

ODFW revised proposal for short term measures to reduce risk of whale entanglements in Dungeness crab gear - Phase II

February 2020

A. Target implementation – within the 2019/20 crab season

- **20% gear reduction effective May 1** (but June 1 in 2020)
(OAR 635-005-0405)
 - **Late-season buoy tag**
(OAR 635-005-0480)
 - **Late-season 30 fathom depth restriction in combination with reduction**
(OAR 635-005-0460)
 - **Sunset** – after 3 seasons for all 3 provisions
(OAR 635-005-0405, 635-005-0460, 635-005-0480)
- **Eliminate two-week gear clean-up period** (no sunset)
(OAR 635-005-0485)
- **Require best practice – lines taut** (no sunset)
(OAR 635-005-0485)
- Fishermen education (non-rulemaking)
 - Best practices
 - Encourage fishers to participate in disentanglement training

B. Target implementation – beginning with the 2020/21 crab season

- **Eliminate replacement tags** – Retaining opportunity for replacement tags due to “catastrophic loss” and “extraordinary circumstances” (no sunset)
(OAR 635-005-0480)
- **Require line marking** – 2 marks, 12 inches, neon orange (no sunset)
(OAR 635-005-0480)



**Oregon Administrative Rules
Oregon Department of Fish and Wildlife**

COMMERCIAL FISHERIES

DIVISION 005

COMMERCIAL SHELLFISH AND MARINE INVERTEBRATE FISHERIES

635-005-0240

Definitions

As used in Division 005 regulations:

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(5) "Catastrophic loss" means direct loss of non-deployed gear in the event of a vessel being destroyed due to fire, capsizing, or sinking. Documentation of a catastrophic loss may include any information the Department considers appropriate, such as fire department or US Coast Guard reports.

...

635-005-0405

Requirement for Ocean Dungeness Crab Permit

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(5) Effective December 1, 2006, the amount of Dungeness crab gear allocated to a permit required under section (1) above will be determined as follows:

(a) The allocation will be based on documented landings of ocean Dungeness crab into Oregon, Washington (excluding landings from the Puget Sound Fishery), or California, using valid Oregon fish receiving tickets, or equivalent valid documents from the states of Washington or California, from December 1, 1995 through August 14, 2001;

(b) The Dungeness crab gear allocation will be the highest number of pots and rings in aggregate the vessel qualifies for during the six qualifying seasons, December 1 of one year through September 15 of the next year (except through August 14, in 2001);

(c) A Dungeness crab gear allocation of 200 shall be assigned to a permit with landings less than 15,020 pounds in the 1995 to 1996 season, and 4,010 pounds in the 1996 to 1997 season, and 5,170 pounds in the 1997 to 1998 season, and 7,083 pounds in the 1998 to 1999 season, and 13,160 pounds in the 1999 to 2000 season, and 8,940 pounds in the 2000 to 2001 season;

(d) A Dungeness crab gear allocation of 300 shall be assigned to a permit with minimum landings of 15,020 pounds in the 1995 to 1996 season, or 4,010 pounds in the 1996 to 1997 season, or 5,170 pounds in the 1997 to 1998 season, or 7,083 pounds in the 1998 to 1999 season, or 13,160 pounds in the 1999 to 2000 season, or 8,940 pounds in the 2000 to 2001 season; and

(e) A Dungeness crab gear allocation of 500 shall be assigned to a permit with minimum landings of 89,020 pounds in the 1995 to 1996 season, or 35,180 pounds in the 1996 to 1997 season, or 39,350 pounds in the 1997 to 1998 season, or 49,450 pounds in the 1998 to 1999 season, or 78,400 pounds in the 1999 to 2000 season, or 37,030 pounds in the 2000 to 2001 season.

...



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(10) Notwithstanding section (5) of this rule, and effective June 1 through August 14, 2020, May 1 through August 14, 2021, and May 1 through August 14, 2022, the amount of Dungeness crab gear allocated to a permit required under section (1) of this rule shall be reduced to 80 percent of the amount allocated under section (5) of this rule. A permit assigned a Dungeness crab gear allocation per section (5) of this rule of:

(a) 200 shall be assigned a Dungeness crab gear allocation of 160;

(b) 300 shall be assigned a Dungeness crab gear allocation of 240; or

(c) 500 shall be assigned a Dungeness crab gear allocation of 400.

635-005-0460

Harvest Areas — Dungeness Crab Fishery

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(2) Effective June 1 through August 14, 2020, May 1 through August 14, 2021, and May 1 through August 14, 2022, it is unlawful to place, operate, or leave commercial Dungeness crab gear seaward of the 30 fathom curve (defined by latitude and longitude) as shown in Title 50 Code of Federal Regulations Part 660 Section 71. Any commercial Dungeness crab gear found seaward of the 30 fathom curve during the effective dates of this section shall be considered derelict and may be retrieved per 635-005-0490.

635-005-0480

Dungeness Crab Buoy Tag and Gear Marking Requirements

It is *unlawful* for commercial purposes to:

(1) Use commercial Dungeness crab gear in the Columbia River or Pacific Ocean unless the gear is individually marked with a surface buoy bearing, in a visible, legible and permanent manner, the buoy brand and buoy color(s) of the owner, and the Department buoy tag, provided that:

...

(g) Additional buoy tags to replace lost tags will be issued by the Department as follows:

~~[(A) As of the first business day after 30 days following the season opening in the area fished, up to ten percent of the tags initially issued for that season; or]~~

~~(A)~~~~(B)~~ For a catastrophic loss, as defined in ORS 635-005-0240; or

~~(B)~~~~(C)~~ If the Director finds that the loss of buoy tags was:

(i) Due to an extraordinary event;

(ii) The loss was minimized with the exercise of reasonable diligence; and

(iii) Reasonable efforts were taken to recover lost buoy tags and associated fishing gear.

~~(C)~~~~(D)~~ Upon receipt of the declaration of loss required by subsection (1)(g)(E) of this rule, and a request for replacement tags under sub-subsection (1)(g)(C) of this rule, the Director or the Director's designee may provide an opportunity for the permit holder requesting the replacement tags to describe why the buoy tag loss meets the criteria for replacement under subsection (1)(g)(C) of this rule. The Director or the Director's designee shall provide the Director's order to the permit holder and to the Department's License Services. The permit holder may appeal the Director's findings to the Fishery Permit Review Board under OAR 635-005-0425.



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77 **(D)**~~(E)~~ Permit holders (or their alternative designated on the buoy tag order form) must obtain, complete,
78 and sign a declaration of loss under penalty of perjury in the presence of an authorized Department employee.
79 The declaration shall state the number of buoy tags lost, the location and date where lost gear or tags were last
80 observed, and the presumed cause of the loss.

81 (2) Possess on a vessel, use, control, or operate any Dungeness crab gear which does not have a tag affixed to
82 the individual pot or ring identifying the gear as belonging to that vessel, a surface buoy bearing the Department
83 buoy brand registered to that vessel, and a Department buoy tag issued by the Department to that vessel, as
84 pursuant to ORS 509.415, except:

85 ...

86 **(d) Under a waiver granted by the Department to allow one time retrieval of permitted Dungeness crab**
87 **gear to shore by another crab permitted vessel from August 1 through August 14 provided that:**

88 **(C) A Request must be in writing and a waiver approved and issued prior to retrieval; and**

89 **(D) A copy of the waiver must be on board the vessel making the retrieval (Contact Department of**
90 **Fish and Wildlife Licensing Services, Salem for guidelines).**

91 ...

92 **(3) Use commercial Dungeness crab gear in the Columbia River or Pacific Ocean unless the line**
93 **connecting the main buoy to the pot or ring is clearly and visibly marked as follows:**

94 **(a) The line must be marked in at least two places:**

95 **(A) Within six feet of the main buoy; and**

96 **(B) Within six feet of the pot or ring;**

97 **(b) Each mark must be at least 12 inches; and**

98 **(c) Each mark must be neon orange.**

99 **(4) Effective June 1 through August 14, 2020, May 1 through August 14, 2021, and May 1 through August**
100 **14, 2022, use commercial Dungeness crab gear in the Columbia River or Pacific Ocean unless the gear is**
101 **individually marked with a secondary Department buoy tag in addition to the buoy tag required under**
102 **section (1) of this rule, provided that:**

103 **(a) The primary buoy tag shall remain attached as required per section (1) of this rule;**

104 **(b) The secondary buoy tag shall be securely attached to the buoy closest to the gear at the end away**
105 **from the buoy line;**

106 **(c) The Department shall issue secondary buoy tags to the owner of each commercial crab permit in**
107 **the amount requested by the permit owner, not to exceed the amount determined by OAR 635-005-**
108 **0405(10); and**

109 **(d) Any commercial Dungeness crab gear found without a secondary buoy tag during the effective**
110 **dates of this section shall be considered derelict and may be retrieved per 635-005-0490.**

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115 **635-005-0485**

116 **Dungeness Crab Gear Prohibitions**

117 It is *unlawful* for commercial purposes to:

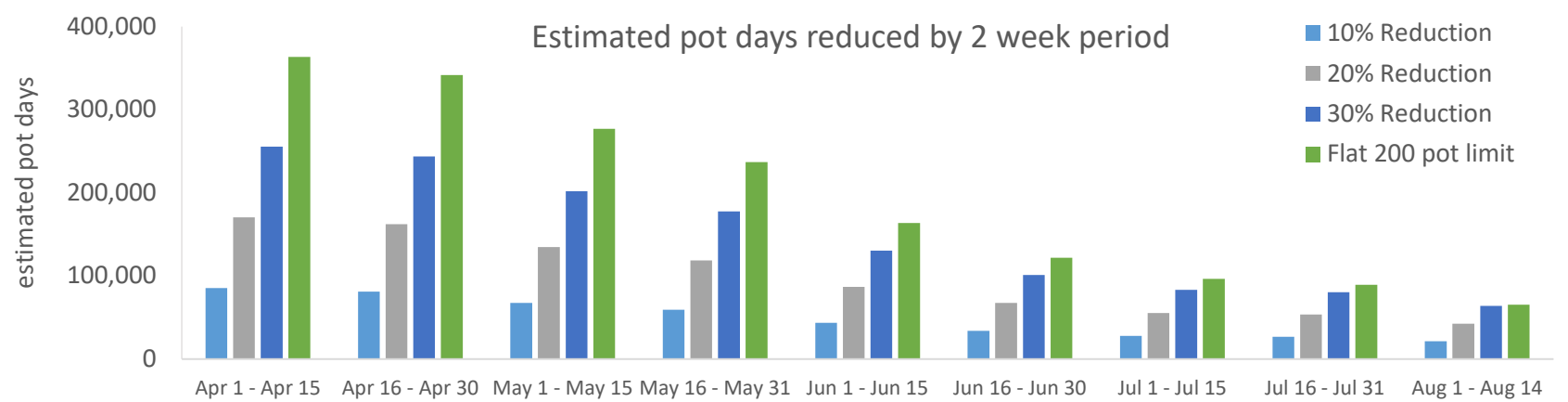
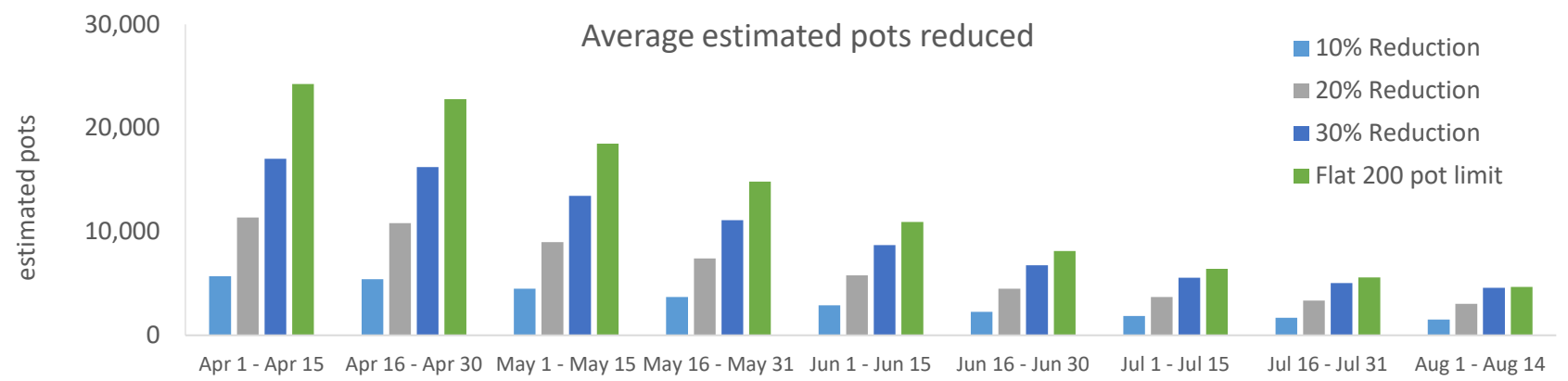
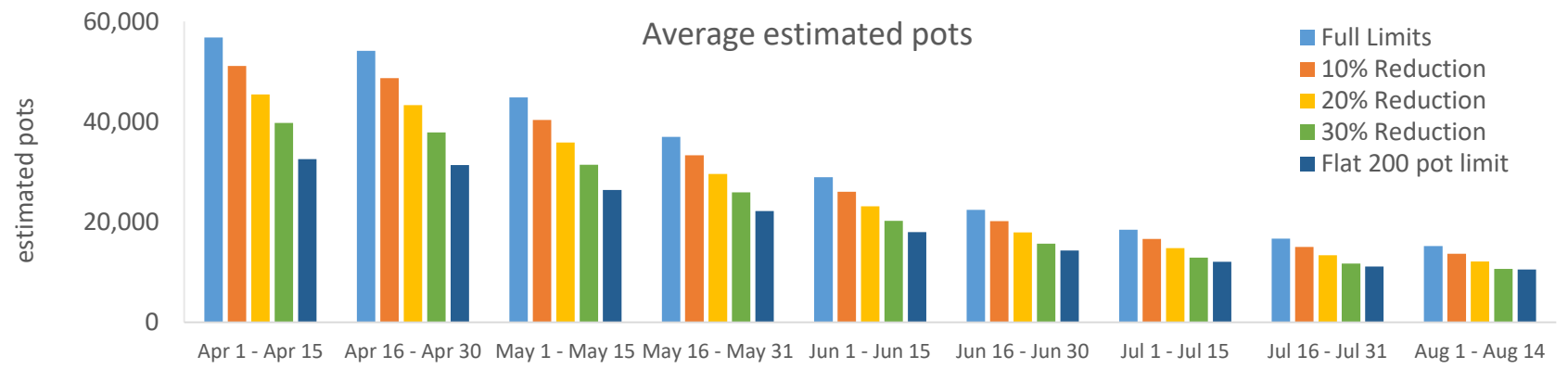
118 (1) Place, operate, or leave Dungeness crab gear in the Pacific Ocean, Columbia River or in any bay or estuary
119 during the closed season, except that in only the Pacific Ocean and Columbia River, Dungeness crab gear may
120 be placed no more than 73 hours immediately prior to the date the Dungeness crab season opens. ~~[In addition,~~
121 ~~unbaited Dungeness crab gear with open release mechanisms may be left in the Pacific Ocean (not including the~~
122 ~~Columbia River) for a period not to exceed 14 days following the closure of the Dungeness crab season.]~~

123 ...

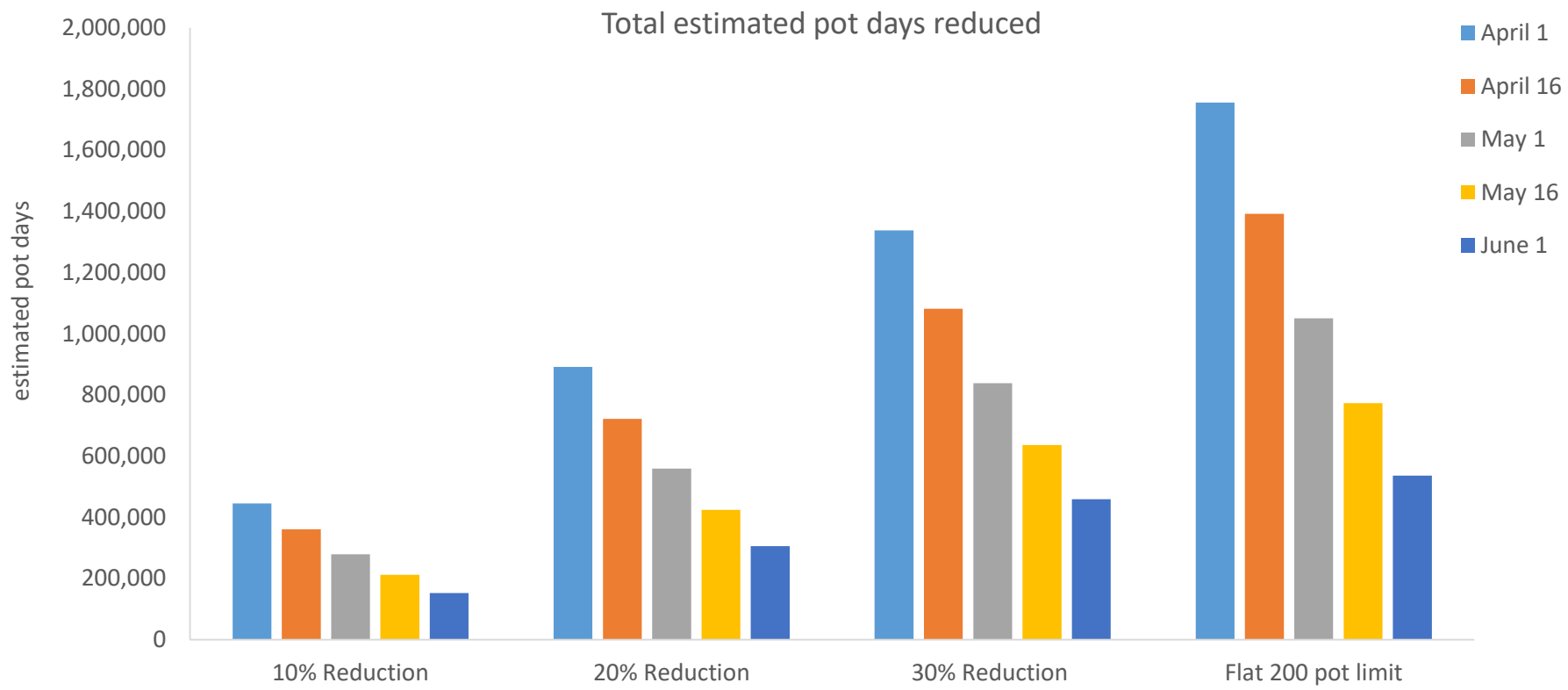
124 **(8) Use Dungeness crab gear with more line than is necessary to compensate for tides, currents, and**
125 **weather.**

DRAFT

Late season pot reduction



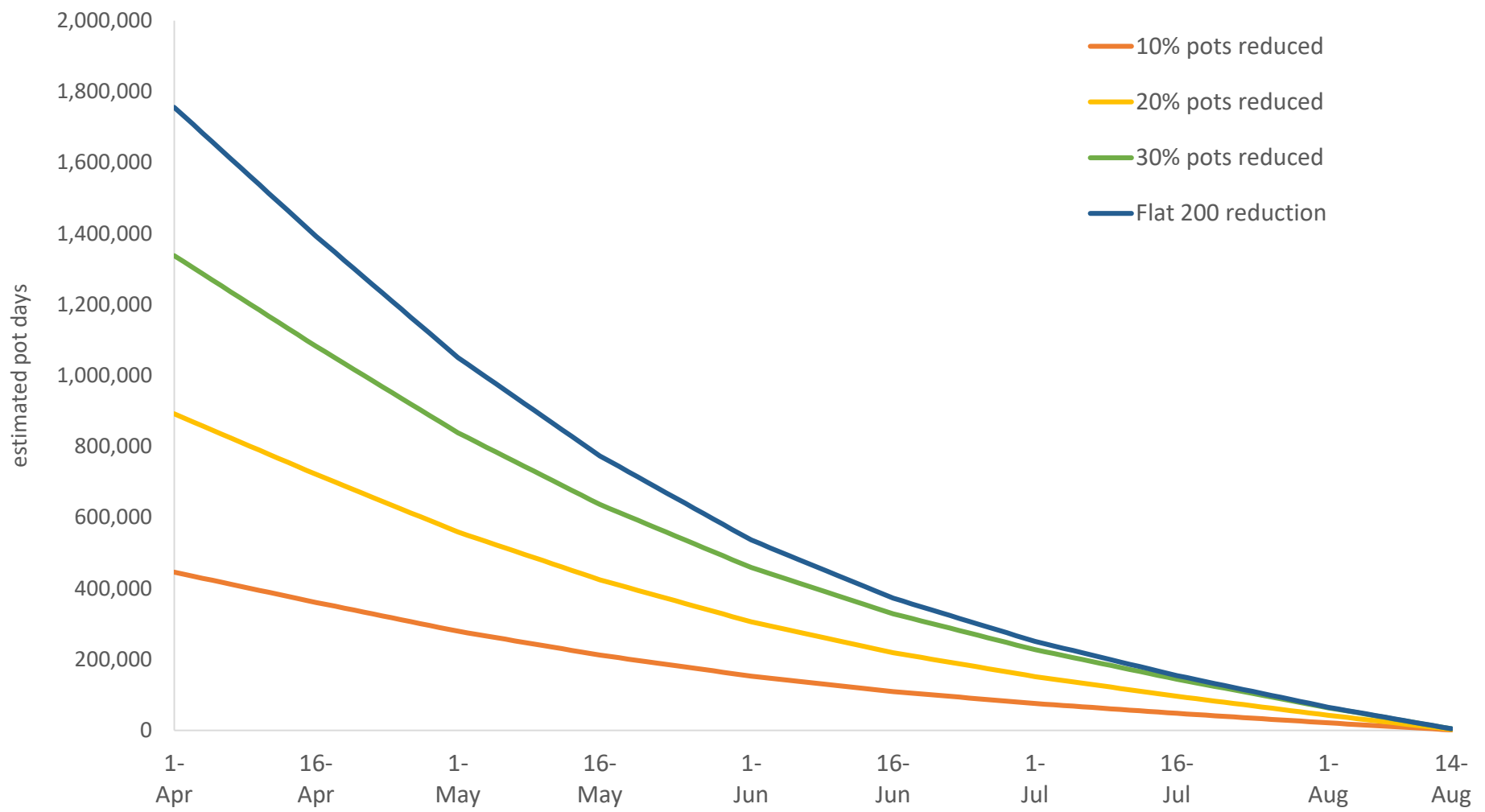
Late season pot reduction – pot day risk reduction



Late season pot reduction – relative conservation benefit

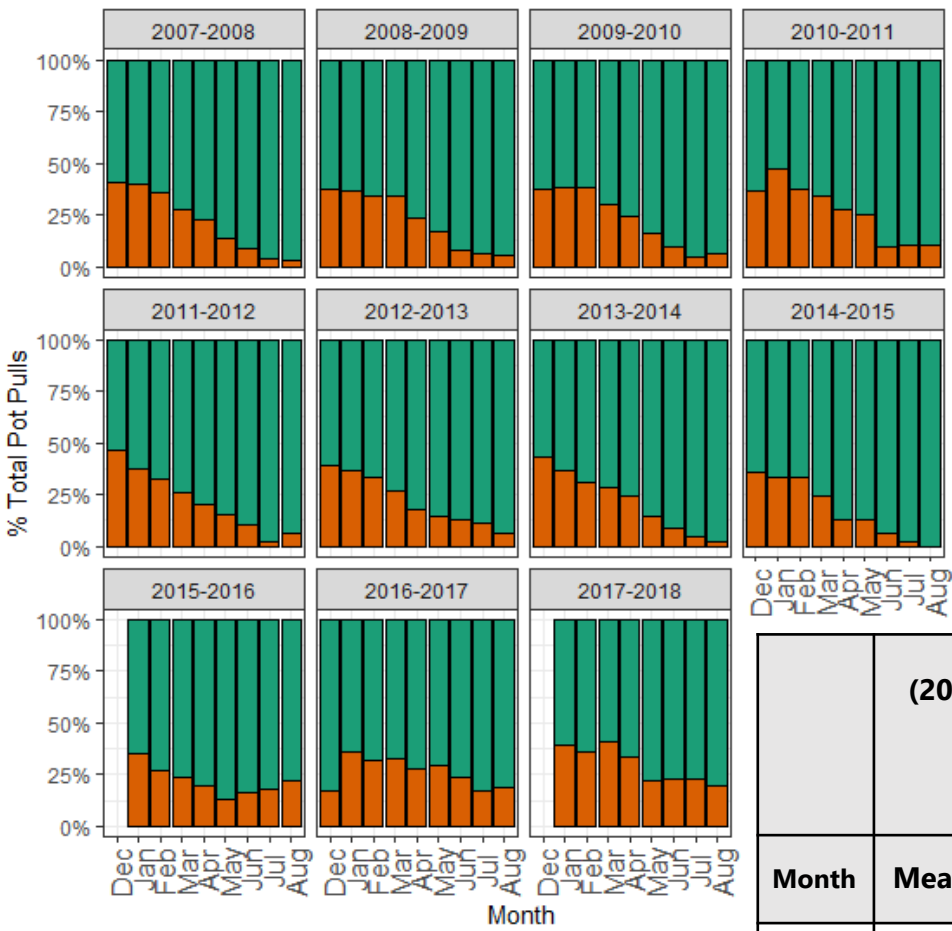
	April 1	April 16	May 1	May 16	June 1
10% Reduction	25	21	16	12	9
20% Reduction	51	41	32	24	17
30% Reduction	76	62	48	36	26
Flat 200 pot limit	100	79	60	44	31

Late season pot reduction – pot day risk reduction



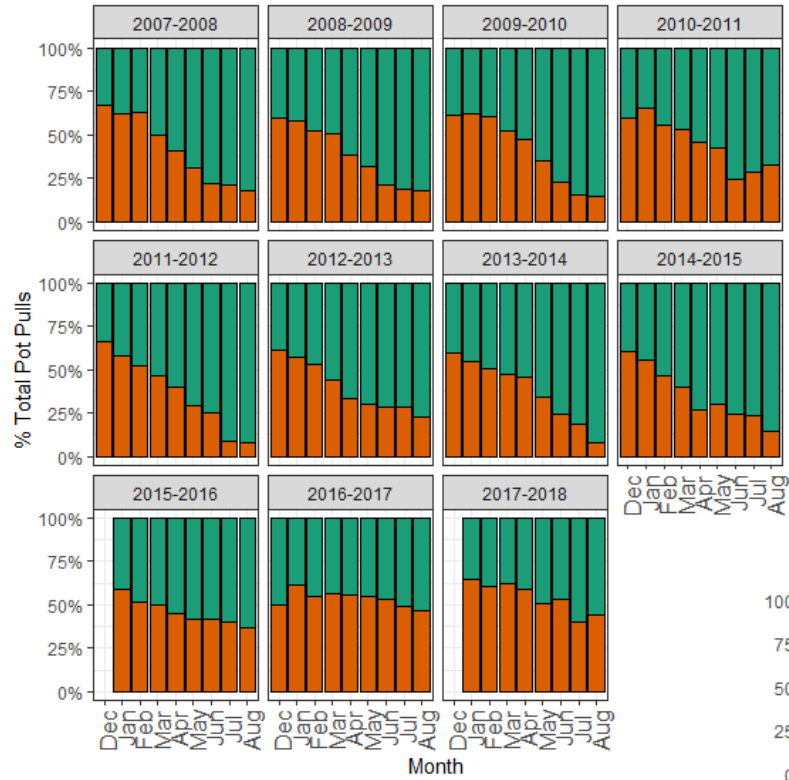
Late season depth restriction – 30 fathoms

- NMFS proposed Humpback critical habitat is outside 50m (27.3 fa)
- Oregon Whale Distribution Study year 1 preliminary data – humpbacks found primarily 54-109 fa (100-200 m) but also recorded between 27-546 fa (50-1000 m)

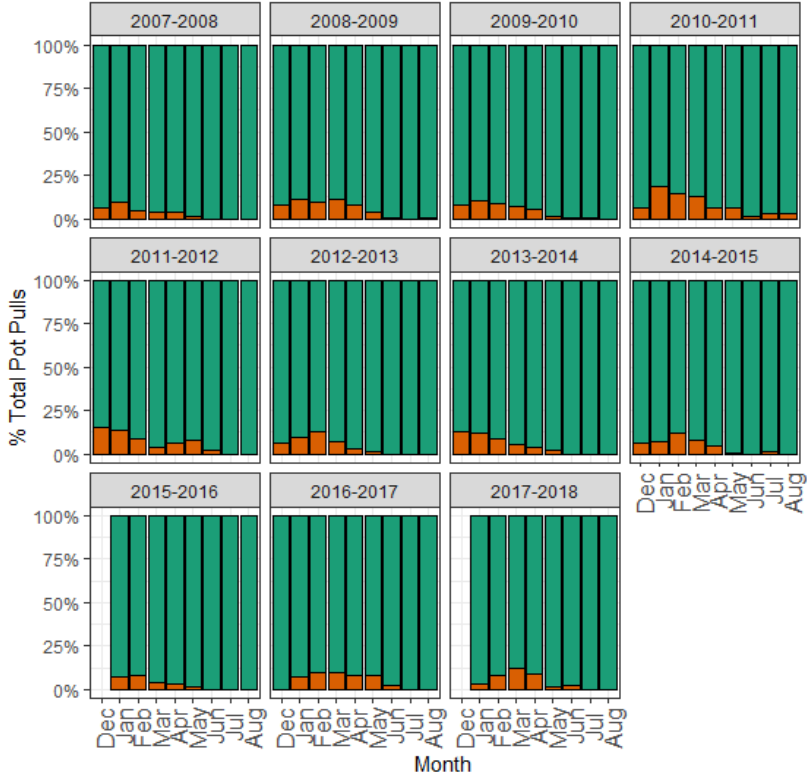


Month	All seasons (2007-2008 through 2017-18)			Recent "deep" late seasons (2015-2016 through 2017-2018)			"Shallow" late seasons (2007-2008 through 2014-2015)		
	Mean	Min	Max	Mean	Min	Max	Mean	Min	Max
Dec	37%	17%	47%	17%	17%	17%	40%	36%	47%
Jan	38%	33%	47%	37%	35%	39%	38%	33%	47%
Feb	34%	27%	38%	32%	27%	36%	35%	31%	38%
Mar	30%	24%	41%	32%	24%	41%	29%	25%	34%
Apr	23%	13%	34%	27%	20%	34%	22%	13%	27%
May	18%	13%	30%	22%	13%	30%	16%	13%	25%
Jun	12%	7%	23%	21%	16%	23%	9%	7%	13%
Jul	9%	2%	23%	19%	17%	23%	6%	2%	11%
Aug	10%	2%	22%	20%	19%	22%	6%	2%	10%

Late season depth restriction

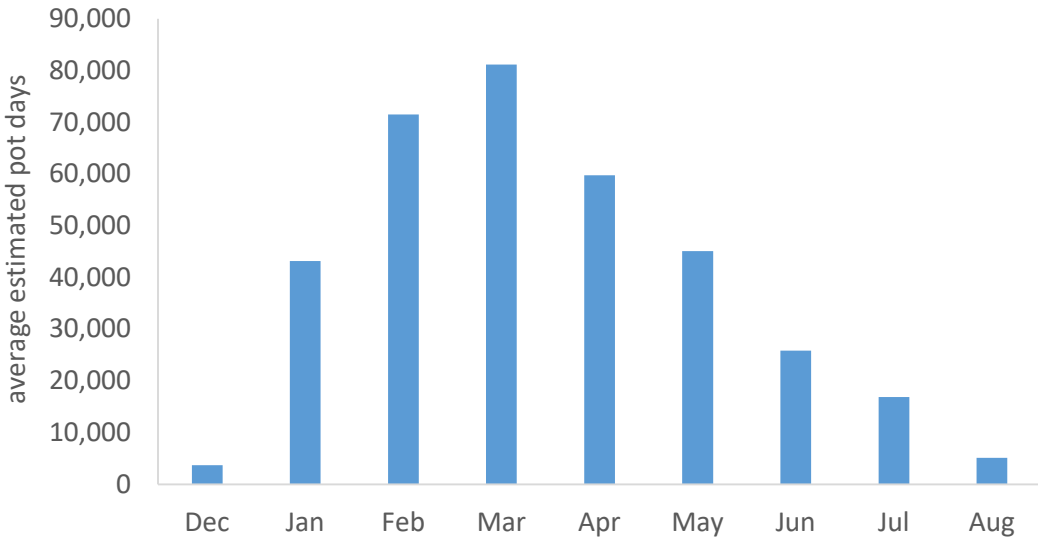


20 fathoms

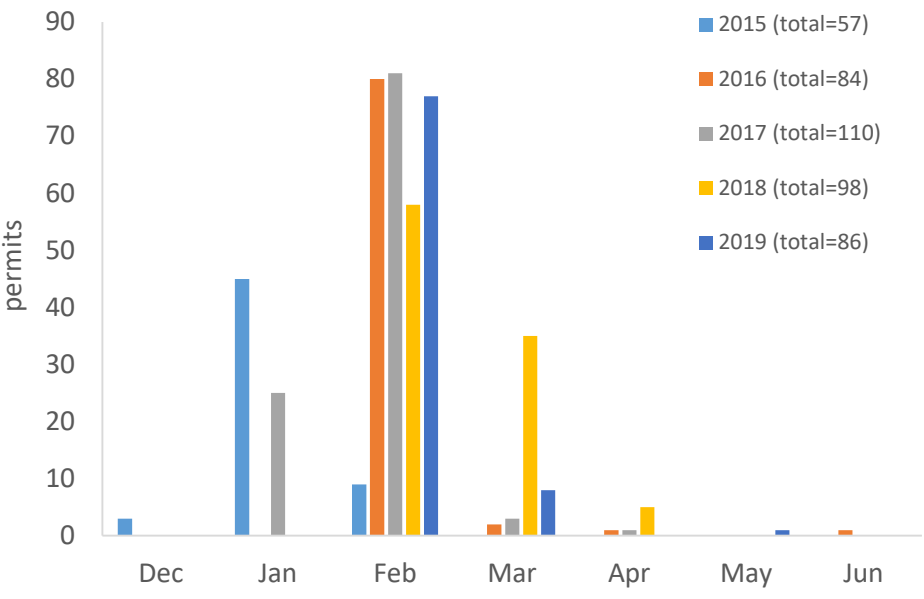
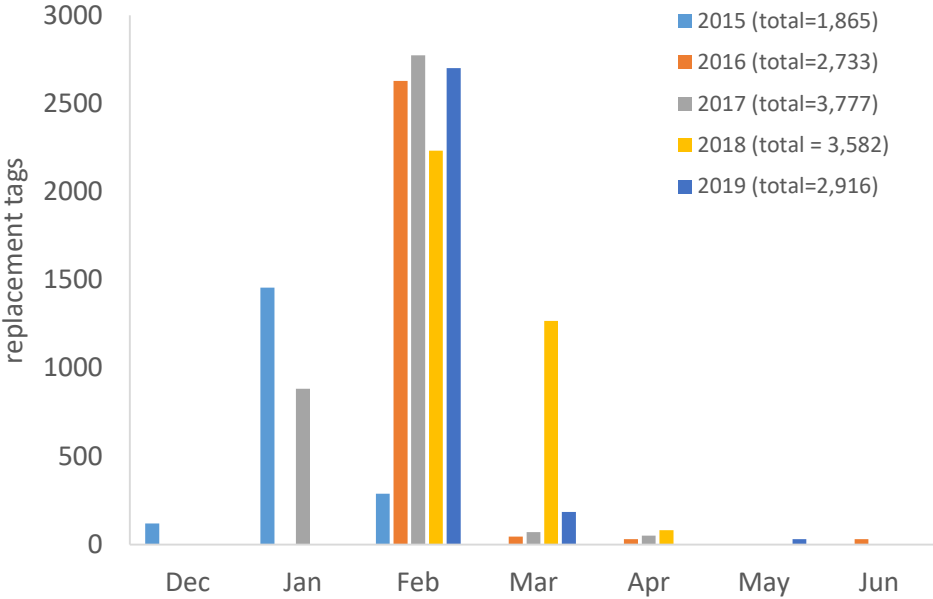


50 fathoms

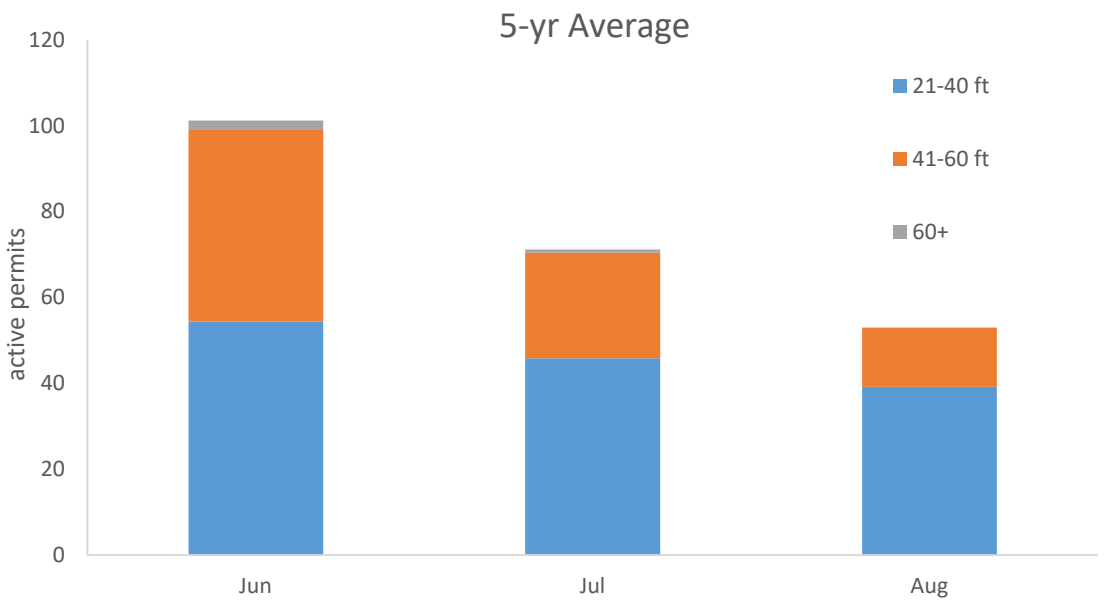
Eliminate replacement tags – estimated pot day risk reduction



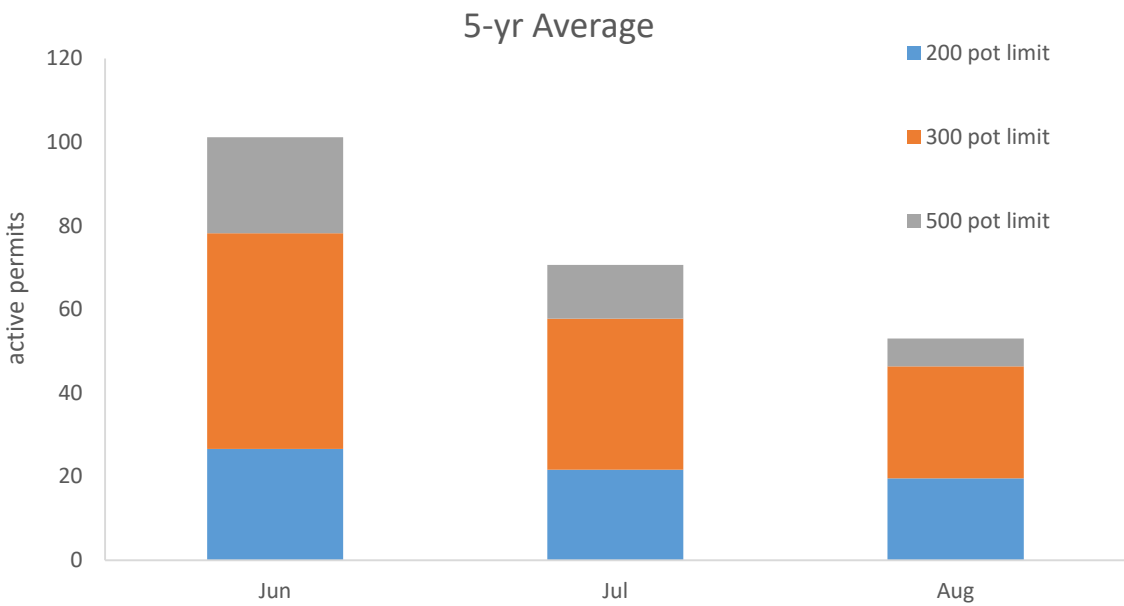
	Pot Days Reduced
Dec	3,720
Jan	43,152
Feb	71,523
Mar	81,152
Apr	59,748
May	45,074
Jun	25,818
Jul	16,883
Aug	5,135
Total	352,205



Eliminate 2 week gear clean-up – estimated pot day risk reduction



	Pot days reduced
Aug 1-14	161,783
Aug 15-28	51,298
Total	213,081



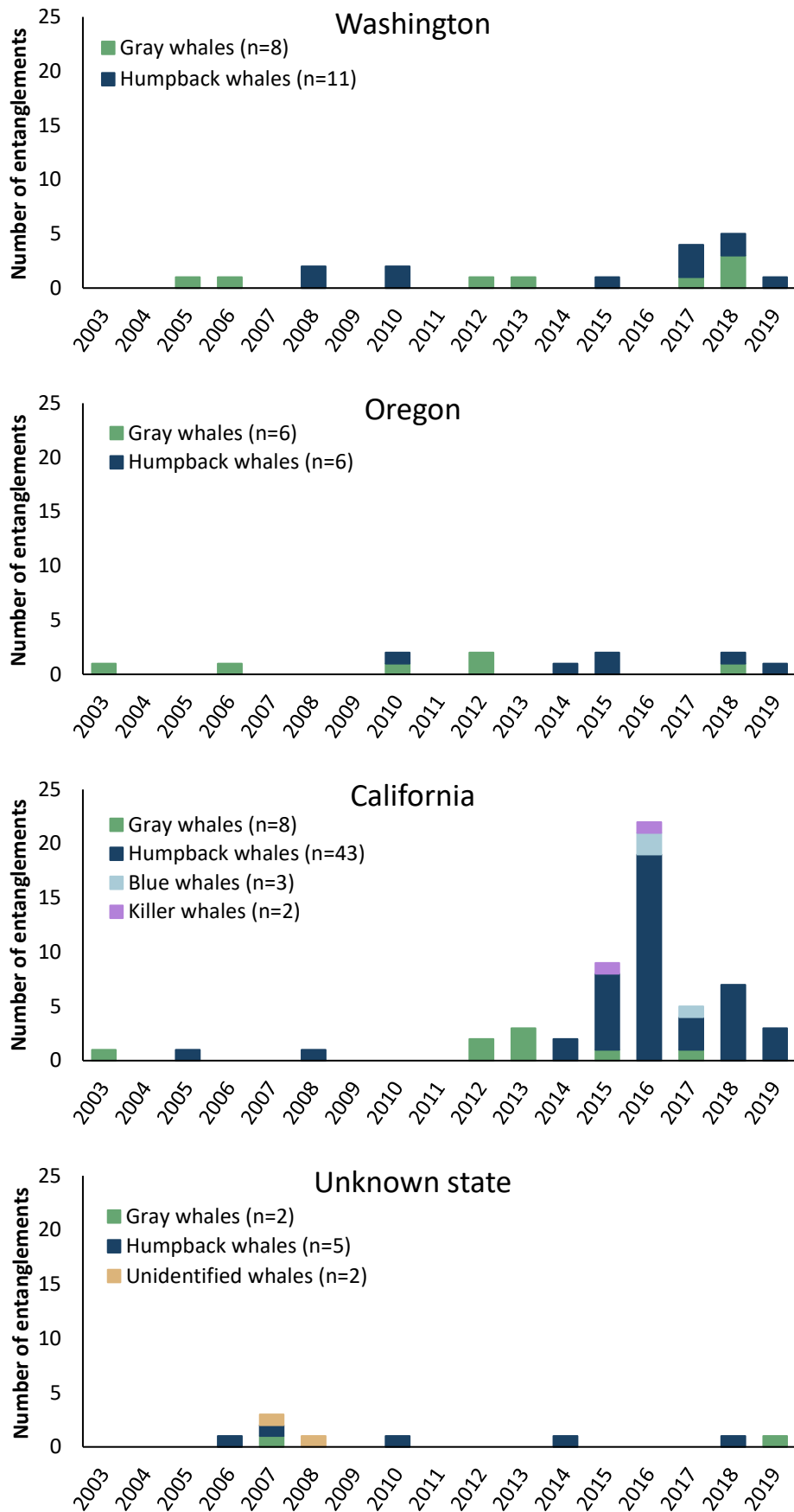


Figure 1. Annual number of confirmed reports of entangled whales in Dungeness crab gear from California, Oregon, Washington (and unknown) by species. In the legend, “n” represents the total number of whales of each species confirmed entangled from 2003 through 2019. Washington entanglements include whales entangled in tribal commercial crab gear. Two whales are counted in multiple panels that were entangled in gear from multiple states (one humpback in OR + WA gear in 2010, one gray in CA + OR gear in 2012). Three humpback whales that were entangled in recreational crab gear are not included (one in WA gear in 2011, two in CA gear in 2015 and 2017). One gray whale entangled in CA crab gear in 1988 is not included. Data is summarized from entanglement data received from NOAA in November, 2019.

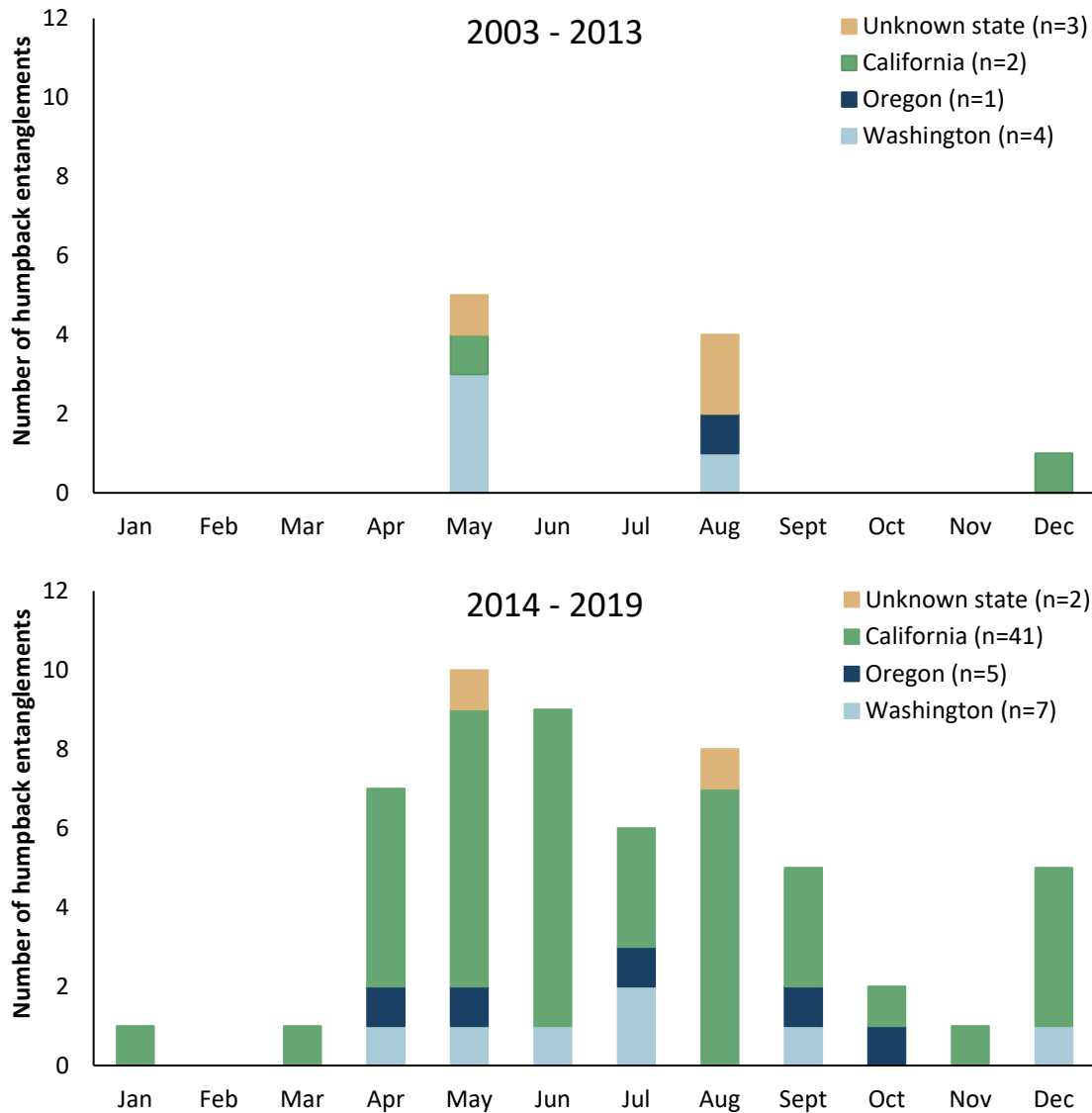


Figure 2. Number of confirmed reports of entangled humpback whales in Dungeness crab gear from California, Oregon, and Washington by month reported. In the legend, “n” represents the total number of humpback whales confirmed entangled during each time period. Entanglements during the last six years are compared to pre-2014 levels due to the large increase in coastwide entanglements that has occurred since 2014. Washington entanglements include whales entangled in state and tribal commercial crab gear. One whale is double counted that was entangled in both OR and WA crab gear in 2010. Three whales that were entangled in recreational crab gear are not included (one in WA gear in 2011, two in CA gear in 2015 and 2017). Data is summarized from entanglement data received from NOAA in November, 2019.