

# PUBLIC TESTIMONY SIGN-UP SHEET

Agenda Item: \_\_\_\_\_

C-3(b) GOA Chinook

Salmon  
Bycatch

	NAME (PLEASE PRINT)	TESTIFYING ON BEHALF OF:
1	Jon Warrenchuk	Oceanq
2	Jason Morgan	UCIDA
3	Bob Krueger	AK whitefish Trawlers
4	Julie Bandy	AGDB
5	Don Ashley	F/V Gold Rush
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NOTE to persons providing oral or written testimony to the Council: Section 307(1)(I) of the Magnuson-Stevens Fishery Conservation and Management Act prohibits any person " to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, false information regarding the capacity and extent to which a United State fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States) regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this Act.

# Alaska Whitefish Trawlers Association

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## Central Gulf of Alaska Pollock Fishery Voluntary Chinook Salmon Bycatch Avoidance Measures

The Pacific Cod fishery in the Central Gulf of Alaska is currently closed. The Pollock fishery in area 630 is closed but area 620, which contains the largest TAC in the CGOA remains open.

Alaska Whitefish Trawlers Association has hosted meetings over the past few days, discussing the prosecution of the Area 620 and Area 630 Pollock fisheries. Significant discussion occurred at these meetings regarding the best measures that the fleet can take to minimize Chinook Salmon bycatch.

The following motions were presented to the association and approved:

- 1) The entire fleet will voluntarily stand down and not fish Pollock with either Pelagic or Non-Pelagic gear until February 20, 2011.
- 2) The fleet agrees to cooperate fully in a real-time hotspot reporting and avoidance program. While it is difficult to accurately assess the magnitude of bycaught salmon in a specific tow, it is recognized that if any measurable amount of salmon is seen it is likely that an unacceptable level of bycatch has occurred.

If this happens, the fleet has agreed to:

- a) immediately report to their processor the time, set location and haul location and depth of that particular tow. The processors will get this information to the Alaska Groundfish Data Bank which will assist in getting this information out to all processors and the fleet.
- b) immediately report to all other vessels fishing in the area the time, set location and haul location and depth of any tow in which an unacceptable level of bycatch has occurred.
- c) avoid fishing in any area with reported unacceptable levels of salmon bycatch.

Robert L. Krueger, President  
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February 1, 2011

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**Re: Comments Regarding Chinook Bycatch in the Gulf of Alaska Groundfish Fishery  
for the Council's 202nd Plenary Session, February 2-8, 2011**

Dear Chairman Olson:

On behalf of the United Cook Inlet Drift Association ("UCIDA"), I respectfully submit the following comments in regard to Agenda Issue C-3(b) – "Review workplan for GOA Chinook Salmon Bycatch" – planned for the February 2-8, 2011 meeting of the North Pacific Fishery Management Council (the "Council").

### Introduction

UCIDA is a not-for-profit trade association representing commercial drift net fishermen operating in Cook Inlet, Alaska. UCIDA and its members are dedicated to securing commercial drift net fishing opportunities in Cook Inlet and ensuring that salmon in Cook Inlet are sustainably managed and harvested, consistent with sound scientific management practices. These sound management practices are essential to preserving commercial fishing as a way of life and to ensure sustained yields for current and future generations in Cook Inlet. Drift net fishing in Cook Inlet is not only a way of life for UCIDA's members and their families, but an important part of the local and regional economy – supporting local fishing communities by delivering high-quality, sustainable, wild salmon to market around the world.

Chinook salmon bycatch in the Gulf of Alaska groundfish fishery is an important issue for UCIDA's members. UCIDA's members target largely sockeye stocks destined for the Kenai and Kasilof rivers – rather than Chinook stocks. But continued access to these sockeye stocks (as well as other stocks in Cook Inlet) is directly impacted by Chinook returns on the Kenai, Kasilof, and other rivers in Cook Inlet. That is so because under existing regulations, the State of Alaska closes or restricts commercial fishing for sockeye and other salmon stocks when Chinook salmon escapement goals are not met. For example, Alaska will close portions of the central



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district to drift net fishing when the Chinook returns for the Kenai River fall below 17,800 fish. *See* 5 AAC 21.359(b)(3).

This kind of shutdown happened in Cook Inlet in 2008 and 2009 when Chinook salmon escapement on the Deshka River fell below its 13,000-28,000 escapement goal. This kind of shutdown has both economic and conservation consequences for Cook Inlet sockeye stocks. Fishermen in Cook Inlet experience an immediate economic hardship in the form of lost harvest opportunities as a result of closures. Equally important, these closures can result in longer-term conservation problems because such closures can lead to over-escapement of sockeye. When too many sockeye are allowed to escape in one season, the habitat is over-utilized, resulting in depressed returns in subsequent years. The commercial fishing harvest is a critical part of avoiding over-escapement, ensuring that yields of sockeye remain at maximum sustainable levels.

For these reasons, UCIDA and its members are very concerned about reports that the Gulf of Alaska groundfish fishery has incidentally caught more than 50,000 Chinook salmon in 2010 alone. There is strong scientific evidence suggesting that a significant portion of this Chinook salmon bycatch comes from Cook Inlet. In 2009, the North Pacific Anadromous Fish Commission (“NPAFC”) issued a study titled “High Seas Salmonid Coded-Wire Tag Recovery, 2009,” Doc. 1179. This NPAFC document graphically describes the migration patterns for numerous Chinook salmon stocks (*see* figures 1-7) including Cook Inlet stocks (figure 2). These figures readily demonstrate that the Kodiak Island, Alaska Peninsula, and southeastern Bering Sea are significant feeding grounds for Chinook from Cook Inlet. Accordingly, the recently reported high number of Chinook bycatch has a direct impact on UCIDA and its members.

### **Comments on Chinook Bycatch**

#### ***1. The Council Must Take Action to Reduce Chinook Bycatch.***

The Council and the Secretary of Commerce (through NOAA Fisheries) have a legal obligation to manage these groundfish fisheries in a manner that minimizes the bycatch of Chinook salmon at levels far below 40,000 Chinook per year. This legal obligation comes from at least three sources.

First, national standard 9 of the Magnuson-Stevens Act (“MSA”) mandates that the Council and the Secretary of Commerce establish conservation measures to minimize bycatch. *See* 16 U.S.C. § 1851(a)(9) (“Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the



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mortality of such bycatch.”). The current regulations do not achieve this result, as demonstrated by the bycatch of more than 50,000 Chinook salmon by the Gulf of Alaska groundfish fishery in 2010 alone.

Second, national standard 8 of the MSA requires the Secretary and the Council to “provide for the sustained participation” of fishing communities and to “minimize adverse economic impacts on such communities.” *See* 16 U.S.C. § 1851(a)(8). As explained above, the current levels of bycatch are having a significant impact on the fishing communities of Cook Inlet. Some river systems in Cook Inlet did not reach their escapement goals for Chinook in 2008, 2009 and 2010. This resulted in fishery closures and economic hardship to fishing communities in Cook Inlet. If NOAA and the Council do not take action to limit bycatch in the groundfish fishery, Cook Inlet communities may continue to suffer negative impacts from associated fishery closures.

Third, section 7(a)(2) of the Endangered Species Act (“ESA”) places substantive and procedural obligations on the Secretary and the Council to ensure that the Gulf of Alaska groundfish fishery management plan does not jeopardize threatened or endangered Chinook salmon. *See* 16 U.S.C. § 1536(a)(2). As demonstrated in the above referenced NPAFC study, the Gulf of Alaska is an important feeding ground for numerous Chinook salmon stocks from Washington, Oregon, and California that are listed as threatened or endangered. Accordingly, NOAA and the Council must take action to reduce the bycatch of these protected stocks.

For all of these reasons, the Council must take action to reduce bycatch of Chinook in the groundfish fishery.

## ***2. The Council Must Consider Bycatch in State Waters as Well.***

The Council currently manages only that portion of the groundfish fishery that is within the exclusive economic zone (“EEZ”), outside of three miles. The State of Alaska manages a very similar groundfish fishery in state territorial waters. These fishing activities, like the fishing activities that are occurring in the EEZ, are catching significant numbers of Chinook salmon. Although the Council is not regulating these state fisheries, it is required to determine, evaluate, and consider the Chinook salmon bycatch within the state fisheries when evaluating its current bycatch regulations. That is so for at least the following two reasons.

First, amendments to fishery management plans or fishing regulations are major federal actions subject to the requirements of the National Environmental Policy Act (“NEPA”). *See* 42 U.S.C. §§ 4321-4370h. NEPA requires, among other things, that the Council and the Secretary



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consider the environmental impacts of a proposed action, including the cumulative impact of the proposed action. The cumulative impact analysis must include “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 other actions.” 40 C.F.R. § 1508.7. The Chinook salmon bycatch occurring in state waters clearly qualifies as “other past, present, and reasonably foreseeable future actions.” As such, the Council must carefully evaluate the impact of authorizing any Chinook bycatch in the EEZ in light of bycatch occurring in state waters.

Second, the Council and NOAA Fisheries must consider the impacts of Chinook salmon bycatch in state waters in order to satisfy their obligations under the ESA. As explained above, section 7(a)(2) of the ESA requires the Council and NOAA to “insure” that any action authorized, funded, or carried out will not jeopardize the continued existence of listed threatened or endangered species. 16 U.S.C. § 1536(a)(2). Courts interpreting section 7(a)(2) have concluded that federal agencies must consider more than just the incremental impacts of the proposed action. Instead, section 7(a)(2) requires that an agency consider “the aggregate of the proposed agency action, the environmental baseline, cumulative effects, and current status of the species.” *See Nat’l Wildlife Fed’n v. Nat’l Marine Fisheries Serv.*, 524 F.3d 917 (9th Cir. 2008) (rejecting argument that jeopardy analysis could focus only on incremental impact of agency action without considering aggregate impacts of all other activities).

For both of these reasons, the Council must carefully consider and evaluate the impact of Chinook salmon bycatch occurring in state waters as well.

### ***3. The Council Must Consider the Indirect Effects of Chinook Salmon Bycatch on Cook Inlet.***

In addition to requiring the Council and NOAA to consider cumulative impacts, NEPA also requires federal agencies to consider “indirect effects.” Indirect effects are “caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” *See* 40 C.F.R. § 1508.8(b). Indirect effects include not only “ecological” effects, but also “cultural, economic [and] social” effects. *Id.*

As explained above, it is “reasonably foreseeable” that the high levels of Chinook bycatch in the groundfish fishery will have “cultural, economic [and] social” impacts on fishermen in Cook Inlet and the fishing communities that depend on fishing-related jobs for their livelihood. In the recent past, low Chinook returns to Cook Inlet have led to significant fishing restrictions and the potential for over-escapement. The Council must fully consider these



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impacts before authorizing continued Chinook salmon bycatch in the Gulf of Alaska groundfish fishery.

**4. *The Council Must Constrain Uses of Chinook Salmon Bycatch to Identification and Scientific Purposes.***

The Council's December 2010 Discussion Paper titled "Chinook Salmon Bycatch in Gulf of Alaska Groundfish Fisheries" (the "Bycatch Paper") explains that "retention of salmon in the pollock fishery is a longstanding practice" because it is unsafe and impractical to sort salmon as the pollock are brought aboard. The Bycatch Paper fails to explain what happens to these retained salmon. It is UCIDA's understanding that the longstanding practice for this fishery is to deliver the entire catch to the processor, where the Chinook salmon are sorted out, counted, placed on a separate "fish ticket," and then processed for market.

This practice is contrary to the letter and spirit of the MSA. The MSA defines bycatch as "fish which are harvested in a fishery, but which are not sold or kept for personal use." 16 U.S.C. § 1802(2). The Council cannot authorize or condone any "longstanding practice" that allows bycatch to be retained and sold. Such a practice constitutes harvest. But the Council knows well that its Fishery Management Plan for the Salmon Fisheries in the EEZ off the Coast of Alaska ("Salmon FMP") has closed these same areas (other than the three historic net fisheries) to commercial harvest for all species of salmon. Thus, the longstanding practice of retaining and selling these salmon is contrary to law as either bycatch or harvest.

Instead, the Council must make clear that these salmon can be retained only for identification or other scientific purposes. Bycatch cannot be kept for personal or commercial use. Any other result not only would be contrary to the MSA and the Salmon FMP, but would create incentives for groundfish fishermen to "accidentally" catch Chinook salmon.

**5. *The Problems Associated with Chinook Bycatch Demonstrate the Need for Federal Management over the Alaska Salmon Fisheries.***

As you know, the Council is in the process of determining how to meet its obligations under the MSA with respect to salmon fishing in Alaska. The Council's December 2010 "Discussion Paper on the FMP for the Salmon Fisheries in the US EEZ off the Coast of Alaska" outlines a number of options the Council is considering, including whether it needs to amend or withdraw the Salmon FMP in the West Area, and whether it should continue deferring management over salmon in the EEZ to the State of Alaska. The problems facing the Council



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with respect to Chinook bycatch in the groundfish fishery clearly demonstrate the need for federal oversight of the salmon fisheries in Alaska for at least the following two reasons.

First, the MSA requires the Council to develop (and update as necessary) a fishery management plan “for each fishery under its authority that requires conservation and management.” 16 U.S.C § 1852(h)(1). The Chinook salmon bycatch issue clearly shows a need for such conservation and management. As discussed above, federal authorizations for Chinook salmon bycatch in the groundfish fishery directly impact conservation and management of Chinook salmon in the Cook Inlet EEZ, as well as the conservation and management of other stocks impacted by sockeye returns. For this reason alone, the Council cannot repeal the Salmon FMP in the West Area, and must continue to provide management oversight over these fisheries.

Second, the MSA instructs the Council that “[t]o the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.” 16 U.S.C. § 1851(a)(3). The Chinook salmon bycatch issue shows that these stocks are not being managed as a unit or in close coordination. The State of Alaska is managing the salmon fisheries in the West Area (including Cook Inlet) without any federal oversight, and without any coordination with the federal government. At the same time, the Council is allocating as many as 40,000 Chinook salmon in the groundfish fishery, without coordinating with the State of Alaska, and without taking into account the impact on Chinook salmon management where those salmon return to their native streams in Alaska. Although these independent allocation decisions directly impact one another, as well as other fisheries, the salmon fisheries are not being managed “as a unit or in close coordination.” For this reason too, the Chinook salmon bycatch issue demonstrates a clear need for federal oversight over the salmon fisheries in Alaska.

In addition to the Chinook salmon bycatch issues, there are a number of additional reasons why the Council cannot abdicate its responsibilities over managing salmon in Alaska by repealing the Salmon FMP. Principally, these salmon fisheries are a national resource, and must be managed in a manner consistent with the MSA’s ten national standards. The Council cannot turn over management to the state – as it has for the last twenty years – without properly ensuring compliance with all of these national standards. UCIDA will provide additional detailed comments related to the Salmon FMP as the Council considers this issue in upcoming meetings.





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### Conclusion

The Council's decisions on Chinook salmon bycatch have the potential to broadly impact salmon fisheries throughout the state. This includes both Chinook salmon fisheries, as well as those fisheries – such as the sockeye fisheries in Cook Inlet – that are limited by Chinook salmon returns. The Council must carefully consider these indirect and cumulative impacts in the course of evaluating its current bycatch regulations. Moreover, given the high level of Chinook salmon bycatch, the significant impact on fishing communities, and the potential impact to endangered species, the Council must evaluate the bycatch impacts in a formal consultation under ESA section 7(a)(2) and a full environmental impact statement under NEPA.

We appreciate your consideration of these comments. If you have questions, or would like any additional information, please do not hesitate to contact UCIDA's Executive Director, Dr. Roland Maw, at (907) 260-9436.

Very truly yours,

A handwritten signature in blue ink that reads "Jason T. Morgan".

Jason T. Morgan  
Attorney for UCIDA

JTM:sdl

January 31, 2011

Mr. Eric Olson, Chair  
North Pacific Fishery Management Council  
605 W. Fourth Avenue, Suite 306  
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Dr. James Balsiger, Regional Administrator  
NOAA Fisheries, Alaska Region  
709 West Ninth Street  
Juneau, AK 99802-1668

RE: Agenda Item C-3 Salmon Bycatch

Dear Chairman Olson, Dr. Balsiger, and Council Members:

We commend the North Pacific Fishery Management Council's commitment to reduce the wasteful bycatch of salmon in the groundfish fisheries. Chinook salmon bycatch by the Gulf of Alaska groundfish fisheries, mostly caused by the pollock trawl fleet, has been ignored for far too long. As you rightfully recognized in December 2010, action to reduce salmon bycatch in the Gulf of Alaska is a high priority and should be completed on an expedited timeframe. Accordingly, the Council should prioritize implementing a meaningful Chinook salmon bycatch cap and substantive changes in fishery behavior that would limit the number of Chinook taken each year.

As we have explained in our previous letters on this issue, the National Marine Fisheries Service's (NMFS) obligations under the law are clear. The Magnuson-Stevens Act explicitly requires that NMFS "to the extent practicable and in the following priority—(A) minimize bycatch; and (B) minimize the mortality of bycatch which cannot be avoided." 16 U.S.C. § 1853(a)(11). This requirement is reinforced in National Standard 9, with which all Fishery Management Plans must be consistent, and which restates the requirement to minimize bycatch to the extent practicable. *See id.* § 1851(a)(9). When it added these provisions to the Act, Congress was very clear that its intent was to halt the "shameful waste" occurring in the nation's fisheries. 142 Cong. Rec. S10,794, at 10,820 (1996).

Currently, there is a shameful waste of one of the most iconic and valuable species that swims in the Pacific. Last year, 54,178 Chinook salmon were killed as bycatch by the Gulf of Alaska groundfish fisheries<sup>1</sup>. Some of those Chinook were likely from imperiled stocks in the Pacific Northwest that are protected under the Endangered Species Act. Some of those Chinook also were likely from Alaskan salmon stocks of concern like the Karluk River on Kodiak or the Chuitna River in Cook Inlet. Many Chinook otherwise would have returned to trans-boundary rivers to fulfill international treaty obligations for escapement goals to Canada. To whichever natal source those salmon would have returned, those salmon would have provided more opportunities for subsistence, sport, and commercial salmon fishing; to meet escapement goals; and to rebuild endangered stocks.

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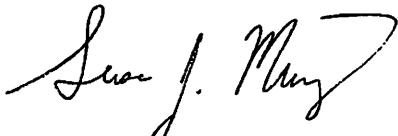
<sup>1</sup> NMFS Alaska Region, Sustainable Fisheries Catch Accounting, Dec 31 2010  
[http://www.fakr.noaa.gov/2010/car120\\_goa.pdf](http://www.fakr.noaa.gov/2010/car120_goa.pdf)

The Council and NMFS must take action to reduce Chinook salmon bycatch in the Gulf of Alaska. This action can help address the State of Alaska's obligation to responsibly manage resources, including salmon; the federal government's duty to meet treaty obligations with Canada; the Fish and Wildlife Service's trust resource management responsibilities under ANILCA; the obligation under the Magnuson-Stevens Act to minimize bycatch to the extent practicable; and the responsibility to ensure compliance with the Endangered Species Act.

However, it appears from the materials circulated for this agenda item prior to this meeting that alternatives, including mandatory cooperatives and for the management structure and allocation of bycatch to cooperatives, are being considered that would substantially delay the action and would have an uncertain impact on salmon bycatch. The Council should focus alternatives on a meaningful Chinook salmon bycatch cap and substantive changes in fishery behavior that would limit the number of Chinook taken each year. Additionally, an alternative should be considered that reduces or eliminates the late pollock fishing season in October, when the majority of Chinook bycatch occurs.

Given the severity and potential legal complications of this situation, we strongly encourage the NPFMC to take action to reduce Chinook salmon bycatch on an expedited timeframe. We look forward to working with you on this issue.

Sincerely,

A handwritten signature in cursive script, appearing to read "Susan J. Murray".

Susan J. Murray  
Director, Pacific