

HARVARD LAW SCHOOL
ANIMAL LAW & POLICY CLINIC

KATHERINE A. MEYER
Clinic Director

KATE BARNEKOW
Clinical Fellow



1585 MASSACHUSETTS AVE.
CAMBRIDGE, MA
02138

animal.law.harvard.edu

Craig Kenkel
Superintendent
Point Reyes National Seashore
National Park Service
1 Bear Valley Road
Point Reyes Station, CA 94956
Department of the Interior Region 10

May 9, 2022

RE: L7617
Tomales Point Planning Process

Dear Mr. Kenkel:

I am writing on behalf of our clients, Jack Gescheidt, Laura Chariton, Skyler Thomas, and the Animal Legal Defense Fund, in response to your letter dated March 31, 2022, requesting comments regarding the scope of the planning process “to replace the 1998 Tule Elk Management Plan for Tomales Point and to address, where appropriate, any updates to the park’s General Management Plan as it relates to the Tomales Point area.” Our clients appreciate that the Park Service has taken the first step to update its management plan for the area and would like to encourage the agency to keep certain issues front-and-center throughout the planning process, as discussed in greater detail below.

In order to properly evaluate the issue of “maintenance or removal of the tule elk fence,” as identified in your above-cited letter, the Park Service must consider the extraordinary death toll of the Tule elk population currently confined behind the fence at Tomales Point. In only the last year (2021), over 25% of the animals (72 elk) have died due to a lack of food and water in the “reserve” where they are confined. This decrease in population is in addition to similar massive declines of 152 elk the year prior (2020) and 257 elk in the previous drought of 2013-2015. This means that in the last two years alone, the elk population at Tomales Point has declined by over 50%. These deaths are not natural or expected parts of population shifts in the wild; they are the direct result of confining animals in a zoo-like setting—behind a fence where they cannot access sufficient food or water sources—and then failing to treat them with even the minimal standards required of those who keep wild animals in captivity, such as provision of sufficient food and water. *See, e.g.*, Animal Welfare Act, 7 U.S.C. §§ 2131, 2143(a)(2)(A) (requiring animals in zoos to be treated humanely, and provided sufficient food and water).

The genetic diversity of the Tule elk at Tomales Point is also key to consideration of this issue. As experts determined when the 1998 Elk Management Plan was published, the Tomales Point herd already had a low level of genetic variation, and the genetic viability of the herd has declined significantly since then. This is due not only to the animals' inability to get past the fence to sufficient food and water sources and the resulting die-offs, but also their inability to co-mingle with other elk herds in order to reduce or avoid inbreeding. Should the Tule elk confined at Tomales Point not be able to obtain access to sufficient food and water, and to interact with other members of their species in the near future, the genetic viability of this herd will continue to decline to the point where it cannot be salvaged.

In addition to considering the removal of the Tule elk fence, the Park Service should consider providing supplemental forage and minerals, as well as supplemental water, to the Tule elk in the interim during drought conditions. In this regard, concerns the Park Service has expressed about the downsides to supplemental feeding apply only in cases of *long-term* feeding programs, not short-term supplementation programs. Indeed, we note that the Fish and Wildlife Service has recently begun providing supplemental feeding to manatees in Florida because of their lack of natural food sources. Curt Anderson, *An Experimental Program Gave Florida Manatees 160,000 Pounds of Lettuce. They Ate All of It.*, KARE11, (Mar. 23, 2022, 11:58 AM) <https://www.kare11.com/article/tech/science/environment/florida-manatee-feeding-program/507-6a6954bc-4e07-400d-a7c6-34f3cd376e0b>. Thus, as long as the elk are confined behind a human-made fence that prevents them from accessing the resources they need to survive, they should be provided adequate food and water.

Our clients—as well as the public as a whole—are also vehemently opposed to the killing of any Tule elk as a way to “manage” the population. The Tule elk are native to the land and are required by federal law to be protected and preserved—not killed in order to allow for other uses of the land. Rather, should the population need to be controlled for some reason, other less drastic measures should be taken, such as the use of immunocontraception, as contemplated and recommended in the 1998 Tule Elk Management Plan.

Moreover, the schedule for this planning process outlined by the Park Service is far too long in duration. Under that schedule, the NPS would not issue a final Environmental Impact Statement and Record of Decision for the revised plan until March 31, 2025, at the earliest. This schedule is far too drawn out, especially given the massive number of Tule elk deaths in only the last year and the incredibly high likelihood that upcoming years will see similar large-scale die-offs. Not only is this wildlife suffering horrific pain and distress from this situation, but there can be no question that the sheer volume of deaths is seriously depleting any genetic viability of the remaining population. Accordingly, a delay of almost three additional years (if not longer) before the planning process is actually completed poses a serious risk to the preservation of this wildlife, especially if the Park Service continues to refuse to provide any forage for these animals. Rather, this planning process should be completed much more quickly, specifically within one year.

In support of and in addition to the above comments, we include as attachments documents filed to date in *Gescheidt, et al., v. Haaland, et al.*, case no. 21-4734-HSG, in the United States District Court for the Northern District of California, as well as non-privileged communications between the parties in that case. We also believe that the entire administrative record in that case should be considered as part of the Park Service's planning process. To that end, we also attach the index of all documents included in the administrative record. While NPS is already in

possession of all of these documents, if for some reason the agency requires actual copies of the documents, please let us know and we will be happy to provide them.

Thank you for undertaking this first step in the process of updating the management plans for Tomales Point, and please do not hesitate to contact us with any questions or if we can be of further assistance in this process.

Sincerely,



Kate Barnekow
kbarnekow@law.harvard.edu
Animal Law & Policy Clinic
Harvard Law School
1585 Massachusetts Ave.
Cambridge, MA 02138
Office: (617) 998-2450
Cell: (512) 868-7800



Katherine A. Meyer
kmeyer@law.harvard.edu
Director, Animal Law & Policy Clinic
Harvard Law School
1585 Massachusetts Ave.
Cambridge, MA 02138
Office: (617) 998-2450
Cell: (202) 257-5145