

TO: NOAA and NOAA Fisheries Leadership

FROM: Michael Kelly

RE: My Resignation

DATE: May 18, 2004

I have resigned, effective May 14, 2004, from my position as a fishery biologist in the Arcata, California NOAA Fisheries Field Office. I had originally planned to resign quietly and begin to concentrate on finding a more productive way of using my skills and education. However, reporters have begun calling and indicating that news of my resignation is a bigger story than I had anticipated. Therefore, rather than have you hear the explanation of my resignation from third parties, I am offering you a more complete explanation of my decision to resign. I also hope that my full and direct explanation may benefit agency leadership and NOAA Fisheries staff.

In October 2002, I believed, both personally and professionally, that our agency had violated the law during the Klamath River ESA section 7 consultation, and I filed a disclosure under the Whistleblower Protection Act. Although a federal judge eventually ruled the Klamath consultation was illegal, my specific allegations were dismissed. My efforts were ultimately unproductive, and appear to have served only to create stress for my supervisors, my family and me. Threatened coho salmon in the Klamath basin still do not have adequate flow conditions to assure their survival.

I now find myself facing a similar situation. For the past year I have been assigned to a project that appears likely to result in similar disagreements to those I experienced with the Klamath consultation. I do not want to put myself or my supervisors through that experience again. I am convinced that I would have been again asked to change my conclusions, or that the biological opinion would be re-written by someone else based on a less rigorous examination of the scientific evidence and without an appropriate level of caution.

This proposed project would eliminate 120 acres of tidally influenced wetlands in the Eel River estuary. I have produced a draft biological opinion concluding that the project jeopardizes the continued existence of the California Coastal Chinook salmon population. Once again, I believe I've written an opinion that is correct based on the best available evidence and application of an appropriate amount of caution. The project is a levee repair proposed by the California Department of Fish and Game on the Eel River Wildlife Area. The 120-acre area has reverted to saltmarsh, mud flat and tide channel during the six years since the levee breached. Given the baseline condition of the Eel River estuary, the critical importance of estuaries to rearing juvenile Chinook salmon, and the status of California Coastal Chinook salmon -- in addition to the likely impacts on Dungeness crab, herring, larval rockfish, eelgrass, other salmonids, and the overall ecosystem -- any amount of caution would dictate that this project never be considered.

The only benefit of this project apparent to me is to concentrate certain species of ducks into a smaller area for hunting purposes. My local supervisors supported my draft conclusion and tried to negotiate with Fish and Game to point out the high ecosystem cost and low benefit of this project. (I should point out that I'm not the only one who is appalled -- fisheries biologists within Fish and Game as well as local wetland scientists and ornithologists are just as concerned.) Certainly, creating freshwater wetlands can be highly beneficial; however, replacing productive tidal wetlands with standing fresh water is simply a very bad idea. Unlike the Klamath decision, which would profoundly impact a lot of people under any outcome, this project will impact very few, if any, people if it is not implemented. I am completely baffled at the importance given to this project. The risks to the ecosystem are clearly too great.

My Regional Manager has recently intervened and has apparently concluded that this project does not jeopardize the Chinook population, and that we will no longer try to negotiate with Fish and Game to help them understand the folly of this undertaking. While Mr. Lecky, at my recommendation, has agreed to have an outside expert review my description of the physical processes that lead to degraded salmon habitat, he has also indicated that he thinks that 120 acres is simply not big enough to jeopardize this Chinook population regardless of how the project affects habitat. I do not understand the logic of his arguments, but it is clear to me that he is not really interested in the opinion of the outside expert, or reaching any other conclusion.

If I were to stay on the job, I am sufficiently convinced that I would be forced to fight again. In the current political climate, it is highly likely I would lose again. As happened on the Klamath, I will once again be working both my official job and an "unpaid outside job" trying to get the agency to uphold its mission and the public trust. I'm not interested in going through that futile exercise again.

I am more concerned about my health and my family's happiness than my finances. My personal ideas about protecting and recovering species are too often not compatible with the approaches taken by this agency. So, now is the time to resign and seek a more satisfying and productive way to help protect fish and their habitats.

I would also like to elaborate on the "cumulative effects" of agency decisions over the last four years, and how this affects my decision. Also, you need to be aware of the low morale of NOAA Fisheries staff in this region. Examples of agency actions and their results that are hurting morale include the Klamath fish-kill, the decision not to list the green sturgeon, the dolphin-safe tuna decision, and the apparent position of the agency regarding the counting of hatchery salmon as part of the protected "natural population." My particular case is just symptomatic of this agency's failure to correctly apply science and caution to its decisions and public pronouncements. I speak for many of my fellow biologists who are embarrassed and disgusted by the agency's apparent misuse of science.

For example, regardless of whether counting hatchery fish leads to loss of protection for threatened and endangered salmon runs, I and other biologists are appalled at the nonsense we hear from high ranking agency officials, such as, "Just as natural habitat

provides a place for fish to spawn and to rear, also hatcheries can do that." The scientific evidence is clear: hatcheries have contributed to the demise of natural populations of salmon.

Properly conducted, objective science always describes the amount of uncertainty present in a conclusion. However, it appears that this agency, and others under the current administration, routinely abuse the science by giving inappropriately high significance to very small amounts of scientific uncertainty, if that uncertainty supports a desired outcome. Not only does this lack of caution and misuse of science adversely impact natural resources, it misleads the American public about how science and the scientific method work. I can only conclude that, with NOAA Fisheries' help, this administration has considerably set back the public's understanding of science.

My resignation is due to my futile efforts to contribute to NOAA Fisheries' attaining what I believe to be its mission, and the cumulative effects of observing this agency's performance over the last four years.

Thank you for listening to my concerns. I just hope that my explanation will help you recognize, understand, and address the mood of your hard working and dedicated staff by paying proper attention to their well-informed opinions. And I sincerely hope my bad experiences will not discourage agency personnel from speaking up for what is right if they find themselves in similar situations.

Mike Kelly