

Megan Durham
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March 13, 2020

Mr. Mark Lee Greenblatt
Inspector General
U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240

Dear Mr. Greenblatt:

We the undersigned are a group of retired DOI Public Affairs, External Affairs, and Communications Officers. Together, we represent over 200 years of experience in Interior Department public communications. We are deeply concerned about potential ethical and procedural violations that may have occurred during the formulation and public announcement of the U.S. Fish and Wildlife Service's proposed rule regarding the Migratory Bird Treaty Act (MBTA).

As background, the proposed rule would limit the scope of the MBTA to acts deliberately intended to kill or harm migratory birds, their nests, or eggs. The proposed rule will allow industry to kill birds with impunity in oil spills, oil waste ponds, cyanide leach pits, and other sources of preventable, foreseeable bird deaths.

We are communication professionals who took seriously our responsibilities to provide accurate, fair, and unbiased information to the public and the press. We were thus more than dismayed by the January 30, 2020, press release on the proposed MBTA rule. This news release strongly suggests that industry groups were given prejudicial, pre-announcement knowledge of or access to the content of the proposed rule, and may represent prohibited ex-parte communication possibly in violation of the Administrative Procedure Act.

This news release, on a proposed regulation, contained a section titled, "What They Are Saying" with statements from no fewer than 28 organizations about why the proposal is a good idea. No statements from the many groups opposed to this proposal were included.

This is a bizarre and unacceptable departure from the past practices of the Interior Department under both Republican and Democratic Administrations. Together, we have prepared and overseen literally hundreds of press releases and press announcements for Interior Department agencies. None of us ever issued a news release on a proposed regulation containing prejudicial statements from interest groups on one side of a policy debate, nor would we have permitted such a news release to be issued.

In the rulemaking process, it is the Department's responsibility to treat all interested parties equally, and not only that, but to do nothing that gives the appearance of prejudice.

The regulation is being proposed; the groups quoted in the release should properly submit such statements as public comments just the same as everyone else does. By including this section, without any contrary opinions, the agency gives the impression that it has already made its decision in favor of the proposed regulation, so what is the point of anyone commenting to the contrary? This news release is specifically designed to support the proposal and suppress dissenting views.

The fact that these groups' comments were included in the announcement — prior to the official opening of the 45-day public comment period — raises the following questions:

- How were they made aware of the upcoming proposal in time to provide their statements?
- Was a copy of the proposal shared with them before it was made available to the public?
- Were they otherwise informed, by telephone or email, of the expected content of the proposed rule?
- Was the proposed rule drafted, in whole or in part, by any of these groups?

- Are there inappropriate relationships between these industry groups and personnel of the Interior Department?
- During this process, did any DOI personnel violate the Scientific Integrity Procedures Handbook, which requires all employees, including political appointees, to "avoid real and potential conflicts of interest" (1.3 g)?

We are asking the Office of the Inspector General to investigate exactly how these groups were informed and involved in the preparation and announcement of the proposed regulation. We regard the handling of this news release as a potential violation of the Administrative Procedure Act (APA) which governs agency rulemakings and requires agencies to maintain a fair and impartial approach to considering public comments. As this press release clearly gives the impression that DOI has already made a decision, we hope that, going forward, the Inspector General's office will ensure that all public comments are duly considered and not pushed aside in a rushed effort to complete this rulemaking.

Additionally, we ask the Inspector General's office to investigate whether the handling of this press release and press announcement violated Departmental policies regarding Scientific Integrity and Public Communications. The Departmental Manual (470 DM I.4 F) directs DOI officials 'to ensure that employees may speak on behalf of the Department to the news media and the public about their official work and freely and openly discuss scientific, scholarly, technical information, and, approaches, findings, and conclusions based on their official work, consistent with the provisions of this chapter."

Additionally, the Departmental Manual (470 DM 1.4 1) requires that employees "abide by the Departmental Manual chapter on Integrity of Scientific and Scholarly Activities (305 DM 3), in dealing with matters that may concern scientific or scholarly integrity."

During the preparation of the news release, supporting materials, and press call for this proposed rule, it is our understanding that professional staff within the Fish and Wildlife Service's Division of Migratory Bird Management were urged, if not pressured, to assist in providing misleading information to the public or to otherwise violate their professional ethics. We encourage the Inspector General to review email traffic between the Division of Migratory Bird Management and the Service's Office of External Affairs regarding a proposed or draft "Myths and Facts" document, and also to review any emails between the DOI Office of Communications and these two FWS divisions regarding this document and the

press announcement. In our experience, directions or pressure to prepare this type of document may have originated at higher levels of the Department. We want to ensure that professional staff within the Division of Migratory Bird Management and External Affairs Office were not concerned about possible retaliation for their refusal, on the basis of science, to fully support the proposed rulemaking.

We do not know all the DOI personnel who were involved in this rulemaking and press announcement. Based on our past experience, we suggest that the IG's office will find people with knowledge of this in the following offices: at the Departmental level, the Office of the Solicitor; the Secretary's Office of Communications; and the Assistant Secretary for Fish and Wildlife and Parks; and at the Fish and Wildlife Service, the Director's Office, the Assistant Director for External Affairs and staff in the Public Affairs Office, and the Assistant Director for Migratory Birds and staff in the Division of Migratory Bird Management.

During our many years of service, all of us supported DOI's mission and endeavored to carry out our duties with honesty and integrity. Millions of Americans care about the future of our migratory bird resources, and all of their views need to be considered equally. No interest group deserves preferential treatment, as appears to be the case in this rulemaking, and DOI career professionals must be able to do their jobs in accordance with DOI policies for scientific integrity and without pressure or fear of reprisal.

Attached are the names and titles of all those who are joining in this complaint. Thank you for your consideration.

Sincerely,

Megan Durham

On behalf of the following:

Megan Durham
Retired, Deputy Assistant Director External Affairs; formerly Chief of Public Affairs, U.S. Fish and Wildlife Service

Michael L. Smith

Retired, Deputy Assistant Director — External Affairs (Washington DC);
formerly Assistant Regional Director — External Affairs (Region 6, Denver) U.S.
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David Klinger

Retired, Assistant Regional Director — Public Affairs, Pacific Region (Portland);
and Senior Writer Editor, National Conservation Training Center U.S. Fish and
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Alan M. Levitt

DOI Office of the Secretary, Deputy Director, Office of Public Affairs (1984-
1990); formerly, Chief of Current Information, U.S. Fish and Wildlife Service
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K. Mitchell Snow

Retired, Senior Legislative Affairs Communications Specialist, Bureau of Land
Management; formerly Chief, Media Services, U.S. Fish and Wildlife Service and
Public Affairs Specialist, U.S. Geological Survey

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Retired, Chief of Media Relations, Alaska Region, Anchorage, U.S. Fish and
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