UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

RESOURCE RENEWAL INSTITUTE, CENTER FOR BIOLOGICAL DIVERSITY, and WESTERN WATERSHEDS PROJECT,

Plaintiffs,

vs.

NATIONAL PARK SERVICE, a federal agency, and CICELY MULDOON, in her official capacity as Superintendent of Point Reyes National Seashore,

Defendants.

Case No: C 16-0688 SBA

ORDER DENYING DEFENDANTS' MOTION TO DISMISS AND GRANTING ALTERNATIVE MOTION FOR A MORE DEFINITE STATEMENT

Dkt. 26

Non-profit environmental organizations Resource Renewal Institute, Center for Biological Diversity and Western Watersheds Project (collectively, "Plaintiffs"), bring the instant action under the Administrative Procedures Act ("APA"), 5 U.S.C. § 701, against the National Park Service ("NPS") and Cicely Muldoon, Superintendent of Point Reyes National Seashore (collectively, "Defendants"), to challenge their continued authorization of commercial dairy and cattle ranching at the Point Reyes National Seashore ("Seashore"). The parties are presently before the Court on Defendants' Motion to Dismiss Complaint or, in the Alternative, for a More Definite Statement, pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(e), respectively. Dkt. 26. Having read and considered the papers filed in connection with this matter and being fully informed, the Court hereby DENIES Defendants' motion to dismiss, and GRANTS their alternative motion for a more definite statement. The Court, in its discretion, finds this matter suitable for resolution without oral argument. See Fed. R. Civ. P. 78(b); N.D. Cal. Civ. L.R. 7-1(b).

I. BACKGROUND

A. FACTUAL SUMMARY

1. Overview

The Seashore is a park preserve located on a coastal peninsula in western Marin County, California. Compl. ¶¶ 1, 19, Dkt. 1. The Seashore, which is part of the National Park System, encompasses approximately 71,000 acres and 80 miles of coastline. Id. ¶¶ 19, 22. It is home to a diverse array of wildlife, including more than one hundred species of mammals, reptiles and amphibians—some of which are protected under the Endangered Species Act ("ESA"). Id. The Seashore's natural resources are among the most geologically and ecologically diverse in the National Park System. Id.

The genesis of Seashore dates back to 1962, when Congress passed an Act authorizing the establishment of the Seashore in order "to save and preserve, for purposes of public recreation, benefit, and inspiration, a portion of the diminishing seashore of the United States that remains undeveloped . . . ." Pub. L. No. 87-657, 76 Stat. 538 (1962) (codified, as amended, at 16 U.S.C. §§ 459c through 459c-7 (2012)). The enabling legislation for the Act granted the Secretary of the Interior administrative authority over the property and directed him to acquire lands, waters, and other property and interests within the Seashore. 16 U.S.C. § 459c-2, c-4.

The Seashore is managed by NPS, which is part of the United States Department of the Interior. The NPS was established in 1916, pursuant to the National Park Service Organic Act of 1916 ("Organic Act"), which mandates, inter alia, that it manage national parks, monuments and specified reservations "in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." 16 U.S.C. § 1. In furtherance of that objective, Congress later amended the Organic Act by enacting the National Parks and Recreation Act, which includes a requirement for the NPS to prepare and revise a general management plan ("GMP") for the preservation and use of each unit of the National Park System. National Parks and Recreations Act of 1978 ("NPRA"), Pub. L.

95-625, Title VII, § 604(3), 92 Stat. 3467, 3518.[1] The provisions governing the preparation and revision of GMPs are now set forth in 54 U.S.C. § 100502, which provide as follows:

> General management plans for the preservation and use of each System unit, including areas within the national capital area, shall be prepared and revised *in a timely manner* by 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. General management plans for each System unit shall include—
>
> (1) measures for the preservation of the area's resources;
>
> (2) indications of types and general intensities of development (including visitor circulation and transportation patterns, systems, and modes) associated with public enjoyment and use of the area; including general locations, timing of implementation, and anticipated costs;
>
> (3) identification of and implementation commitments for visitor carrying capacities for all areas of the System unit; and
>
> (4) indications of potential modifications to the external boundaries of the System unit, and the reasons for the modifications.

See 54 U.S.C. § 100502. The NPS's internal polices describe GMPs as the "basic foundation for decisionmaking." To stay "current," a GMP is to be "reviewed and amended or revised . . . every 10 to 15 years [or] . . . sooner if conditions change significantly." Chanin Decl., Ex. A at 8, 11 (2006 Management Policies at §§ 2.3.1, 2.3.12), Dkt. 28-2.

2. Ranching Activities

The instant dispute arises from the NPS' ongoing practice of permitting commercial dairy and cattle ranching on approximately twenty-five active "ranch units," located on 18,000 acres of the Seashore. Compl. ¶¶ 31, 92. These authorizations, which typically span from one to ten years, are comprised of agricultural lease/permits, special use permits and letters of authorization. Id. ¶¶ 94, 96, 31. According to Plaintiffs, ranching operations

[1] The requirements pertaining to the creation and revision of a GMP were originally codified under the NPRA at 16 U.S.C. § 1a-7(b). This section was repealed on December 19, 2014, and reenacted pursuant to an act styled as the National Park Services and Related Programs ("NPS Act") P.L. 113-287, § 3, 128 Stat. 3094 (2014) (codified as 54 U.S.C. § 100502).

"cause or threaten significant adverse impacts to the natural resources, wildlife, cultural objects, recreational opportunities, educational opportunities, and public enjoyment of the . . . Seashore." Id. ¶ 67. Among other things, cattle grazing is destructive to native vegetation, impairs water quality and increases erosion, which, in turn, harms aquatic life. Id. ¶ 32.[2]

Despite the negative impact of ranching activities at the Seashore, Defendants have continued to authorize dairy and cattle ranching operations without first preparing an updated GMP or an environmental impact study ("EIS") or environmental analysis ("EA"), as required by the National Environmental Policy Act ("NEPA"). Id. ¶¶ 97, 98, 122, 124, 127, 132-33. According to Plaintiffs, almost all of the previously-issued grazing permits or leases have expired, and the NPS has recently been using ad hoc measures to continue authorizing livestock ranching on the Seashore, without any public input or evaluation under NEPA. Id. ¶ 99. The NPS has announced to the public that it is issuing letters of authorization allowing ranching to continue where agricultural leases/permits or special use permits have expired until it issues new leases/permits. Id.

3. General Management Plan

Plaintiffs' concerns regarding Defendants' continued authorization of dairy and cattle ranching at the Seashore also form the basis of their claim regarding Defendants' failure to prepare a new or revised GMP. In 1980, the NPS issued a GMP ("1980 GMP") for the Seashore and an accompanying GMP Environmental Assessment ("GMP EA"). Id. ¶ 56. The GMP EA explained that while dairy and cattle ranching are "desirable" in certain areas of the Seashore, "natural resource management considerations will not support grazing in all areas where it has occurred historically." Id.

[2] Among the wildlife negatively impacted by ranching operations are tule elk, which are native to the Seashore but were extirpated in the 1800's, largely due to hunting and agriculture. Compl. ¶ 84. Under the Tule Elk Preservation Act of 1976, 16 U.S.C. § 673d, tule elk were reintroduced to the Seashore in 1978. Id. ¶ 85. A three mile long fence erected by Defendants to protect ranching operations have harmed and killed hundreds of tule elk. Id. ¶¶ 86-91.

Since then, the NPS has signaled its intention to prepare a new General Management Plan and Environmental Impact Statement ("GMP/EIS") for the Seashore, as evidenced by notices published in the Federal Register in 1997, 1999 and 2000. Id. ¶¶ 62, 116. In addition, in 1999, the NPS announced that a draft EIS would by publicly available in the summer of 2001, and that a final EIS and Record of Decision would issue in spring of 2002. Id. ¶ 63. None of those deadlines were met. Id.

In a 2003 newsletter to the public, the NPS announced five alternative management concepts for the Seashore to be considered in the GMP/EIS revision, and sought public comments. Id. ¶ 65. Of these five alternatives for future management of the Seashore, three contemplated reductions in ranching, while only one contemplated expanding such operations. Id.

In 2008, the NPS announced it would release a draft GMP/EIS during the fall of 2008 or the winter of 2009 and a final GMP/EIS and Record of Decision in 2009. Id. ¶ 66. However, the agency never completed the GMP revision process and apparently has no current plans to do so. Id.

B. PROCEDURAL HISTORY

Plaintiffs filed the instant action in this Court on February 10, 2016. The Complaint alleges three claims for relief under the APA. The first claim is predicated on APA § 706(1), which empowers a federal court to "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1). In particular, Plaintiffs allege that Defendants have failed to revise the GMP for the Seashore in a "timely manner," as required by the NPS Act, 54 U.S.C. §§ 100101, 100502. As relief, Plaintiffs seek an order requiring Defendants to adopt a current and valid GMP on a reasonably expedited schedule.

The second and third claims seek judicial review of final agency actions under APA § 706(2), which authorizes a court to set aside a final agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.'" 5 U.S.C. § 706(2). The second claim challenges the Defendants' issuance of ranching authorizations during the past six years in violation of NEPA and its implementing regulations. The third

claim similarly challenges the same conduct as a violation of the Point Reyes National Seashore Act, 16 U.S.C. § 459c-6, and the NPS Act. Plaintiffs seek to set aside the authorizations.[3]

In response to the Complaint, Defendants have filed a Motion to Dismiss Plaintiffs' Complaint or, in the Alternative, for a More Definite Statement. Dkt. 26. Defendants contend that the Court lacks subject matter jurisdiction under the APA as to the first claim on the ground that there is no non-discretionary duty under 54 U.S.C. § 100502 requiring them to revise the GMP for the Seashore. As to the remaining claims, Defendants argue that Plaintiffs are alleging a non-justiciable programmatic challenge to their "ranching program," as opposed to challenging a specific agency action. Alternatively, Defendants move for a more definite statement to compel Plaintiffs to specifically identify each ranching authorization being challenged in the second and third claims. The motion is fully briefed and ripe for adjudication.

II. LEGAL STANDARD

A. MOTION TO DISMISS FOR LACK OF JURISDICTION

An action may be dismissed under Rule 12(b)(1) for lack of subject matter jurisdiction. "A jurisdictional challenge under Rule 12(b)(1) may be made either on the face of the pleadings or by presenting extrinsic evidence." Warren v. Fox Family Worldwide, Inc., 328 F.3d 1136, 1139 (9th Cir. 2003). Where, as here, the challenge is a facial one, "[t]he district court resolves a facial attack as it would a motion to dismiss under Rule 12(b)(6): Accepting the plaintiff's allegations as true and drawing all reasonable inferences in the plaintiff's favor, the court determines whether the allegations are sufficient as a legal matter to invoke the court's jurisdiction." Leite v. Crane Co., 749 F.3d 1117, 1121 (9th Cir. 2014). Where the pleadings fail to allege facts "essential to federal jurisdiction," the district court must dismiss the case. Tosco Corp. v. Comt'ys for a Better

[3] Plaintiffs claim that they do not seek to bar all ranching activities at the Seashore, but desire to ensure that the propriety and extent of such ranching is timely decided through the processes required by law—a revised GMP and a NEPA-compliant EIS.

Env't, 236 F.3d 495, 499 (9th Cir. 2001). Leave to amend should be granted where the defect can be cured with additional factual allegations. Id.

B. MOTION FOR A MORE DEFINITE STATEMENT

"If a pleading is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading." Fed. R. Civ. P. 12(e). Rule 12(e) motions generally are disfavored. Medrano v. Kern Cnty. Sheriff's Officer, 921 F. Supp. 2d 1009, 1013 (E.D. Cal. 2013). Nonetheless, a more definite statement may be appropriate to address pleading ambiguities. See Kirkpatrick v. Cty. of Washoe, 792 F.3d 1184, 1191 (9th Cir. 2015), reh'g en banc granted, 813 F.3d 1258 (9th Cir. 2016) (noting that a motion for more definite statement is appropriate to address "ambiguities" in a complaint); see also Swierkiewicz v. Sorema N.A., 534 U.S. 506, 514 (2002) ("If a pleading fails to specify the allegations in a manner that provides sufficient notice, a defendant can move for a more definite statement under Rule 12(e) before responding.").

III. DISCUSSION

A. CLAIM ONE

Plaintiffs bring their first claim under the APA to compel Defendants to adopt a current GMP for the Seashore on a reasonably expedited schedule. The APA allows a court to compel "agency action unlawfully withheld or unreasonably delayed," 5 U.S.C. § 706(1), in cases where it "failed to take a discrete agency action that it is required to take," Norton v. S. Utah Wilderness Alliance, 542 U.S. 55, 64 (2004). When an agency fails to act, the APA provides relief in the form of empowering a court to compel agency action that has been unlawfully withheld or unreasonably delayed. Id. at 62.

To invoke jurisdiction under the APA, the plaintiff must show that the defendant (1) had a non-discretionary duty to act, and (2) unreasonably delayed in acting on that duty. Id. at 63-65. Defendants contend that 54 U.S.C. § 100502 does not impose any non-discretionary duty to act because the statute does not prescribe *when* the NPS must revise a GMP or provide any guidelines for doing so. This contention lacks merit. The command

of the NPS Act is clear: "General management plans for the preservation and use of each System unit . . . *shall* be prepared and revised *in a timely manner* by the Director. 54 U.S.C. § 100502 (emphasis added). The use of the term "shall" conveys that the duty to act is mandatory. See United States v. Monsanto, 491 U.S. 600, 607 (1989). The imposition of a "timely manner" requirement, as opposed a specific statutory deadline, does not affect the justiciability of a claim for unreasonable delay under the APA. See Houseton v. Nimmo, 670 F.2d 1375, 1377 (9th Cir. 1982) ("even though agency action may be subject to no explicit time limit, a court may compel an agency to act within a reasonable time."); see also Forest Guardians v. Babbitt, 164 F.3d 1261, 1272 (10th Cir. 1998), opinion amended on denial of reh'g, 174 F.3d 1178 (10th Cir. 1999) (finding that a claim of unreasonable delay based on an agency's failure to act "within an expeditious, prompt, or reasonable time" may be adjudicated by the court under the APA).[4]

The cases cited by Defendants are uncompelling. In ONRC Action v. Bureau of Land Management, 150 F.3d 1132 (9th Cir. 1998), plaintiffs filed suit under the APA, alleging, inter alia, that Bureau of Land Management ("BLM") had failed to predicate its land management activities on "up-to-date land use plans," as ostensibly required by the Federal Land Policy Management Act ("FLPMA"). Id. at 1137. On appeal, the Ninth Circuit upheld the district court's dismissal of the action for lack of standing under the APA on the ground that none of the statutory or regulatory provisions cited by the plaintiffs imposed a clear duty on the BLM to revise its land use plans. Id. In reaching its decision, the court focused on the fact that the FLPMA requires the revision of land use plans *only if*

[4] Whether an agency has, in fact, unreasonably delayed in taking action is a merits question. The Ninth Circuit has recognized that "*in the absence of a firm deadline*" to act, a district court should analyze the reasonableness of such delay in light of the factors set forth in T.R.A.C. v. F.C.C., 750 F.2d 70 (D.C. Cir. 1984). See Biodiversity Legal Found. v. Badgley, 309 F.3d 1166, 1177 n.11 (9th Cir. 2002) (emphasis added). However, when a firm statutory deadline exists, "no balancing of [the T.R.A.C.] factors is required or permitted." Id. This dichotomy—and, in particular, the recognition that the T.R.A.C. factors apply "in the absence of a firm deadline"—further supports the conclusion that a firm deadline is not required to establish jurisdiction under the APA.

deemed "appropriate" by the BLM. Id. The court also pointed out that the cited statutes and regulations did not specify "when to revise the plans." Id.

Unlike the FMPLA, the NPS Act does not confer discretion on the NPS to decide *whether* to revise a GMP. To the contrary, the statute commands that the NPS "shall" revise a GMP in a "timely manner." Although the NPS has leeway in deciding *when* to revise a GMP, it remains statutorily obligated to do so in a "timely manner," which the FPLMA did not require in ONCR. Were the Court to conclude otherwise, as urged by Defendants, their statutory obligation to revise a GMP would be rendered a nullity. See Tang v. Chertoff, 493 F.Supp.2d 148, 150 (D. Mass. 2007) ("The duty to act is no duty at all if the deadline is eternity."). As for the remaining cases string-cited by Defendants, they too are inapposite. As in ONRC, those cases involved statutes that expressly conferred upon the subject agency the discretion to decide whether it is "appropriate" to act. See Gardner v. U.S. Bureau of Land Mgmt., 638 F.3d 1217, 1220 (9th Cir. 2011); Luciano Farms, LLC v. United States, No. 2:13-CV-02116-KJM-AC, 2014 WL 1912356, at *3 (E.D. Cal. May 13, 2014); Idaho Rivers United v. U.S. Forest Serv., 857 F. Supp. 2d 1020, 1032 (D. Idaho 2012).

Equally misplaced is Defendants' reliance on Conservation Northwest v. Kempthorne, No. C 04-1331-JCC, 2007 WL 1847143 (W.D. Wash. June 25, 2007). Reply at 2. In that case, the district court found it lacked jurisdiction to review a claim that the Fish and Wildlife Service ("FWS") had unreasonably delayed in implementing grizzly bear recovery plans under the section 4(f) of the ESA. Id. at *5.[5] Defendants argue that Kempthorne establishes that decisions by an agency based upon a statute requiring action in a "timely manner" are unreviewable under the APA. However, despite Defendants' suggestions to the contrary, the statute discussed in Kempthorne did not direct the agency

[5] Section 4(f) of the ESA states that "[t]he Secretary shall develop and implement plans (hereinafter in this subsection referred to as 'recovery plans') for the conservation and survival of endangered species and threatened species listed pursuant to this section, unless he finds that such a plan will not promote the conservation of the species." 16 U.S.C. § 1533(f)(1) (emphasis added).

to act in a "timely manner." In fact, the statute provided no guidance, either expressly or implicitly, as to when all terms of a recovery plan are to be implemented. Id. at *2. It was for that specific reason that the district court concluded that the FWS's decision respecting the implementation of the recovery plans was within the agency's non-reviewable discretion. Id. at *3.

In sum, the Court is unpersuaded by Defendants' contention that Plaintiffs' first claim under the APA is subject to dismissal for lack of jurisdiction. Defendants' motion to dismiss said claim is therefore DENIED.

B. CLAIMS TWO AND THREE

Plaintiffs bring their second and third claims under the APA's provisions for judicial review of final agency actions. See 5 U.S.C. § 706(2). Under the APA, a court may set aside an agency's final action if the action was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). To maintain a cause of action under this provision, a plaintiff must challenge an "agency action" that is "final." Norton v. S. Utah Wilderness Alliance, 542 U.S. 55, 61-62 (2004). "As a general matter, two conditions must be satisfied for an agency action to be "final": First, the action must mark the 'consummation' of the agency's decisionmaking process, . . . —it must not be of a merely tentative or interlocutory nature. And second, the action must be one by which 'rights or obligations have been determined,' or from which 'legal consequences will flow.'" Bennett v. Spear, 520 U.S. 154, 177-78 (1997) (citations omitted). The APA does not allow "programmatic" challenges, but instead requires that plaintiffs challenge a specific final agency action which has "an actual or immediate threatened effect." Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 882-894 (1990).

Defendants contend that Plaintiffs' second and third claims fail to challenge any discrete agency action, and instead present impermissible "programmatic challenges" to their "ranching program" at the Park. Mot. at 12-13. This contention lacks merit. The Complaint expressly challenges ranching authorizations which permit cattle grazing and related activities at each of the twenty-five ranch units at the Park. Compl. ¶¶ 92-99.

These types of authorizations are subject to judicial review under the APA. See Oregon Nat. Desert Ass'n v. U.S. Forest Serv., 465 F.3d 977, 984 (9th Cir. 2006) (holding that an authorization for livestock grazing on federal property was a "final agency action" subject to review under the APA).

In their reply, Defendants concede that Plaintiffs may challenge the authorizations permitting dairy and ranching activities at the Seashore, but now complain that the pleadings fail to identify each particular authorization at issue. Reply at 7. However, Defendants have not cited any binding decisional authority holding that, to survive a Rule 12(b)(1) motion, the pleadings must comport with a heightened level of specificity. To the contrary, the Ninth Circuit has recognized that for purposes of establishing jurisdiction, generalized allegations will suffice. See Maya v. Centex Corp., 658 F.3d 1060, 1068 (9th Cir. 2011) ("At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss [for lack of subject matter jurisdiction] we 'presum[e] that general allegations embrace those specific facts that are necessary to support the claim.'") (citations omitted).

Defendants rely on Osage Producers Association v. Jewell, No.15-CV-469-GKF-FHM, 2016 WL 3093938 (N.D. Okla. June 1, 2016) ("OPA"), where the district court dismissed a petition for review under the APA for lack of subject matter jurisdiction, inter alia, on the ground that the petitioner was asserting a non-justiciable programmatic challenge. See Reply at 7-8. That case is readily distinguishable. In OPA, the court found that the petition did not identify any specific agency actions, but "generically described[d] certain arbitrary or unlawful agency practices" that amounted to nothing more than "a generic challenge to an amorphous group of several hundred administrative decisions." 2016 WL 3093938, at *2. The Complaint in this action is fundamentally different than the petition in OPA. In the instant case, the pleadings challenge Defendants' authorizations for livestock ranching on the approximately twenty-five units comprising the Park that have been issued over the course of the last six years. Compl. ¶¶ 92, 94-99. The general terms and conditions of those authorizations are likewise alleged. Id. Although each particular

authorization is identified, Plaintiffs have alleged sufficient information to invoke subject matter jurisdiction at this stage of the litigation. Accordingly, Defendants' motion to dismiss the second and third claims is DENIED.

As an alternative matter, Defendants request that, in the event the action is not dismissed for lack of subject matter jurisdiction, the Court order Plaintiffs to file a more definite statement specifically listing each of the final agency actions they seek to challenge in their second and third claims. As noted, a more definite statement under Rule 12(e) is the appropriate vehicle to obtain clarity regarding claims alleged in a pleading. See Kirkpatrick, 792 F.3d at 1191. Plaintiffs contend that Defendants already are aware of the agency actions in dispute and that their request for a more definite statement is a stall tactic. In particular, Plaintiffs assert that during the pre-motion meet and confer process, they directed Defendants to the NPS's website for the list of the ranching authorizations that are being challenged. Chainin Decl. ¶ 15 & Exs. N-O. However, the Court notes that the Complaint purports to challenge "ranching authorizations [issued] within the last six years on the Point Reyes National Seashore . . . ." Compl. ¶¶ 121, 127. It is unclear whether the authorizations listed on the NPS's website represent the entire constellation of challenged agency actions, or whether additional authorizations are at issue. In either event, the onus is on Plaintiffs to specifically identify those actions. Defendants should not be required to speculate what actions are being challenged in this action. As such, Defendants' alternative motion for a more definite statement is GRANTED.

IV. CONCLUSION

For the reasons set forth above,

IT IS HEREBY ORDERED THAT Defendants' motion to dismiss is DENIED, and their alternative request for a more definite statement is GRANTED. Within twenty-one (21) days of the date this Order is filed, Plaintiffs shall file a First Amended Complaint which includes allegations identifying each of the ranching authorizations that form the basis of their second and third claims for relief.

IT IS SO ORDERED.

Dated: July 15, 2016

SAUNDRA BROWN ARMSTRONG
Senior United States District Judge