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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JACK GESCHEIDT, et al.,
Plaintiffs,
v.
DEB HAALAND, et al.,
Defendants.

Case No. [21-cv-04734-HSG](#)

**ORDER GRANTING DEFENDANTS’
MOTION FOR SUMMARY
JUDGMENT AND DENYING
PLAINTIFFS’ CROSS-MOTION FOR
SUMMARY JUDGMENT**

Re: Dkt. Nos. 56, 57

Pending before the Court are the parties’ cross-motions for summary judgment. Dkt. Nos. 56, 57. The Court held a hearing on the motions. For the reasons detailed below, the Court **GRANTS** Defendants’ motion for summary judgment and **DENIES** Plaintiffs’ motion for summary judgment.

I. BACKGROUND

The parties are familiar with the facts of this case, and they are largely undisputed. The Court therefore only briefly summarizes the facts as relevant to the cross-motions for summary judgment.

Plaintiffs filed this action against the National Park Service (“Park Service” or “NPS”)¹ in 2021 to protect the tule elk population that lives in the Tomales Point area of Point Reyes National Seashore. *See* FAC. Plaintiffs contend that drought conditions in the area have become “extremely dire,” and the tule elk are dying from lack of adequate forage and water. *See, e.g., id.* at ¶¶ 1–4, 61–62, 64–68, 72–76. NPS has reported, for example, that the Tomales Point elk

¹ Plaintiffs sue Deb Haaland, the Secretary of the Interior, Shawn Benge, the Deputy Director of the National Park Service, and Craig Kenkel, Superintendent of Point Reyes National Seashore, in their official capacities. *See* Dkt. No. 33 (“FAC”) at ¶¶ 19–21.

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Northern District of California

1 population declined from 445 to 293 in 2020. *See* Dkt. No. 56-1, Ex. A at 3, 9. 152 elk therefore
 2 died in 2020. *See id.* In December 2021, NPS reported that the elk population further declined to
 3 221, meaning an additional 72 elk died. *See* Dkt. No. 57-2, Ex. 1. Plaintiffs suggest that these
 4 deaths were preventable, and that tule elk will continue to die unnecessarily because of the Park
 5 Service’s failure to timely revise its management plan for the National Seashore. *See* FAC at
 6 ¶¶ 1–4, 61–62, 64–68, 72–76. Plaintiffs contend that the Park Service’s failure to timely revise its
 7 management plan violates the Administrative Procedure Act (“APA”). *See id.* at ¶¶ 87–91.

8 **A. The National Park Service’s Management of the Tule Elk**

9 In 1978, Congress enacted the National Park and Recreation Act, which required the Park
 10 Service to prepare and revise general management plans for each unit of the National Park System.
 11 *See* Act of Nov. 10, Pub. L. 95-625, § 604(3), 92 Stat 3467. The current statute reads in relevant
 12 part:

13
 14 General management plans for the preservation and use of each
 15 System unit . . . *shall be prepared and revised in a timely manner* by
 16 the Director. On January 1 of each year, the Secretary shall submit to
 Congress a list indicating the current status of completion or revision
 of general management plans for each System unit.

17 54 U.S.C. § 100502 (emphasis added). Such plans shall include (1) “measures for the preservation
 18 of the area’s resources”; (2) “indications of types and general intensities of development . . .
 19 associated with public enjoyment and use of the area”; (3) “identification of and implementation
 20 commitments for visitor carrying capacities for all areas of the System unit”; and (4) “indications
 21 of potential modifications to the external boundaries of the System unit, and the reasons for the
 22 modifications.” *Id.*

23 The General Management Plan for the National Seashore was adopted in 1980 (the “1980
 24 General Management Plan” or “1980 GMP”). *See* Dkt. Nos. 39–47, 55 (“Administrative Record”
 25 or “AR”) 293–347. Under the plan, the Park Service’s management objectives included
 26 “identify[ing], protect[ing], and perpetuat[ing] the diversity of existing ecosystems which are
 27 found at Point Reyes National Seashore and are representative of the California seacoast,” as well
 28 as “protect[ing] marine mammals, threatened and endangered species, and other sensitive natural

1 resources found within the seashore.” *Id.* at 301. The 1980 GMP also stated that “[r]estoration of
2 historic natural conditions (such as reestablishment of Tule elk) will continue to be implemented
3 when such actions will not seriously diminish scenic and recreational values.” *See id.* at 313.

4 Other management objectives included “monitor[ing] grazing and improv[ing] range
5 management practices in the pastoral zone in cooperation with ranchers” and “preserv[ing] and
6 protect[ing] all structures in or nominated to the National Register of Historic Places,” such as the
7 Pierce Point Ranch. *Id.* at 302, 309–12, 314, 316. The plan also indicated that “it is probable that
8 this [ranching] use will continue indefinitely.” *Id.* at 312. A fence was accordingly erected to
9 separate the tule elk from the adjacent public lands leased to ranchers. *Id.* at 3644.

10 In 1998, the Park Service issued the Tule Elk Management Plan to “guide the
11 management, monitoring, and research of tule elk . . . at Point Reyes National Seashore for the
12 next five to ten years.” *Id.* at 3637. The Park Service explained that the Plan was needed “to
13 provide for the protection of the elk that is consistent with scientifically sound principles, takes
14 into account the interests of the public, and meets the objectives for which the Seashore was
15 established.” *Id.* The Park Service noted concerns about the elk “overpopulating a limited,
16 enclosed range and the potential consequences to other protected species and ecosystems.” *Id.*

17 The 1998 Plan thus identified three “missions” related to the elk:

- 18 • Adaptively manage elk as a natural component of the dynamic
19 ecosystem of Point Reyes.
- 20 • Assist in the preservation of tule elk as a subspecies and the
21 genetic diversity it contains.
- 22 • Manage tule elk consistent with other management objectives,
23 including agriculture, public visitation, and the protection of
24 natural, cultural, and recreational resources.

25 *Id.* at 3673–74.

26 As relevant to this case, the 1998 Plan also adopted specific management actions,
27 including that the Park Service would “[m]aintain the elk fence on Tomales Point and continue to
28 separate tule elk from cattle”; “continue monitoring tule elk and their environment to analyze
trends and better understand tule elk population dynamics and ecology at Point Reyes”; and set an

1 interim population range for the elk at Tomales Point at 350–450. *See id.* at 3628–31, 3679–81,
 2 3685–86. The plan stated that “[r]emoving the fence at Tomales Point will be considered if and
 3 when ranching ceases on the adjacent lands.” *Id.* at 3685. Plaintiffs allege that this fence prevents
 4 the tule elk from finding adequate water and forage, particularly during times of drought. *See,*
 5 *e.g.*, FAC at ¶¶ 61, 80–81.

6 **B. Procedural Background**

7 On June 24, 2021, Plaintiffs filed a motion for preliminary injunction, in which they sought
 8 an order requiring NPS to “take immediate measures to ensure that the Tule elk who live on
 9 Tomales Point in Point Reyes National Seashore are provided access to sufficient food and water
 10 to ensure that these animals do not continue to die of starvation and/or dehydration.” Dkt. No. 8 at
 11 13. On August 2, 2021, the Court denied Plaintiffs’ motion. Dkt. No. 26.

12 Plaintiffs subsequently amended their complaint. In the FAC, Plaintiffs make clear that
 13 now they are only challenging the Park Service’s failure to revise the 1980 General Management
 14 Plan as it pertains to Tomales Point,² and not the 1998 Tule Elk Management Plan. *See, e.g.*, FAC
 15 at ¶¶ 2–3, 88–90. In short, Plaintiffs contend that under 54 U.S.C. § 100502, the Park Service is
 16 required to update its general management plan “in a timely manner,” and that by failing to do so
 17 for over forty years, the Park Service has unreasonably delayed agency action, in violation of 5
 18 U.S.C. § 706(1). *Id.* at ¶¶ 88–90. The parties have filed cross-motions for summary judgment.
 19 Dkt. Nos. 56, 57.

20 //

21
 22 ² In 2021 the Park Service began the process of amending the 1980 GMP to “update management
 23 guidance for approximately 28,000 of the more than 86,000 acres of national park system lands
 24 managed by Point Reyes, including all lands currently leased for beef and dairy ranching.” *See*
 25 AR 350, 354. But Plaintiffs urge that this amendment only covers a *portion* of the National
 26 Seashore, and does not update the management guidance as to Tomales Point or the tule elk there.
 27 *See* Dkt. No. 57-1 at 11, 16. Although the amendment does discuss elk management as to two
 28 free-ranging herds found elsewhere in the National Seashore, the Park Service clarified in
 response to public comment on the amendment that “[t]he fenced elk population on Tomales Point
 is outside the planning area.” *See* AR 383–86, 1341. It is unclear whether a “timely” amendment
 under 54 U.S.C. § 100502 would require specific consideration of Tomales Point and the tule elk
 there as Plaintiffs suggest. *See* Dkt. No. 57-1 at 19 (“[F]ailing to revise the 1980 GMP for
 Tomales Point is indisputably unreasonable.” (emphasis added)). But because the Court does not
 reach the question of whether the Park Service unreasonably delayed in revising the 1980 GMP,
 the Court need not address this issue.

1 **II. LEGAL STANDARD**

2 Summary judgment is proper when a “movant shows that there is no genuine dispute as to
3 any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a).
4 A fact is “material” if it “might affect the outcome of the suit under the governing law.” *Anderson*
5 *v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). And a dispute is “genuine” if there is evidence
6 in the record sufficient for a reasonable trier of fact to decide in favor of the nonmoving party. *Id.*
7 But in deciding if a dispute is genuine, the court must view the inferences reasonably drawn from
8 the materials in the record in the light most favorable to the nonmoving party, *Matsushita Elec.*
9 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587–88 (1986), and “may not weigh the evidence
10 or make credibility determinations,” *Freeman v. Arpaio*, 125 F.3d 732, 735 (9th Cir. 1997),
11 *overruled on other grounds by Shakur v. Schriro*, 514 F.3d 878, 884–85 (9th Cir. 2008). If a court
12 finds that there is no genuine dispute of material fact as to only a single claim or defense or as to
13 part of a claim or defense, it may enter partial summary judgment. Fed. R. Civ. P. 56(a).

14 **III. DISCUSSION**

15 Under § 706(1), a court may “compel agency action unlawfully withheld or unreasonably
16 delayed.” See 5 U.S.C. § 706(1). As explained above, Plaintiffs contend that under 54 U.S.C.
17 § 100502, the Park Service must “prepare[] and revise[]” its general management plan “in a timely
18 manner.” See 54 U.S.C. § 100502. Forty years, they posit, is untimely under any definition, and
19 has led to inadequate care of the tule elk at Tomales Point. See FAC at ¶¶ 88–90.

20 **A. Standing**

21 As an initial matter, the Park Service argues that Plaintiffs lack standing to bring their APA
22 claim. See Dkt. No. 57 at 9–12. A plaintiff seeking relief in federal court bears the burden of
23 establishing “the irreducible constitutional minimum” of standing. *Spokeo, Inc. v. Robins*, 136 S.
24 Ct. 1540, 1547 (2016) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)). *First*, the
25 plaintiff must have “suffered an injury in fact.” *Id.* This requires “an invasion of a legally
26 protected interest” that is concrete, particularized, and actual or imminent, rather than conjectural
27 or hypothetical. *Lujan*, 504 U.S. at 560 (quotation omitted). *Second*, the plaintiff’s injury must be
28 “fairly traceable to the challenged conduct of the defendant.” *Spokeo*, 136 S. Ct. at 1547. *Third*,

1 the injury must be “likely to be redressed by a favorable judicial decision.” *Id.* (citing *Lujan*, 504
 2 U.S. at 560–61). The Park Service urges that Plaintiffs cannot meet any of these three standing
 3 requirements.

4 **i. Injury in Fact**

5 Injury in fact may be alleged as either a “procedural” or a “substantive” injury. *See City of*
 6 *Sausalito v. O’Neill*, 386 F.3d 1186, 1197 (9th Cir. 2004). Procedural injury results from violating
 7 a statute or regulation that guarantees *a particular procedure*. *See id.* (“[A] cognizable procedural
 8 injury exists for Article III purposes . . . because of a failure to honor a statutorily required
 9 procedure”) (citing *Citizens for Better Forestry v. U.S. Dep’t of Agric.*, 341 F.3d 961, 969–70
 10 (9th Cir. 2003)). Substantive injury, on the other hand, results from violating a statute or
 11 regulation that guarantees *a particular result*. *See West v. Sec’y of Dep’t of Transp.*, 206 F.3d 920,
 12 930, n.14 (9th Cir. 2000). Here, because Plaintiffs contend that the Park Service failed to timely
 13 update the 1980 GMP as required under § 100502, they assert a procedural injury. *See* Dkt. No.
 14 58 at 10 (“Plaintiffs here are complaining about a *procedural* violation of the relevant
 15 statute”) (emphasis in original).

16 As the Supreme Court has explained, however, “an asserted right to have the Government
 17 act in accordance with law is not sufficient, standing alone, to confer jurisdiction on a federal
 18 court.” *See Allen v. Wright*, 468 U.S. 737, 754 (1984), *abrogated on other grounds by Lexmark*
 19 *Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014). Thus, Plaintiffs may not
 20 simply allege that the Park Service failed to comply with § 100502. Rather, Plaintiffs must “also
 21 assert[] a ‘concrete interest’ that is threatened by the failure to comply with that [procedural]
 22 requirement.” *City of Sausalito*, 386 F.3d at 1197. Here, Plaintiffs contend that their aesthetic
 23 interests in visiting, photographing, and studying the wildlife at the Seashore—including the tule
 24 elk at Tomales Point—are threatened by the Park Service’s failure to revise the general
 25 management plan under § 100502. *See* Dkt. No. 56 at 23–24; Dkt. No. 58 at 3–7.

26 In response, the Park Service suggests that Plaintiffs cannot state a procedural injury under
 27 § 100502 because the statute’s procedural requirements do not protect Plaintiffs’ interests. *See*
 28 Dkt. No. 57 at 10–11. Specifically, the Park Service argues that because § 100502 “does not

1 provide for public participation, the statute does not afford a procedural right protective of
2 Plaintiffs’ concrete interests.” *See* Dkt. No. 57 at 10. In other words, the Park Service suggests
3 that § 100502 must afford Plaintiffs specific procedural rights—such as notice and comment—in
4 order for them to establish procedural injury. *See id.*; *see also* Dkt. No. 59 at 2–3.

5 In its briefing, the Park Service relies heavily on a District of Wyoming case in support of
6 this limitation on procedural injury. *See id.* at 10–11. In *Jackson Hole v. Babbitt*, the plaintiffs
7 sued the National Park Service over its decision to construct a new entrance station to the Grand
8 Teton National Park. *See Jackson Hole Conservation All. v. Babbitt*, 96 F. Supp. 2d 1288, 1290–
9 92 (D. Wyo. 2000). The plaintiffs urged that the Park Service’s decision was based on a deficient
10 environmental assessment, prepared under the National Environmental Policy Act (“NEPA”). *Id.*
11 They also argued that the Park Service failed to prepare a GMP for the park, in violation of 16
12 U.S.C. § 1a-7 (the predecessor to § 100502, the statute at issue in this case). *Id.* at 1292.

13 Although the court found that the plaintiffs had standing to sue under NEPA, it concluded that
14 they did not have standing to sue under § 1a-7. *See id.* at 1292–95. The court explained that the
15 plaintiffs “have standing to challenge NPS’s compliance with 16 U.S.C. § 1a-7 *only if that statute*
16 *provides them with a procedural right* whose transgression constitutes an Article III injury in
17 fact.” *Id.* at 1295 (emphasis added). But “in contrast to NEPA, § 1a-7 does not provide any
18 opportunity for public participation or comment in the general management plan planning
19 process.” *Id.* The court concluded that the plaintiffs did not have a procedural right conferred by
20 § 1a-7, such that they were just arguing that the Park Service “failed to obey the law,” which is not
21 sufficient to establish standing. *Id.* (citing *Allen*, 468 U.S. at 754).

22 Here, the Park Service argues that the Court should adopt the reasoning in *Jackson Hole*
23 and find that (1) a right to public participation through notice and comment is required for a
24 plaintiff to establish a procedural injury; and (2) because § 100502 (like § 1a-7 before it) does not
25 provide for public participation, Plaintiffs cannot establish standing in this case. *See* Dkt. No. 57
26 at 10–11; Dkt. No. 59 at 2–3. But the Court would not lightly rely so heavily on a single out-of-
27 district case on this foundational issue of law. The court’s analysis about standing in *Jackson*
28 *Hole* is brief, and in the two decades since it was decided, only one other case appears to have

1 relied on its reasoning. *See Feldman v. Mainella*, No. CV 05-4900 DT (CWX), 2006 WL
2 8448114, at *10 (C.D. Cal. Mar. 27, 2006) (concluding in a single sentence that § 1a-7 “does not
3 provide a private right of action,” and therefore the plaintiffs lacked standing). The court in
4 *Jackson Hole* also based its own analysis on a single Tenth Circuit case, *State of Utah v. Babbitt*,
5 137 F.3d 1193, 1197–99 (10th Cir. 1998), to support its conclusion that the plaintiffs cannot assert
6 standing to sue based on procedural injuries under § 1a-7.

7 In *State of Utah v. Babbitt*, the plaintiffs filed suit to enjoin the Bureau of Land
8 Management (“BLM”) from preparing an inventory of public lands in Utah. 137 F.3d at 1197–99.
9 Under the Federal Land Policy and Management Act (“FLPMA”), the BLM is required to conduct
10 periodic inventories of federal lands to determine whether any areas are suitable for preservation
11 as wilderness. *Id.* In 1980, BLM conducted this inventory and recommended millions of acres in
12 the state be designated as wilderness. *Id.* But Congress never passed any legislation actually
13 designating these federal lands as wilderness. *Id.* In 1996, the Secretary of the Interior therefore
14 said that “a small team of career professionals” would reassess the federal lands in Utah and report
15 their findings to address this stalemate. *Id.* The plaintiffs challenged this process, arguing, *inter*
16 *alia*, that the defendants had no authority to conduct this re-inventory, and that it violated the
17 FLPMA because the new inventory plan did not provide for public participation. *Id.* at 1200.

18 The Tenth Circuit held that the plaintiffs did not have standing to sue. *Id.* at 1206–16. The
19 court reasoned that the plaintiffs lacked standing because they did not actually have a statutory
20 right to participate in the inventory process. *Id.* at 1206–09. The plaintiffs therefore could not
21 claim that they were injured because of the denial of this right. *Id.* The Tenth Circuit further
22 noted that “[a]ny future injury Plaintiffs may suffer from the submission of the inventory report
23 directly to Congress,” such as from actual changes in the management or designation of the land,
24 “is speculative at best.” *Id.* at 1210, n.25. The report would “not contain any recommendations
25 concerning the suitability or unsuitability of the land for management as wilderness,” and would
26 not “affect the management of the public lands.” *Id.* at 1199. It was also not clear what, if
27 anything, Congress would even do with the report, so the plaintiffs could not rely on the
28 possibility of congressional action to establish injury in fact. *Id.* at 1210, n.25.

1 Critically, however, the court did not suggest that a right to public participation is *always*
2 required to establish standing for procedural injuries. Nor did the court determine that the
3 FLPMA had to provide the plaintiffs with any other procedural rights for them to assert standing
4 based on procedural injury. Because the plaintiffs in *State of Utah* had argued that they had
5 standing based on a right to public participation, the court addressed that specific alleged injury.
6 This Court thus does not read the reasoning of *State of Utah* to speak directly to the issue
7 addressed in *Jackson Hole*.

8 Unfortunately, the parties do not cite—and the Court has been unable to find—any Ninth
9 Circuit cases addressing whether public participation rights are required for plaintiffs to establish
10 procedural injury generally or under § 100502 more specifically. Rather, the parties’ proffered
11 cases simply discuss at a high level what is required to assert procedural injury. In one
12 formulation, the Ninth Circuit explains:

13 [T]o show a cognizable injury in fact, [plaintiffs] must allege (and on
14 summary judgment adduce sufficient facts to show) that (1) the
15 [agency] violated certain procedural rules; (2) these rules protect [the
16 plaintiffs’] concrete interests; and (3) it is reasonably probable that
the challenged action will threaten their concrete interests.

17 *See Citizens for Better Forestry*, 341 F.3d at 969–70. In a more recent case, the Ninth Circuit
18 provided a slightly different formulation:

19 To establish an injury-in-fact, a plaintiff challenging the violation of
20 a procedural right must demonstrate (1) *that he has a procedural right*
21 *that, if exercised, could have protected his concrete interests*, (2) that
the procedures in question are designed to protect those concrete
22 interests, and (3) that the challenged action’s threat to the plaintiff’s
concrete interests is reasonably probable.

23 *California v. Azar*, 911 F.3d 558, 570 (9th Cir. 2018) (citing *Citizens for Better Forestry*, 341 F.3d
24 at 969–70) (emphasis added). The Park Service relies on the highlighted language in *Azar* to
25 suggest that Plaintiffs must establish that § 100502 provides them with specific procedural rights
26 to assert procedural injury. *See* Dkt. No. 59 at 2–3. There is some logical appeal to this
27 suggestion. But the Ninth Circuit did not address the source of the procedural rights asserted
28 there.

1 As the Park Service acknowledges in its reply, these “procedural rights” cases generally
2 arise in the context of NEPA, “which confers procedural rights upon interested members of the
3 public.” *See* Dkt. No. 59 at 2. The Park Service suggests that this is because such statutory rights
4 to public participation are required to assert procedural injury. *Id.* Yet the Ninth Circuit never
5 says as much in these cases. To the contrary, the Ninth Circuit has previously stated that “[i]t is
6 unclear whether th[e] ‘procedural right’ must be conferred by a statute, or whether the right arises
7 because a concrete interest is threatened.” *See Douglas Cnty. v. Babbitt*, 48 F.3d 1495, 1501, n.4
8 (9th Cir. 1995). To the Court’s knowledge, the Ninth Circuit has not explicitly resolved this
9 ambiguity.

10 During the hearing on the motions for summary judgment, the Park Service cited to a
11 passage in *Fernandez v. Brock*, in which the Ninth Circuit stated:

12 A plaintiff who merely claims that a defendant violated a statutory
13 duty does not necessarily satisfy the requirement of injury in fact in
14 article III. Instead, we hold that the crucial inquiry in such a situation
15 is whether a statute that imposes statutory duties *creates correlative*
16 *procedural rights in a given plaintiff*, the invasion of which is
17 sufficient to satisfy the requirement of injury in fact in article III.

18 840 F.2d 622, 630 (9th Cir. 1988) (emphasis added). The Park Service again argues that this
19 language supports its contention that Plaintiffs cannot establish an injury in fact based on a
20 violation of § 100502, which does not provide for public participation in the GMP process. But
21 the Court finds that the Park Service reads this language in *Fernandez* too broadly.

22 In *Fernandez*, the plaintiffs were migrant farmworkers seeking a court order to force the
23 Secretary of Labor to establish regulations under the Employment Retirement Income Security Act
24 (“ERISA”) to govern the participation, accrual, and vesting threshold for pension benefits for
25 seasonal workers. *Id.* at 624–25. As relevant here, the farmworkers argued that for purposes of
26 standing, their injury was the violation of their statutory rights under ERISA. *Id.* at 628. They
27 cited various provisions that require the Secretary to promulgate regulations for the seasonal
28 industry. *Id.* at 628. They urged “that when Congress enacts a statute imposing a statutory duty,
the violation of this duty is sufficient to satisfy the injury-in-fact prong of standing, even though

1 no injury would exist without the statute.” *Id.* In short, the plaintiffs suggested that the
2 Secretary’s failure to comply with the statute conferred standing. As noted above, the Supreme
3 Court has already rejected this theory. *See Allen*, 468 U.S. at 754.

4 The Ninth Circuit thus explained that instead it had to evaluate “the statutory language, the
5 statutory purpose, and the legislative history” of ERISA to determine whether it was intended to
6 protect the plaintiffs’ interests. *Id.* at 629–31. Much like in *Citizens for Better Forestry* or *Azar*,
7 the Ninth Circuit considered whether “the procedures in question [were] designed to protect some
8 threatened concrete interest of [the plaintiffs]” *See Citizens for Better Forestry*, 341 F.3d at
9 969 (quotation omitted). Having done so, the Court ultimately found that Congress had
10 recognized the needs of seasonal workers, and the plaintiffs therefore had established injury in
11 fact. *Id.*

12 Consistent with *Fernandez*, the Ninth Circuit seems to routinely find procedural injury
13 without any consideration of the public’s right to participate in the agency’s decision-making
14 process.

15 In *National Family Farm Coalition v. EPA*, for example, the plaintiffs challenged the
16 EPA’s decision to register a pesticide to kill weeds on corn, soybean, and cotton fields under the
17 Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”). *See Nat’l Fam. Farm Coal. v.*
18 *EPA*, 966 F.3d 893, 904–07 (9th Cir. 2020). The plaintiffs argued that the EPA misapplied
19 FIFRA’s procedural requirements, and failed to consider whether farmers’ use of the pesticide on
20 milkweed in their fields would unreasonably adversely impact the monarch butterfly population.
21 *Id.* The EPA argued that the plaintiffs lacked standing. *Id.* at 908–10. The Ninth Circuit
22 explained that the plaintiffs were asserting procedural injuries. *Id.* at 909. However, in
23 determining whether the plaintiffs had standing based on these injuries, the Court did not consider
24 whether registering a chemical under FIFRA required notice and comment. Whether or not the
25 statute actually requires such public participation, the Court did not identify or discuss any such
26 right when determining whether the plaintiffs had established an injury in fact. *Id.* at 909–10.

27 Rather, the Ninth Circuit broadly explained that “the registration provisions at issue [in
28 FIFRA] are designed to protect the environment.” *Id.* at 909. The Court then focused on the

1 plaintiffs’ asserted interest in the environment—specifically, their aesthetic interest in the monarch
2 butterflies. The Court found that the plaintiffs had sufficiently established injury in fact based on
3 their declarations that they “enjoy watching the monarch butterfly migration where they live, that
4 [the new pesticide] is approved for use in their states, and that they are concerned they will no
5 longer be able to enjoy observing monarch butterflies because of [the pesticide’s] effects on
6 milkweed.” *Id.* The Court explained that even for procedural injuries, “a concrete interest can be
7 an aesthetic or recreational interest in a particular place, or animal, or plant species” provided
8 “there is a geographic nexus between the individual[s] asserting the claim and the location
9 suffering [the] environmental impact.” *Id.* (quotations omitted) (alterations in original).

10 In short, the Court recognized plaintiffs’ aesthetic interest in the monarch butterflies as a
11 concrete interest protected by FIFRA’s registration process. *Id.*; accord *Ctr. for Biological*
12 *Diversity v. Mattis*, 868 F.3d 803, 809–17, & n.5 (9th Cir. 2017) (recognizing procedural injury
13 based on the Department of Defense’s alleged failure to take into account a new military base’s
14 impact on recognized cultural heritage properties as required under the National Historic
15 Preservation Act); *Desert Citizens Against Pollution v. Bisson*, 231 F.3d 1172, 1176 (9th Cir.
16 2000) (“The recreational or aesthetic enjoyment of federal lands is a legally protected interest
17 whose impairment constitutes an actual, particularized harm sufficient to create an injury in fact
18 for purposes of standing.”); *City of Davis v. Coleman*, 521 F.2d 661, 671 (9th Cir. 1975) (“The
19 procedural injury implicit in agency failure to prepare an [Environmental Impact Statement under
20 NEPA]—the creation of a risk that serious environmental impacts will be overlooked—is itself a
21 sufficient ‘injury in fact’ to support standing, provided this injury is alleged by a plaintiff having a
22 sufficient geographical nexus to the site of the challenged project that he may be expected to suffer
23 whatever environmental consequences the project may have.”).

24 These cases are also consistent with the Supreme Court’s suggestion that plaintiffs may
25 “seek[] to enforce a procedural requirement the disregard of which could impair a separate
26 concrete interest of theirs.” See *Lujan v. Defs. of Wildlife*, 504 U.S. at 572, & n.7 (emphasis
27 added). “[O]ne living adjacent to the site for proposed construction of a federally licensed dam
28 has standing to challenge the licensing agency’s failure to prepare an environmental impact

1 statement, even though he cannot establish with any certainty that the statement will cause the
 2 license to be withheld or altered, and even though the dam will not be completed for many years.”
 3 *Id.* at 572, n.7. In this hypothetical, the Supreme Court did not condition standing on whether the
 4 person living adjacent to the proposed dam could provide input during the preparation of the
 5 environmental impact statement.

6 The Ninth Circuit’s reasoning in *National Family Farm Coalition* and the Supreme Court’s
 7 hypothetical in *Lujan* therefore seem to apply with equal force here. Under § 100502, the
 8 preparation and revision of the GMPs are intended “for the preservation and use” of the national
 9 parks, and “shall include . . . measures for the preservation of the area’s resources.” 54 U.S.C.
 10 § 100502(1). They are therefore intended, at least in part, to protect “resources” like the wildlife
 11 within the national parks—just as FIFRA is intended to protect the environment. And here,
 12 Plaintiffs contend that they have an aesthetic interest in the resources within the national parks—
 13 particularly the tule elk at Tomales Point. Plaintiffs contend that the failure to revise the GMP in
 14 over forty years has threatened these interests.³ *See* Dkt. No. 58 at 4.

15 In support of their motion for summary judgment, Plaintiffs have also provided
 16 declarations in which they explain that they visit Tomales Point regularly and have aesthetic and
 17 recreational interests in the wildlife there. *See, e.g.*, Dkt. No. 56, Exs. C–F. Plaintiff Jack
 18 Gescheidt, for example, states that he has “been visiting Tomales Point in the Point Reyes
 19 National Seashore on a regular basis—on average six times per year—for at least twenty-four
 20 years.” *See* Dkt. No. 56-4, Ex. C at ¶ 1. He “come[s] to the Tomales Point park for aesthetic
 21 enjoyment, recreation, and spiritual renewal,” and enjoys photographing the area, “including the
 22 magnificent Tule elk herd.” *Id.* at ¶ 2. He also explains how the well-being (or lack thereof) of

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³ The Animal Legal Defense Fund asserts standing to bring suit on behalf of its members, whose
 aesthetic and recreational interests are germane to the organization’s purposes, and are negatively
 impacted by the Park Service’s alleged inaction. *See* Dkt. No. 58 at 6–7; FAC at ¶¶ 16–18. The
 Park Service does not appear to raise distinct organizational standing arguments as to this Plaintiff.
Cf. Friends of the Earth v. Laidlaw Envtl. Services, 528 U.S. 167, 180 (2000) (“An association has
 standing to bring suit on behalf of its members when its members would otherwise have standing
 to sue in their own right, the interests at stake are germane to the organization’s purpose, and
 neither the claim asserted nor the relief requested requires the participation of individual members
 in the lawsuit.”).

1 the elk has affected his enjoyment of Tomales Point during his visits. *See id.* at ¶¶ 3–8. He
2 worries for the safety of the remaining elk, and has avoided returning to the park rather than risk
3 seeing dead or emaciated elk given current circumstances. *Id.* The Park Service does not question
4 the veracity of Plaintiffs’ asserted aesthetic interests in this case, and the Supreme Court has
5 confirmed that “[o]f course, the desire to use or observe an animal species, even for purely esthetic
6 purposes, is undeniably a cognizable interest for purposes of standing.” *See Lujan*, 504 U.S. at
7 562–563.

8 In the absence of clearer authority, the Court thus declines the Park Service’s invitation to
9 limit the procedural injury doctrine to statutes providing the public with the right to notice and
10 comment. Accordingly, the Court finds that Plaintiffs have adduced sufficient evidence to support
11 their contention that they have suffered injury in fact based on the threat to their concrete aesthetic
12 and recreational interests.

13 **ii. Causation & Redressability**

14 The Park Service next contends that even if Plaintiffs have identified an injury in fact, they
15 cannot establish causation and redressability. *See* Dkt. No. 57 at 11–12. The Park Service argues
16 that Plaintiffs’ suggestion that revising the 1980 GMP would change the way elk management is
17 conducted in Tomales Point is simply too speculative and attenuated. *Id.* They note that the 1980
18 GMP does not address elk management with any specificity—rather, that level of detail is
19 contained in the 1998 Elk Management Plan. *Id.*; *see also* Dkt. No. 59 at 4 (“GMPs are
20 programmatic documents providing ‘broad direction for park management.’”). The Park Service
21 further notes that the Court cannot dictate the substance of *how* the GMP is revised. Dkt. No. 57
22 at 12. Therefore, even if the Park Service revised the GMP, the Park Service suggests that the
23 plan could remain largely unchanged and the elk in Tomales Point would continue to be managed
24 as they are now. *Id.*

25 The Ninth Circuit has explained that “[a] showing of procedural injury lessens a plaintiff’s
26 burden on the last two prongs of the Article III standing inquiry, causation and redressability.”
27 *Salmon Spawning & Recovery Alliance v. Gutierrez*, 545 F.3d 1220, 1226 (9th Cir. 2008).
28 “Plaintiffs alleging procedural injury can often establish redressibility with little difficulty,

1 because they need to show only that the relief requested—that the agency follow the correct
2 procedures—*may* influence the agency’s ultimate decision” *Id.* at 1226–27; *see also Citizens*
3 *for Better Forestry*, 341 F.3d at 976 (“A petitioner who asserts inadequacy of a government
4 agency’s environmental studies . . . need not show that further analysis by the government would
5 result in a different conclusion. It suffices that . . . the [agency’s] decision *could be influenced* by
6 the environmental considerations that [the relevant statute] requires an agency to study.”)
7 (alterations and emphasis in original). The Ninth Circuit has said “[t]his is not a high bar to
8 meet.” *Salmon Spawning*, 545 F.3d at 1227.

9 To the extent the Park Service argues that the relaxed standard for causation and
10 redressability does not apply here, Dkt. No. 57 at 12, the Court disagrees. As explained in Section
11 III.A.i above, the Court has found that Plaintiffs have adduced evidence of a procedural injury.
12 The Park Service’s remaining arguments are inconsistent with the relaxed standard for procedural
13 injuries.

14 The Park Service points out that specific tule elk management decisions—such as whether
15 to maintain a fence separating the herds from public grazing land and whether to provide
16 additional forage—are currently addressed in the 1998 Tule Elk Management Plan. *Id.* at 11–12;
17 Dkt. No. 59 at 3–7. NPS therefore urges that Plaintiffs cannot establish that prevailing on their
18 APA claim to revise the GMP would have any effect on the management or health of the tule elk
19 at all. *Id.* But the Park Service’s argument relies on the assumption that because the current GMP
20 does not provide any specific guidance on elk management, a revised GMP would not either.

21 Plaintiffs contend that the current GMP is deficient because it does not contain adequate
22 measures ensuring the protection of wildlife at the Seashore and does not account for the state’s
23 severe and ongoing drought conditions. *See* Dkt. No. 58 at 7–8. Plaintiffs further argue that a
24 revised GMP could—and should—address such things. *Id.* As it stands now, the 1980 GMP
25 identifies the Park Service’s management objectives, including “protect[ing] marine mammals,
26 threatened and endangered species, and other sensitive natural resources found within the
27 seashore.” AR 301. It also states that “[r]estoration of historic natural conditions (such as
28 reestablishment of Tule elk) will continue to be implemented when such actions will not seriously

1 diminish scenic and recreational values.” *See id.* at 313. The GMP does, therefore, consider
2 wildlife such as the tule elk to at least some degree. NPS does not identify any statutory basis
3 under § 100502 or elsewhere that would preclude a revised GMP from providing for more explicit
4 consideration of the health and ongoing welfare of wildlife at the Seashore. Plaintiffs do not need
5 to show that a revised GMP would actually result in a different management plan or that it would
6 weigh considerations affecting tule elk management differently. It is enough that the Park
7 Service’s revision “could be influenced” by the considerations for elk health and safety that
8 Plaintiffs identify. *See Citizens for Better Forestry*, 341 F.3d at 976 (emphasis omitted).

9 The Park Service’s reliance on *Salmon Spawning* is similarly misplaced. *See* Dkt. No. 59
10 at 6–7. In *Salmon Spawning*, the Ninth Circuit explained that although the redressability
11 requirement for procedural injuries “is not a high bar,” it is also “not toothless.” 545 F.3d at 1226–
12 27. In that case, the State Department had entered into a treaty on behalf of the United States with
13 Canada regarding fisheries in the Pacific Northwest. *See id.* at 1223–24. The plaintiffs argued
14 that before the State Department could enter this treaty, the Endangered Species Act required it to
15 request advice from the National Marine Fisheries Service (“NMFS”) or the Fish and Wildlife
16 Service about the treaty’s effect on endangered species such as the salmon in this area. *Id.* NMFS
17 evaluated the treaty and issued a “biological opinion” that it was not likely to jeopardize the
18 endangered salmon. *Id.* The plaintiffs challenged the NMFS biological opinion as arbitrary and
19 capricious, and the implementation of the treaty was thus unlawful. *Id.* at 1224.

20 In evaluating the plaintiffs’ standing, the Ninth Circuit reasoned that it could theoretically
21 set aside the biological opinion. *Id.* at 1226. Critically, however, the Court concluded that it
22 “could not set aside the next, and more significant, link in the chain—the United States’ entrance
23 into the Treaty” because “that is a decision committed to the Executive Branch.” *Id.* at 1226–27.
24 The Park Service has not identified any similar limitation or break in the causal chain here.

25 The Park Service also cites *Fernandez v. Brock* in arguing that Plaintiffs cannot establish
26 redressability here. *See* Dkt. No. 57 at 12. As discussed in Section III.A.i above, the plaintiffs in
27 *Fernandez* were migrant farmworkers seeking access to pension benefits under ERISA. *See*
28 *Fernandez*, 840 F.2d at 625–28. The Ninth Circuit held that it was too speculative to conclude

1 that they would receive pension benefits if the Secretary of Labor promulgated new regulations for
 2 seasonal workers. *Id.* The Court questioned the chain of causation, explaining that “the
 3 farmworkers do not know what the regulations will say and cannot predict whether their employer
 4 will continue to offer a pension plan at all.” *Id.* at 628. The Court pointed out that the new
 5 regulations may not “differ meaningfully” from those already in place. *Id.* But critically,
 6 *Fernandez* predates the Supreme Court’s opinion in *Lujan*, and did not apply the relaxed standard
 7 for procedural injuries. *See id.* at 625–28. As the Ninth Circuit later recognized, plaintiffs
 8 asserting procedural injuries do not need to establish with certainty that their injury will be
 9 addressed if the agency follows the correct procedures. “[T]hey need to show only that the relief
 10 requested—that the agency follow the correct procedures—*may* influence the agency’s ultimate
 11 decision” *Salmon Spawning*, 545 F.3d at 1226–27.

12 Assuming NPS failed to comply with its obligations under § 100502, “the court can
 13 remedy the defect by ordering the Government to comply with its statutory obligations.” *See*
 14 *Mattis*, 868 F.3d at 819. It is thus enough for Plaintiffs to show that the Park Service’s procedural
 15 compliance with § 100502 may affect their aesthetic interests by changing the way wildlife such
 16 as the tule elk are managed at Tomales Point.

17 * * *

18 The Court finds that Plaintiffs have established standing to pursue their APA claim.

19 **B. Enforceability under the APA**

20 The Park Service next argues that even if Plaintiffs have standing, they still cannot bring a
 21 claim under § 706(1) of the APA based on § 100502 because the statute does not involve “a
 22 ministerial or non-discretionary act.” *See* Dkt. No. 57 at 12–15 (citing *Norton v. S. Utah*
 23 *Wilderness All.* (“*SUWA*”), 542 U.S. 55, 64 (2004)).

24 Under the APA, the Court can “compel agency action unlawfully withheld or unreasonably
 25 delayed.” 5 U.S.C. § 706(1). The Supreme Court has interpreted this language to mean that “the
 26 only agency action that can be compelled under the APA is action legally *required*.” *SUWA*, 542
 27 U.S. at 63, & n.1 (emphasis in original). Accordingly, a case under § 706(1) “can proceed only
 28 where a plaintiff asserts that an agency failed to take a *discrete* agency action that it is *required to*

1 *take.*” *Id.* at 64 (emphasis in original). Section 706(1) is not intended to permit “broad
2 programmatic attack(s)” on agency action, which are better addressed “in the offices of the
3 [agency] or the halls of Congress” *Id.* (quotation omitted). The Court explained that such
4 limitations are intended “to protect agencies from undue judicial interference with their lawful
5 discretion, and to avoid judicial entanglement in abstract policy disagreements which courts lack
6 both expertise and information to resolve.” *Id.* at 66.

7 To prevail under § 706(1), Plaintiffs must therefore demonstrate that the Park Service had
8 a nondiscretionary duty to act under § 100502. *Id.* at 63–64. As with all questions of statutory
9 interpretation, the starting point for determining whether such a duty exists is the language of the
10 statute itself. *See United States v. Lillard*, 935 F.3d 827, 833 (9th Cir. 2019) (“The interpretation
11 of a statutory provision must begin with the plain meaning of its language.” (quotation omitted)).

12 As relevant here, § 100502 states:

13
14 General management plans for the preservation and use of each
15 System unit . . . shall be prepared and revised in a timely manner by
16 the Director.

16 54 U.S.C. § 100502 (emphasis added). Plaintiffs contend that the word “shall” is “an unequivocal
17 word of command,” which when paired with the words “be revised” indicates that the Park
18 Service has a non-discretionary duty to revise the GMP. *See* Dkt. No. 58 at 11–14; Dkt. No. 56 at
19 17–18. The Park Service, in turn, responds that because the statute does not prescribe *when* it
20 must revise a GMP or *how* it should do so, the statute inherently implicates the agency’s discretion
21 and does not impose any non-discretionary duty for purposes of § 706(1). *See* Dkt. No. 57 at 12–
22 15. The Court agrees with the Park Service that when read in context and against the backdrop of
23 binding authority, § 100502 does not require the kind of mandatory, non-discretionary act
24 necessary for claims under § 706(1).

25 The Park Service urges that a statute cannot compel any “discrete” act without an attendant
26 statutory timeframe. *Id.* In *SUWA*, for example, the Supreme Court indicated that “the failure to
27 promulgate a rule or take some decision *by a statutory deadline*” may be a discrete act. *See*
28 *SUWA*, 542 U.S. at 63 (emphasis added). As an example, the Court explained that under 47

1 U.S.C. § 251, the Federal Communications Commission is required “to establish regulations to
2 implement’ interconnection requirements ‘[w]ithin 6 months’ of the date of enactment of the
3 Telecommunications Act of 1996.” *Id.* at 65 (quoting 47 U.S.C. § 251(d)(1)). This statutory
4 mandate, the Court explained, “would have supported a judicial decree under the APA requiring
5 the prompt issuance of regulations, but not a judicial decree setting forth the content of those
6 regulations.” *Id.* Because § 100502 does not contain a specific timeframe to revise GMPs,
7 however, the Park Service suggests that Plaintiffs cannot bring their unreasonable delay claim.

8 Plaintiffs respond that although the Supreme Court in *SUWA* referenced a statute that
9 contained a deadline as an example of a mandatory duty, “the Court certainly did not rule that this
10 was the only kind of mandatory duty that would suffice” under § 706(1). *See* Dkt. No. 58 at 11–
11 12. Plaintiffs then list several cases they say support their position that no specific timeline is
12 required to find mandatory duties for purposes of § 706(1). *See* Dkt. No. 58 at 12. However, the
13 majority of these cases involve 5 U.S.C. § 555(b), and thus do not address § 706(1) or *SUWA* at
14 all. *Id.*

15 For example, in *In re Natural Resources Defense Council, Inc.*, 956 F.3d 1134, 1136 (9th
16 Cir. 2020), the Ninth Circuit considered the EPA’s failure to respond to an administrative petition
17 that the Natural Resources Defense Council (“NRDC”) had filed requesting that a specific
18 pesticide no longer be allowed in household pet products. *See id.* at 1136–37. The EPA did not
19 respond to the petition for approximately five years. *Id.* at 1137. The EPA sought remand for
20 further consideration of the risks associated with the pesticide, and said it would issue a revised
21 response to the NRDC’s petition. *Id.* But several years later, the EPA had still not done so, and
22 the NRDC filed another case seeking a writ of mandamus to compel the EPA to issue a final
23 response to the petition under 5 U.S.C. § 555(b). *Id.* at 1138.

24 Section 555(b) applies when a “person [] appear[s] before an agency . . . for the
25 presentation, adjustment, or determination of an issue, request or controversy in a proceeding . . .
26 or in connection with an agency function.” 5 U.S.C. § 555(b). The statute directs “each agency to
27 conclude a matter presented to it” “within a reasonable time.” *Id.* Such cases, therefore, are not
28 subject to the same limitations as those brought under § 706(1). The parties did not have to

1 identify any discrete or non-discretionary act, and the Court did not address that question. *Accord*
2 *In re A Cmty. Voice*, 878 F.3d 779, 784–86 (9th Cir. 2017) (“[A]n agency has a duty to fully
3 respond to matters that are presented to it under its internal processes.”); *In re Pesticide Action*
4 *Network N. Am., Nat. Res. Def. Council, Inc.*, 798 F.3d 809, 811–13 (9th Cir. 2015); *Asmai v.*
5 *Johnson*, 182 F. Supp. 3d 1086, 1089, 1092–93 (E.D. Cal. 2016). Because Plaintiffs have not
6 petitioned the Park Service to do anything, these cases are readily distinguishable.

7 Even in the cases that do not explicitly rely on § 555(b), they still involve an agency’s
8 response time to petitions or applications. In *In re Public Employees for Environmental*
9 *Responsibility*, 957 F.3d 267, 274 (D.C. Cir. 2020), for example, the plaintiffs filed a mandamus
10 petition to compel the Park Service and the Federal Aviation Authority to issue rules governing
11 commercial sightseeing flights over national parks. 957 F.3d at 269. The relevant applications
12 had been pending “for nearly two decades.” *Id.* Under the relevant statute, however, the agency
13 “shall make every effort to act on [an] application . . . and issue a decision on the application *not*
14 *later than 24 months after it is received or amended.*” 49 U.S.C. § 40128(a)(2)(E) (emphasis
15 added). The district court reasoned that the plaintiffs were only seeking “to compel the [agencies]
16 to make decisions within the statutory time frames.” *Id.* at 273 (quotation omitted) (alteration in
17 original). And “[a]lthough the Act does not impose a rigid schedule, it provides a ruler against
18 which the agencies’ progress must be measured.” *Id.* at 274. Even if the Court found this
19 reasoning persuasive, the statute at issue here does not provide this kind of timeline or “ruler.” *Cf.*
20 *WildEarth Guardians v. Chao*, 454 F. Supp. 3d 944, 955 (D. Mont. 2020) (“The cases where
21 courts have entered an injunction remedying an agency’s failure to act explain the narrow scope of
22 § 706(1) and generally present challenges to an agency’s failure to comply with an absolute, non-
23 discretionary duty that involves a time limit.”) (collecting cases).

24 Nevertheless, the Ninth Circuit has suggested at least in passing that a statutory deadline
25 may not be required for purposes of § 706(1). In *Hells Canyon Pres. Council v. U.S. Forest Serv.*,
26 593 F.3d 923, 932–34 (9th Cir. 2010), for example, the plaintiffs argued that the Forest Service
27 failed to comply with its mandatory duty to prevent motor vehicles in a certain part of the Hells
28 Canyon Wilderness. *See id.* The relevant statute states that “there shall be no . . . use of motor

1 vehicles within any such [wilderness] area.” The Court explained the limitations under § 706(1)
2 that the Supreme Court identified in *SUWA*. *See id.* at 932–33 (“[A] claim under § 706(1) can
3 proceed only where a plaintiff asserts that an agency failed to take a discrete agency action that it
4 is required to take.”) (quotation and emphasis omitted). And the Ninth Circuit did not question
5 that the statute—which does not contain any deadline—imposed a nondiscretionary duty. *Id.*
6 Rather, the Court rejected the plaintiffs’ claim by holding that the Forest Service had already
7 complied with its duty. *Id.* at 932 (“[T]he Forest Service has been carrying out this statutory
8 responsibility since at least 1981.”). In concurrence, Judge Graber further emphasized that “[i]t
9 cannot seriously be disputed that the Forest Service must prohibit the use of motor vehicles within
10 the Wilderness area.” *Id.* at 934 (Graber, J., concurring in part and dissenting in part); *see also*
11 *Vietnam Veterans of Am. v. Cent. Intel. Agency*, 811 F.3d 1068, 1078–79 (9th Cir. 2016) (finding
12 regulation providing ongoing duty to warn of health effects still satisfied § 706(1)). Accordingly,
13 the lack of a clear statutory deadline does not appear dispositive. *Cf. Forest Guardians v. Babbitt*,
14 174 F.3d 1178, 1190 (10th Cir. 1999) (“[I]f an agency has no concrete deadline establishing a date
15 by which it must act . . . a court must compel only action that is delayed unreasonably.”).

16 But unlike the statute in *Hells Canyon*, § 100502 provides additional guidance regarding
17 the agency action. It says that “[g]eneral management plans . . . shall be prepared and revised *in a*
18 *timely manner*.” 54 U.S.C. § 100502. In determining whether this imposes a nondiscretionary
19 duty, Plaintiffs do not grapple with the meaning of “in a timely manner” in the context of the
20 statute as a whole. *See* Dkt. No. 58 at 13–14. Rather, they repeatedly point out that the use of the
21 word “shall” is “critical” because it is “an unequivocal word of command.” *Id.* at 14 (emphasis
22 omitted). When asked about the “timely manner” language during the hearing on the motions,
23 Plaintiffs further clarified that in their view it is irrelevant to the initial question of whether
24 § 100502 imposes a non-discretionary duty. They urge that the Court should only consider this
25 language once it turns to the merits question of whether the Park Service in fact unreasonably
26 delayed in revising the 1980 GMP.

27 Yet despite Plaintiffs’ urging, the word “shall” is not talismanic. Plaintiffs’ own authority
28 only states that “the word ‘shall’ *usually* connotes a requirement.” *See Maine Cmty. Health*

1 *Options v. United States*, 140 S. Ct. 1308, 1320 (2020) (emphasis added). The Court must still
 2 interpret the statute as a whole and in context to understand whether it imposes a nondiscretionary
 3 duty. The Court therefore cannot elevate the word “shall” and ignore the “in a timely manner”
 4 language entirely. As the Ninth Circuit has instructed, “[w]e start with the plain statutory text and,
 5 when deciding whether the language is plain, we must read the words in their context and with a
 6 view to their place in the overall statutory scheme.” *See Altera Corp. & Subsidiaries v. Comm’r*
 7 *of Internal Revenue*, 926 F.3d 1061, 1075 (9th Cir. 2019) (quotations omitted).

8 Plaintiffs assert that “timely,” if considered at all, simply means “quickly, rapidly; without
 9 delay, promptly.” Dkt. No. 58 at 13. But this generic definition makes little sense in the context
 10 of general management plans, which address long-term planning needs for all “area[s] of land and
 11 water administered by the Secretary [of the Interior], acting through the Director [of the National
 12 Park Service], for park, monument, historic, parkway, recreational, or other purposes.” *See* 54
 13 U.S.C. § 100501; *see also* 54 U.S.C. § 100102(1), (3). Section 100502 itself also lists broad
 14 categories of information that general management plans “shall include”:

- 15 1) measures for the preservation of the area’s resources;
- 16 2) indications of types and general intensities of development
 17 (including visitor circulation and transportation patterns,
 18 systems, and modes) associated with public enjoyment and
 19 use of the area;
- 20 3) identification of and implementation commitments for visitor
 21 carrying capacities for all areas of the System unit; and
- 22 4) indications of potential modifications to the external
 23 boundaries of the System unit, and the reasons for the
 24 modifications.

25 54 U.S.C. § 100502. Any one of these categories would require significant time and resources to
 26 analyze and develop for each specific System unit. It defies common sense to believe Congress
 27 intended the Park Service to prepare and revise such complex documents “quickly” or “rapidly.”
 28 Moreover, under Plaintiffs’ interpretation, the Park Service would have to revise a GMP “quickly”
 or “rapidly,” even if the Park Service had just prepared it.

The Oxford English Dictionary—on which Plaintiffs rely—offers several other more apt
 definitions. These include “[s]ufficiently early, in good time”; “[a]t a fitting, suitable, or

1 favourable time; in a well-timed manner; opportunely” and “[a]t the proper or natural time; not
2 prematurely.”⁴ These definitions all highlight the inherently subjective nature of the phrase “in a
3 timely manner.” The phrase, on its own, does not clarify when the Park Service must act.
4 Whether a revision is made at a “favorable” or “proper” time will require consideration of the
5 surrounding circumstances, including the scope of the general management plans and the need for
6 revision. The Court therefore agrees with the Park Service that “in a timely manner” confers “a
7 great deal of discretion [on the agency] in deciding how to achieve” the statute’s object. *SUWA*,
8 542 U.S. at 66.

9 In *SUWA*, the plaintiffs alleged that the BLM failed to comply with its statutory and
10 regulatory mandates by allowing recreational use of off-road vehicles on federal land. *See SUWA*,
11 542 U.S. at 59–60. The relevant statutes instructed BLM to “continue to manage [lands] . . . in a
12 manner so as not to impair the suitability of such areas for preservation as wilderness” and to
13 “manage the public lands under principles of multiple use and sustained yield, in accordance with
14 the land use plans.” *Id.* at 59–60, 66–67. The Supreme Court found that although these statutes
15 were “mandatory as to the object to be achieved,” they still left “BLM a great deal of discretion in
16 deciding how to achieve it.” *Id.* at 66.

17 The Court declined the plaintiffs’ invitation to “enter a general order compelling
18 compliance with the mandate, without suggesting any particular manner of compliance.” *Id.*
19 Doing so, the Court cautioned, “would mean that it would ultimately become the task of the
20 supervising court, rather than the agency, to work out compliance with the broad statutory
21 mandate, injecting the judge into day-to-day agency management.” *Id.* at 66–67. But “[t]he
22 prospect of pervasive oversight by federal courts *over the manner and pace of agency compliance*
23 with such [broad] congressional directives is not contemplated by the APA.” *Id.* at 67 (emphasis
24 added); *see also id.* at 63 (indicating § 706(1), like traditional mandamus, is limited to “the
25

26 ⁴ *See Timely*, *Oxford English Dictionary*,
27 <https://www.oed.com/view/Entry/202121?rskey=QHf6SQ&result=2&isAdvanced=false#eid> (last
28 visited Feb. 24, 2023); *see also Opportune*, *Merriam-Webster Dictionary*, [https://www.merriam-
webster.com/dictionary/opportunely](https://www.merriam-webster.com/dictionary/opportunely) (last visited Feb. 24, 2023) (“[O]ccurring at an appropriate
time.”).

1 ordering of a precise, definite act about which [an official] ha[s] no discretion whatever.”)
2 (quotations omitted) (alterations in original). Here too, an order directing the Park Service to
3 prepare a revised general management plan under § 100502 would substitute the Court’s judgment
4 for the agency’s in determining when such a plan required revision.

5 Similarly, in *ONRC Action v. Bureau of Land Mgmt.*, 150 F.3d 1132, 1134–35 (9th Cir.
6 1998), the plaintiff sued BLM under § 706(1), claiming that it had violated NEPA and the FLPMA
7 by failing to stop logging and road construction, land exchanges, and juniper eradication in the
8 Cascade Mountains. The plaintiffs pointed to § 1712 of the FLPMA, which states that “[t]he
9 Secretary shall . . . maintain, and, when appropriate, revise land use plans.” 43 U.S.C. § 1712.
10 Although the statute uses the word “shall,” the Ninth Circuit nevertheless held that the statute did
11 not impose a nondiscretionary duty that was enforceable under § 706(1). *ONRC*, 150 F.3d at
12 1139. The Court reasoned that “[t]he language in Section 1712 does not [] establish a clear duty
13 of when to revise the plans” *Id.*; accord *Luciano Farms, LLC v. United States*, No. 2:13-CV-
14 02116-KJM-AC, 2014 WL 1912356, at *3 (E.D. Cal. May 13, 2014) (finding statutory language
15 requiring agency to revise land resource management plans for national forests “as appropriate”
16 “do[es] not command anyone to do anything or to refrain from doing anything”). There is no
17 meaningful distinction between the statutory language in *ONRC*, which required the BLM to
18 revise land management plans “when appropriate,” and the “in a timely manner” language at issue
19 here. Just as § 1712 does not impose a nondiscretionary duty, neither does § 100502.

20 Plaintiffs rely heavily on the district court’s order in *Resource Renewal Inst. v. Nat’l Park*
21 *Services*, No. C 16-0688 SBA, 2016 WL 11673179, at *4–5 (N.D. Cal. July 15, 2016). *See* Dkt.
22 No. 56 at 17–18; Dkt. No. 58 at 11. There, the court analyzed § 100502 and reasoned that a
23 specific statutory deadline was not necessary to establish a non-discretionary duty under § 706(1).
24 *Res. Renewal*, 2016 WL 1167319, at *4–5. The court explained that “the statute commands that
25 the NPS ‘shall’ revise a GMP in a ‘timely manner,’” and “[a]lthough the NPS has leeway in
26 deciding when to revise a GMP, it remains statutorily obligated to do so in a ‘timely manner.’” *Id.*
27 at *4. The Court respectfully disagrees with the reasoning of this case, as reflected in the analysis
28 above. The court in *Resource Renewal* did not examine the meaning of the phrase “in a timely

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1 manner,” or consider the effect that this phrase had on the meaning of the statute overall, instead
2 focusing on the use of the word “shall.” It also relied on cases involving § 555(b), which as
3 discussed above, does not contain the same limitations as claims brought under § 706(1).

4 The Court finds that § 100502 does not create a nondiscretionary duty to act. The Court
5 therefore cannot compel agency action as being unlawfully withheld under § 706(1). The Court
6 understands Plaintiffs’ concerns that the tule elk population at Tomales Point has decreased
7 significantly over the last few years. *See* Dkt. No. 56-1, Ex. A at 3, 9 (reporting decline in 2020
8 from 445 to 293 elk in 2020); Dkt. No. 57-2, Ex. 1 (reporting decline in 2021 from 293 to 221
9 elk). But the Court must faithfully adhere to the limits of the APA. As the Ninth Circuit has
10 cautioned, “[e]ven if a court believes that the agency is withholding or delaying an action the court
11 believes it should take, the ability to compel agency action is carefully circumscribed to situations
12 where an agency has ignored a specific legislative command.” *See Gardner v. U.S. Bureau of*
13 *Land Mgmt.*, 638 F.3d 1217, 1221–22 (9th Cir. 2011) (quotation omitted).

14 * * *

15 Because the Court has found that § 100502 is not enforceable under the APA, the Court
16 does not address whether the Park Service has been untimely in revising the 1980 General
17 Management Plan. As the Court has previously explained, it is not indifferent to the conditions
18 facing the tule elk. But Plaintiffs have not identified a viable legal basis that would entitle them,
19 or the Court, to intervene in the Park Service’s wildlife management decisions.⁵

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27 ⁵ Notably, the Park Service has publicly announced that it “will develop a new management plan
28 for Tomales Point,” including revising the 1998 Tule Elk Management Plan and the 1980 General
Management Plan. *See* Dkt. No. 57 at 23–24; *see also* Dkt. No. 57-1, Ex. 1 at ¶¶ 2–4.

1 **IV. CONCLUSION**

2 The Court **GRANTS** Defendants' motion for summary judgment and **DENIES** Plaintiffs'
3 motion for summary judgment. The Clerk is directed to enter judgment in favor of Defendants
4 and to close the case.

5 **IT IS SO ORDERED.**

6 Dated: 2/27/2023

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8 HAYWOOD S. GILLIAM, JR.
9 United States District Judge
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United States District Court
Northern District of California