resources and uses.

d. Inventory Content

To evaluate the magnitude of the proposed project, the likelihood of project effects, and the significance of the resources and uses that the project may affect, regulating agencies shall require that the applicant include consideration of certain factors in the inventory. The Resource and Use Inventory and Effects Evaluation and Special

²³ This is not “necessary data and information” for the purposes of 15 CFR § 930.58(a)(1)(ii).

Resource and Use Review Standards requirements apply to all renewable energy facility projects for which an applicant pursues a DSL proprietary authorization, unless the requirements are waived by DSL or otherwise addressed in another subsection of the plan. In addition to the resource inventory and effects evaluation content of this paragraph, projects are also subject to the Special Resource and Use Review Standards specified in paragraph B.4.g.

- 1.) Information regarding the development, placement, operation, maintenance, and decommissioning of the project:
 - (a) Location (using maps, charts, descriptions, etc.);
 - (b) Numbers and sizes of equipment, structures;
 - (c) Methods, techniques, activities to be used;
 - (d) Transportation and transmission systems needed for service and support;
 - (e) Materials to be disposed of and method of disposal;
 - (f) Physical and chemical properties of hazardous materials, if any, to be used or produced;
 - (g) Navigation aids; and
 - (h) Proposed time schedule.

- 2.) Location and description of all affected areas, including, but not limited to:
 - (a) Site of the renewable energy facility;
 - (b) Adjacent areas that may be affected by physical changes in currents and waves caused by the project;
 - (c) Utility corridor transiting the territorial sea and ocean shore; and
 - (d) Shoreland facilities.

- 3.) Physical and chemical conditions including, but not limited to:
 - (a) Water depth;
 - (b) Wave regime;
 - (c) Current velocities;
 - (d) Dispersal, horizontal transport, and vertical mixing characteristics;
 - (e) Meteorological conditions; and
 - (f) Water quality.

- 4.) Bathymetry (bottom topography) and Shoreline Topography (LIDAR Light Detection and Ranging)

- 5.) Geologic structure, including, but not limited to:
 - (a) Geologic hazards, such as faults or landslides of both marine and shoreline facility areas;
 - (b) Mineral deposits;
 - (c) Seafloor substrate type; and
 - (d) Hydrocarbon resources.

- 6.) Biological features, including, but not limited to:

- (a) Critical marine habitats (*see* Part Five, Appendix A);
 - (b) Other marine habitats;
 - (c) Fish and shellfish stocks and other biologically important species;
 - (d) Recreationally or commercially important finfish or shellfish species;
 - (e) Planktonic and benthic flora and fauna;
 - (f) Other elements important to the marine ecosystem; and
 - (g) Marine species migration routes.
- 7.) Cultural, economic, and social uses affected by the renewable energy facility, including, but not limited to:
- (a) Commercial and sport fishing;
 - (b) State or federally protected areas;
 - (c) Scientific research;
 - (d) Ports, navigation, and dredge material disposal sites;
 - (e) Recreation;
 - (f) Coastal communities economy;
 - (g) Aquaculture;
 - (h) Waste water or other discharge;
 - (i) Utility or pipeline corridors and transmission lines;
 - (j) Military uses; and
 - (k) Aesthetic resources.
- 8.) Significant historical, cultural or archeological resources.
- 9.) Other data that the regulating agencies determine to be necessary and appropriate to evaluate the effects of the proposed project.

e. Written Evaluation.

Regulating agencies shall require the applicant to submit a written evaluation of all the reasonably foreseeable adverse effects associated with the development, placement, operation, and decommissioning of the proposed renewable energy facility. For purposes of the evaluation, the submittal shall base the determination of “reasonably foreseeable adverse effects” on scientific evidence. The information and data to comply with the Special Resources and Uses Standards is specified in paragraph B.4.g. The evaluation shall describe the potential short-term and long-term effects of the proposed renewable energy facility on marine resources and uses of the Oregon territorial sea, continental shelf, onshore areas and coastal communities based on the inventory data listed in paragraph B.4.d and the following considerations:

- 1.) Biological and Ecological Effects:
- Biological and ecological effects include those on critical marine habitats and other habitats, and on the species those habitats support. The evaluation shall determine the probability of exposure and the magnitude of exposure and response, as well as the level of confidence (or uncertainty) in those determinations. The evaluation need not discuss highly speculative consequences. However, the evaluation shall discuss

catastrophic environmental effects of low probability. Factors to consider include, but are not limited to:

- (a) The time frames/periods over which the effects will occur;
- (b) The maintenance of ecosystem structure, biological productivity, biological diversity, and representative species assemblages;
- (c) Maintaining populations of threatened, endangered, or sensitive species;
- (d) Vulnerability of the species, population, community, or the habitat to the proposed actions; and
- (e) The probability of exposure of biological communities and habitats to adverse effects from operating procedures or accidents.

2.) Current Uses:

Evaluate the effects of the project on current uses and the continuation of a current use of ocean resources such as fishing, recreation, navigation, and port activities. Factors to consider include, but are not limited to:

- (a) Local and regional economies;
- (b) Archeological and historical resources; and
- (c) Transportation safety and navigation.

3.) Natural and Other Hazards

Evaluate the potential risk to the renewable energy facility, in terms of its vulnerability to certain hazards and the probability that those hazards may cause loss, dislodging, or drifting of structures, buoys, or facilities. Consider both the severity of the hazard and the level of exposure it poses to the renewable marine resources and coastal communities. Hazards to be considered shall include the scouring action of currents on the foundations and anchoring structures, slope failures and subsurface landslides, faulting, tsunamis, variable or irregular bottom topography, weather related, or due to human cause.

4.) Cumulative Effects

Evaluate the cumulative effects of a project, including the shoreland component, in conjunction with effects of any prior phases of the project, past projects, other current projects, and probable future projects.²⁴ The evaluation shall analyze the biological, ecological, physical, and socioeconomic effects of the renewable energy facility development and of other renewable energy facility projects along the Oregon coast, while also taking into account the effects of existing and future human activities and the regional effects of global climate change.

²⁴ Under the National Environmental Policy Act (NEPA), “cumulative impacts” means “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-federal) or person undertakes such actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” 40 CFR. § 1508.7.

(a) In conducting the cumulative effects analysis, the applicant shall focus on the specific resources and uses, as detailed under paragraph B.4.d, that may be affected by the incremental effects of the proposed project and other projects in the same geographic area. The evaluation shall include but not be limited to consideration of whether:

- i. the resource and uses are especially vulnerable to incremental effects;
- ii. the proposed project is one of several similar projects in the same geographic area;
- iii. other developments in the area have similar effects on the resources and uses;
- iv) these effects have been historically significant for the resource and uses; and
- v) other analyses in the area have identified a cumulative effects concern.

5.) Adaptive Management

Regulating agencies and the project developer shall use adaptive management and monitoring to evaluate the project at each subsequent phase; the intent of such evaluation is to inform the design, installation and operation of successive phases.

f. Pilot and Phased Development Projects

2.) Pilot Project

The regulating agency may recommend that an applicant conduct a pilot project to obtain adequate information and data and measure the effects.²⁵ Pilot projects are renewable energy facility developments which are removable or able to be shut down quickly, are not located in sensitive areas, and are for the purpose of testing new technologies or locating appropriate sites.²⁶ A regulating agency may allow a project developer to use a pilot project for the purpose of obtaining the data and

²⁵ Alternatively, DLCD may issue a CZMA “conditional concurrence” under 15 CFR § 930.4 and include a condition that in order to be consistent with the information requirements of the Territorial Sea Plan a project developer must first conduct a pilot project, or, if DLCD objects under the CZMA, may recommend a pilot project as an alternative to the proposed project.

²⁶ Pilot Project has the same meaning as “Demonstration Project” under the Department of State Lands rules governing the placement of ocean energy conversion devices on, in, or over state-owned land within the Territorial Sea. OAR 141-140-0020(7) defines “Demonstration Project” as “a limited duration, non-commercial activity authorized under a temporary use authorization granted by the Department to a person for the construction, installation, operation, or removal of an ocean energy facility on, in or over state-owned submerged and submersible land in the Territorial Sea to test the economic and/or technological viability of establishing a commercial operation. A demonstration project may be temporarily connected to the regional power grid for testing purposes without being a commercial operation.”

information necessary to fulfill the requirements of subsection B.4., and shall be based on the following approval criteria:

- (a) The purpose of the pilot project is to provide information on the performance, structural integrity, design, and environmental effects of a specific renewable energy technology or its supporting equipment and structures.
- (b) The applicant shall complete adequate inventories of baseline conditions, as required by paragraph B.4.d (Inventory Content), prior to conducting the pilot project.
- (c) The risk of adverse effects from the pilot project shall be insignificant, because:
 - i. of low probability of exposure of biological communities and habitats;
 - ii. of low sensitivity of the biological communities and habitats to the exposure; or
 - iii. the effects of exposure to sensitive communities and habitats will be insignificant.
- (d) The pilot project shall not adversely affect any “important marine habitat” or “critical marine habitat” (*see* Part Five, Appendix A: Glossary of Terms).
- (e) The pilot project will have a term, not to exceed five years, and authorization for the project will include a standard condition requiring project alteration or shutdown in the event that an unacceptable level of environmental effect occurs.
- (f) The pilot project shall avoid significant or long-term interference with other human uses of marine resources, and will require decommissioning and site restoration at expiration of the authorization period if federal and state authorization for a commercial renewable energy facility is not sought and approved.
- (g) All data necessary to meet the requirements of subsection B.4, shall be in the public domain subject to ORS 192.410 *et seq.*
- (h) Work Plan: The applicant shall provide a written work plan which will include, but not be limited to the following:²⁷

²⁷ Pilot projects that are authorized under the standards and conditions of this subparagraph f.2 are not required to fulfill the requirements of section D. The standards and requirements of section D will apply to an application for authorization to expand the pilot project from a short-term limited scope facility to a commercial operation scale facility.

- i. A list of the information needed to satisfy the requirements of subsection B.4.,
- ii. Specific pilot project objectives to obtain the needed information and an explanation of how the study or test design will meet the objectives.
- iii. Description of study or test methods to meet the objectives, such as:
 - Literature review;
 - Collection of any needed baseline data;
 - Hypotheses to address the study objectives;
 - Descriptions of field sampling and data-analyses methods to be used; and
 - Use of adequate controls to allow the effects of the proposed action to be separated from natural fluctuations in resources and habitats.
- iv. Supporting documentation demonstrating that the study design is scientifically appropriate and statistically adequate to address the research objectives.
- v. Descriptions of how the project developer will report and deliver the data and analyses to the regulating agency for review and approval.

(i) A pilot project that provides the necessary and sufficient information may become a phased development.

3.) Phased Development

The regulating agency may recommend that an applicant conduct a project as a phased development in order to obtain adequate information and data and to measure the incremental effects of each phase prior to further or complete build-out of the project.²⁸ Phased development projects are renewable energy facility developments which are limited in scale and area, but are designed to produce energy for commercial use. The applicant for a phased development project shall comply with the requirements of subsection B.4. A regulating agency may allow the use of a phased development project to allow for commercial energy production while obtaining certain data and information necessary to fulfill the requirements of subsection B.4. that can only be obtained through the monitoring and study of the effects of the development as it is installed and operated for a discrete period of time.

g. Special Resources and Uses Review Standards

- 1.) The following siting and development requirements apply to the construction, deployment or maintenance of a renewable energy facility:

²⁸ Alternatively, the Department of Land Conservation and Development may issue a CZMA “conditional concurrence” under 15 CFR § 930.4 and include a condition that in order to be consistent with the information requirements of the Territorial Sea Plan that a phased project must first be conducted, or, if the state objects under the CZMA, may recommend a phased project as an alternative to the proposed project.

- (a) Consider practicable alternative deployment and placement of structures in proximity to the proposed project area that would have less impact on identified resources and uses.
- (b) Minimize construction and installation activities during critical time periods for the resources and uses as identified by appropriate regulatory agencies.
- (c) Minimize disturbance to the identified resources and uses during construction and installation of the renewable energy facility and other structures.

2.) Fisheries Use Protection Standards

(a) Definition of Terms

- i. Adverse Effect for Fisheries Use Protection Standards: a significant reduction in the access of commercial and recreational fishers to an area spatially delineated as an area important to a single fishing sector, multiple combined sectors, or to the fishing community of a particular port.
- ii. Presumptive Exclusion Fisheries Use Protection Standards: the assumption that the distribution and importance of fisheries use within an area would preclude siting a renewable energy facility based on the potential adverse effects of that development on those identified resources and uses. To overcome the presumptive exclusion, an applicant must demonstrate and the regulating agency must concur that the proposed project meets all applicable standards for protecting the fisheries use subject to potential adverse effects.

(b) General Fisheries Use Protection Standard

The following standards must be considered in determining the possible adverse effects a renewable energy facility might have on fisheries use, and are applicable to applications in all resource and use areas unless otherwise designated by the plan:

- i. Minimize the displacement of fishers from traditional fishing areas, and the related impact on the travel distance and routing required to fish in alternative areas;
- ii. Minimize the compaction of fishing effort caused by the reduction in the areas normally accessible to fishers;
- iii. Minimize the economic impact resulting from the reduction in area available for commercial and recreational fishing for the effected sectors and ports.
- iv. Mitigate possible hazards to navigation and, provide practicable opportunities for vessel transit, at the project location.

- v. Limit the number and size of projects that are located in an area to minimize the impact on a particular port or sector of the fishing industry. Consider the distribution of projects and their cumulative effects based on the criteria listed in (i) through (iv).

(c) Area Designation Fisheries Use Protection Standards

The following standards apply to specific plan areas as delineated and described in the map located in Part Five, Appendix B.

i. Resources and Uses Conservation Areas (RUCA) Standards

The following standards apply to the protection of areas important to fisheries within Resources and Uses Conservation Areas.

Renewable energy facilities within RUCA are presumptively excluded from areas important to fisheries. To overcome the presumptive exclusion, an applicant must demonstrate and the regulating agency must concur that the project will have no reasonably foreseeable adverse effect on areas important to fisheries and there is no practicable alternative site.

ii. Resource and Use Management Areas (RUMA) Standards

The following standards apply to the protection of areas important to fisheries within Resources and Uses Management Areas.

Renewable energy facilities within RUMA may locate within areas important to fisheries of high catch; high value fish in low abundance or low fishing effort; important on a seasonal basis, or; important to individual ports or particular fleet, if the applicant demonstrates and the regulating agency concurs that the project will have no significant adverse effect on areas important to fisheries.

iii. Renewable Energy Facility Suitability Study Area (REFSSA) Standards

The following standards apply to the protection of areas important to fisheries within Renewable Energy Facility Suitability Study Areas.

Renewable energy facilities may locate within REFSSA based on a resource and use inventory evaluation of recreational and commercial fisheries, and the application of the standards listed under subparagraphs g.1 and g.2.b, if applicable.

3.) Ecological Resources Protection Standards

(a) Definition of Terms

- i. Adverse Effect for Ecological Resource Protection Standards: degradation in ecosystem function and integrity (including but not limited to direct habitat damage, burial of habitat, habitat erosion, reduction in biological diversity) or degradation of living marine

- organisms (including but not limited to abundance, individual growth, density, species diversity, species behavior).
- ii. Presumptive Exclusion for Ecological Resource Protection Standards: the assumption that the distribution and importance of ecological resources within an area would preclude the siting of a renewable energy facility based on the potential adverse effects of that project on those identified resources.
 - iii. Important, Sensitive, or Unique (ISU) Area: The state has identified particularly important, sensitive and unique ecological resources (ISUs), with the intention of providing them the highest level of protection from the effects of renewable energy development while allowing existing beneficial uses. ISU areas include both the discrete locations of the ISU resources and bounding polygons (*i.e.* buffers) intended to provide adequate room for species foraging or other activities; protection from disturbance of the ISU resource; or both. Project developers shall consult with the Oregon Department of Fish and Wildlife (ODFW) and plan the project build-out consistent with ODFW recommended buffers prior to filing application materials with regulating agencies. Currently delineated ISU resources are located within RUCA. The identified ISU resources are known to be especially vulnerable to development impacts due to high concentration of the resource in a small area or the nature of the resource. The state may change the list of ISUs in the future (through addition or deletion of ISU from list or through updating the distribution of an ISU) as new data become available. Regulating agencies will apply the ISU standard where ISUs are discovered outside the RUCA. Currently, ISUs include:
 - Rock habitat (including kelp beds, seagrass beds, subtidal reefs, and rocky intertidal);
 - Pinniped haulout areas;
 - Seabird nesting colonies; and
 - Estuary and river mouths (especially those that support salmon)
 - iv. Each ISU area includes the discrete locations of the ISU resources plus bounding polygons (*i.e.* buffers) that are intended to provide adequate room for species foraging or other activities, or protection of the ISU resource from disturbance from a renewable energy facility while allowing existing beneficial uses. Project developers shall consult with ODFW to calculate the ISU area (*i.e.* determine protection buffers) prior to filing application materials with regulating agencies.
 - For rock resources, regulating agencies will apply a buffer of 1000 feet (0.164 nautical miles) to account both for rock reef species foraging and disturbance from development.
 - For seabird nesting colonies and pinniped haulouts, regulating agencies will apply a buffer of between 1000 and 2000 feet

(0.164-0.329 nautical miles) depending on the inhabitants (species, abundance, critical nature of the colony or haulout).

v. Ecological Resources of Concern:

- Critical marine habitats (including but not limited to critical habitats as defined in the Endangered Species Act, and high-use areas),
- Other important marine habitats,
- Fish and shellfish stocks and other biologically important species (including but not limited to seabirds and mammals),
- Recreationally or commercially important finfish or shellfish species,
- Planktonic and benthic flora and fauna,
- Other elements important to the marine ecosystem, including but not limited to:
 - ecosystem structure,
 - biological productivity,
 - species density,
 - biological diversity,
 - representative species assemblages, and,
- Marine species migration routes.

(b) Area Designation Ecological Resources Protection Standards

The following standards apply to specific plan areas as delineated and described in the map located in Part Five, Appendix B.

i. Resources and Uses Conservation Areas (RUCA) Standards:

Renewable energy facilities are presumptively excluded from ISU areas delineated within a RUCA.

- (a) If the regulating agency concurs, the applicant may overcome the presumptive exclusion by a demonstration that:
- 1) there is no practicable alternative site outside an ISU area that is less environmentally damaging (when evaluating the project proposal, the regulating agencies shall not consider project cost as a factor when determining whether practicable alternatives exist), and;
 - 2) the project will have no reasonably foreseeable adverse effects on the ISUs located at the project site and off-site ISUs potentially affected by the project.
- (b) Renewable energy facilities shall have no significant adverse effect on areas that provide intense foraging for several important species.
- (c) Renewable energy facilities shall have no significant adverse effect on ecological resources of concern.

ii. Resources and Uses Management Areas (RUMA) Standards:

- (a) Renewable energy facilities shall have no significant adverse effects on areas that provide intense foraging for several important species.
- (b) Renewable energy facilities shall have no significant adverse effects on ecological resources of concern.
- (c) The ISU standard, as applied within a RUCA, shall apply to ISU resources that are delineated within a RUMA.

iii. Renewable Energy Facility Suitability Study Area (REFSSA) Standards: These areas have been identified as having the lowest potential for conflict between renewable energy facilities and ecological resources.

(a) Ecological Resources of Concern: Renewable energy facilities shall have no significant adverse effects on ecological resources of concern.

(b) The ISU standard, as applied within a RUCA, shall apply to ISU resources that are delineated within a REFSSA.

4.) Recreational Resources Standards

A determination of impact is based on the inventory of recreational uses contained in the map (Part Five, Appendix B).

(a) Renewable energy projects may not have a significant adverse effect on areas of high or important use for recreational activities. A significant adverse effect occurs when:

- i. Access is denied or unreasonably impeded;
- ii. The project creates reasonably foreseeable health or safety impacts; or
- iii. The project would have reasonably foreseeable significant impacts on the natural environment that the recreational community depends on.

(b) Areas of high or important use for recreational activities occur where there is

- i. Community of historical users;
- ii. High intensity of use; or
- iii. Uniqueness or a special quality associated with the recreational use relative to the state or region.

5.) Visual Resource Protection Standards

The following standards rely on an overlay of delineated ocean viewsheds that has been incorporated into the map (Part Five, Appendix B). Regulating agencies will apply these standards to projects in all designated areas within the territorial sea.

(a) Classification of Viewsheds

The following classification system categorizes viewshed sites based on a set of objective criteria related to the unique setting, aesthetic qualities and physical properties of each site. Each viewshed class has a specific objective that

determines the level of activity that would be compatible with maintaining the character of the viewshed. The class objectives and project review criteria are used to determine the impact a project has on each affected viewshed. A single project may impact multiple viewsheds, and will be subject to the associated visual classification and review standards for each of them. The JART will provide the applicant with the list of affected viewsheds for which the applicant must conduct simulations to determine if the project meets the standards described for the affected viewshed class.

- i. Class I: The objective of this class is to preserve the existing character of the seascape. This class provides for natural ecological changes; however, it does not preclude very limited development activity. The level of change to the characteristic seascape must be very low and may not attract attention.
- ii. Class II: The objective of this class is to retain the existing character of the seascape. The level of change to the characteristic seascape must be low. Development activities may be seen, and may attract minimal attention, but may not dominate the view of the casual observer.
- iii. Class III: The objective of this class is to partially retain the existing character of the seascape. The level of change to the characteristic seascape may be moderate. Development activities may be seen, and may attract attention but may not dominate the view of the casual observer.
- iv. Class IV: The objective of this class is to provide for development activities which require major modifications of the existing character of the seascape. The level of change to the characteristic seascape can be high. These development activities may dominate the view and be the major focus of viewer attention. However, every attempt shall be made to minimize the impact of these activities through careful location, minimal disturbance, and repeating the basic elements.

(b) Project Review Criteria

In order to determine whether the proposed project meets the standards defined for each Class of viewshed, regulating agencies will consider the following visual contrast criteria for the visible portion of the proposed renewable energy facility for which the applicant has produced visual simulations for the affected viewsheds selected by the JART.

- i. Distance from viewpoint. The visual contrast created by a project usually is less as viewing distance increases.

- ii. Angle of Observation. The apparent size of a project is directly related to the angle between the viewer's line-of-sight and the slope upon which the project is to take place.
- iii. Length of Time the Project Is In View. If the viewer has only a brief glimpse of the project, the visual contrast may not be of great concern. If, however, the project is subject to view for a long period, as from an overlook, the visual contrast may be very significant.
- iv. Relative Size or Scale. Project contrast is directly related to project size and scale as compared to the surroundings in which it is located. This should include consideration of project size (*e.g.*, number of devices) along with size of the individual devices and associated structures along with layout and spacing. For example, minimizing horizontal spread of the layout may reduce visual contrast.
- v. Season of Use. Visual contrast ratings should consider the physical conditions that exist during the heaviest or most critical visitor use season.
- vi. Light Conditions. Light conditions can substantially affect the amount of visual contrast. The direction and angle of lighting can affect color intensity, reflection, shadow, form, texture, and many other visual aspects of the seascape. Light conditions during heavy use periods must be a consideration in visual contrast ratings.
- vii. Spatial Relationships. The spatial relationship within a seascape is a major factor in determining the degree of visual contrast. For example, projects in areas that are the "focus of key views" like a headland or large offshore rocks could have a higher visual contrast.
- viii. Atmospheric Conditions. The visibility of projects due to atmospheric conditions such as fog or natural haze should be considered.
- ix. Motion, lights and color. Movement and lighting draw attention to a project and vary depending on conditions and time of day and night. Surface treatment (*e.g.*, color) may increase or decrease visibility.
- x. Shore-based facilities. Associated shore-based facilities (*e.g.*, buildings, cables etc.) should also be considered in the visual impact analysis.

6.) Proprietary Use and Management Area (PUMA) Standards

A PUMA is an area wherein there are one or more authorized uses or special management designations, including but not limited to, undersea fiber-optic or

scientific research cable corridors, navigation channel and pilotage safety corridors, and state or federal habitat management areas. Regulating agencies will not accept a renewable energy facility application in a PUMA unless the use is legally permissible and complies with the authorized use of the area. Applications for projects within a PUMA are subject to the resources and uses review standards that apply to the type of resources or uses area the PUMA is located in, as delineated by the Map Designations and resources and uses inventory data in Appendix B.

7.) Project Development Limitations and Constraints

The total amount of area within the territorial sea that is to be built or committed for renewable energy facilities is limited both on a statewide and regional basis.

- (a) The total area that is built and committed to marine renewable energy development, based on the area permitted and leased for that use, shall not exceed a maximum of three percent of the total area of the territorial sea.
- (b) The total area that is built and committed to marine renewable energy development, based on the area permitted and leased for that use, shall not exceed a maximum of one percent of the total area within a 60 nautical mile arc as measured from the mouths of the Columbia River estuary, the Newport estuary, and the Coos Bay estuary.
- (c) The total area designated as REFSSA in the plan shall not exceed five percent of the total area of the territorial sea.

D. Operation Plan Development

The regulating agency shall require the applicant to submit an operation plan as a condition of approval for a state permit, license, lease or other authorization for renewable energy facility development. The operation plan must explain the procedures and mechanisms that the operator will employ so that the facility will comply with regulatory standards and other conditions of permit or license approval related to water and air quality, adverse environmental effects, maintenance and safety, operational failure and incident reporting. The operation plan shall be designed to prevent or mitigate harm or damage to the marine and coastal environment and at a minimum shall include the following information:

1. Phased Development Plan

The requirements for an operation plan listed in this section would apply to each stage of the phased development so as to account for any changes in design, technology or operation that may result from monitoring the initial phase of the operation.

2. Facility Development Plan

A plan is required that describes the physical and operational components of the proposed facility and must contain, at minimum, detailed technical information, data, protocols and references for:

- a. Structural and project design, materials used, anchoring and installation information;
- b. All cables and pipelines, including lines on project easements;
- c. A description of the deployment activities;
- d. A listing of chemical products used;
- e. A description of vessels, vehicles, aircraft and the transit lanes that will be used;
- f. A general description of the operating procedures and systems;
- g. Construction schedule; and
- h. Other information as required by the Department of State Lands.

A facility that has been developed to the full extent of its design and operating capacity may, during the lifetime of its authorization, require systematic improvements to the technology, structures and operational procedures that were originally authorized. The regulating agency shall require a new facility development plan, as appropriate and necessary, to provide the data and information for the redevelopment and operation of the new facility components.

3. Project Operation Plan

An operation plan is required that describes, at a minimum, information regarding the routine environmental monitoring, safety management and emergency response procedures, facility inspections, and the decommissioning of the project. The operation plan shall explain the procedures and mechanisms that will be employed so that the facility will comply with regulatory standards and other conditions of permit or license approval related to water and air quality, environmental protection and mitigation, facility maintenance and safety, operational failure and incident reporting. An operation plan shall include the following information:

a. Contingency Plan:

A plan to describe how the facility operator will respond to emergencies caused by a structural or equipment failure due to human error, weather, geologic or other natural event. The plan shall include a description of the types of equipment, vessels and personnel that would be deployed, the chain of command or management structure for managing the facility repairs, recovery or other forms of remedial action, and the process and timeline for notification of state and federal authorities.

b. Inspection Plan:

A plan to provide for the implementation of a routine inspection program to ensure the mechanical, structural and operational integrity of renewable energy facilities. In addition, unscheduled inspections shall be required after any major geological or meteorological event to ensure continued operational safety and environmental protection.

c. Monitoring Plan:

A plan to provide for the implementation of a routine standardized monitoring program for potential impacts on specific resources as specified by the resource inventory and effects evaluation. The operator shall monitor activities related to the operation of the project and demonstrate that its performance satisfies specified standards in its approved plans. Monitoring shall be sufficient to accurately document and quantify the short-term and long-term effects of the actions on the affected resources and uses. Plans for monitoring shall include, at a minimum:

- 1.) A list of the information needed to satisfy an effects evaluation.
- 2.) Specific study objectives to obtain the needed information and explanation of how the study design will meet the objectives.
- 3.) Description of study methods to meet the objectives, such as:
 - (a) Literature review;
 - (b) Collection of needed baseline data;
 - (c) Hypotheses to address the study objectives;
 - (d) Descriptions of field sampling and data-analyses methods to be used; and
 - (e) Use of adequate controls, such as control sites, to allow the effects of the proposed action to be separated from natural fluctuations in resources and habitats.
- 4.) The monitoring plan shall include supporting documentation demonstrating that the study design is scientifically appropriate and statistically adequate to address the research objectives.²⁹
- 5.) The monitoring plan shall include a description of the method that will be used to report and deliver data and analyses information to the authorizing state agency for review in a timely and efficient manner.³⁰
- 6.) The monitoring plan will include a description of the process for periodic and ongoing public involvement and review of the monitoring work.

²⁹ Standardized monitoring protocols would result in data sets that are comparable and transferable among sites and technologies. The protocols would include a Before, After, Control, Impact (BACI) experimental study design.

³⁰ Example: the data and analysis will be applied to determine if conditions meet the standard established under the Oregon Department of Environmental Quality rule for “Biocriteria” at OAR 340-041-0011, which provides “Waters of the State must be of sufficient quality to support aquatic species without detrimental changes in the resident biological communities.”

d. Adaptive Management Plan

An adaptive management plan to provide a mechanism for incorporating new findings and new technologies into the operation and management of the project. The adaptive management plan shall include performance standards that are based on results of the resource inventory and effects evaluation and incorporated in the study design of the monitoring plan as described in paragraph D.3.c (Monitoring Plan). The plan shall explain the processes for how adaptation measures are applied to the operation of the project. When the monitoring results show that the performance standards are not being met due to the operation of the facility, adaptation measures designed to bring the operation into compliance with the performance standard will be applied to the operation of the project. The adaptive management plan will explain processes for how adaptation measures will be applied to the operation and management of the project.

The adaptive management plan should account for:

- 1.) Variable conditions in the marine environment;
- 2.) Change in the status of resources;
- 3.) New information provided by monitoring of the project;
- 4.) Data and information provided by research and from other sources;
- 5.) New technologies that would provide for greater protection of ocean resources;
- 6.) Ocean fisheries, or other ocean uses to be protected from adverse effects and operational conflicts; and
- 7.) Unanticipated cumulative effects.

4. Decommissioning Plan:

An applicant shall provide a plan to restore the natural characteristics of the site to the extent practicable by describing the facilities to be removed.³¹ The plan must include: a proposed decommissioning schedule; a description of removal and containment methods; description of site clearance activities; plans for transporting and recycling, reusing, or

³¹ The requirement for a decommissioning plan is based upon DSL rules under OAR chapter 141, division 140. Under OAR 141-140-0080(5)(e), the holder of a temporary use authorization or lessee is required to:

“Remove ocean energy monitoring equipment, ocean energy facilities and any other material, substance or related or supporting structure from the authorized area as directed by the Department within a period of time to be established by the Department as a condition of the authorization. If the holder of the temporary use authorization or lessee fails or refuses to remove such equipment, facility or other material, substance or related or supporting structure, the Department may remove them or cause them to be removed, and the holder of the authorization or lessee shall be liable for all costs incurred by the State of Oregon for such removal.”

The decommissioning of the transmission cable is required under OAR 141-083-0850(6), which provides:

“If determined necessary by [DSL] in consultation with the easement holder and other interested parties, and if permitted by the applicable federal agency(ies) regulating the cable, the easement holder shall remove the cable from the state-owned submerged and submersible land within one (1) year following the termination of use of the cable or expiration of the easement.”

disposing of the removed facilities; a description of those resources, conditions, and activities that could be affected by or could affect the proposed decommissioning activities; results of any recent biological surveys conducted in the vicinity of the project and recent observations of marine mammals at the project site; mitigation measures to protect archaeological and sensitive biological features during removal activities; and a statement as to the methods that will be used to survey the area after removal to determine any effects on marine life. A decommissioning plan should identify how the project owner will restore the site to the natural condition that existed prior to the development of the site, to the extent practicable.

5. Financial Assurance Plan:

The applicant shall provide a financial assurance compliance plan that describes how the holder will comply with the state requirements for financial assurance. The plan must assure that the financial assurance provided by the holder will be sufficient to cover the estimated costs of: (1) removal and recovery of the project or portions of the project lost or damaged through an accident; (2) damages to vessels and equipment owned by third parties through an accident; and (3) decommissioning and removal of the project upon the termination of its authorization(s). Holders of authorizations for renewable energy facilities or devices shall comply with applicable state financial assurance requirements, including but not limited to: ORS 274.867 and implementing administrative rules of the Department of State Lands, OAR chapter 141, division 140.

6. Agreements:

Applicants shall communicate with traditional ocean users and stakeholders with an interest in the area of the proposed project to address issues of concern.³²

Part Five Appendix B: Map Designations

The map information and data contained and referenced herein, designate areas within the territorial sea that are subject to section B.4., Resource and Use Inventory and Effects Evaluation and Special Resource and Use Review Standards. The maps delineate areas within the territorial sea based on the resources and uses present within them, and to which the review standards apply. Those area designations are numbered to facilitate locating and identifying individual units. Special conditions that apply to specific area units are defined.

³² The Department of State Lands rule on Pre-Application Requirements, OAR 141-140-0040, provides:

“Before submitting an application to the Department, a person wanting to install, construct, operate, maintain or remove ocean energy monitoring equipment or an ocean energy conversion facility for a research project, demonstration project or commercial operation shall meet with:

“(a) Department staff to discuss the proposed project; and

“(b) Affected ocean users and other government agencies having jurisdiction in the Territorial Sea to discuss possible use conflicts, impacts on habitat, and other issues related to the proposed use of an authorized area for the installation, construction, operation, maintenance or removal of ocean energy monitoring equipment or an ocean energy facility.”

Renewable Energy Permit Area (REPA): these areas are delineated sites for which there is an existing authorization for the development of renewable energy testing, research or facilities. Applications for renewable energy facilities within a REPA must comply with the terms and conditions required by the regulating agency authorization for the site. The total area of renewable energy facility sites authorized as REPA may not exceed three percent of the territorial sea (37.8 sq. miles or 28 sq. nautical miles).
REPA units: 1 through 2.

Renewable Energy Facility Suitability Study Area (REFSSA): an area wherein there may be ecological resources, or activities relating to commercial fishing sectors, recreational fishing, or individual ports. Renewable energy facilities may be sited within a REFSSA. Renewable energy facility development in these areas is anticipated to have the lowest potential adverse effects on inventoried marine resources and uses within state waters. A renewable energy facility proposal in a REFSSA must comply with Part Five, paragraphs B.4.a through f., and section C, and the applicable regulatory and proprietary requirements of state and federal agencies. The total area for REFSSA may not exceed five percent of the territorial sea (63 sq. miles or 47.5 sq. nautical miles).
REFSSA units: 1 through 4.

REFSSA_2 (Nestucca): Restricted to the development of marine renewable energy facilities that do not attract attention such as those that are located under the sea surface.

REFSSA_3 (Reedsport): The Federal Energy Regulatory Commission has issued a Preliminary Permit (P-13666) to Reedsport OPT Wave Park, LLC, at this site. Should OPT, or a company owning OP, fail to maintain the FERC license, the REFSSA will become a RUCA as determined by the resources and uses inventory data and information for the area.

Resources and Uses Management Area (RUMA): an area wherein there are important or significant ecological resources or areas that are economically important to commercial fishing sectors, recreational fishing, or individual ports. Renewable energy facilities may be sited within a RUMA. Under some circumstances there is a potential for renewable energy facility development to have significant adverse effects on inventoried marine resources and uses within these areas. A project proposal in a RUMA must demonstrate that it will have no significant adverse effects on inventoried marine resources and uses as determined by the standards for protecting those resources and uses in that area.
RUMA units: 1 through 22.

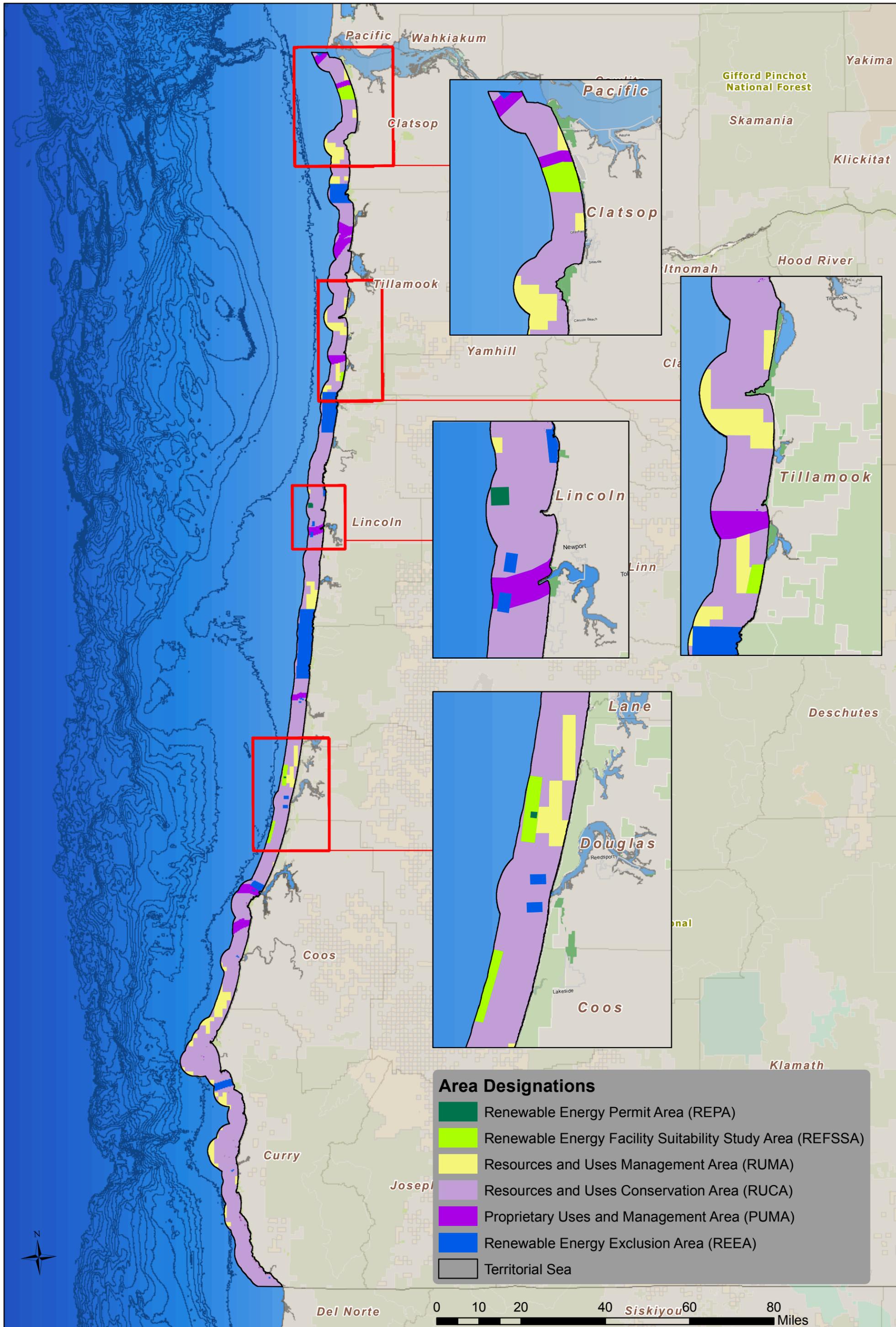
Resources and Uses Conservation Area (RUCA): an area wherein there are important, significant, or unique (ISU) ecological resources, or an area that is of significant economic importance to commercial fishing sectors, recreational fishing, or individual ports. A renewable energy facility could be sited within a RUCA, though there is a high potential that most types of projects would have significant adverse effects on inventoried marine

resources and uses within the area. A project proposal in a RUCA must demonstrate that the it will have no reasonably foreseeable adverse effects on inventoried marine resources and uses as determined by the standards for protecting those resources and uses in that area.
RUCA units: 1 through 16

Renewable Energy Exclusion Area (REEA): special management areas. These areas contain permitted or managed uses that have some form of exclusive right or authority to exclude, restrict or control other uses in that area, including dredge material disposal sites, marine reserves and marine protected areas. Regulating agencies will not accept renewable energy facility applications within a REEA.
REEA units: 1 through 13

Proprietary Use and Management Area (PUMA): areas wherein there are authorized uses and special management designations. These areas are subject to some form of authority to restrict or control other uses. Examples of these types of authorizations include undersea fiber-optic or scientific instrumentation, cable corridors, and navigation channel and pilotage safety corridors. Regulating agencies will not accept renewable energy facility applications in these areas unless the use is legally permissible and complies with the authorized use of the area.
PUMA units: 1 through 8

Territorial Sea Plan Part Five Appendix B - Plan Map



Territorial Sea Plan Part Five

Plan Map Area Designation: Area Unit Identification Index

Area Designations	
AreaType	
	Renewable Energy Permit Area (REPA)
	Renewable Energy Facility Suitability Study Area (REFSSA)
	Resources and Uses Management Area (RUMA)
	Resources and Uses Conservation Area (RUCA)
	Proprietary Uses and Management Area (PUMA)
	Renewable Energy Exclusion Area (REEA)

The area designation units are numbered sequentially from north to south for each area type.

REPA Unit identification: REPA 1 through REPA 2

REFSSA Unit identification: REFSSA 1 through REFSSA 4

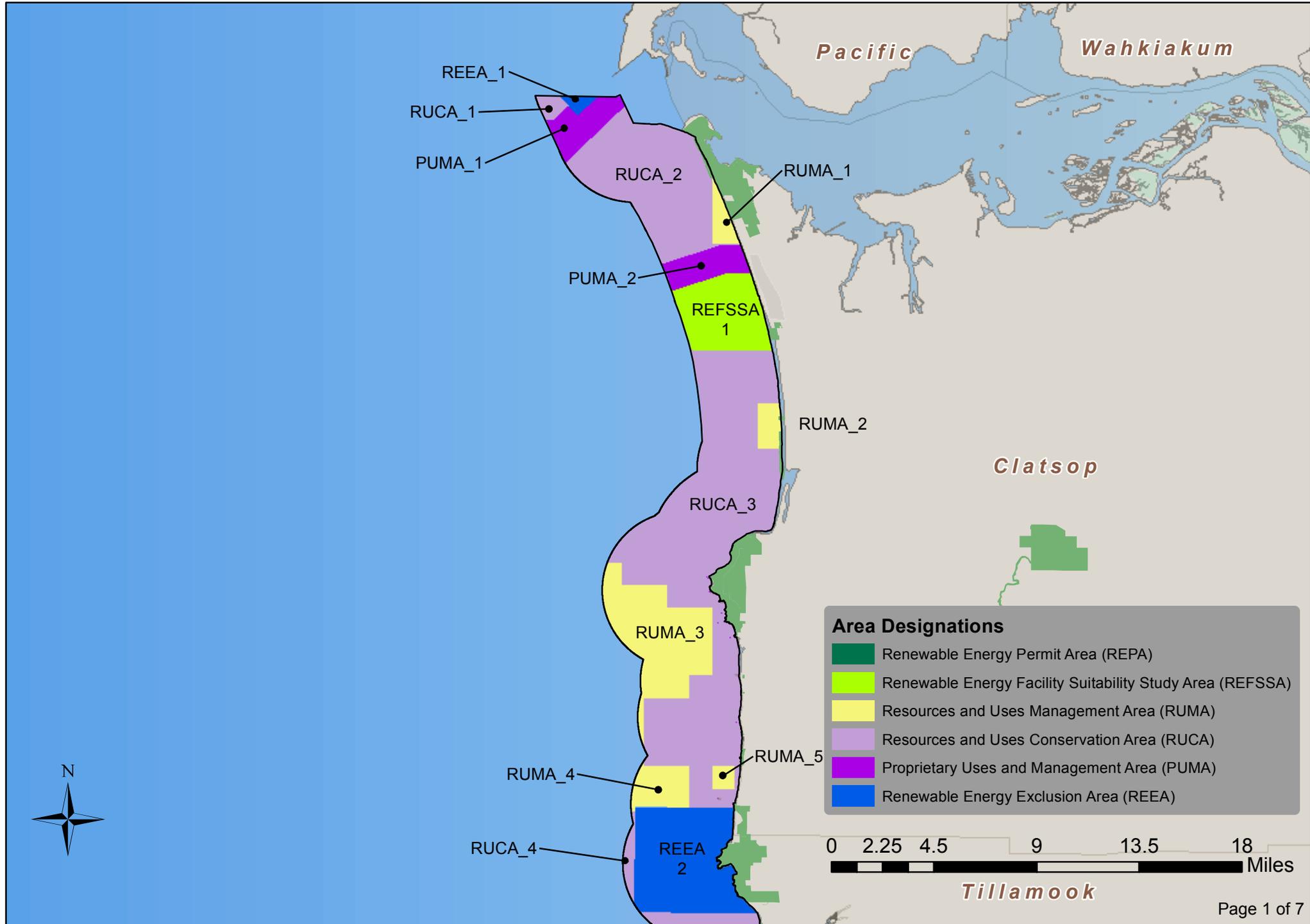
RUMA Unit identification: RUMA 1 through RUMA 22

RUCA Unit identification: RUCA 1 through RUCA 16

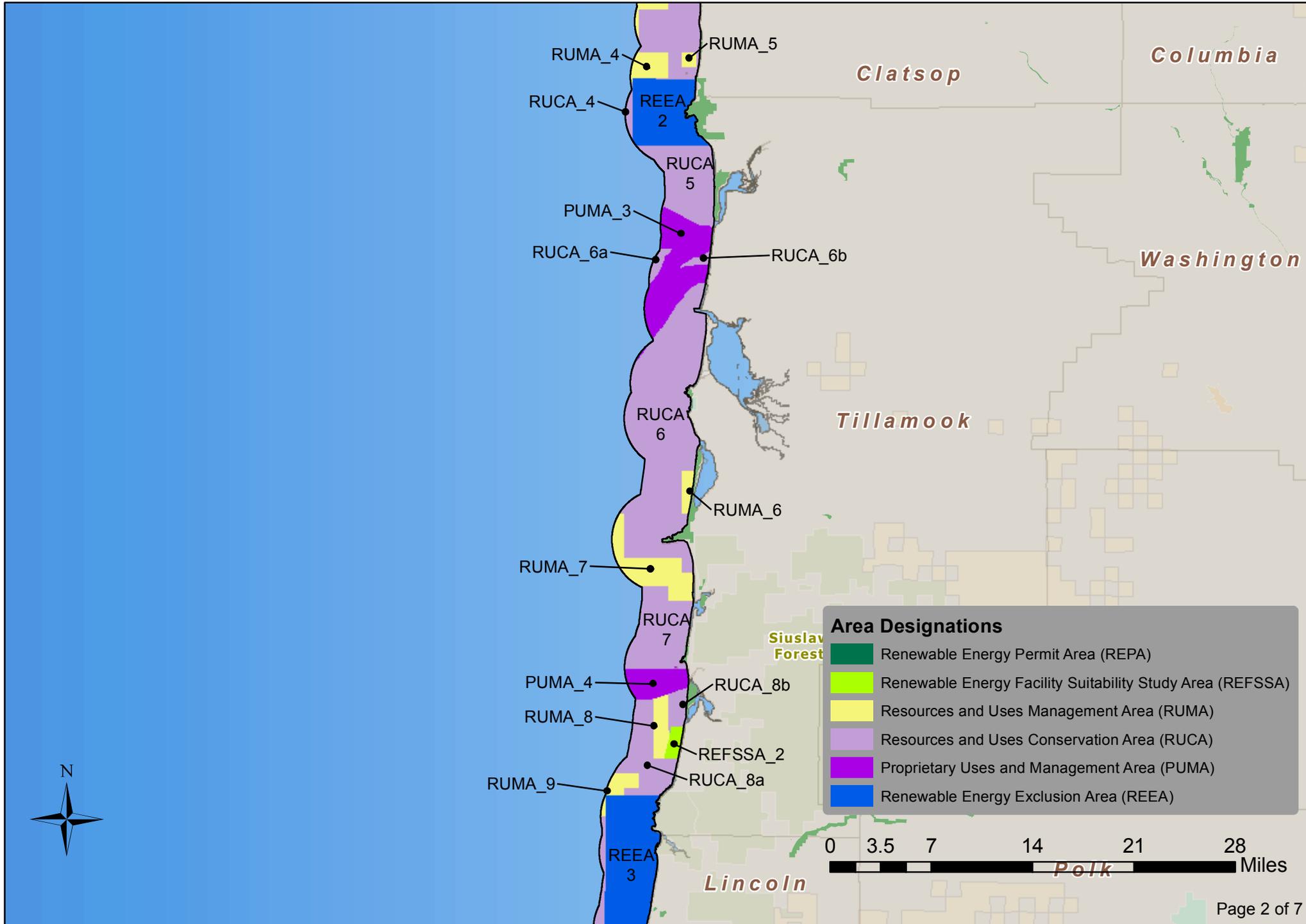
PUMA Unit identification: PUMA 1 through PUMA 8

REEA Unit identification: REEA 1 through REEA 14

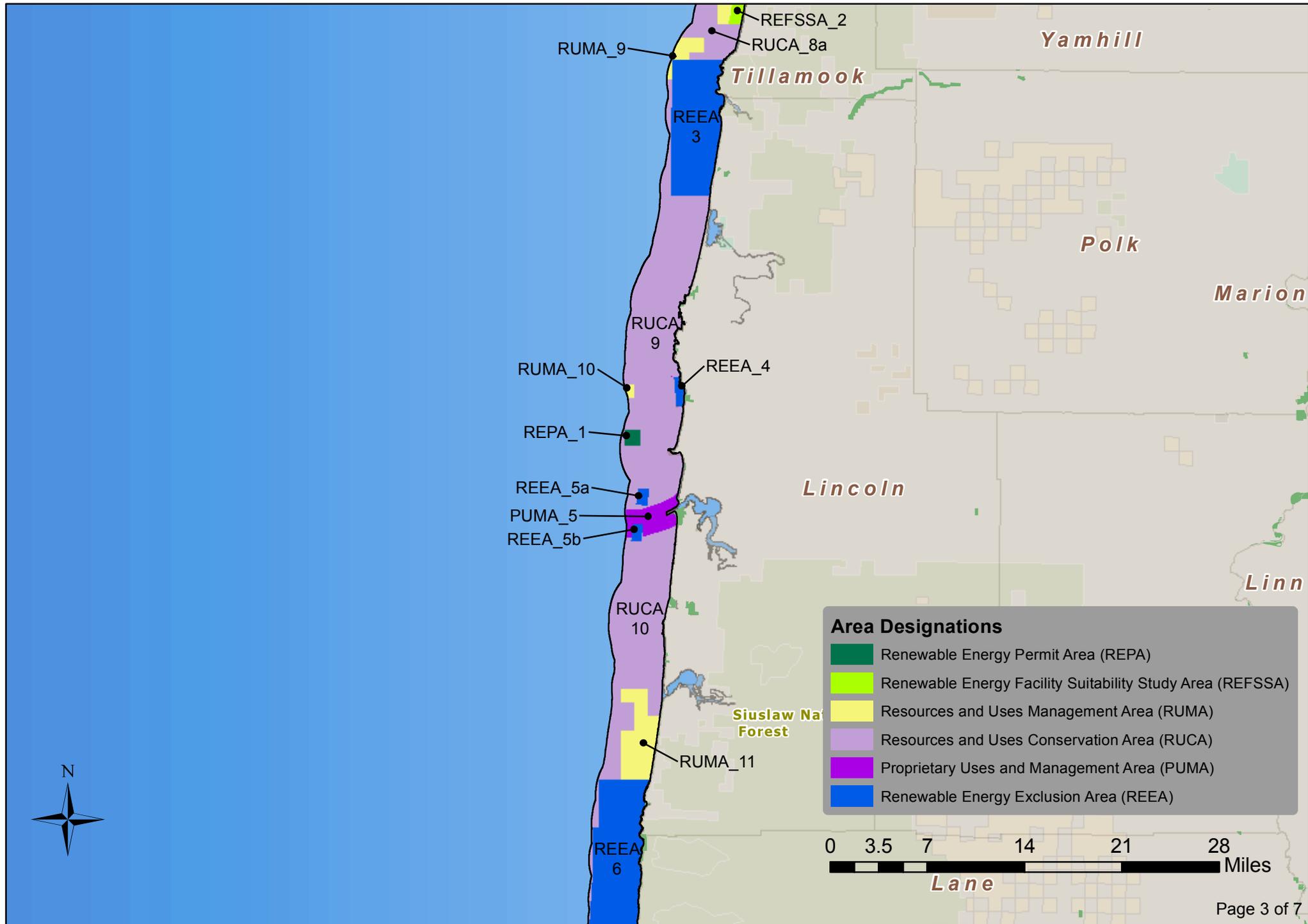
Territorial Sea Plan Part Five Appendix B - Plan Map Area Designation Index



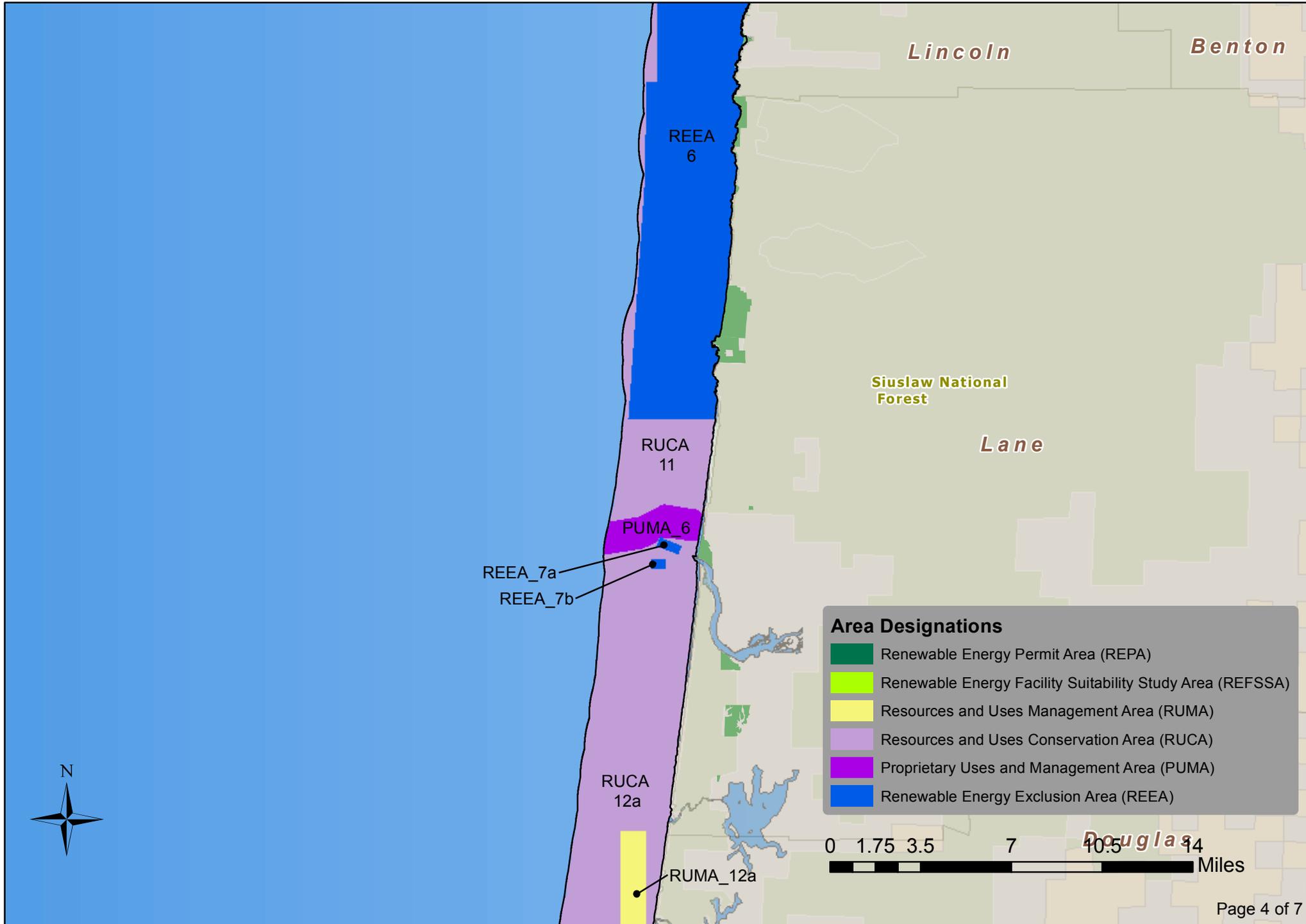
Territorial Sea Plan Part Five Appendix B - Plan Map Area Designation Index



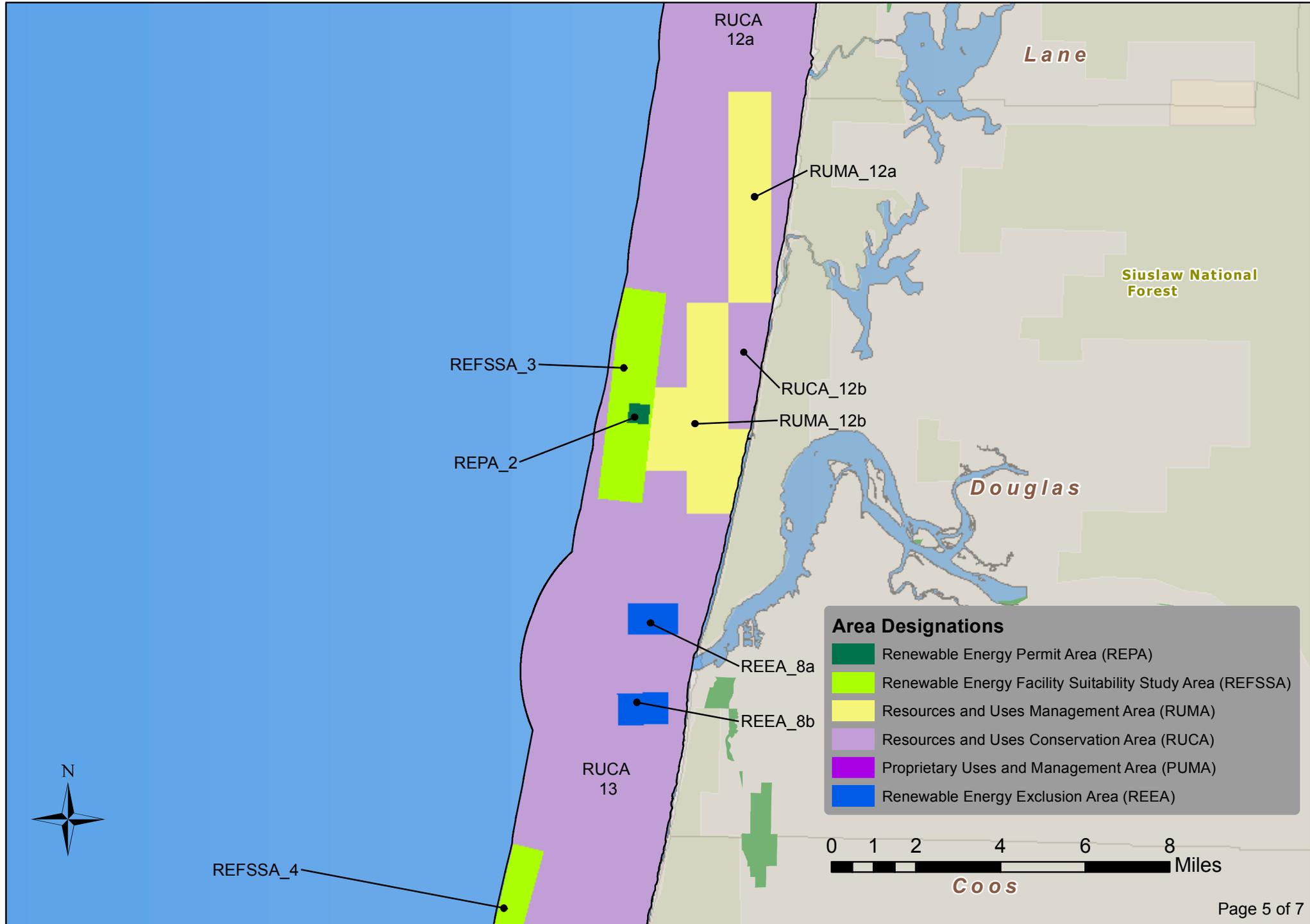
Territorial Sea Plan Part Five Appendix B - Plan Map Area Designation Index



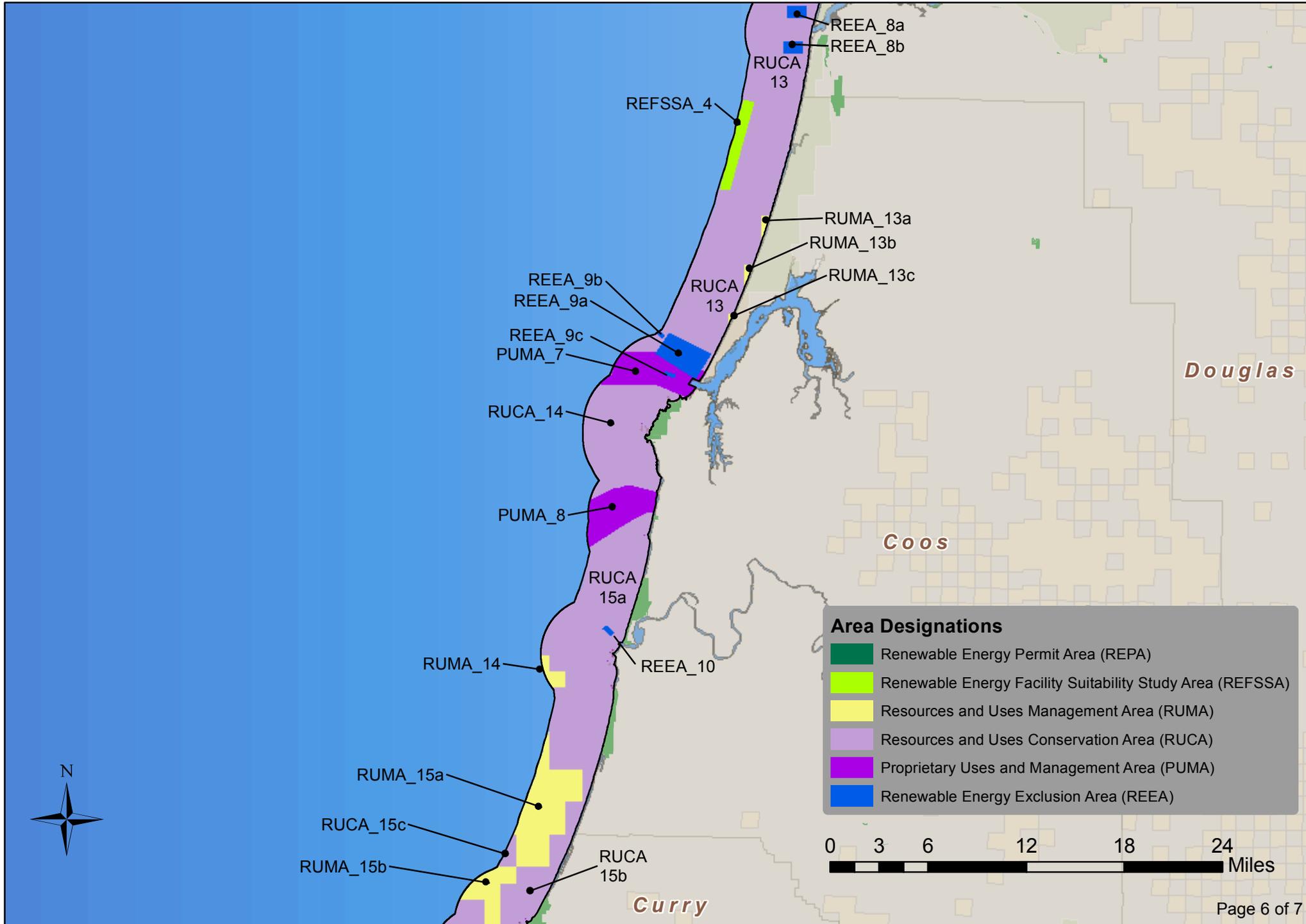
Territorial Sea Plan Part Five Appendix B - Plan Map Area Designation Index



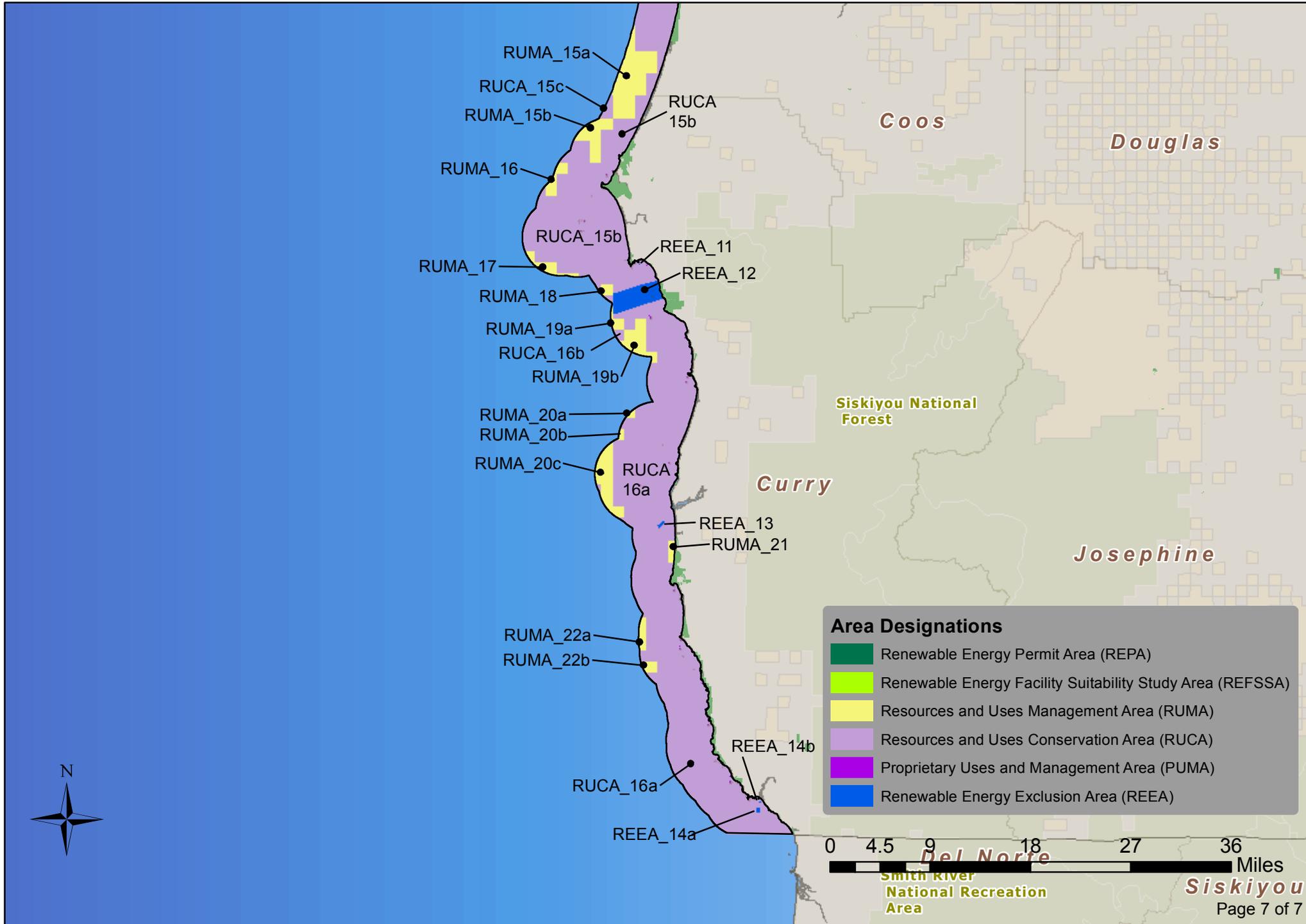
Territorial Sea Plan Part Five Appendix B - Plan Map Area Designation Index



Territorial Sea Plan Part Five Appendix B - Plan Map Area Designation Index



Territorial Sea Plan Part Five Appendix B - Plan Map Area Designation Index



Area Designations	
	Renewable Energy Permit Area (REPA)
	Renewable Energy Facility Suitability Study Area (REFSSA)
	Resources and Uses Management Area (RUMA)
	Resources and Uses Conservation Area (RUCA)
	Proprietary Uses and Management Area (PUMA)
	Renewable Energy Exclusion Area (REEA)

Territorial Sea Plan Part Five: Resources and Uses Inventory Data Sets

The geospatial data sets for marine resources and uses listed below were used as the basis for delineating the areas that form the Territorial Sea Plan Part Five Plan Map.

Beneficial Uses Data Sets

- Dredge Material Disposal
- Commercial Shipping Lanes
- Coastal Discharge Outfalls
- National Wildlife Refuges
- NNMREC Test Site
- Submarine Cables
- State Marine Managed Areas
- FERC Preliminary Permits
- Tugboat Towlanes
- Ocean Recreation
- Navigational Aides
- Nearshore Research Inventory
- Visual Resource Management Class Map

Ecological Resources Data Sets

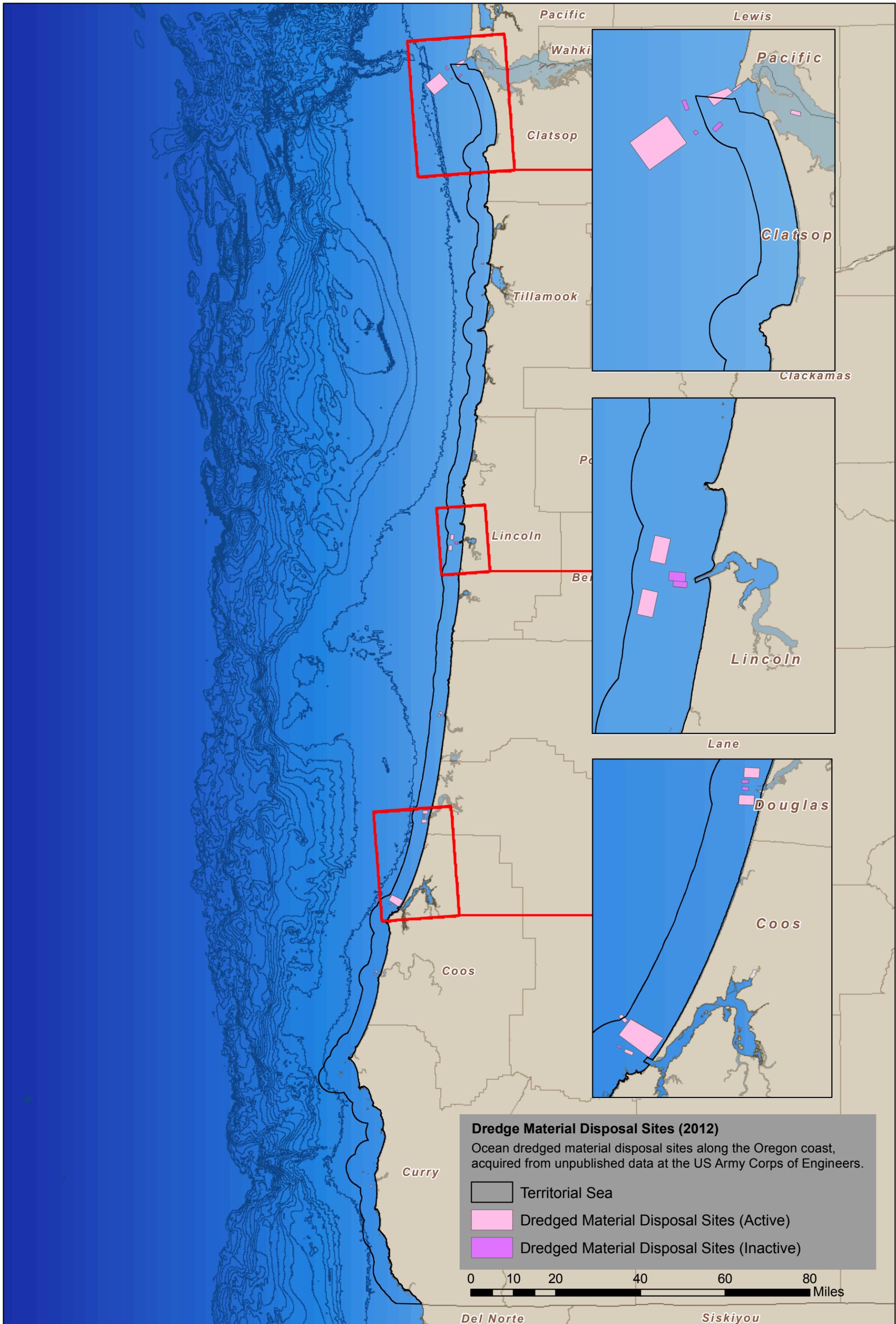
- Canopy Kelp Beds
- Subtidal Rocky Reef
- Rocky Shores Habitat
- Pinniped Haulouts
- Steller Sea Lion Critical Habitat
- Nesting Seabird Colony Locations
- Western Snowy Plover Habitat
- Ecological Hotspots
- Gray Whale Foraging
- Marbled Murrelet Foraging

Fisheries Use Data Sets

- Multi-sector Area Fishing Grounds Value Maps
- Dungeness Crab Fishing Grounds Port Value Maps
- Dungeness Crab Fishing Grounds Statewide Value Maps

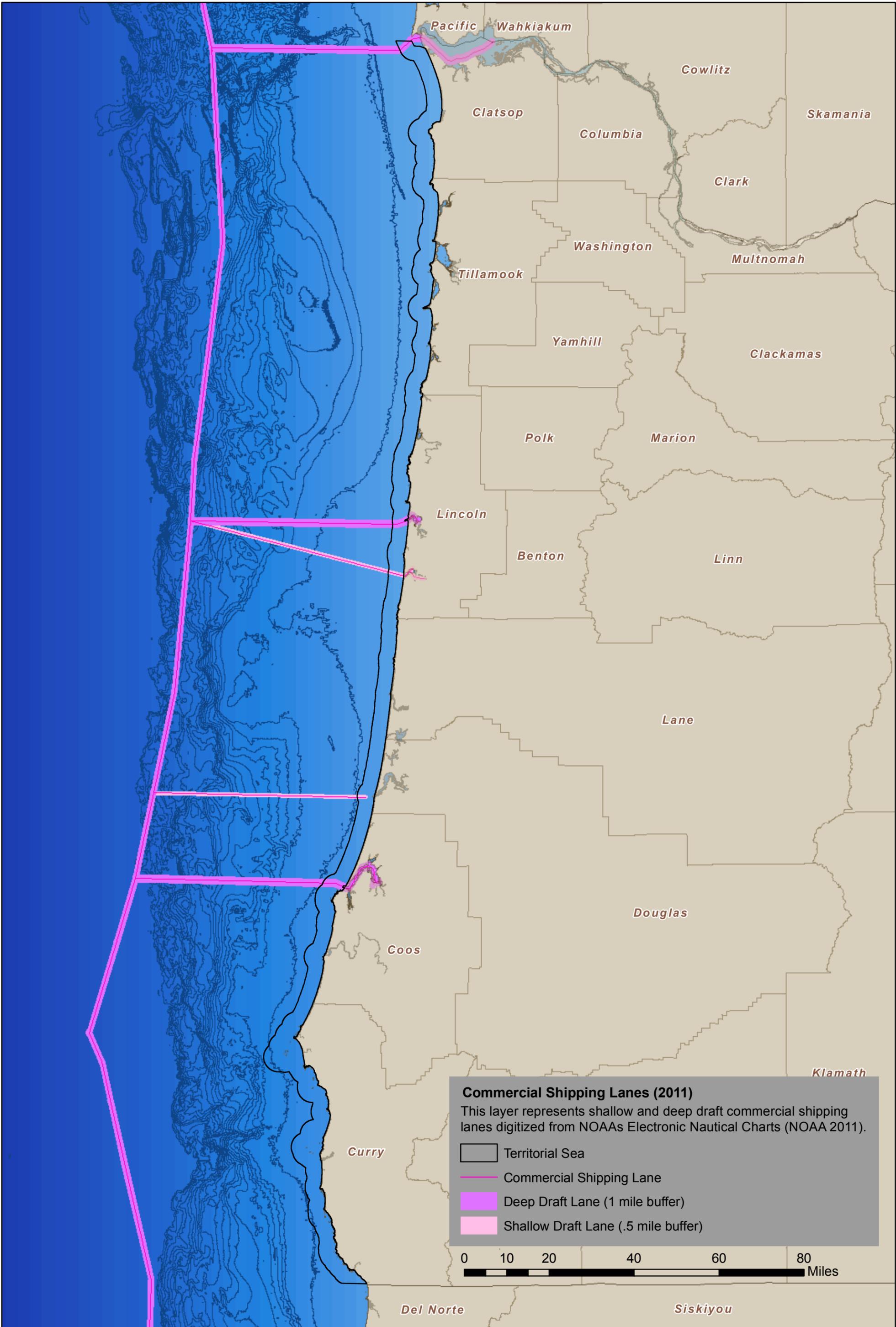
Territorial Sea Plan Part Five Appendix B - Plan Map

Beneficial Uses Resource Inventory - Dredge Material Disposal



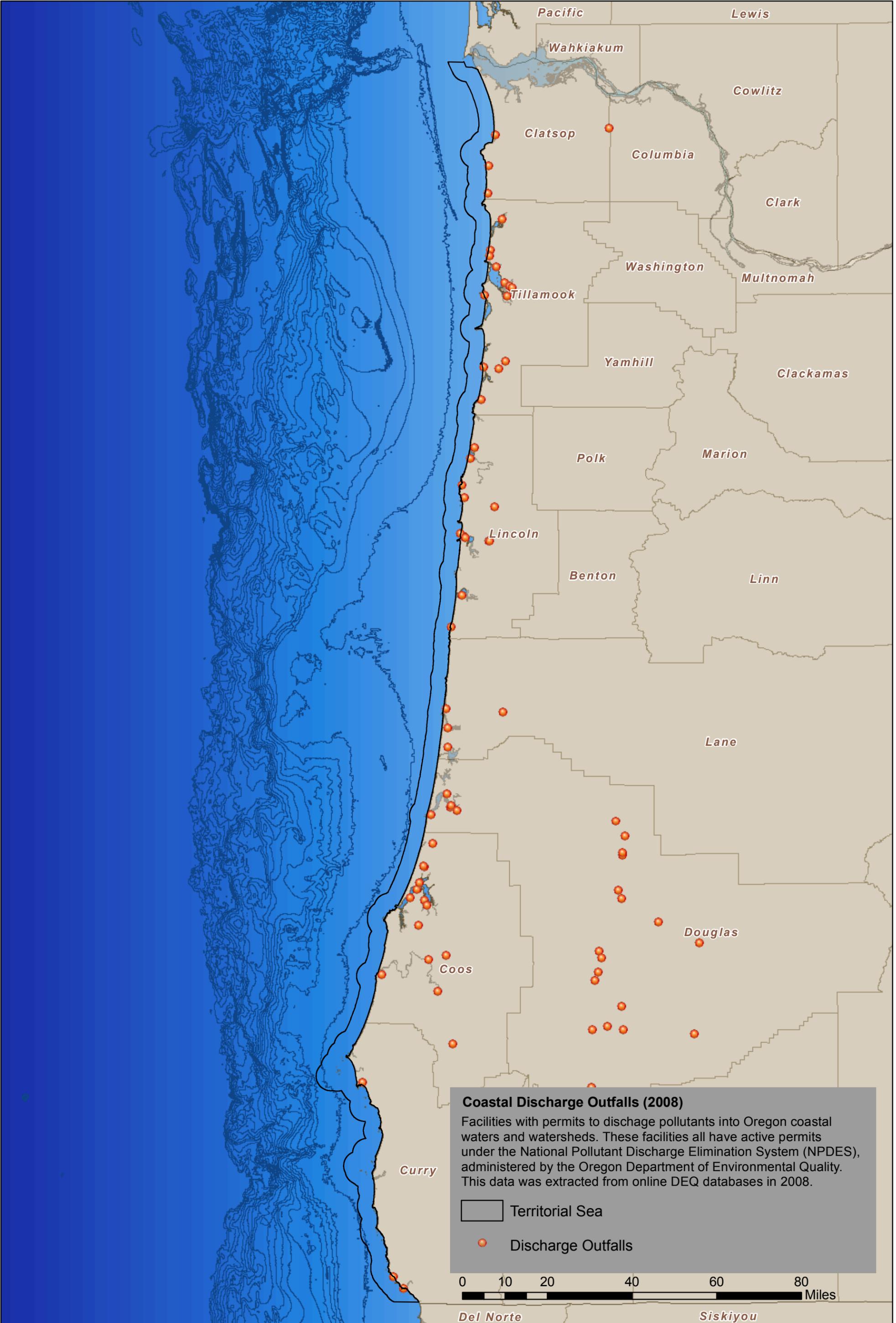
Territorial Sea Plan Part Five Appendix B - Plan Map

Beneficial Uses Resource Inventory - Commercial Shipping Lanes



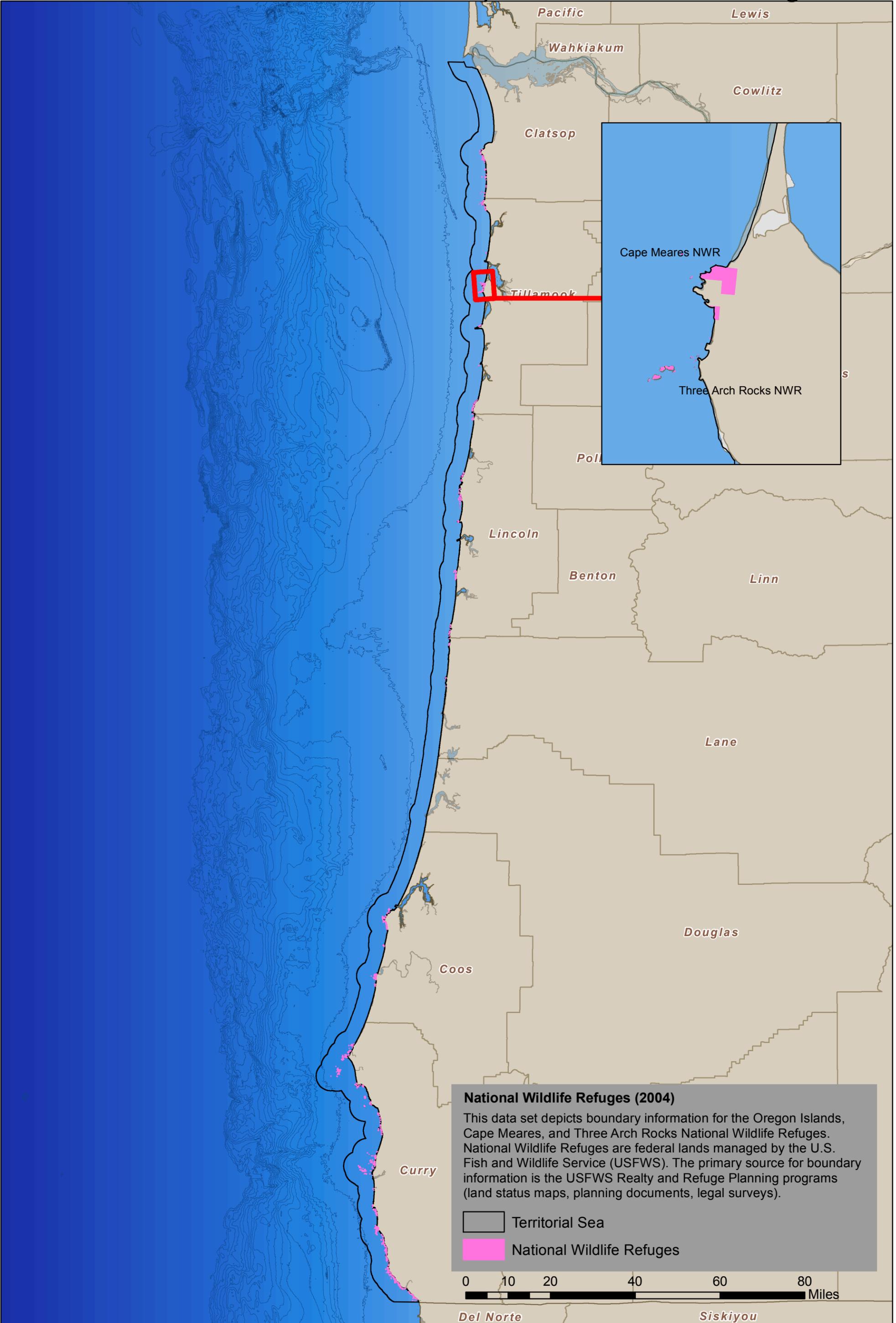
Territorial Sea Plan Part Five Appendix B - Plan Map

Beneficial Uses Resource Inventory - Coastal Discharge Outfalls



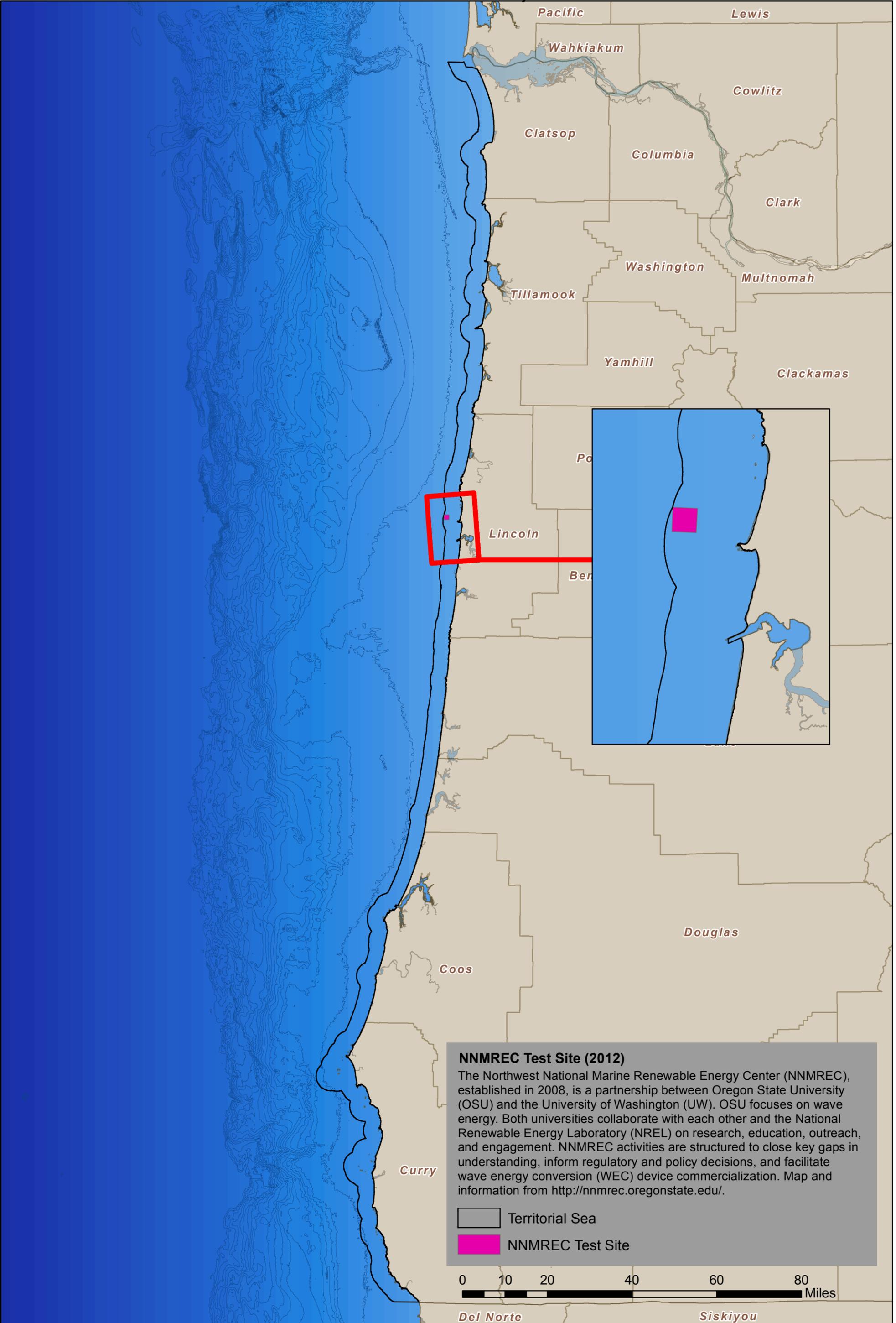
Territorial Sea Plan Part Five Appendix B - Plan Map

Beneficial Uses Resource Inventory - National Wildlife Refuges



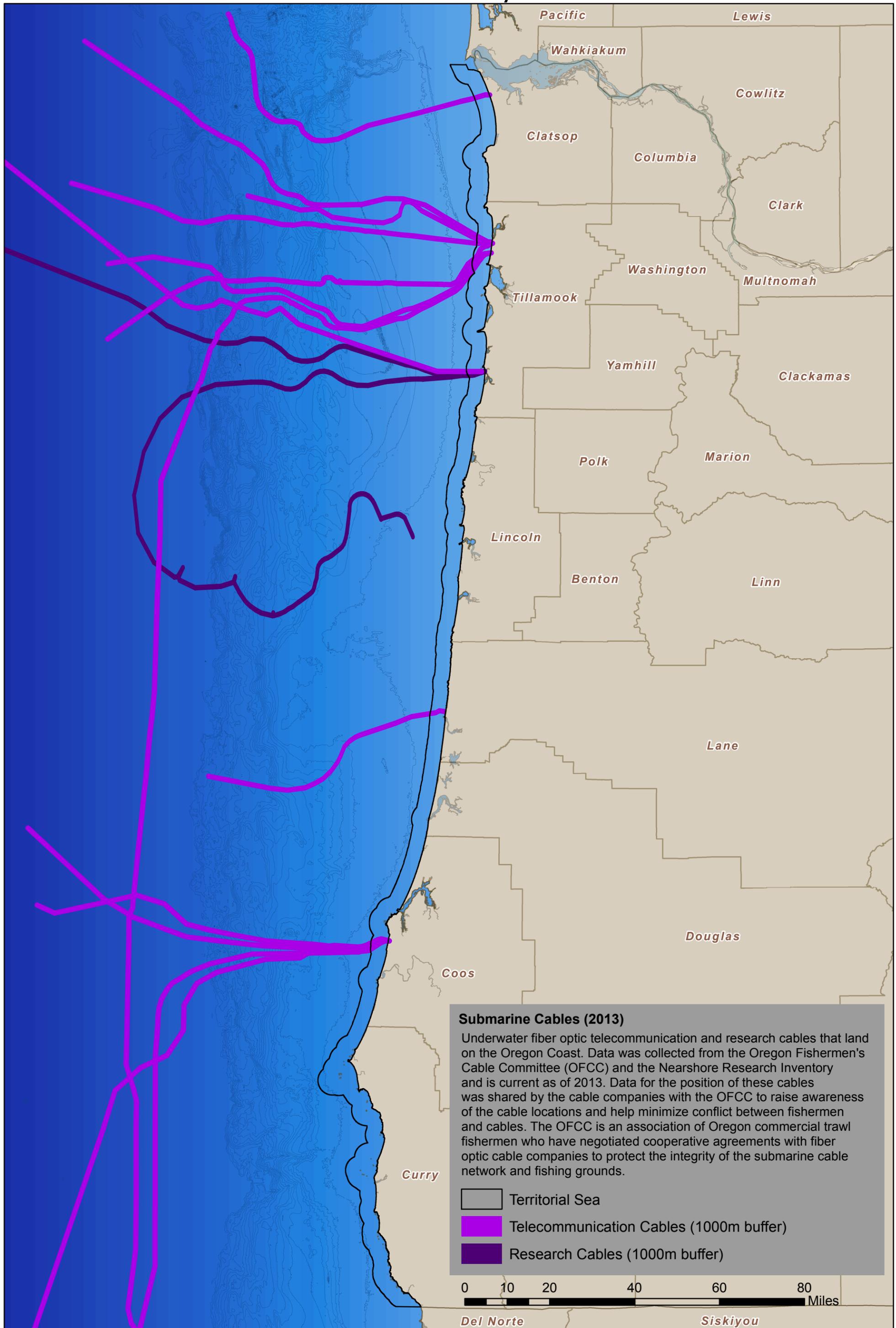
Territorial Sea Plan Part Five Appendix B - Plan Map

Beneficial Uses Resource Inventory - NNMREC Test Site



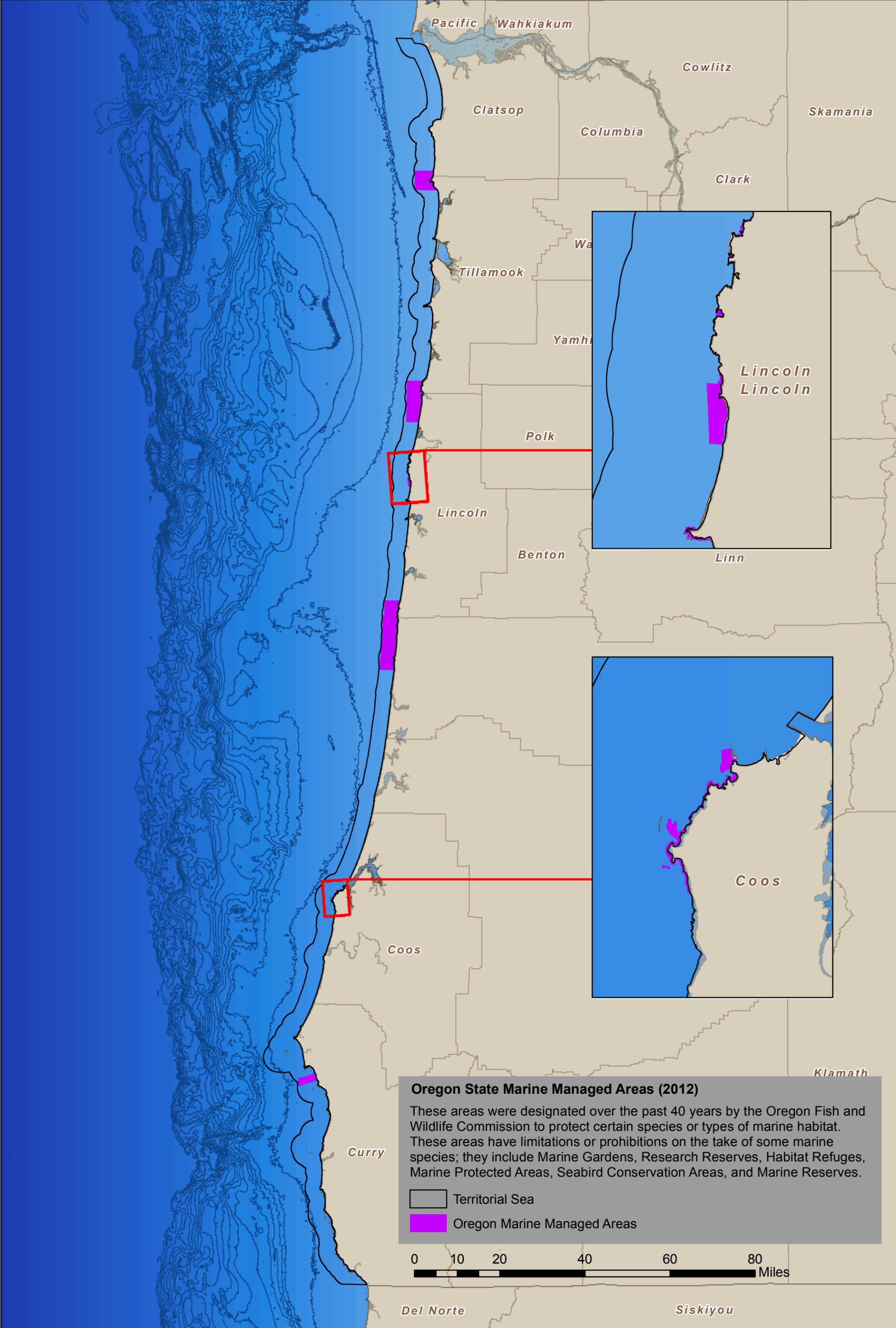
Territorial Sea Plan Part Five Appendix B - Plan Map

Beneficial Uses Resource Inventory - Submarine Cables



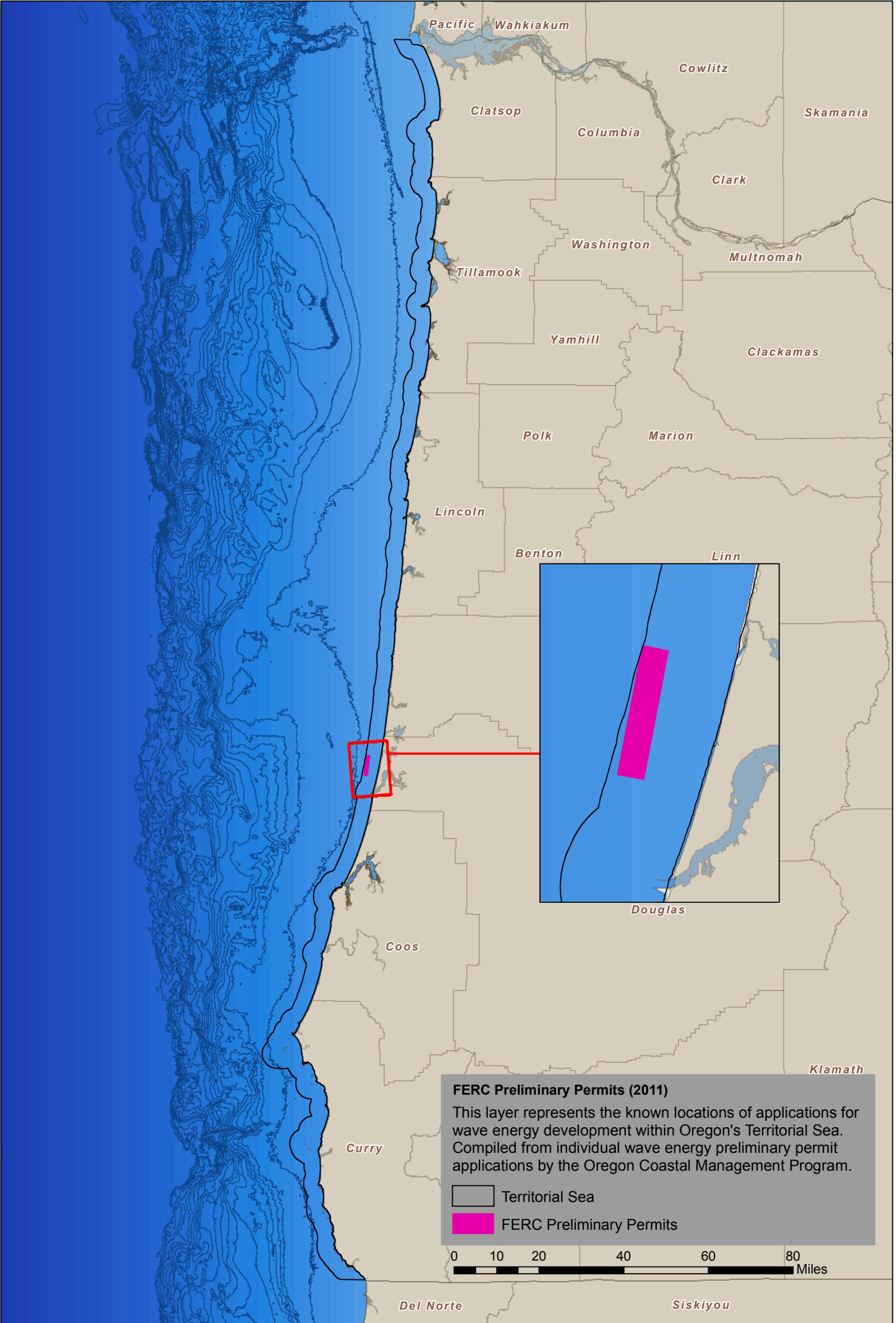
Territorial Sea Plan Part Five Appendix B - Plan Map

Beneficial Uses Resource Inventory - State Marine Managed Areas



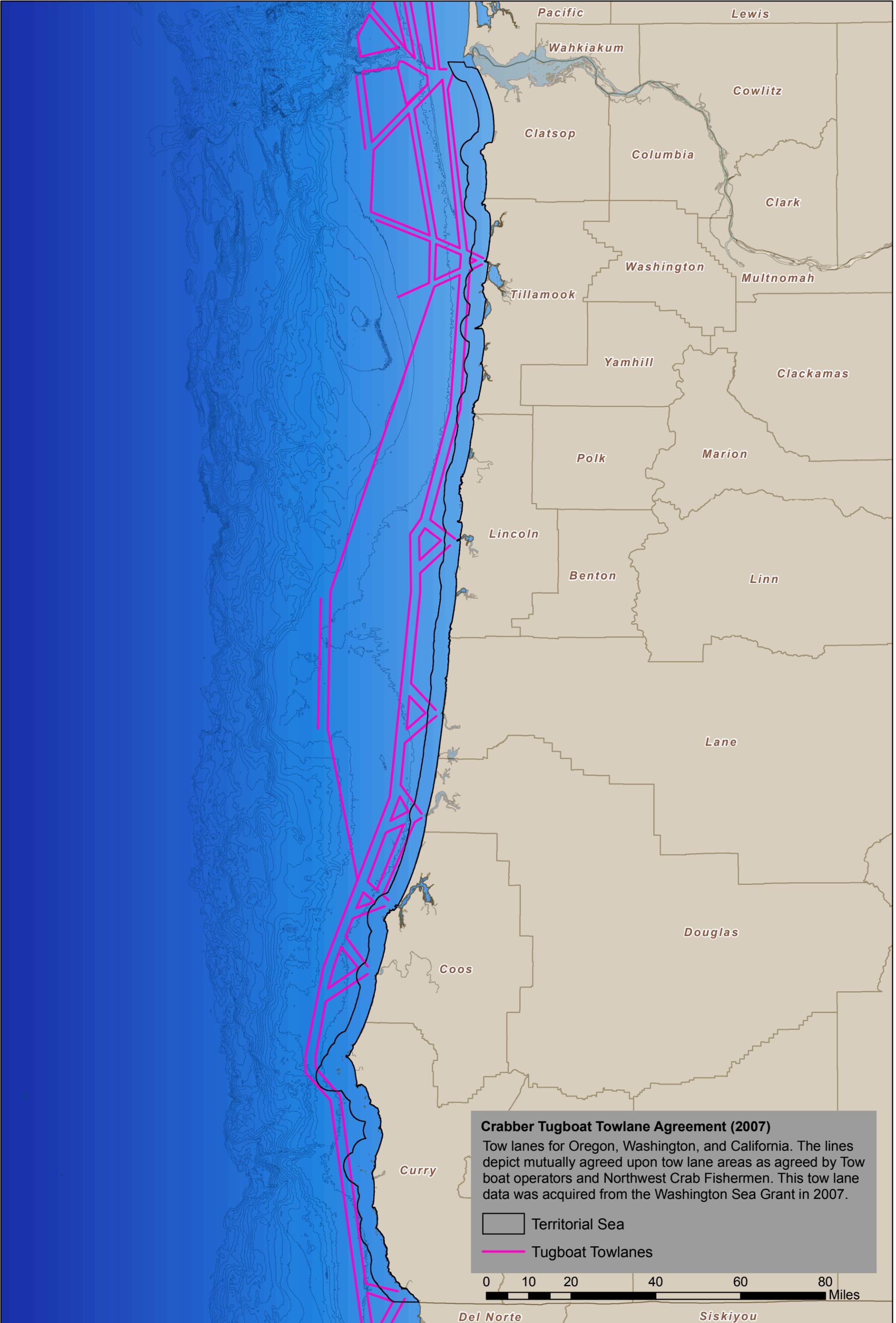
Territorial Sea Plan Part Five Appendix B - Plan Map

Beneficial Uses Resource Inventory - FERC Preliminary Permits



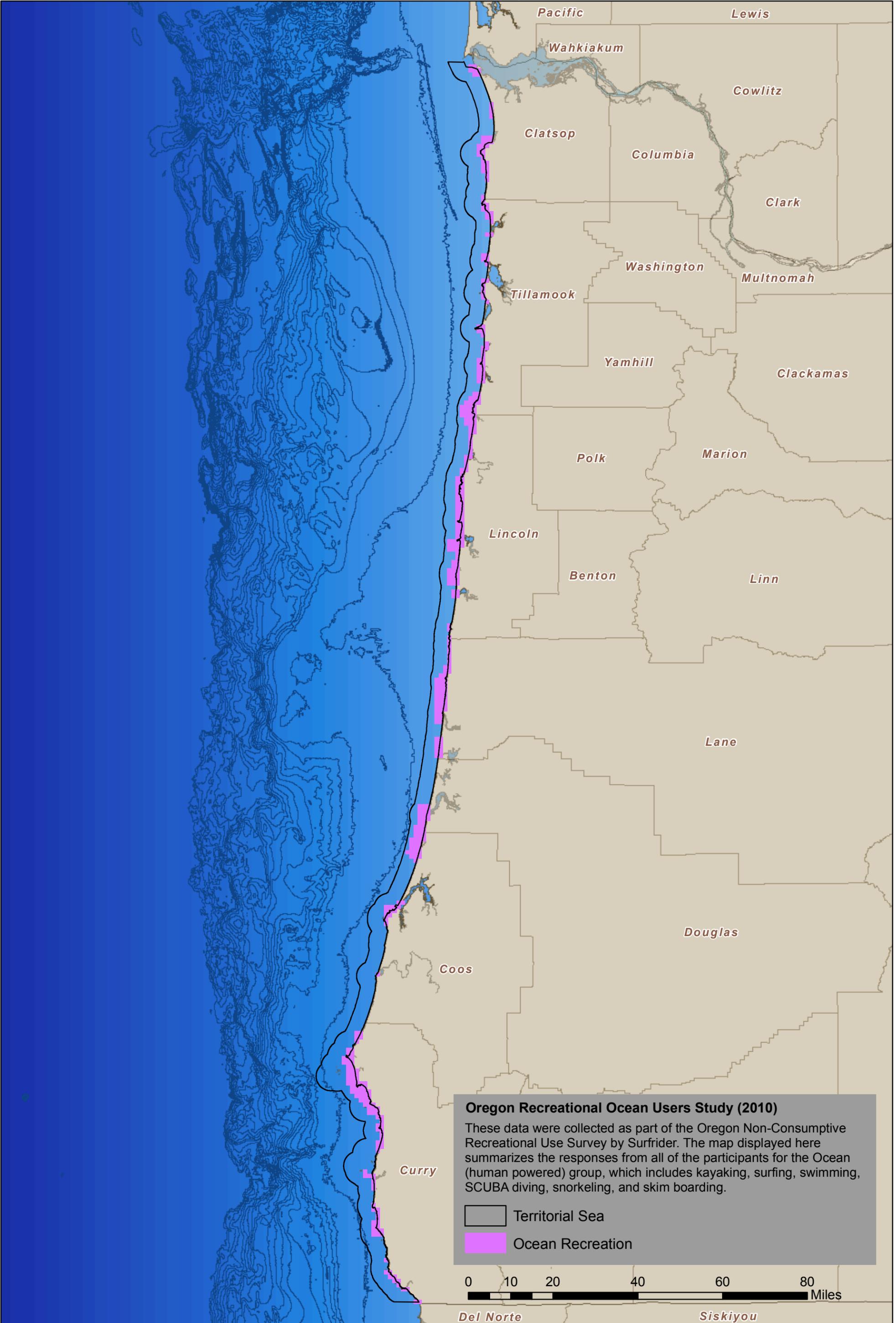
Territorial Sea Plan Part Five Appendix B - Plan Map

Beneficial Uses Resource Inventory - Tugboat Towlanes



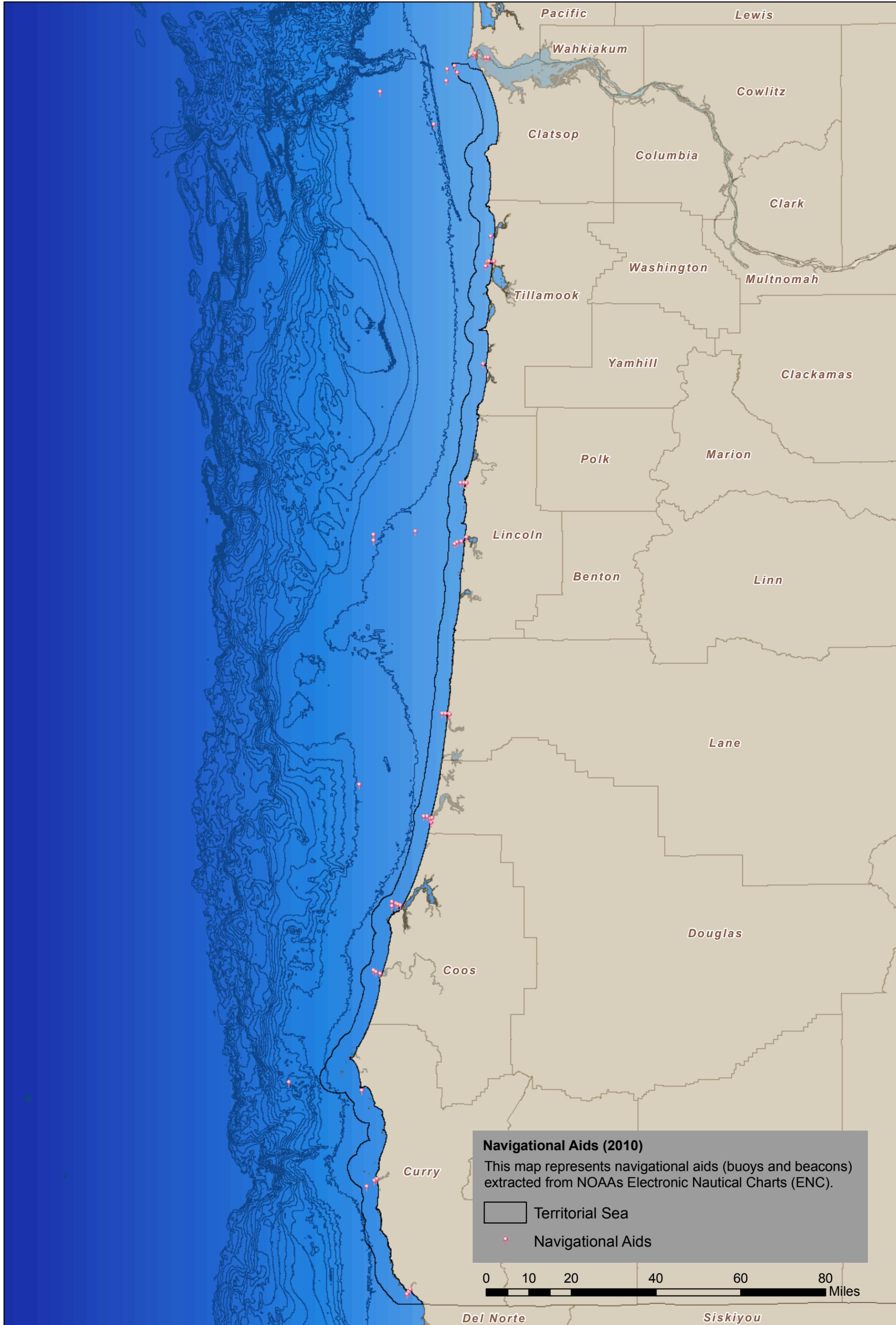
Territorial Sea Plan Part Five Appendix B - Plan Map

Beneficial Uses Resource Inventory - Ocean Recreation



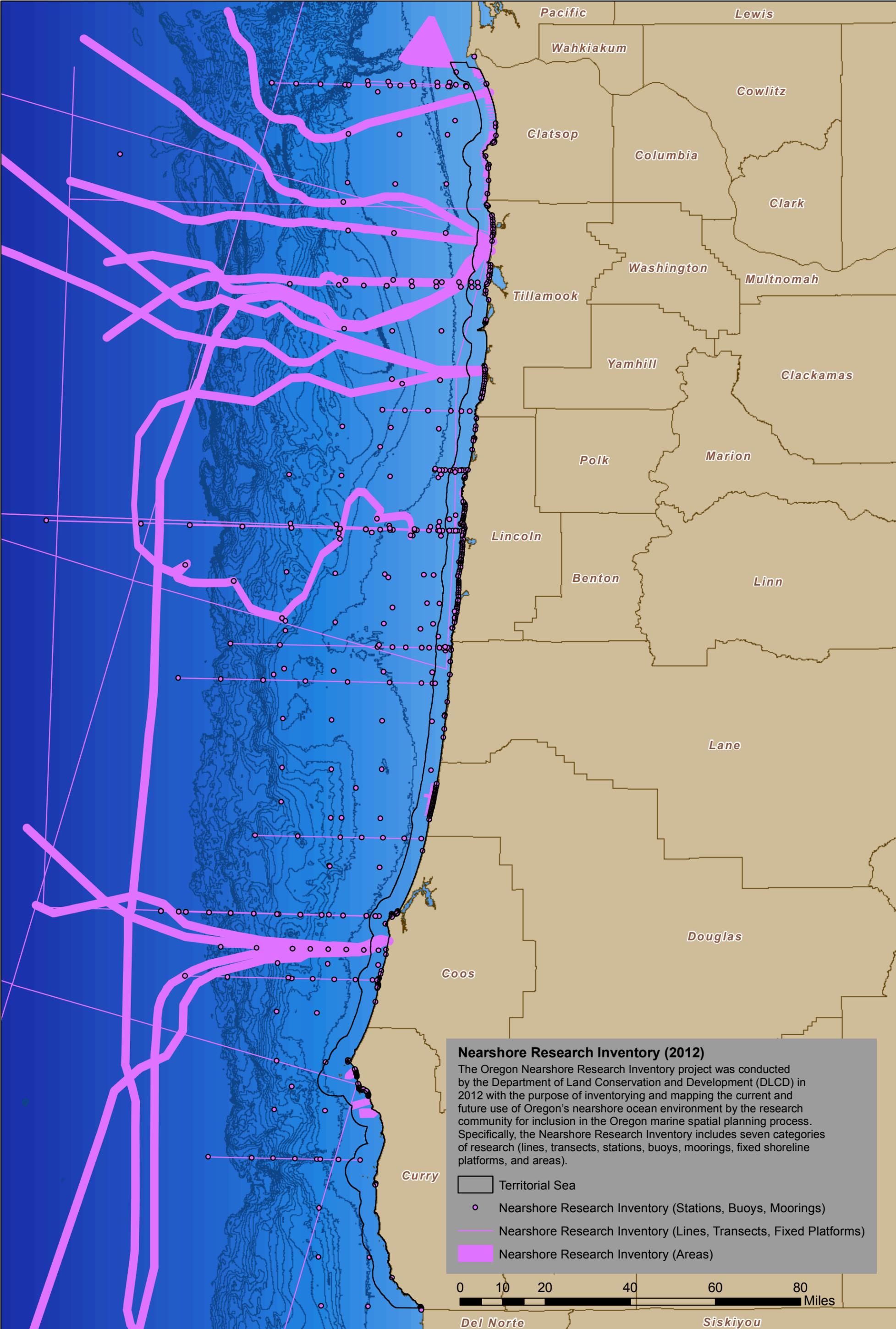
Territorial Sea Plan Part Five Appendix B - Plan Map

Beneficial Uses Resource Inventory - Navigational Aids



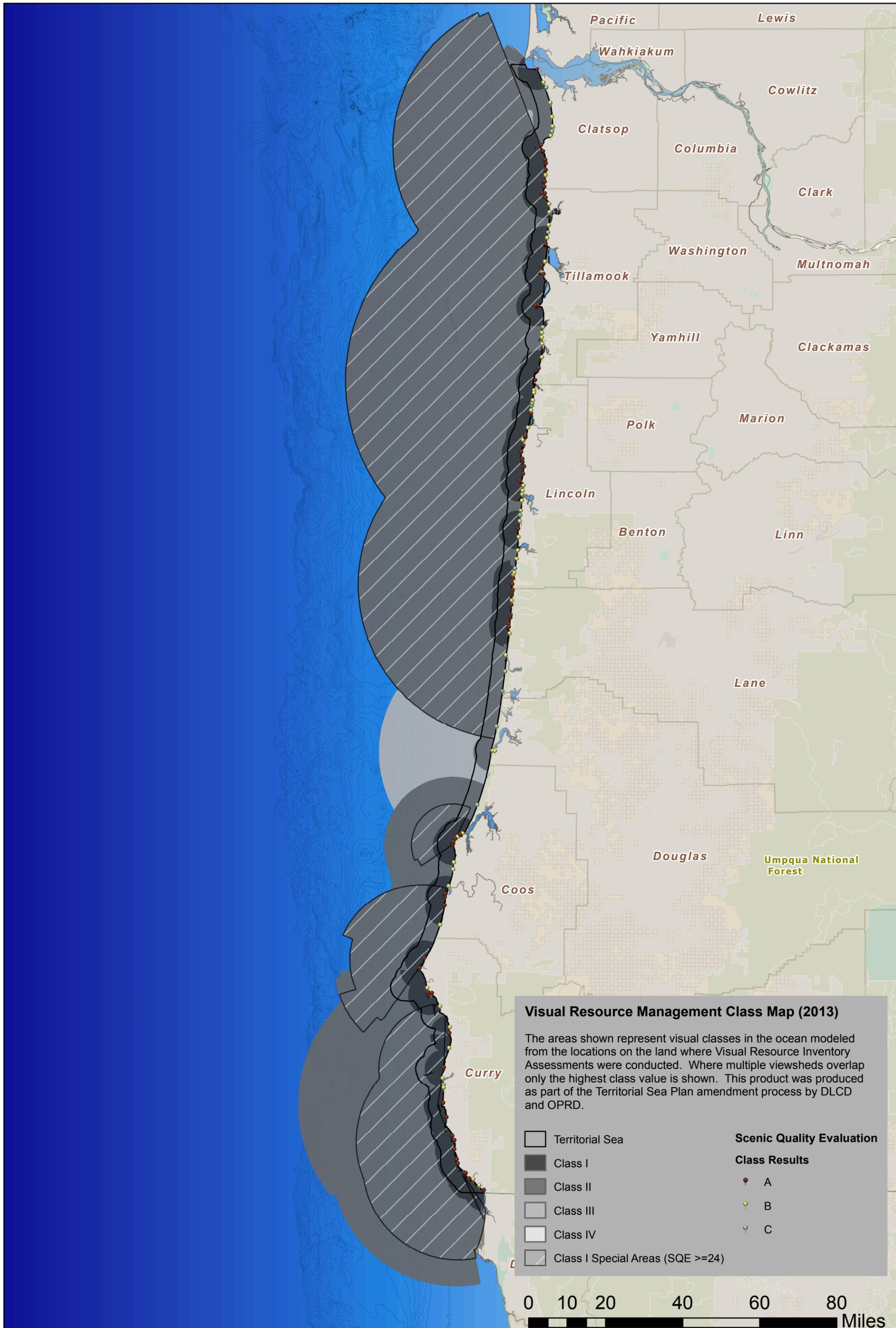
Territorial Sea Plan Part Five Appendix B - Plan Map

Beneficial Uses Resource Inventory - Nearshore Research Inventory



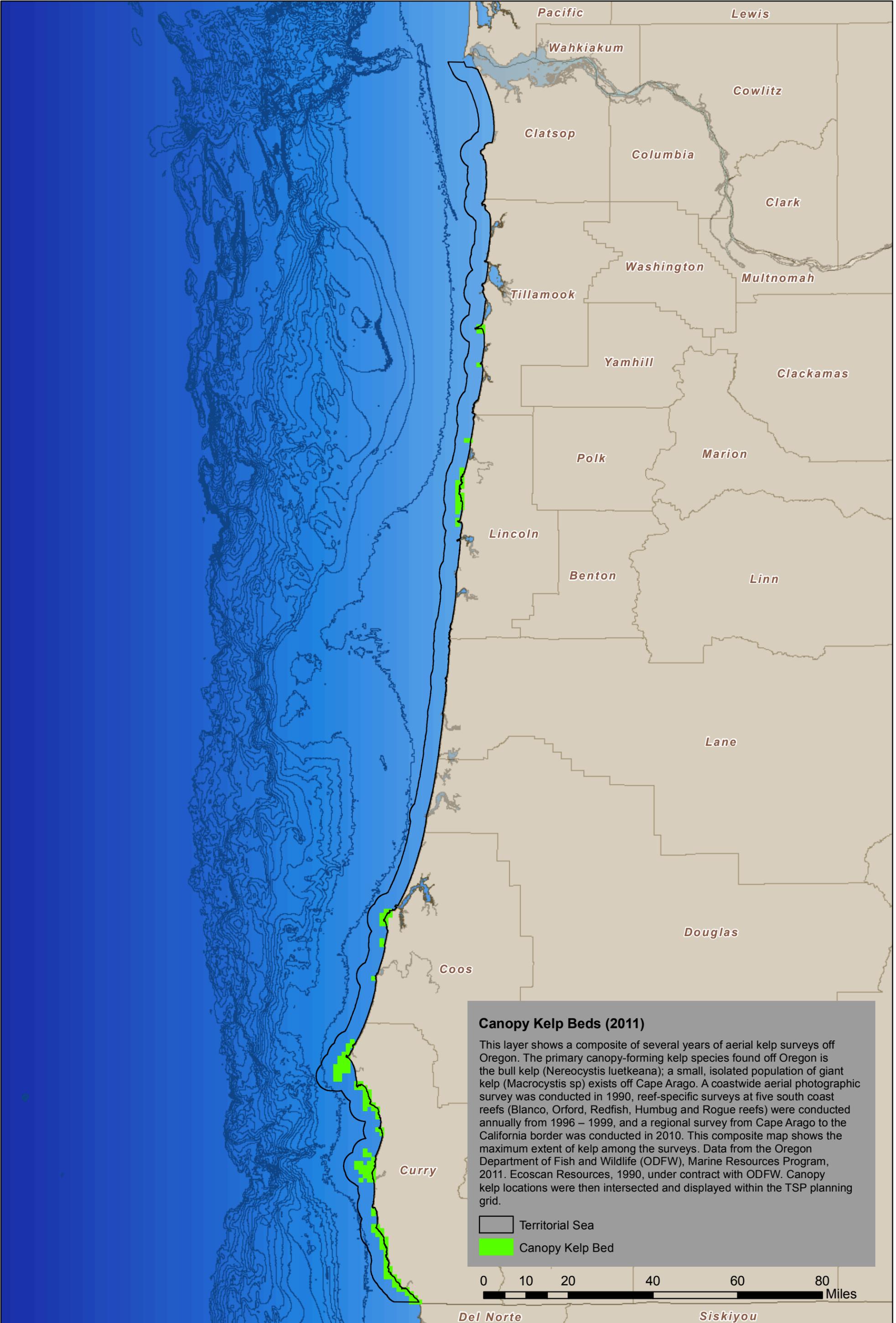
Territorial Sea Plan Part Five Appendix B - Plan Map

Beneficial Uses Resource Inventory - Visual Resource Class Map



Territorial Sea Plan Part Five Appendix B - Plan Map

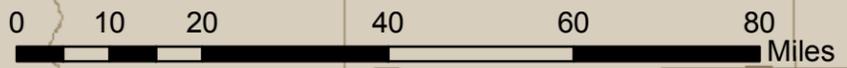
Ecological Resource Inventory - Canopy Kelp Beds



Canopy Kelp Beds (2011)

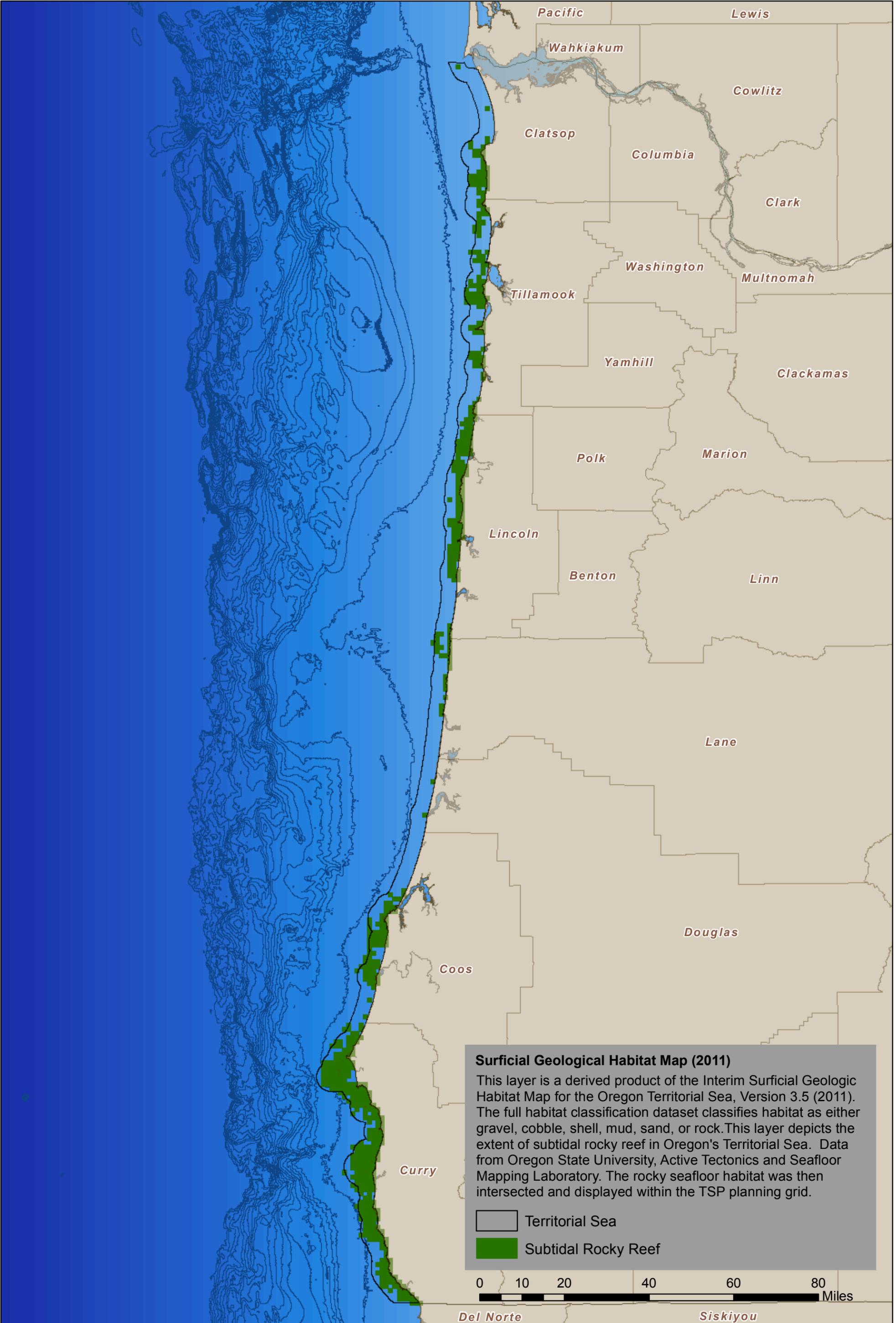
This layer shows a composite of several years of aerial kelp surveys off Oregon. The primary canopy-forming kelp species found off Oregon is the bull kelp (*Nereocystis luetkeana*); a small, isolated population of giant kelp (*Macrocystis* sp) exists off Cape Arago. A coastwide aerial photographic survey was conducted in 1990, reef-specific surveys at five south coast reefs (Blanco, Orford, Redfish, Humbug and Rogue reefs) were conducted annually from 1996 – 1999, and a regional survey from Cape Arago to the California border was conducted in 2010. This composite map shows the maximum extent of kelp among the surveys. Data from the Oregon Department of Fish and Wildlife (ODFW), Marine Resources Program, 2011. Ecoscan Resources, 1990, under contract with ODFW. Canopy kelp locations were then intersected and displayed within the TSP planning grid.

- Territorial Sea
- Canopy Kelp Bed



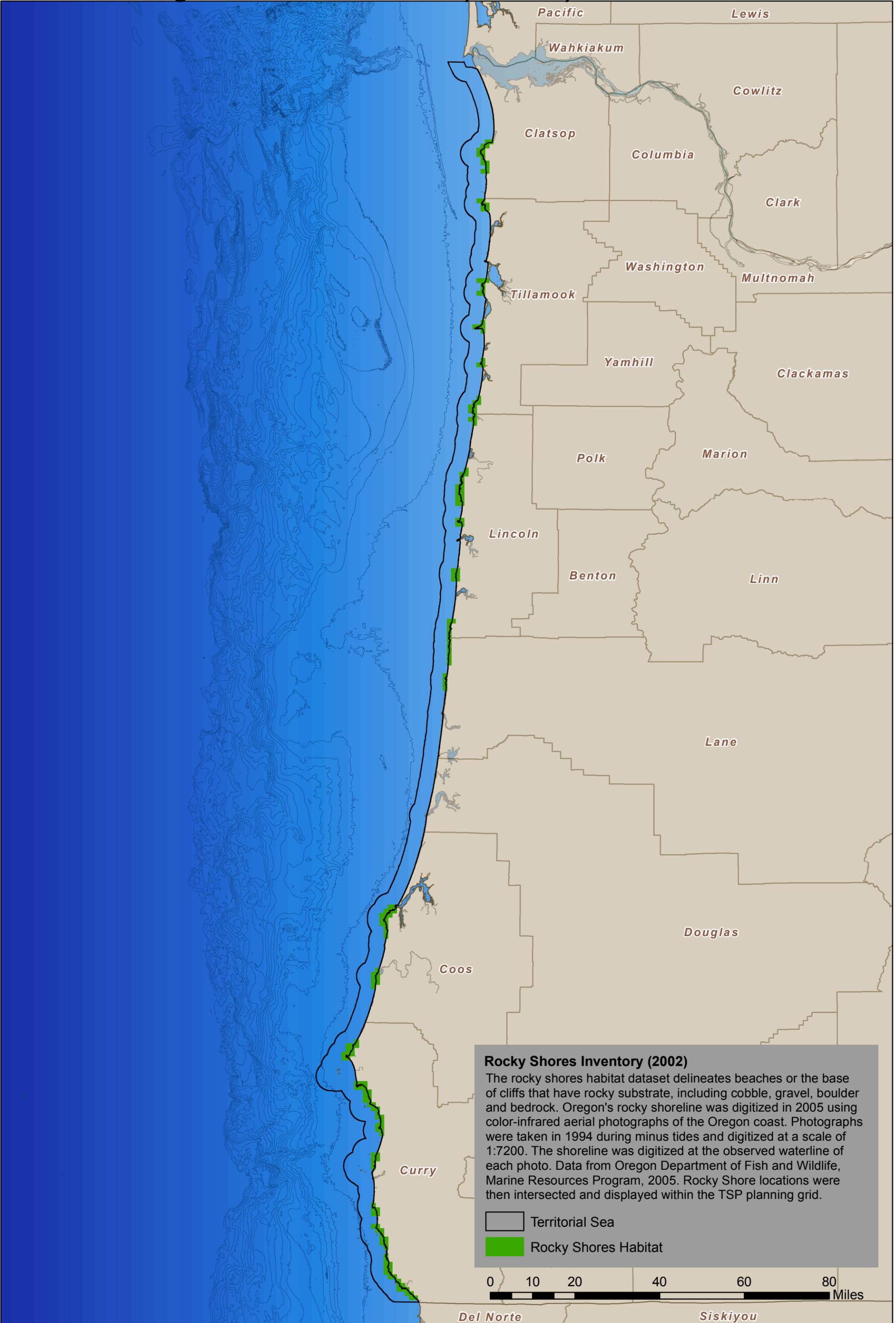
Territorial Sea Plan Part Five Appendix B - Plan Map

Ecological Resource Inventory - Subtidal Rocky Reef



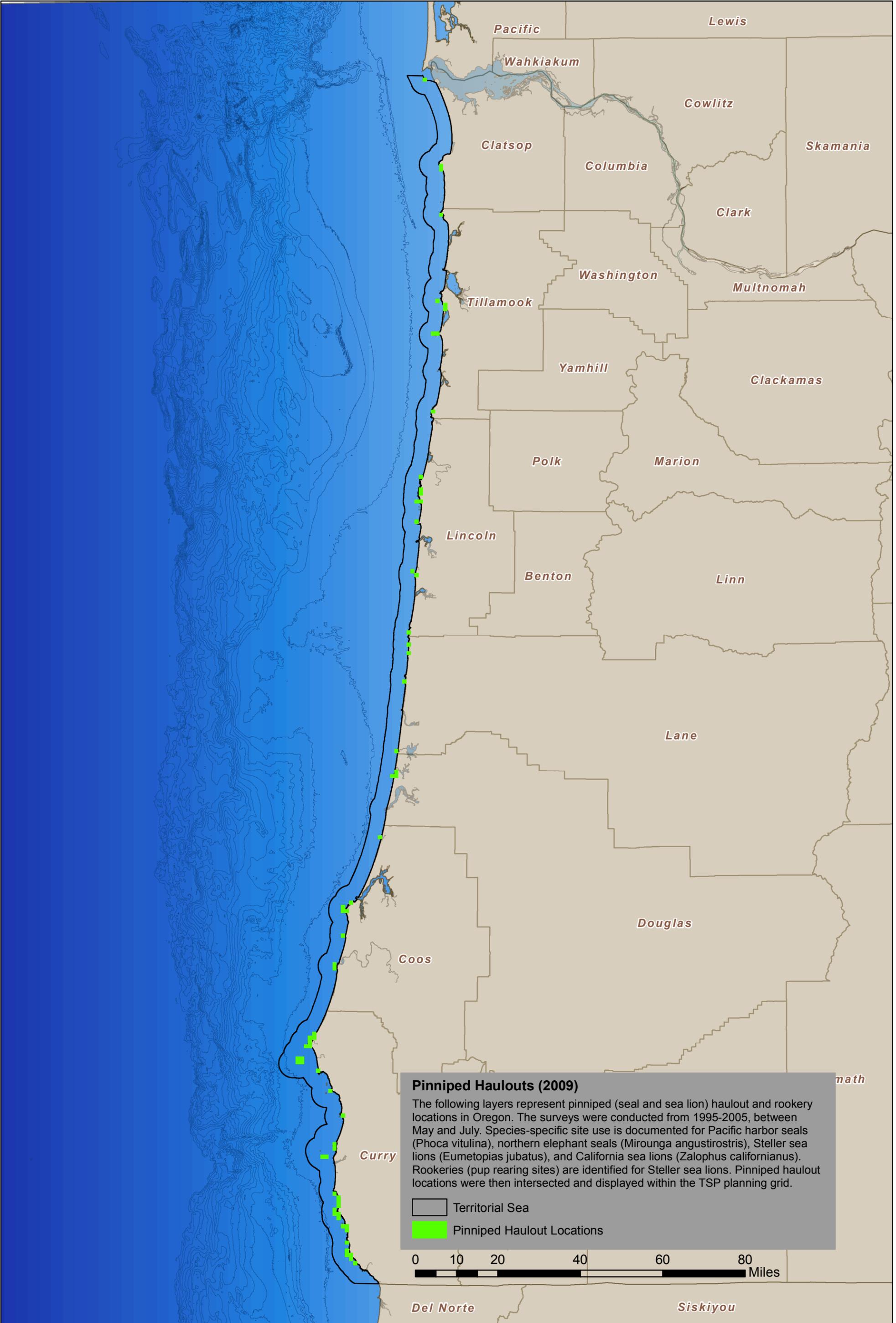
Territorial Sea Plan Part Five Appendix B - Plan Map

Ecological Resource Inventory - Rocky Shores Habitat



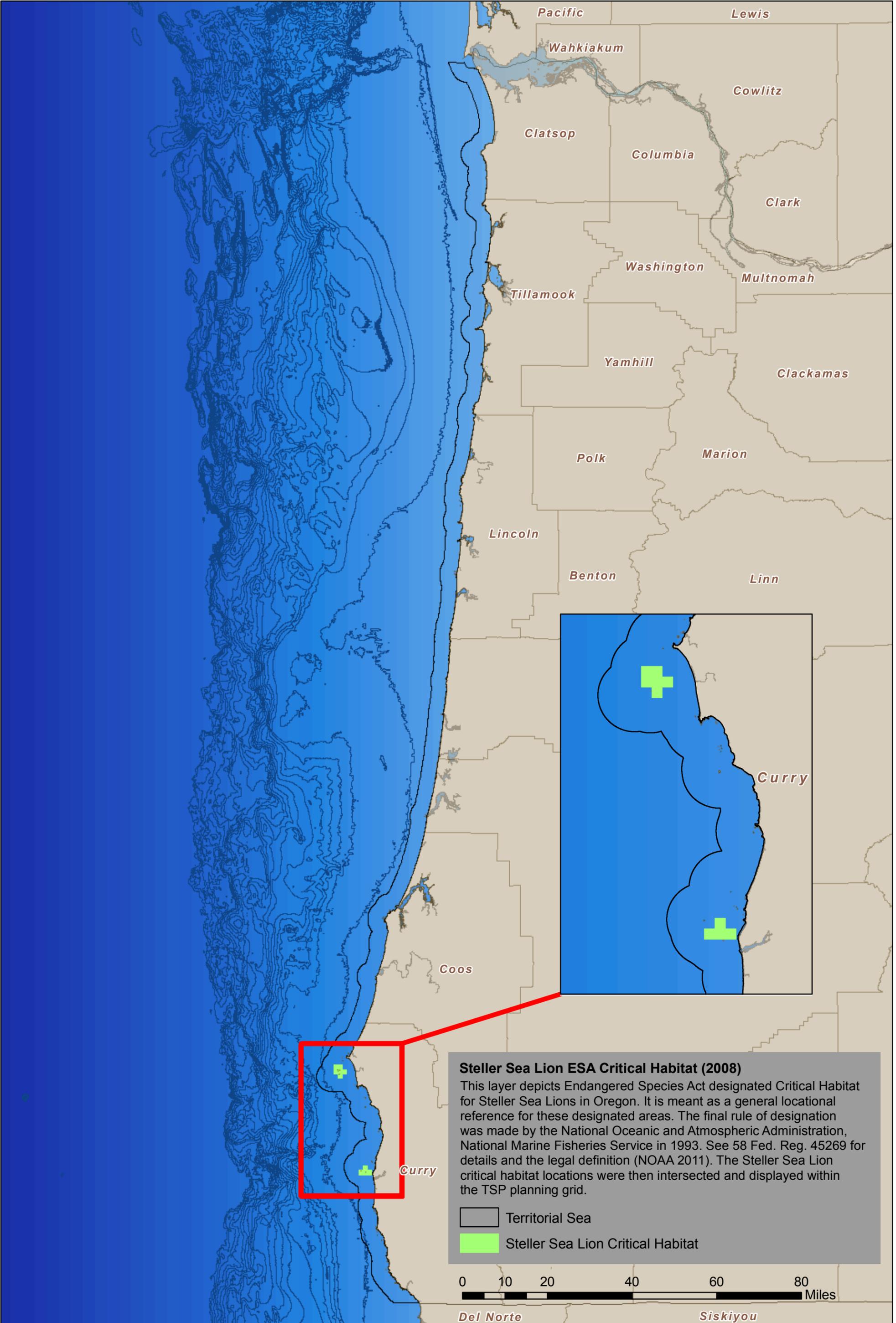
Territorial Sea Plan Part Five Appendix B - Plan Map

Ecological Resource Inventory - Pinniped Haulouts



Territorial Sea Plan Part Five Appendix B - Plan Map

Ecological Resource Inventory - Steller Sea Lion Critical Habitat



Steller Sea Lion ESA Critical Habitat (2008)

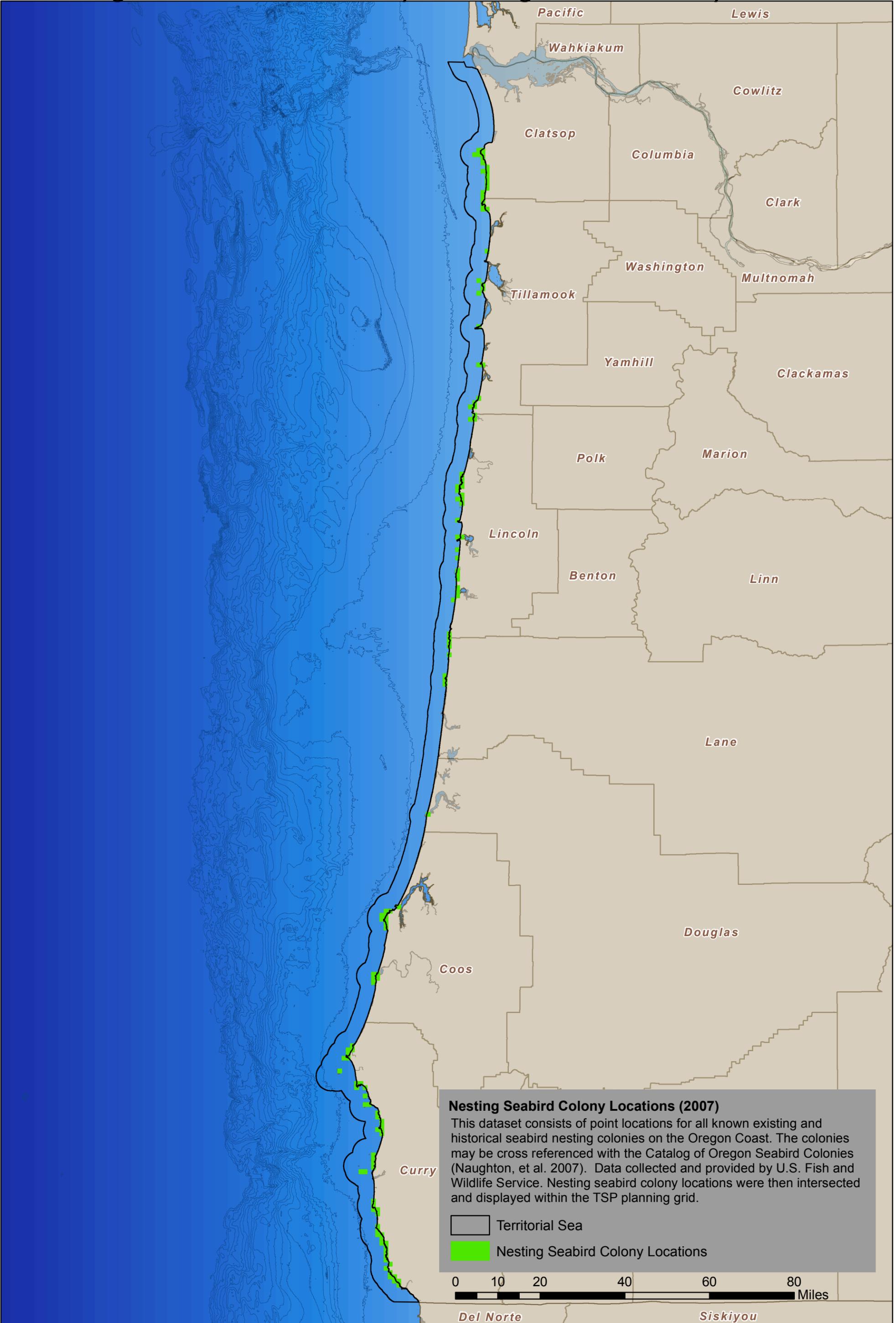
This layer depicts Endangered Species Act designated Critical Habitat for Steller Sea Lions in Oregon. It is meant as a general locational reference for these designated areas. The final rule of designation was made by the National Oceanic and Atmospheric Administration, National Marine Fisheries Service in 1993. See 58 Fed. Reg. 45269 for details and the legal definition (NOAA 2011). The Steller Sea Lion critical habitat locations were then intersected and displayed within the TSP planning grid.

-  Territorial Sea
-  Steller Sea Lion Critical Habitat



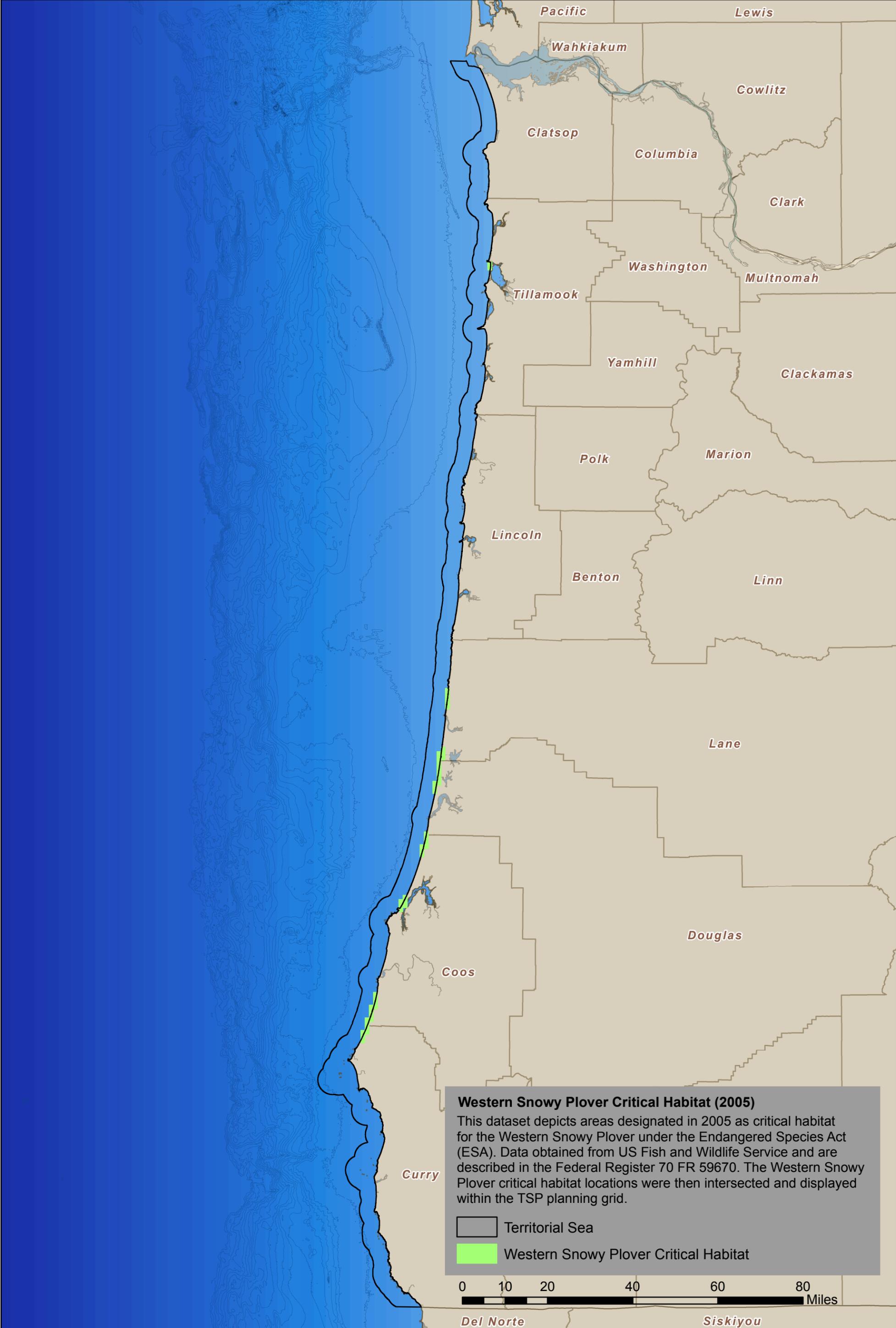
Territorial Sea Plan Part Five Appendix B - Plan Map

Ecological Resource Inventory - Nesting Seabird Colony Locations



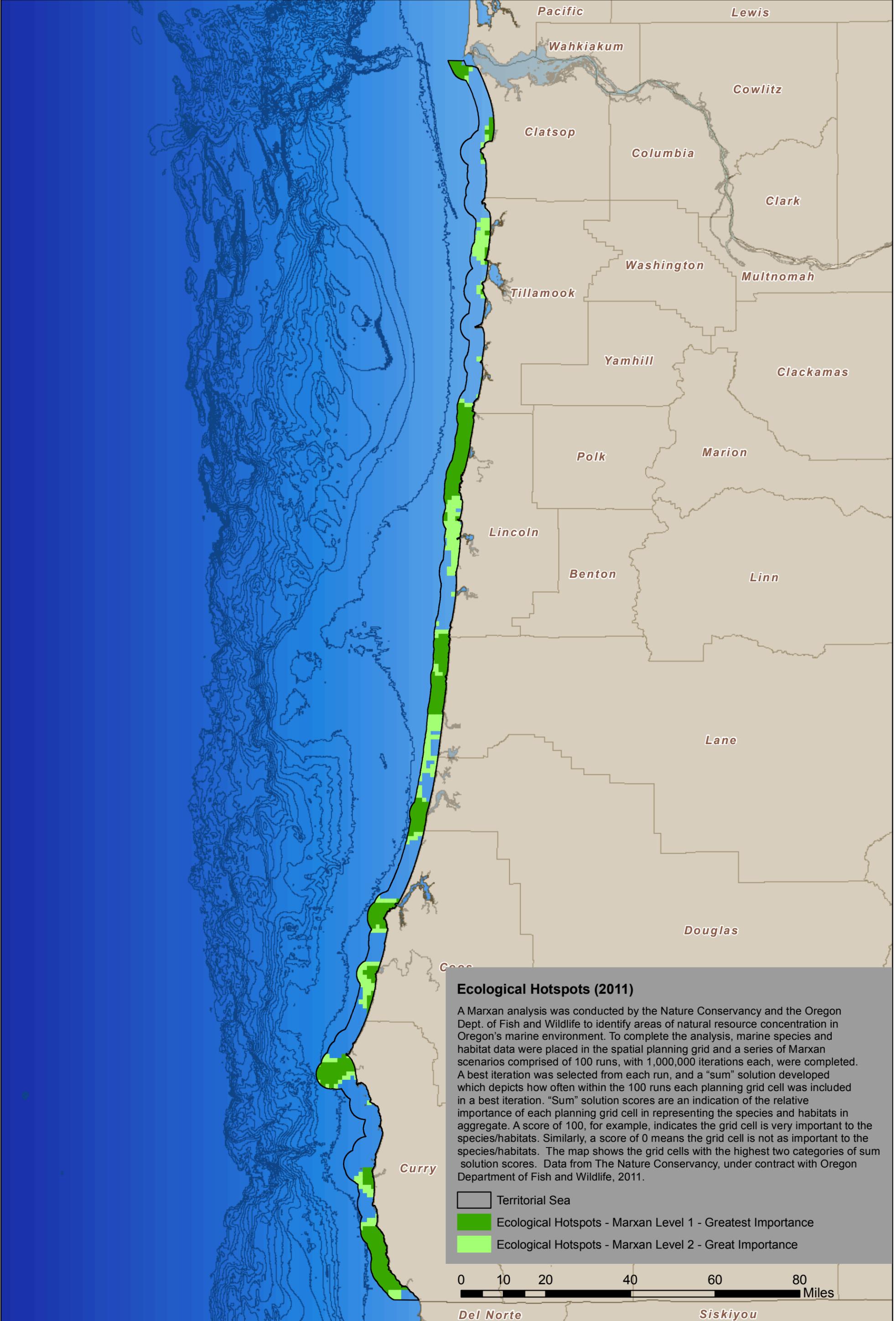
Territorial Sea Plan Part Five Appendix B - Plan Map

Ecological Resource Inventory - Western Snowy Plover Critical Habitat



Territorial Sea Plan Part Five Appendix B - Plan Map

Ecological Resource Inventory - Ecological Hotspots



Ecological Hotspots (2011)

A Marxan analysis was conducted by the Nature Conservancy and the Oregon Dept. of Fish and Wildlife to identify areas of natural resource concentration in Oregon's marine environment. To complete the analysis, marine species and habitat data were placed in the spatial planning grid and a series of Marxan scenarios comprised of 100 runs, with 1,000,000 iterations each, were completed. A best iteration was selected from each run, and a "sum" solution developed which depicts how often within the 100 runs each planning grid cell was included in a best iteration. "Sum" solution scores are an indication of the relative importance of each planning grid cell in representing the species and habitats in aggregate. A score of 100, for example, indicates the grid cell is very important to the species/habitats. Similarly, a score of 0 means the grid cell is not as important to the species/habitats. The map shows the grid cells with the highest two categories of sum solution scores. Data from The Nature Conservancy, under contract with Oregon Department of Fish and Wildlife, 2011.

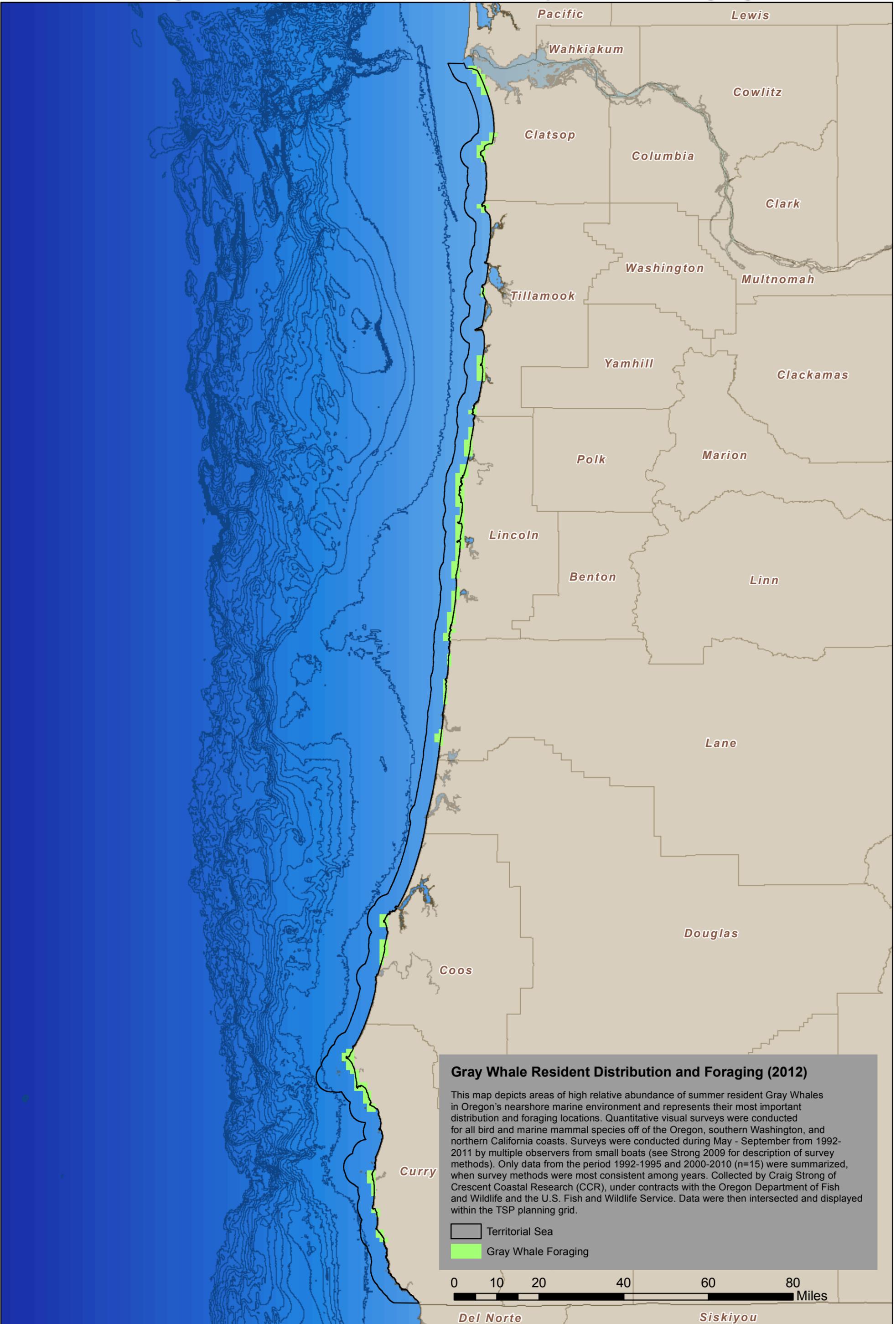
-  Territorial Sea
-  Ecological Hotspots - Marxan Level 1 - Greatest Importance
-  Ecological Hotspots - Marxan Level 2 - Great Importance



Del Norte Siskiyou

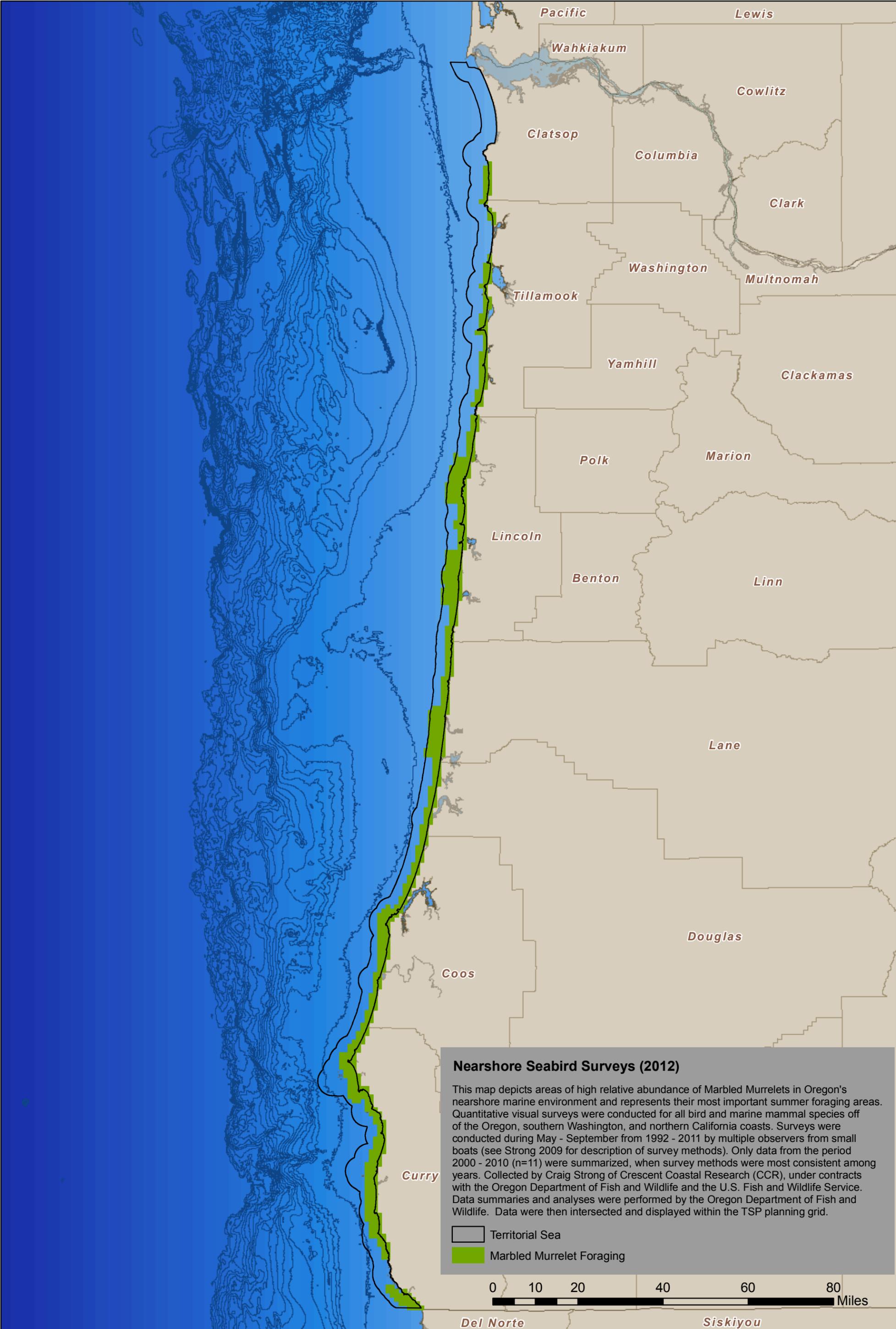
Territorial Sea Plan Part Five Appendix B - Plan Map

Ecological Resource Inventory - Gray Whale Foraging



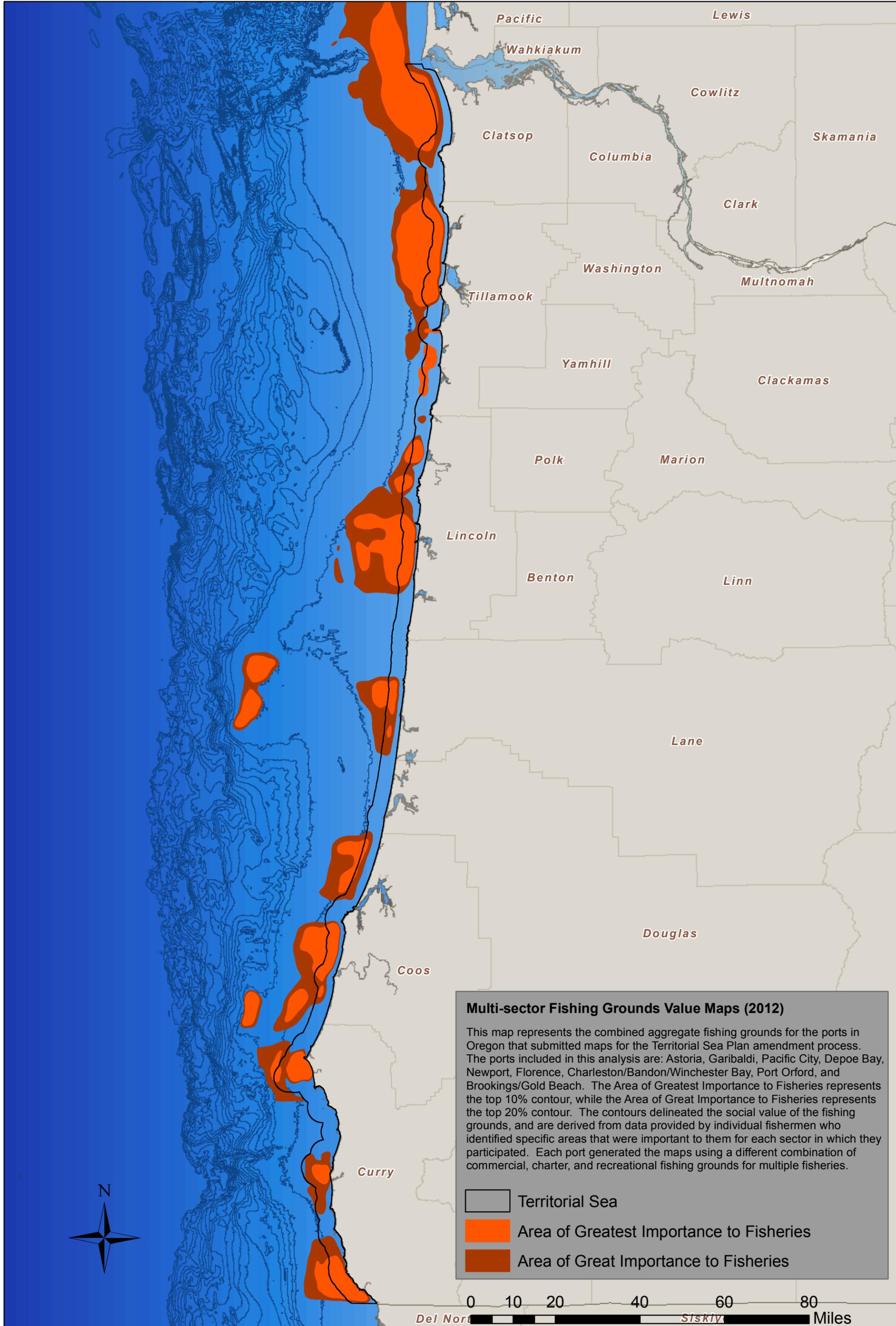
Territorial Sea Plan Part Five Appendix B - Plan Map

Ecological Resource Inventory - Marbled Murrelet Foraging



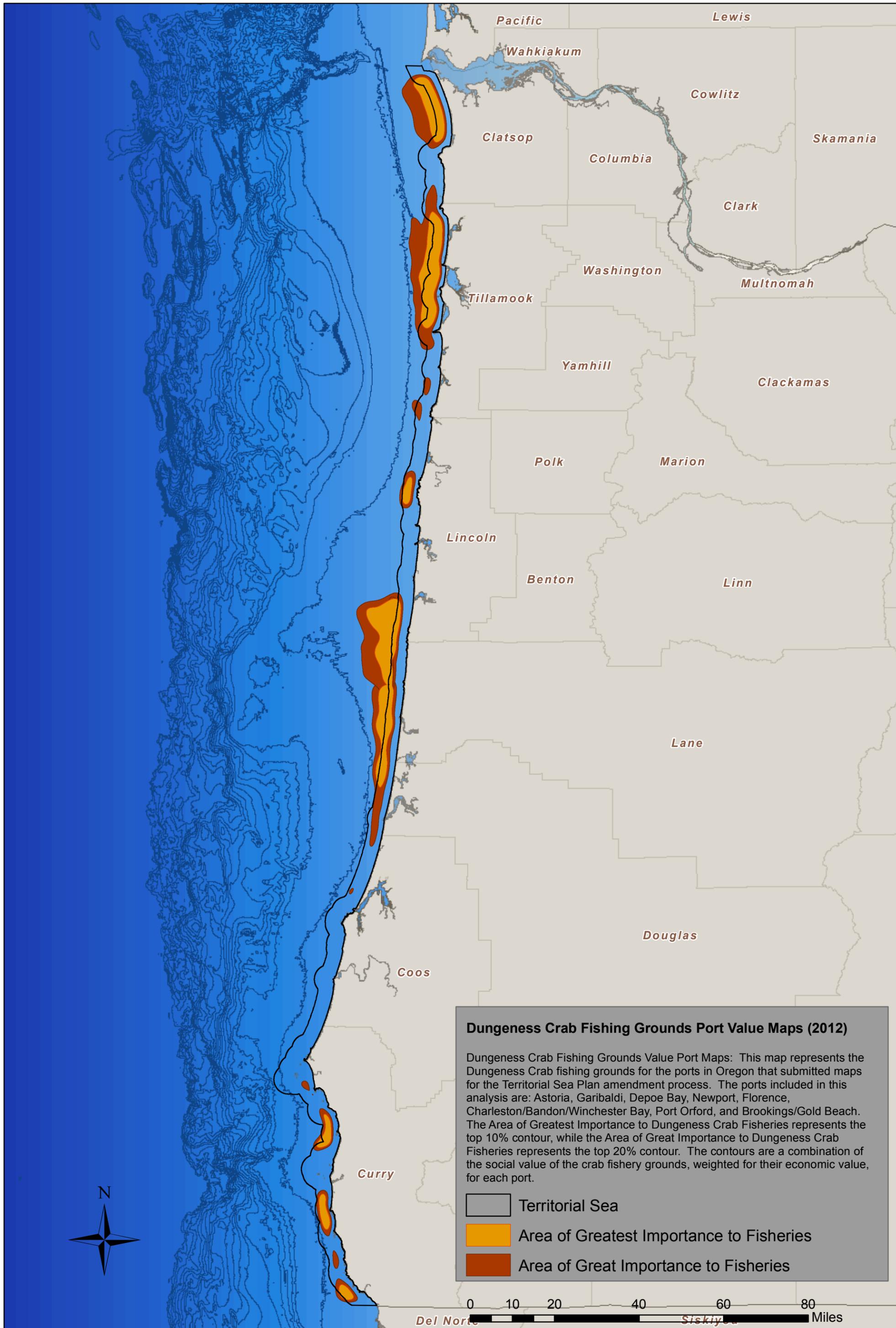
Territorial Sea Plan Part Five Appendix B - Plan Map

Fisheries Resource Inventory - Multisector Port Maps



Territorial Sea Plan Part Five Appendix B - Plan Map

Fisheries Resource Inventory - Dungeness Crab Port Fishery Maps



Territorial Sea Plan Part Five Appendix B - Plan Map

Fisheries Resource Inventory - Dungeness Crab Statewide Map

