



NEGOTIATING A LEGAL SETTLEMENT THAT ALLOWS ROPELESS FISHING

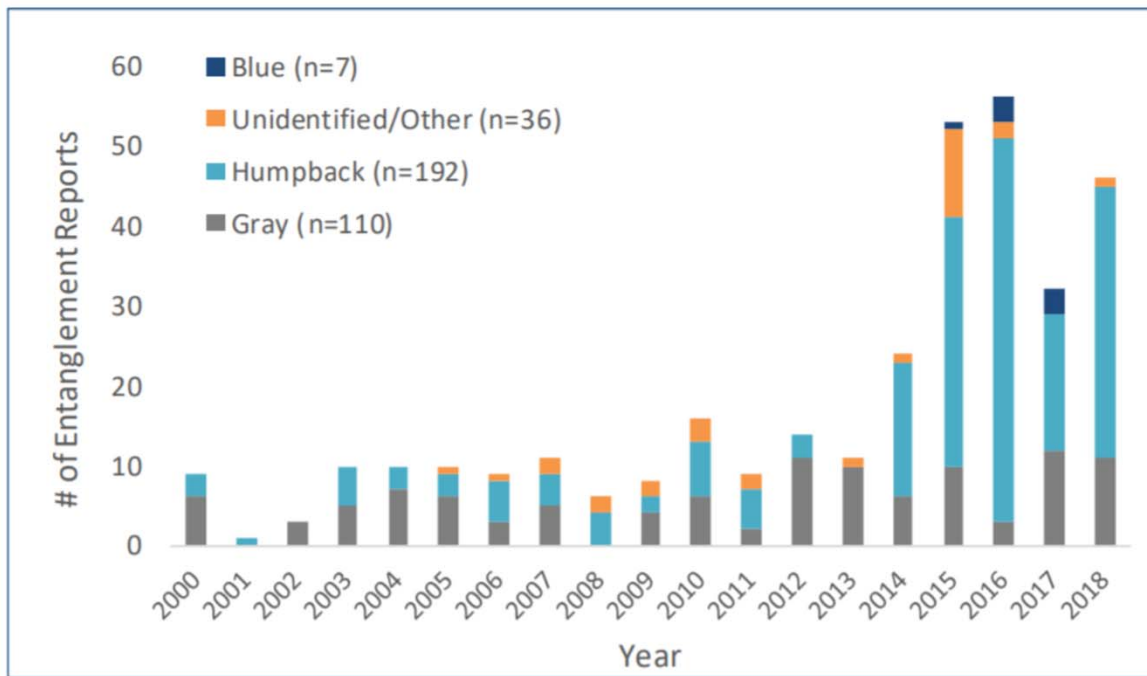
Kristen Monsell, Oceans Program Legal Director

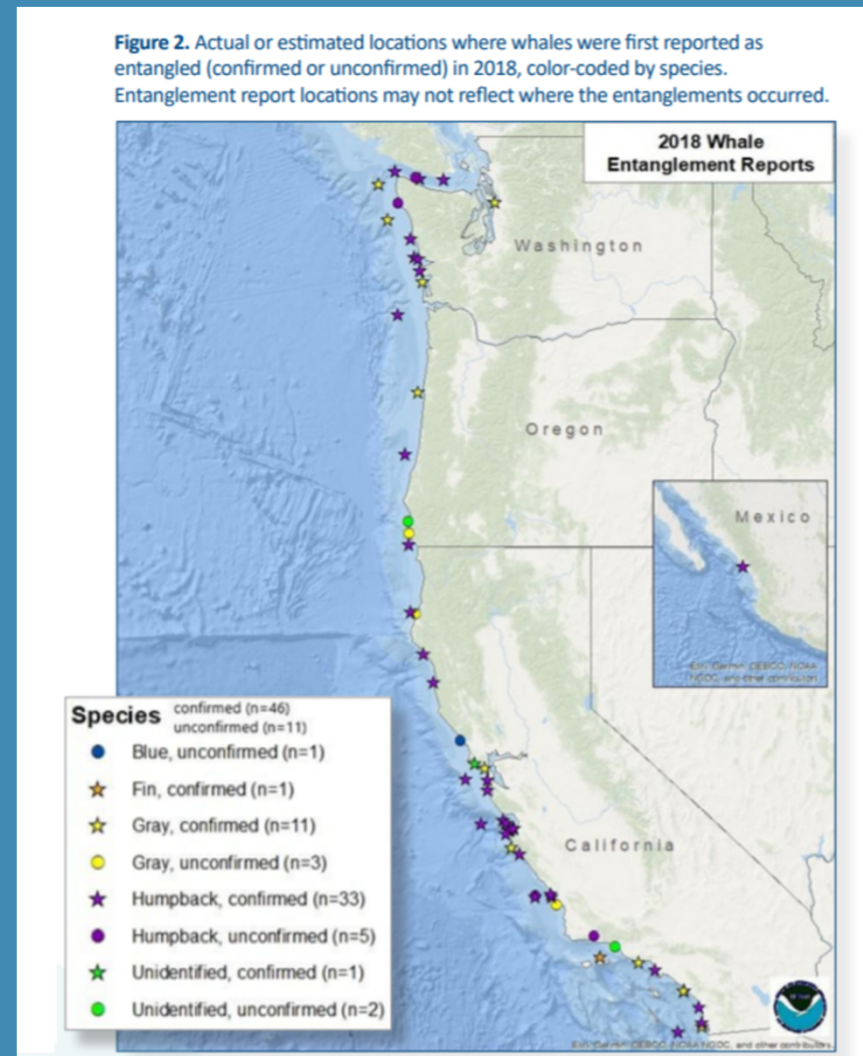
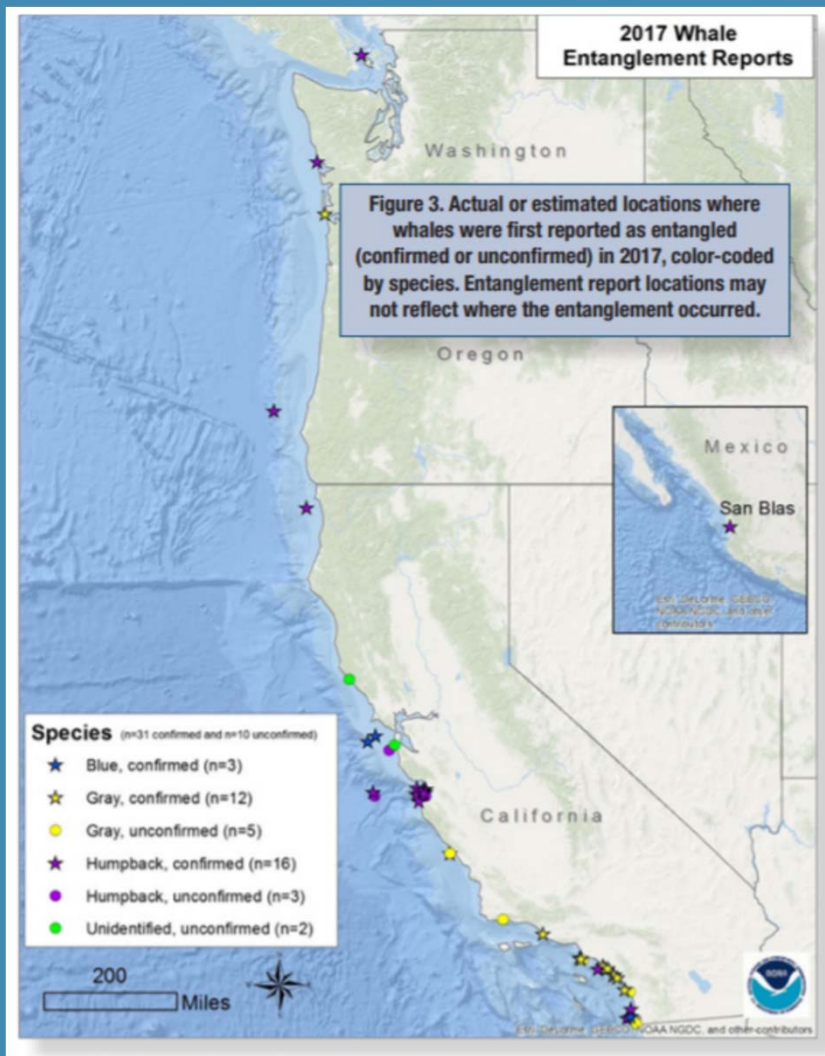
Center for Biological Diversity

November 2019

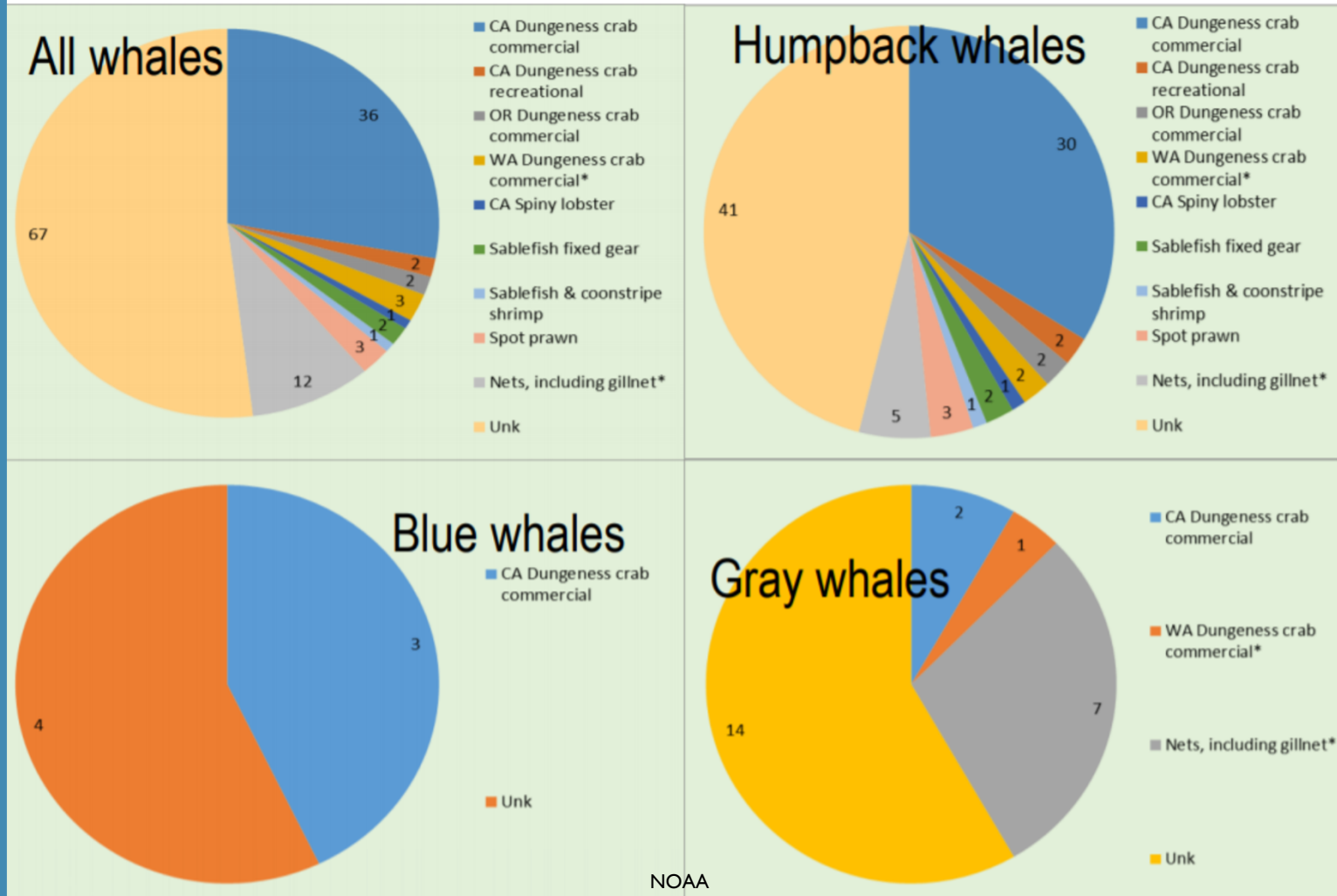
WHALE ENTANGLEMENTS OFF THE U.S. WEST COAST

Figure 1. Confirmed U.S. West Coast whale entanglements by year and species, 2000 to 2018. In the legend, “n” represents the total number of that species confirmed entangled in the 19-year period.





Sources of Confirmed Whale Entanglements 2015-2017



ENDANGERED SPECIES ACT

Seeks “to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved.” 16 U.S.C. § 1531(b).

ESA is considered the “most comprehensive legislation for the preservation of endangered species ever enacted by any nation. . . . The plain intent of Congress in enacting this statute was to halt and reverse the trend toward species extinction, whatever the cost.” *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 180, 184 (1978).

Makes it “unlawful for any person” to “take any [endangered] species within the United States” or the territorial seas without authorization, 16 U.S.C. § 1538(a)(1)(B), and for “any person” to “cause” a take to be committed. *Id.* § 1538(g).

Defines take as to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage” in such conduct.” *Id.* § 1532(19).

“[A] governmental third party pursuant to whose authority an actor directly exacts a taking . . . may be deemed to have violated the provisions of the ESA.” *Strahan v. Cox*, 127 F.3d 155, 163 (1st Cir. 1997).



Center for Biological Diversity v. Bonham,
Case No. 17-05685
(N.D. Cal., filed Oct. 3, 2017)

One claim:

State's permitting, licensing, and management of the California commercial Dungeness crab fishery is killing, injuring, harming, capturing, and otherwise causing "take" of humpback whales, blue whales, and leatherback sea turtles, in violation of the ESA, 16 U.S.C. §§ 1538(a)(1)(B), 1538(a)(1)(G); 50 C.F.R. § 223.213.

Relief:

Take authorization under Section 10, which allows federal government to permit take "incidental to, and not the purpose of, . . . an otherwise lawful activity" provided certain conditions are met. 16 U.S.C. § 1539(a)(1)(B).

Implementation of immediate measures to significantly reduce the risk of entanglement.



San Francisco Chronicle

LOCALSPORTING GREENPOLITICS
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California seeks plan to protect whales and Dungeness crab fishery

By Charlton H. Bonham | Nov. 27, 2018 | Updated: Nov. 27, 2018 5:37 p.m.

SETTLEMENT AGREEMENT

Beginning April 1, 2021, and each season on April 1 thereafter until the ITP issues, Districts 10, 17, and south are only open to ropeless fishing gear by default. This spring closure can be lifted at the next scheduled Director's risk determination, after consultation with the Working Group, only if the risk is low on all RAMP criteria

The Department will continue to support development of ropeless gear technology, or any other alternative gear, and explicitly allow for its testing and use

Authorized use of ropeless gear will include annual reporting requirements on the outcomes of use, and recommendations for further development.

The Department will amend existing regulations or finalize new regulations by November 1, 2020, that allow alternate gear, including ropeless gear, that meets the enforcement criteria to be used in any area closed to commercial Dungeness crab fishing to protect whales or sea turtles.

