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March 29, 2019

Acting Inspector General Mary L. Kendall  
U.S. Department of the Interior  
Office of Inspector General  
1849 C Street NW - Mail Stop 4428  
Washington, DC 20240

Dear Acting Director Kendall:

I write to request that you investigate allegations that Deputy Secretary of the Department of the Interior David Bernhardt interfered with the scientific process or the scientific conclusions of a Fish and Wildlife Service (USFWS) assessment of the effect of toxic pesticides on several endangered species. These allegations are based on more than 84,000 pages of internal Interior Department documents released through a Freedom of Information Act (FOIA) request. Additionally, I believe that Mr. Bernhardt confirmed the allegations before the U.S. Senate Committee on Energy and Natural Resources during his confirmation hearing to become the Department's Secretary on March 28, 2019, though he disputed my assertion that his involvement was inappropriate political meddling.

On March 26, 2019, *the New York Times* reported, based on more than 84,000 pages of internal Interior Department documents released through FOIA, that Mr. Bernhardt, in his role as Deputy Secretary, directly intervened with Fish and Wildlife Services officials to block the release of a report on toxic pesticides.<sup>1</sup> The Fish and Wildlife analysis showed that two pesticides "were so toxic that they would 'jeopardize the continued existence' of more than 1,200 endangered birds, fish and other animals and plants," according to the Times report.<sup>2</sup>

Documents included in the FOIA production show that the pesticide industry repeatedly asked political appointees at the Interior Department and EPA to intervene in the Fish and Wildlife analysis and that Mr. Bernhardt eventually did so. According to these documents, a pesticide industry attorney wrote to then-Interior Secretary Zinke and to then- EPA Administrator Scott Pruitt on April 13, 2017 and followed up on that request with EPA staff on June 21, 2017.<sup>3</sup> A pesticide industry executive called an Interior Department attorney on or around May 1, 2017 and another pesticide trade association official reached out to that same Interior Department attorney on July 19, 2017 to discuss the Endangered Species Act.<sup>4</sup>

<sup>1</sup> New York Times, *Interior Nominee Intervened to Block Report on Endangered Species*, March 26, 2019; [www.nytimes.com/2019/03/26/us/politics/endangered-species-david-bernhardt.html](http://www.nytimes.com/2019/03/26/us/politics/endangered-species-david-bernhardt.html)

<sup>2</sup> *Ibid.*

<sup>3</sup> Wiley Rein LLP letter to the U.S. Department of the Interior, April 13, 2017; Email from Wiley Rein LLP attorney David Weinberg to EPA official Justin Schwab; released via Freedom of Information Act Request, June 21, 2017; [www.documentcloud.org/documents/5778894-Trump-Era-Shift-Evaluating-Pesticide-Threats-to.html](http://www.documentcloud.org/documents/5778894-Trump-Era-Shift-Evaluating-Pesticide-Threats-to.html)

<sup>4</sup> Email from Aaron Hobbs, President of Responsible Industry for a Sound Environment (RISE) to Interior Department attorney Daniel Jorjani, May 1, 2017; Email from Jay Vroom, then head of pesticide industry trade association CropLife, July 10, 2017; [www.documentcloud.org/documents/5778894-Trump-Era-Shift-Evaluating-Pesticide-Threats-to.html](http://www.documentcloud.org/documents/5778894-Trump-Era-Shift-Evaluating-Pesticide-Threats-to.html)

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On October 5, 2017, Mr. Bernhardt emailed Gary Frazer, the Fish and Wildlife Services Assistant Director for Endangered Species, who according to *the New York Times*, “was the top official overseeing the assessment of the impact” the pesticides have on endangered species.<sup>5</sup>

**From:** David Bernhardt <[dwbarnhardt@ios.doi.gov](mailto:dwbarnhardt@ios.doi.gov)>  
**Date:** October 5, 2017 at 12:49:29 PM EDT  
**To:** [gary\\_frazer@fws.gov](mailto:gary_frazer@fws.gov), DOI <[todd\\_willens@ios.doi.gov](mailto:todd_willens@ios.doi.gov)>, [greg\\_j\\_sheehan@fws.gov](mailto:greg_j_sheehan@fws.gov)  
**Cc:** Gareth Rees <[gareth\\_rees@ios.doi.gov](mailto:gareth_rees@ios.doi.gov)>  
**Subject:** Pesticides

All: I apologize for the request, but I need to be updated on the status of consultations related to pesticides.

Please work with Gareth to schedule a briefing for mid-next week.

In addition, please provide me any briefing material -- that you have already generated -- you think might be useful for my preparation. I am at a baseline of virtually zero. I have been told we have a December court ordered deadline that we are not going to meet.

Thank you,  
David

Sent from my iPhone

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FOIA documents show Mr. Bernhardt held a series of meetings with Mr. Frazer over the next three weeks.<sup>7</sup> On October 30, 2017, according to his calendar, Mr. Bernhardt then met with EPA and White House officials to discuss Endangered Species Act Section 7, which pertains to the role that the U.S. Fish and Wildlife Service plays in providing consultation guidance for other federal agencies to ensure actions they take do not jeopardize the existence of any species listed under the ESA.<sup>8</sup>

Emails included in the FOIA production show that on November 8, 2017, Mr. Bernhardt edited a draft letter from career Fish and Wildlife Service staff to the EPA announcing the Interior Department would not be delivering the Fish and Wildlife assessment to the EPA as previously planned.

<sup>5</sup> New York Times, March 26, 2019

<sup>6</sup> Email from Interior Department Deputy Secretary David Bernhardt to Fish and Wildlife Services assistant director Gary Frazer, October 5, 2017; [www.documentcloud.org/documents/5778894-Trump-Era-Shift-Evaluating-Pesticide-Threats-to.html](http://www.documentcloud.org/documents/5778894-Trump-Era-Shift-Evaluating-Pesticide-Threats-to.html)

<sup>7</sup> Deputy Secretary Bernhardt calendar appointments, October 11, 2017 – November 1, 2017; [www.documentcloud.org/documents/5778894-Trump-Era-Shift-Evaluating-Pesticide-Threats-to.html](http://www.documentcloud.org/documents/5778894-Trump-Era-Shift-Evaluating-Pesticide-Threats-to.html)

<sup>8</sup> Deputy Secretary Bernhardt calendar appointment, October 30, 2017; [www.documentcloud.org/documents/5778894-Trump-Era-Shift-Evaluating-Pesticide-Threats-to.html](http://www.documentcloud.org/documents/5778894-Trump-Era-Shift-Evaluating-Pesticide-Threats-to.html); US Fish and Wildlife Service; [www.fws.gov/midwest/endangered/section7/section7.html](http://www.fws.gov/midwest/endangered/section7/section7.html)

From: Frazer, Gary  
To: Gina Shultz; Craig Aubrey; Patrice Ashfield; Richard Goeken; Peg Romank; BENJAMIN JESUP; Nancy Brown-Kobil; Shawn Finley  
Subject: Re: Draft letter to EPA requesting more information  
Date: Thursday, November 9, 2017 9:35:50 AM  
Attachments: request for more info from EPA AES edits clean DS edits.docx

FYI only. Met with David this morning and discussed the revisions shown in the attached. I didn't find any to be problematic. He's going to share the revised draft within the interagency group that he's engaged with. Next steps will be informed by that discussion. -- GDF

Gary Frazer  
Assistant Director -- Ecological Services  
U.S. Fish and Wildlife Service  
(202) 208-4646

On Wed, Nov 8, 2017 at 12:50 PM, Frazer, Gary <gary\_frazer@fws.gov> wrote:  
FYI. Just keeping you apprised of the status. -- GDF

Gary Frazer  
Assistant Director -- Ecological Services  
U.S. Fish and Wildlife Service  
(202) 208-4646

----- Forwarded message -----

From: Bernhardt, David <b6-Personal Privacy@ov>  
Date: Wed, Nov 8, 2017 at 10:43 AM  
Subject: Re: Draft letter to EPA requesting more information  
To: "Frazer, Gary" <gary\_frazer@fws.gov>

Gary: I have one sentence I wish to discuss with you tomorrow.

Thank you,  
David

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Additionally, according to *the New York Times* report, the pesticide analysis was blocked in conjunction with a "radical shift" in how USFWS analyzes the effects of pesticides on endangered species. The change greatly increased the burden of proof the agency is required to meet to demonstrate pesticide effects on endangered species and, according to *the Times*, will likely result in fewer new restrictions on pesticide use in the future.<sup>10</sup> CropLife and RISE praised the change.<sup>11</sup>

Finally, on March 28, 2019, Mr. Bernhardt appeared before the U.S. Senate Committee on Energy and Natural Resources for his confirmation hearing to become Secretary of the Department of the Interior. I

<sup>9</sup> Email from Interior Department Deputy Secretary David Bernhardt to Fish and Wildlife Services assistant director Gary Frazer, November 8, 2017; [www.documentcloud.org/documents/5778894-Trump-Era-Shift-Evaluating-Pesticide-Threats-to.html](http://www.documentcloud.org/documents/5778894-Trump-Era-Shift-Evaluating-Pesticide-Threats-to.html)

<sup>10</sup> New York Times, March 26, 2019

<sup>11</sup> Letter from pesticide industry associations CropLife and RISE to USFWS, September 24, 2018



questioned him about these documents and his role in blocking the USFWS analysis and he confirmed to me that had reviewed the analysis, believed it had not been subjected to legal review, and made the determination to delay the report.


BERNHARDT: "You're dealing with some of the most difficult consultations on the planet and when I read the document my reaction to it was this is really an interesting draft but it clearly didn't have any legal review and in our world you can't ignore the law and, and come up with a scheme. You have to have it fit the law and the facts. And so I basically said let's go kick it over to career lawyers, have them look at it, and their assessment was exactly like mine. And so what we decided is that the approach needed to be readdressed."<sup>12</sup>

Yet, under standard procedure, there would be legal analysis throughout the development of the USFWS assessment. As a result, I am deeply troubled by what appears to be a political appointee meddling in the scientific process at USFWS in its analysis of toxic pesticides and their effect on the environment and hundreds of endangered species. Therefore as a former Chair and current member of the U.S. Senate Committee on Energy and Natural Resources, I am requesting that the Office of Inspector General investigate the following:

1. The role Mr. Bernhardt and other political appointees at the Interior Department played in delaying or obstructing the USFWS pesticide analysis.
2. The role Mr. Bernhardt played in changing USFWS policy with regard to Section 7 of the Endangered Species Act.
3. The role other political appointees, like Agriculture Department senior advisor and former CropLife lobbyist Rebeckah Adcock, played in the Interior Department and USFWS decision-making process with regard to the USFWS draft analysis.
4. Whether, as Mr. Bernhardt alleged to me under oath on March 28, 2019, the USFWS draft analysis "clearly didn't have any legal review."
5. Whether, as Mr. Bernhardt alleged to me under oath on March 28, 2019, career lawyers at the Interior Department agreed with his analysis.

If you have any questions regarding this request, you may contact Malcolm McGeary on my staff at 202-224-5244.

Respectfully,



Ron Wyden  
United States Senator

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<sup>12</sup> U.S. Senate Committee on Energy and Natural Resources David Bernhardt confirmation hearing; March 28, 2019