

HARVARD LAW SCHOOL
ANIMAL LAW & POLICY CLINIC



June 5, 2024

Superintendent, Point Reyes National Seashore
National Park Service

Re: Tomales Point Area Plan Environmental Assessment Comment

Dear Superintendent,

We are writing on behalf of our clients Jack Gescheidt, Laura Chariton, and the Animal Legal Defense Fund, in response to the announcement dated May 6, 2024, requesting comments on the Tomales Point Area Plan Environmental Assessment.

Introduction

We strongly encourage the National Park Service (the Park Service) to implement its preferred alternative, the Tomales Point Area Plan (TPAP) Environmental Assessment's (EA) Alternative B, with certain modifications. The Park Service must remove the Tomales Point elk fence, which prevents the tule elk from gaining access to water and forage south of Tomales Point and has led to the suffering and death of hundreds of elk in recent years. We are strongly opposed to both the no-action Alternative A and Alternative C, involving culling the tule elk, both of which fail to conserve this invaluable native tule elk population.

Certain modifications to the proposed Alternative B are necessary to ensure the protection and long-term survival of the tule elk. In particular, one key modification involves developing a park-wide elk management plan. The EA states that “[t]ule elk that leave the Tomales Point planning area after the fence is removed will be managed in a manner consistent with the Limantour herd, as described in the [2021 General Management Plan Amendment Record of Decision].”¹ This means that elk who travel outside of Tomales Point will be subject to the potential of “aggressive hazing” with beanbag shots and “lethal removal” as part of the Park’s plan for elk management and protection of ranchers’ interests outside of Tomales Point.² This underscores the need for a park-wide tule elk management plan, which the Park Service incorrectly dismissed as being inappropriate until an unspecified future time when more data is available.³ A park-wide plan must be developed to take into account the potential migration and intermingling of the Tomales Point elk with the other free-ranging herds, without reliance on inhumane management strategies. Protected wildlife should not have to suffer aggressive hazing and be subject to culling to protect the interests of dairy ranchers in a unit of the National Park System. Furthermore, delaying a park-wide elk management plan is particularly concerning given that 1) the Park Service has *already* waited decades to revise the 1998

¹ NPS, *Point Reyes National Seashore: Tomales Point Area Plan Environmental Assessment* 13 (2024) (hereinafter “EA”) available at <https://perma.cc/LMR7-7ZTC>.

² NPS, *General Management Plan Amendment Record of Decision* 36–7 (2021) (hereinafter “GMPA ROD”).

³ EA at A-1.

Tule Elk Management Plan which, by its own terms, should have expired and been replaced in 2008,⁴ and 2) the Park Service has already delayed revision of a general management plan, as it pertains to Tomales Point, for *over forty years*.⁵

Interests of the Commenters

Jack Gescheidt, a resident of California since 1996, has been visiting Tomales Point in the Point Reyes National Seashore on a regular basis for over twenty-five years. He hikes and runs in Tomales Park and very much enjoys viewing the wildlife and photographing the tule elk who live there. Laura Chariton, a native Californian, has been visiting the Point Reyes National Seashore since 1974. She loves the tule elk and enjoys observing them in their natural state. She is so enamored of the elk that for many years she served as a tule elk docent on behalf of the Park Service, teaching visitors about the biology, ecosystems, and lives of the Tomales Point elk. Animal Legal Defense Fund (ALDF) is a national nonprofit animal protection organization founded in 1979 and headquartered in Cotati, California. ALDF uses education, public outreach, legislation, and litigation to protect the lives, and advance the interests, of animals, including the tule elk who live in Tomales Point at Point Reyes National Seashore.

The Park Service Should Move Forward with Most of the Proposed Actions Under Alternative B

It is important that the Park Service promptly proceed with the core plan under Alternative B to remove the elk fence that prevents Tomales Point tule elk from migrating to access forage and water during periods of drought. In 1978, the Park Service erected the eight-foot-tall fence around the Tomales Point peninsula to isolate the reintroduced elk from nearby ranches. The fence traverses the entire width of Tomales Point, preventing the elk from accessing any food or water south of the fence. Since 1986, the Park Service has been on notice that the elk were likely to experience “die-offs or nutritionally related problems” during “periods of drought.”⁶ Foreseeably, the inability of elk to access food or water outside of the fenced area has had dire consequences. Starvation and dehydration in drought years have killed off the Tomales Point tule elk in large numbers. As a coalition of scientists explained in their June 2021 letter to the Park Service:

Numbers of tule elk within the [Tomales Point] Reserve have irrupted and crashed four times since their reintroduction in past El Niño - La Niña climate cycles under NPS's minimal intrusion / passive management approach. Most recently, the population crashed from 559 elk in 2012 to 293 elk by 2015. The herd then irrupted to 445 elk in 2019 before crashing again to 293 elk in 2020. These irruptions were the result of elk responding to favorable habitat conditions. The subsequent crashes were the result of the inability of the confined elk to disperse from the Reserve to find more favorable forage. In contrast, the two nearby free-ranging herds remained relatively stable during the 2020 drought: The Limantour

⁴ NPS, *Point Reyes National Seashore Tule Elk Management Plan and Environmental Assessment* 1998 1 (1998) (hereinafter “1998 Plan”) (explaining that the 1998 Tule Elk Management Plan was intended to guide the management of tule elk at the Seashore for the next five to ten years).

⁵ Since the 2021 general management plan amendment for Point Reyes National Seashore specifically excluded Tomales Point, the general management plan for Tomales Point has not been updated since it was first prepared in 1980. *See generally*, NPS, *General Management Plan Point Reyes National Seashore/California* (1980).

⁶ Peter John Patrick Gogan, *Ecology of the Tule Elk Range, Point Reyes National Seashore* 321 (Apr. 25, 1986) (Ph.D. dissertation, University of California, Berkeley).

herd declined from 164 to 155 elk; and the Drakes Beach herd stabilized and increased by one from 138 to 139 between 2019 and 2020.⁷

As the comparison to the population of free-ranging herds demonstrates, these declines were avoidable consequences of unnatural confinement. And again, in 2021, 25% of the remaining elk (72 elk) died due to a lack of food and water.⁸

Consequently, we write to support the Park Service's proposal to remove the existing elk enclosure fence and construct a new wildlife-friendly fence to prevent cattle from entering the planning area. Removing the fence will allow the herd to stabilize and reduce elk suffering.

We are also highly supportive of the Park Service's plan to remove the twelve elk enclosures from the wilderness zone. These enclosures were established in the winter of 1997-1998 and have never been removed.⁹ The enclosures present a number of issues. They have not been maintained in a state of good repair and have become dilapidated, with parts of the fencing falling down in many places. On at least one occasion, Ms. Chariton observed animal bones in the enclosures, indicating that wildlife may have become trapped inside the fencing. Ms. Chariton also witnessed that, during periods of drought, the enclosures prevent the tule elk from accessing forage that is trapped within. This is cruel and torturous to the animals who are starving, yet unable to access food due to human-erected barriers from a decades-old, defunct research project. Moreover, tule elk and other wildlife can trap their legs in fallen-down fencing, which leads to injuries. There is no present need for the enclosures, and they must be removed.

Alternative B Should Be Modified to Include a Park-Wide Elk Plan, Provide Interim Supplemental Water for the Elk and, in the Long-Term, Phase Out Cattle Ranching

1. The TPAP Should Establish a Park-Wide Elk Plan that Forbids Harassment and Killing of Elk

As explained above, there is no good reason for the Park Service to further delay a comprehensive, park-wide plan for management of the tule elk. As the Tomales Point herd migrates, intermixes with other herds, and creates new offspring, there will be the need to holistically look at all the herds together. Furthermore, the population thresholds referenced by the 2021 General Management Plan Amendment Record of Decision¹⁰ make no sense once the herds become intermingled. A park-wide plan is the best way to adequately address the new reality of elk herds that will interbreed and intermingle – something that should be encouraged for the purpose of promoting genetic variation and the general health of the herds.

The EA explains that “Tule elk that leave the Tomales Point planning area after the fence is removed will be managed in a manner consistent with the Limantour herd, as described in the [2021

⁷ Letter from Reginald H. Barrett, Ph.D., Emeritus Professor Wildlife Mgmt., Env't Sci., Poly', and Mgmt., Univ. CA, Berkeley, et al., to Deb Haaland, Sec'y Interior & Shawn Benge, Deputy Dir., Operations, National Park Service (June 24, 2021).

⁸ See *Statement from Superintendent Craig Kenkel on Upcoming Planning for Tomales Point at Point Reyes National Seashore*, NPS (Dec. 14, 2021) <https://www.nps.gov/pore/learn/news/newsreleases-20211214-statement-from-superintendent-on-upcoming-planning-for-tomales-point.htm>.

⁹ EA at 49.

¹⁰ GMPA ROD at 36–7.

General Management Plan Amendment Record of Decision for Point Reyes National Seashore].”¹¹ That Record of Decision states, for the Limantour herd:

While elk will continue to be present on ranchlands, areas of high elk concentration will be monitored and managed in response to localized resource impacts. In these cases, the graduated management response described [in the document] will be implemented, including standard and aggressive hazing techniques and the potential for lethal removal of individual elk.¹²

These management techniques are cruel and inhumane and are the subject of ongoing federal litigation.¹³ The newly freed Tomales Point herd should not be subject to aggressive hazing and so-called “lethal removal” to protect the interests of ranchers whose cattle are polluting the Seashore and harming the wildlife. This illuminates the need for a comprehensive, park-wide plan for the elk, which would account for the potential intermingling of elk herds and should forbid the use of hazing techniques or lethal removal of any elk. In the absence of such a plan, it should be made clear that, if any elk leave the Tomales Point area, they must not be subject to hazing or culling. In particular, it must be made clear that Tomales Point elk that migrate onto areas leased for ranching will *not* be considered “new elk herds”¹⁴ and will *not* be subject to the so-called “graduated management response” described in the 2021 General Management Plan Amendment Record of Decision.¹⁵

If members of the Tomales Point elk herds who stray onto ranch lands must be diverted, the Park Service should, at most, allow for standard hazing techniques to be used, which pose a lower risk to the elk. More aggressive hazing techniques, such as the firing of bean bag shots, should not be permitted as these techniques risk scaring the elk into running into obstacles which can lead to bruising, broken legs, or even death. Lethal removal of tule elk should *never* be permitted. The Park Service should also notify the public whenever management techniques are used on the elk population. Whenever practicable, such notification should be given in advance of any management, and, in all cases, confirmation that action was taken must be given after the fact. Prior notification is important to ensure public safety during management actions and to keep members of the public and visitors to the Seashore informed as to which management techniques are being utilized for the tule elk herds.

2. The Park Service Should Temporarily Continue Provision of Supplemental Water and Minerals

Under Alternative B, “[e]mergency actions to supplement water and mineral resources for tule elk would be discontinued, and the system of water tanks and troughs would be removed.”¹⁶ We encourage the Park Service to instead consider a more gradual phase-out, allowing the supplemental water program to remain in place for at least two summer-autumn seasons after removal of the fence, and longer if needed to counteract drought conditions. The Tomales Point elk have formed four sub-herds of fenced-in elk—the North herd, the Plateau herd, the White Gulch herd, and the South herd. It will take time for the northernmost sub-herds to realize they can migrate out of the

¹¹ EA at 13.

¹² GMPA ROD at 37.

¹³ *Resource Renewal Institute et al v. NPS*, Docket No. 3:22-cv-00145 (N.D. Cal. Jan 10, 2022).

¹⁴ GMPA ROD at 36.

¹⁵ *Id.* at 37.

¹⁶ EA at 10.

previously fenced area, and supplemental water is still necessary for elk during this transition. This is particularly important as the northernmost sub-herds have been the most drought-stricken during recent droughts.

At the Tomales Point Area Plan and Environmental Assessment Virtual Public Meeting (the TPAP Public Meeting), the Park Service justified removing supplemental water systems based on a need to protect natural processes and allow them to play out. This indicates that the Park Service believes that the negative impacts from droughts, in particular the deaths of hundreds of elk from starvation and dehydration, is acceptable because it adheres to the Park Service's passive management policy. On the contrary, not only does the Park Service have a duty to protect the tule elk and ensure their survival, but the Park Service *created* the artificial conditions of a fenced-in herd in the first place. Thus, providing an interim period of supplemental water while the herd transitions to a free-range herd is the humane and necessary choice.

As the EA acknowledges, “in 2012-2013 and 2019-2020, there were two substantial population spikes and declines. Elk numbers decreased from 540 to 286 between 2012–2014 and from 445 to 221 between 2019– 2021. These population losses coincided with significant drought conditions.”¹⁷ The EA continues on to make the baseless assertion that “[a] lack of drinking water was not found to be a contributing factor” to the elk deaths but “continued droughts in the area eventually led to the Park Service providing supplemental water and minerals through water troughs and mineral licks to the Tomales Point herd.”¹⁸ It should be undisputed that the severe drought conditions caused the elk to die not just from a lack of adequate forage but from a lack of water as well.¹⁹ However, the Park Service failed to even test for dehydration in four out of the six elk necropsies that were completed during the major elk die-offs.²⁰ Thus, at the very least, given the Park Service's lack of data to support its assertion, dehydration, a logical consequence of drought, cannot be ruled out as a cause of the elk deaths. Furthermore, the very fact that the Park Service provided supplemental water demonstrates that the agency recognized dehydration posed a serious risk to the elk population. Moreover, the Park Service appears to be acknowledging that access to water is an issue for the Tomales Point herd since Alternative C, which involves maintaining the elk fence, also proposes enhancing the capacity of eight naturally occurring water sources.²¹

Since 2015, the Park Service has recognized the need for supplemental water.²² In 2015, the Park Service acknowledged that “[o]bservations by park staff have confirmed that all but one . . . of the remaining functional water basins . . . have gone completely dry for extended periods over the last two years” and there was a need to develop “a contingency plan for the delivery of supplemental water to Tomales Point tule elk in the event that drought conditions persist or become worse in the future.”²³ Despite this, the Park Service did not actually provide supplemental water until 2021.²⁴ While removing the elk fence is an important step towards ensuring that the Tomales Point elk are able to gain access to adequate water, the Park Service acknowledges that “[i]t is expected that most

¹⁷ EA at 41.

¹⁸ *Id.*

¹⁹ See Amy Allen Decl., Exhibit F, ¶ 8. ECF No. 8-8, *Gescheidt v. Haaland*, No. 4:21-cv-04734-HSG (N.D. Cal. June 24, 2021).

²⁰ See *id.* ¶ 4 (explaining that “[o]f the six fully complete reports, only two were checked for dehydration (brain sodium level). One of those two showed severe dehydration (600 times the normal level of sodium in the brain tissue).”).

²¹ EA at 15.

²² Exhibit 11, ECF No. 16-11, *Gescheidt v. Haaland*, No. 4:21-cv-04734-HSG (N.D. Cal. July 14, 2021).

²³ *Id.* at 1.

²⁴ *Unprecedented Drought Prompts Point Reyes National Seashore to Provide Supplemental Water for Tule Elk at Tomales Point*, NPS (June 11, 2021), <https://www.nps.gov/pore/learn/news/newsreleases-20210611-water-for-tomales-point-tule-elk.htm>.

of the individuals within the Tomales Point tule elk herd would continue to use habitat at Tomales Point.”²⁵ Thus, during the first two summer-autumn seasons after removal of the fence, the TPAP must provide for the maintenance of supplemental water to allow the elk time to adapt to their newly-gained ability to migrate and access other sources. In the case that severe drought conditions persist past these two seasons, the Park Service should maintain supplemental water supplies until such droughts abate.

3. The TPAP Should Include a Plan to Phase Out Cattle Operations

The EA states that “[r]anching operations are excluded from evaluation as they occur outside of the planning area.”²⁶ However, once the Tomales Point tule elk herd becomes a free-range herd, their range will overlap with ranching operations, necessitating the inclusion of ranching operations in the TPAP. To be effective, the TPAP must include a definitive plan for removing cattle operations. Domesticated cows harm native species, including tule elk, through pollution, disease, and resource competition. Ranching activities have heavily polluted the Point Reyes Seashore, with a recent Park Service report finding that *E. coli* exceeded health standards in 31% of the water quality samples collected by the Park Service.²⁷ Ranches also fence off 28,000 acres—one third of the entire park—from the public and indigenous wildlife,²⁸ using dangerous barbed-wire fencing that poses a threat to the elk and other animals.

Destructive cattle ranches pose a major threat to the tule elk and must be removed from the Seashore. Commercial ranches are environmentally destructive for-profit operations that place egregious costs on the tule elk and the broader environment at the Seashore. Unlike cows, tule elk are a native species and thus their protection and conservation must be a priority for the Park Service.²⁹

So long as cattle ranching is allowed in Point Reyes National Seashore, ranchers must be responsible for fencing in the cows to prevent the spread of Johne’s disease from cattle to elk. Johne’s disease is a gastrointestinal bacterial infection that spreads through fecal matter and is “contagious, chronic, and usually fatal.”³⁰ Typically, symptoms will not appear until months or years after infection, making it difficult to visually identify infected animals. “For every obvious case of Johne’s disease [] among dairy cattle on the farm, 15 to 25 other animals are likely infected.”³¹

In the long-term, the only way to truly protect the elk and other endemic species at the Seashore from the impacts of cattle ranching is to phase out ranching entirely and prioritize protection and conservation of wildlife and the environment. During the TPAP Public Meeting the Park Service acknowledged that the Tomales Point tule elk were originally fenced in to protect adjacent agricultural operations and private lands. Removing this fence is only the first step in reversing the

²⁵ EA at 43.

²⁶ *Id.* at 5.

²⁷ *Water Quality Monitoring and Assessment Point Reyes National Seashore*, NPS 35 (Oct. 2023), <https://perma.cc/GJX5-BEXX>.

²⁸ See *General Management Plan Amendment: Final Environmental Impact Statement* ii (Sept. 2020).

²⁹ See EA at 6 (Explaining desired conditions for the Seashore, including that “[p]opulations and extent of invasive, *non-native* species are limited such that they do not, or only minimally, affect ecosystem processes and/or function” while “[n]ative plant and animal communities persist and thrive.” (emphasis added)).

³⁰ *NVAP Reference Guide: Johne’s Disease (Control and Eradication)*, USDA (Mar. 20, 2024) <https://www.aphis.usda.gov/nvap/reference-guide/control-eradication/johnes#:~:text=Diagnosis,the%20most%20accurate%20diagnostic%20test.>

³¹ *Id.*

decades-long prioritization of cattle ranching interests over the wellbeing of elk and other native wildlife. The Park Service should be fully committed to its wilderness character management policy by creating a plan to entirely phase out cattle ranching at the Seashore.

The No-Action Alternative A Allows for Continued Suffering of the Elk During Periods of Drought and Should be Rejected

As discussed above, removal of the elk fence is necessary to ensure that the Tomales Point tule elk population does not continue to suffer during recurring climate-change induced droughts. Furthermore, removal of the fence is vital to ensure the genetic viability of the herd. All Point Reyes tule elk are descendants of the ten original elk brought to the Seashore in 1978, and genetic diversity within the elk herds has been a concern since the 1998 Elk Management Plan was originally published, if not earlier. At that time, the Park Service acknowledged that reductions in population size result in “genetic bottlenecks” that threaten the diversity of the herds and the herds’ long-term survival.³² The 1998 plan included recommendations from scientists to periodically introduce “female tule elk from other locations into the Point Reyes herd to maintain genetic diversity by increasing gene flow.”³³ However, this has never happened, and the problem has only worsened over time. Genetic bottlenecks continue to be exacerbated during drought conditions and due to the presence of the elk fence preventing migration to adequate sources of forage and water. Removing the fence would allow the Tomales Point elk to interact with free-ranging elk herds, thus encouraging genetic diversity.

The Park Service’s Alternative C, Involving Lethal Removal of Elk, is Abhorrent Because it Promotes the Use of an Inhumane Tactic to Solve a Problem Created by the Park Service in the First Place

The Park Service should not move forward with its Alternative C, which would involve killing the elk on an annual basis to artificially keep the population level low.³⁴ To begin, solving the problem of elk suffering and dying due to inadequate food and water should not involve the killing of those very elk. In 1976, Congress declared the need for “the restoration and conservation of a Tule elk population in California,” and required the Secretary of the Interior to “develop a plan for Tule elk restoration and conservation, including habitat management,” and to make land “reasonably available for the preservation and grazing of Tule elk.”³⁵ The Park Service cannot now ignore Congress’s directive to restore and conserve this elk population by killing animals that are artificially contained within Tomales Point just because such action would make management of the elk population easier. Moreover, choosing Alternative C would require preparation of an Environmental Impact Statement, due to the context and intensity of the ecological and cultural effects of culling the tule elk herd, described herein.³⁶

³² 1998 Plan at 39.

³³ *Id.*

³⁴ EA at 15, 52.

³⁵ 16 U.S.C. §§ 673d–e, g.

³⁶ According to the new regulations promulgated under the National Environmental Policy Act, which will take effect on July 1, 2024, “[a]gencies should consider the characteristics of the geographic area, such as proximity to unique or sensitive resources” and “[t]he degree to which the action may adversely affect unique characteristics of the geographic area such as historic or cultural resources, parks, Tribal sacred sites . . . [or] ecologically critical areas.” National Environmental Policy Act Implementing Regulations Revisions Phase 2, 89 Fed. Reg 35442, 35464, 35467 (proposed May 1, 2024) (to be codified at 40 C.F.R. § 1501.3(d)).

The Park Service considered and rejected control of the elk population via lethal removal back in 1998. In its 1998 Tule Elk Management Plan, the Park Service noted that the public was very much opposed to reducing the population by killing the elk and that “[t]he preferred technique to limit growth is immunocontraception, which allows treated individuals to breed after contraception is stopped.”³⁷ Accordingly, the Park Service stated that although “[d]ifferent methods of population control could be used” for the Tomales Point herd, “contraception and relocation [were] preferred.”³⁸ While the Park Service now claims that contraception is too difficult to implement,³⁹ this should still be the preferred method of elk herd management if the fence is not removed. The public is even more invested in the health of the elk herd than they were in 1998, as demonstrated by the enormous public support for the removal of the elk fence during the comments on the TPAP scoping newsletter. Thus, lethal removal of elk is untenable and contrary to the public interest. While the Park Service claims that contraception will be less effective since it only lasts for 1 or 2 years,⁴⁰ this is actually preferable since, as the Park Service acknowledged in 1998, it allows elk breeding to resume in the future. We are generally opposed to *any* artificial management of the elk population, but, if the Park Service must move forward with such management, it should choose contraceptive options over lethal removal.

Even translocation would be preferable over lethal removal of elk. The Park Service cites CDFW as disallowing translocation of elk into and out of the Seashore due to concerns about the spread of Johne’s disease.⁴¹ However, elk could easily be tested for Johne’s disease⁴² before being translocated. Furthermore, introduction of tule elk from other locations (and vice versa) is an important manner of encouraging genetic diversity among the herds and was actually recommended by the Park Service’s own scientific advisory panel back in 1993. The panel’s 1993 report to the Park Service recommended adding “2-3 female elk [to the Tomales Point population] every elk generation to maintain genetic variation” and stressed that “[t]he first addition of new elk should be made as soon as possible.”⁴³ While there are animal welfare concerns with translocating wild animals and removing individual elk from their herds, such an option is preferable to killing the animals.

The EA also proposes the use of a prescribed fire regime under Alternative C.⁴⁴ Prescribed burns should *not* be allowed to occur while the elk are fenced in and is yet another reason for the Park Service to move forward with Alternative B and to take the fence down. Allowing the free movement of elk is essential if prescribed burns are to be conducted safely. Furthermore, the Park Service has stated that the use of prescribed fire “would be planned and coordinated with FIGR [the Federated Indians of Graton Rancheria].”⁴⁵ FIGR should lead any prescribed burns and any use of prescribed fire must ensure that there is no risk of harm to the tule elk, whom the Park Service have acknowledged are “a species of cultural significance to FIGR.”⁴⁶

³⁷ 1998 Plan at 47.

³⁸ *Id.* at 46.

³⁹ EA at A-2–A-3.

⁴⁰ *Id.* at A-3.

⁴¹ *Id.* at A-2.

⁴² *NVAP Reference Guide: Johne’s Disease (Control and Eradication)*, *supra* note 30.

⁴³ 1998 Plan at 89.

⁴⁴ EA at 37.

⁴⁵ *Id.* at 10.

⁴⁶ *Id.* at 39.

Timing of Next Steps

We understand, based on the government's argument in front of the Ninth Circuit Court of Appeals, and the information provided in the TPAP Public Meeting, that the Park Service plans on having a final decision available in August of this year.⁴⁷ Such a decision must include an accelerated timeline for removal of the elk fence. The Tomales Point elk currently face the threat of recurring droughts due to climate change, where they will once again face starvation and dehydration if the elk fence continues to prevent their ability to migrate to access other sources of food and water. Thus, a final decision must include plans to remove the elk fence before November 1, 2024. The TPAP, and the associated GMP amendment, must clearly set out this timeline. Any further delays risk significant harm to this vulnerable population that has already suffered and lost hundreds of its members in recent years.

The Park Service can ensure prompt removal of the fence and minimize environmental impacts of fence removal by leveraging existing infrastructure. For example, some or all of the existing fence posts could be used for the new wildlife-friendly fencing. The Park Service could also utilize volunteer help to facilitate prompt removal of the existing elk fence.

Conclusion

We are highly supportive of the Park Service's adoption of its preferred Alternative B, with the modifications discussed herein. As described above, the Park Service should reject Alternative A and Alternative C. Fencing in the Tomales Point tule elk has resulted in numerous problems for the elk and has ultimately caused the inhumane suffering and death of confined wild animals. Continued fencing will only allow these problems to persist, due to recurring droughts and climate change. Removing the fence, and doing so quickly, will address unstable population drops, starvation, genetic isolation, disease, and unnecessary suffering, while restoring some of the historical and cultural identity of the area as it existed before commercial ranching operations. Furthermore, while the Park Service may attempt to manage potential conflicts between elk and ranches, the ultimate solution is to remove the ranches entirely from the Seashore. Commercial industry that harms wildlife and the environment, damages historical sites, and promotes disease has no place in the Seashore. Finally, the Park Service must take affirmative measures to provide supplemental water and protect the elk from dehydration for at least two summer-autumn seasons following the removal of the fence, if not longer.

In considering the public comments on this EA, the Park Service should also reference previous comments submitted by the Harvard Law School Animal Law & Policy Clinic to the Park Service on September 25, 2023, and May 9, 2022, as well as plaintiffs' briefing, declarations, and exhibits associated with *Gescheidt et al v. Haaland et al*, Docket No. 4:21-cv-04734 (N.D. Cal.) (a case to which the Park Service is a party), including those cited within the above comments. The Park Service should also reference the large volume of comments, submitted as part of the TPAP scoping process, which discuss the negative impact that cows from ranches have upon the tule elk and supported the Park Service's proposed plan to remove the elk fence. Because the Park Service has prevented submission of attachments, we expect these documents, all of which are within the Park Service's possession, to form part of the administrative record for this proceeding.

⁴⁷ *Watch recording for case: Jack Gescheidt v. Deb Haaland*, United States Courts for the Ninth Circuit (April 1, 2024) <https://www.ca9.uscourts.gov/media/video/?20240401/23-15580/>.

Sincerely,

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