

THE STATE

Federal Biologist Invokes Whistleblower Act

He says administration pressure led to river levels too low to protect salmon. A U.S. official says decision relied on 'best available science.'

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Invoking the Whistleblower Protection Act, a federal wildlife biologist accused the Bush administration Monday of pressuring his agency to accept inadequate protections for endangered salmon in the Klamath River.

Less than a month after an estimated 33,000 salmon died in the river, Michael Kelly, a biologist with the National Marine Fisheries Service, said **the agency agreed last May to accept water flows in the Klamath too low to support fish -- so that farmers upstream in the Klamath Basin could receive their full allotment of water.**

Some of the fish that died were coho salmon protected under the Endangered Species Act, which Kelly's agency is obligated to enforce.

Kelly's accusation was included in a request for shelter under the Whistleblower Protection Act. The U.S. Office of Special Counsel will now open an investigation. The act shields Kelly from demotion or termination by the fisheries service as a result of his complaint.

The inquiry could result in a report of misconduct being sent to congressional leaders and President Bush, if it's found that the fisheries service and the U.S. Bureau of Reclamation failed to adequately protect salmon.

Kelly "called me a month ago, after the fish kill began," said Karen Schambach, the California director of the nonprofit Public Employees for Environmental Responsibility, which helped Kelly file the complaint. "But he was thinking of this even before the fish were killed. It's a huge decision and he agonized over it because he's a young guy, not someone close to retiring, and we all know what happens to whistle-blowers."

Kelly, who has declined to be interviewed, has worked for the fisheries service in Northern California for two years. Before that, he worked as a biologist for the U.S. Fish and Wildlife Service, according to Schambach.

Rod McInnis, the acting southwest regional administrator for the fisheries service, said that Kelly will continue working on issues involving the Endangered Species Act. "We don't have a lot of spare people," he said.

Last spring, Kelly was responsible for helping to write a biological opinion of how much water should stay in the Klamath River for fish. That report, in turn, determined how much water could be diverted to farmers in the Klamath Basin along the California-Oregon border.

Twice, the Bureau of Reclamation -- the agency that diverts water to farmers -- disagreed with the flows requested by the fisheries service. So in late April, the two agencies agreed to sit down and hammer out a compromise.

According to Schambach, Kelly was angered that the Bureau of Reclamation, under pressure from the Bush administration, wouldn't budge from flow requirements that he thought favored farmers.

Jeff McCracken, a spokesman for the Bureau of Reclamation, said Monday that the agency used a report by the National Academy of Sciences as a guideline for its plans for the river. "This was the best available science ... from the top scientists in the country," he said.

But Kelly was equally upset that the fisheries service, in his view, rubber-stamped the flows that were approved. Schambach said Kelly saw this as a violation of the Endangered Species Act, which requires analysis of any action that could harm fish.

Most of the fish that perished in recent weeks were chinook salmon, but some endangered coho salmon and steelhead also died. California wildlife officials believe the salmon died of gill rot, a disease exacerbated by low flows in the river. A federal report on the die-off, the largest in recent years, is pending.

Environmentalists expressed little surprise at Kelly's claims.

"If you are a federal employee for a long time you get used to this bastardization of science," said Kate Vandemoer, executive director of WaterWatch in Portland, Ore., and a former hydrologist with the fisheries service. "For the other folks who manage to retain some degree of principle, it's pretty depressing."

Meanwhile, Dan Keppen, executive director of the Klamath Water Users Assn., said that Kelly's complaint reinforces the incorrect notion that providing water for farmers caused the salmon die-off. He suspects the kill was a natural phenomenon due to drought.

"The fish kill is being used to drive political agendas," he said.