

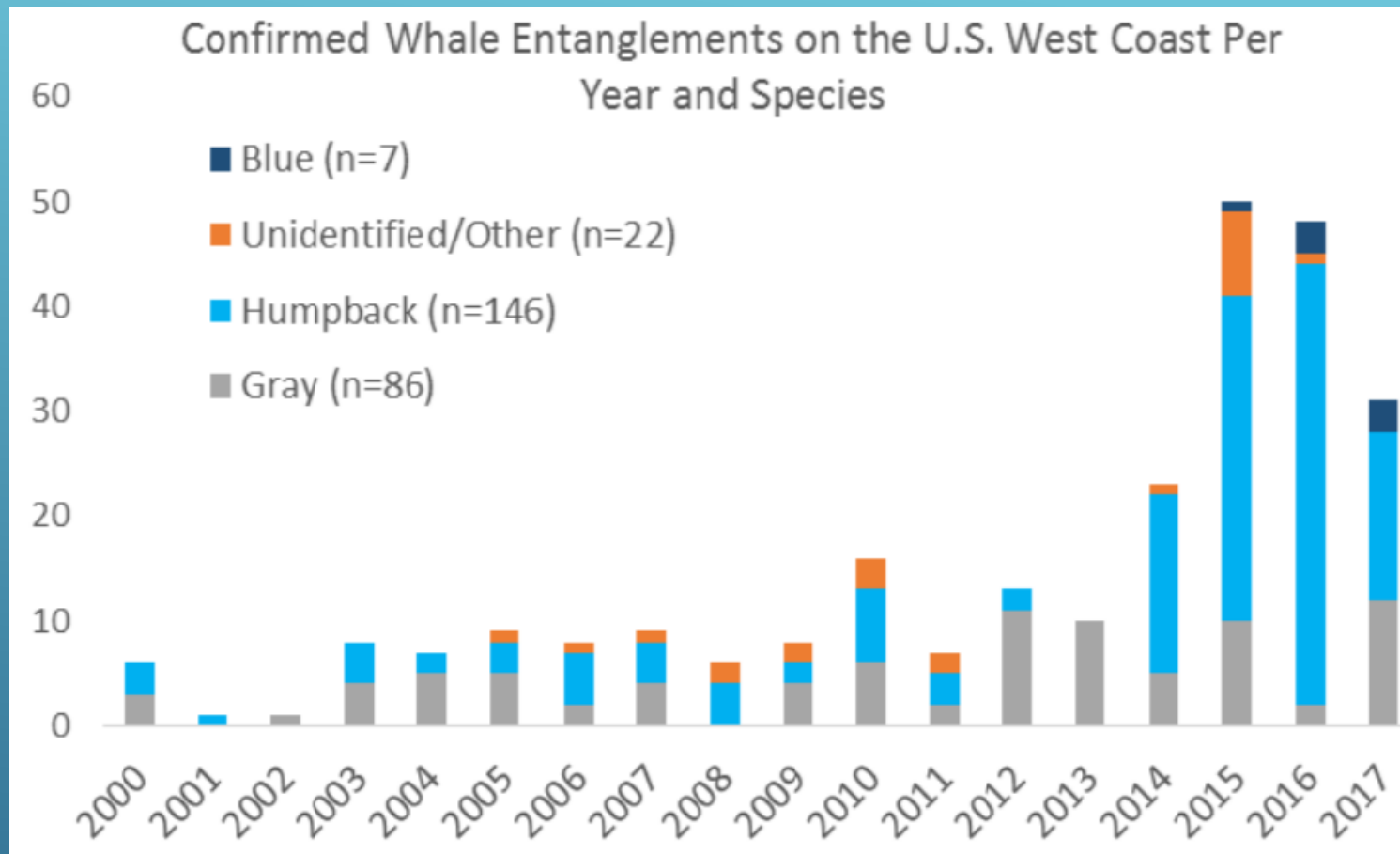
WHALE AND SEA TURTLE ENTANGLEMENTS OFF CALIFORNIA



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November 28, 2018



NOAA

Fishery type	Number of reports for 2016
Dungeness crab commercial trap fishery	22 (1 killer, 2 blue, 19 humpback)
Gillnet fisheries	2 (humpback)
Spot prawn trap fishery	3 (humpback)
Sablefish trap fishery	2 (humpback)
Dungeness crab recreational trap fishery	0
Spiny lobster fishery	0

NOAA

FISHERY	2017	NUMBER OF REPORTS
California Dungeness crab commercial trap fishery		5 (1 gray, 3 humpbacks, 1 blue)
California Dungeness crab recreational trap fishery		1 (1 humpback)
Washington Dungeness crab commercial trap fishery including tribal fisheries		3 (1 gray, 2 humpbacks)
Sablefish/coonstripe shrimp commercial trap fishery*		1 (1 humpback)
Gillnet fisheries**		4 (4 gray)

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ENDANGERED SPECIES ACT

ESA 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 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).

Section 9 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).

Under the ESA, “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. Coxe*, 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 of the ESA, which allows the 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).
- *Immediate* mitigation measures to *significantly* reduce the risk of entanglement.