



December 7, 2021

Office of Fossil Energy and Carbon Management
Department of Energy
fergas@hq.doe.gov
via email

Re: Docket No. 21-98-LNG, Freeport LNG Expansion, L.P. et al. Application

The Center for Biological Diversity (“Center”) submits these comments in opposition to Freeport LNG Expansion, LP and three FLNG Liquefaction LLC entities’ application to increase their exports to non-free trade agreement countries by 88 billion cubic feet of gas per year. The Center supports and incorporates by reference the Sierra Club and Natural Resources Defense Council’s protest.

In addition to the project-specific reasons detailed in the protest for why the request to increase export volume should be denied as contrary to the public interest, the Department of Energy (“DOE”) should decline the applicants’ invitation to apply the ill-conceived categorical exclusion that was adopted in the waning days of the Trump administration. During the short 30-day comment period provided for the Notice of Proposed Rulemaking to revise categorical exclusion 5.7, nineteen environmental public interest organizations and the Sabin Center for Climate Change Law submitted comments in opposition. Those comments highlighted that:

- The proposal did not meet the NEPA standards for a categorical exclusion.¹
- DOE impermissibly disregarded indirect and cumulative effects, including upstream and downstream greenhouse gas emissions. Contrary to DOE’s argument that it has no authority to prevent upstream and downstream impacts, DOE in fact retains “exclusive” authority to do so.² DOE has also previously recognized that natural gas exports can affect the environment, including by inducing upstream production,³ so could not reasonably say based on its experience that exports do not cause significant environmental impacts.⁴

¹ *Sierra Club v. Bosworth*, 510 F.3d 1016, 1027 (9th Cir. 2007) (an agency’s decision to create a categorical exclusion will be considered arbitrary and capricious if: “[i]t failed to consider adequately the unique characteristics of the applicable geographic areas, the degree to which effects on the quality of the environment were controversial or the risks were unknown, the degree to which the [categorical exclusions] might establish a precedent for future actions with significant effects or represented a decision in principle about future considerations, the degree to which the actions might affect endangered species, and whether there existed cumulative impacts from other related actions”); *see also id.* at 1030-33; *Colorado Wild Heartwood v. U.S. Forest Serv.*, 435 F.3d 1204, 1218-19 (10th Cir. 2006).

² *Sierra Club v. FERC*, 827 F.3d 36, 46-48 (D.C. Cir. 2016); *see also Sierra Club v. DOE*, 867 F.3d 189, 192 (2017).

³ *See Sierra Club v. DOE*, 867 F.3d 189, 201 (D.C. Cir. 2017) (DOE has “candidly discussed significant risks associated with increased gas production.”).

⁴ *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

- The lifecycle analyses cited by DOE in the NPRM significantly underestimate methane emissions during natural gas production and do not properly account for the rise of renewable energy in overseas markets.
- DOE unlawfully ignored other foreseeable impacts of export authorization decisions, including increased noise and ship strikes that harm threatened species, air pollutants and greenhouse gas emissions from the marine vessels, and impacts from invasive species that travel in ballast water.
- The categorical exclusion improperly segments the environmental review of natural gas export approvals, which must be analyzed in a single environmental impact statement with other connected actions under NEPA.

Despite these serious deficiencies, DOE held steadfastly to its determination that “transport of natural gas by marine vessel normally does not pose the potential for significant environmental impacts,”⁵ relying on one technical report that singles out marine vessel safety impacts and concludes that natural gas is unlikely to leak during transport.⁶ Now that DOE is confronted with a request to apply this categorical exclusion, it should formally recognize that it did not provide an acceptable factual and legal basis when it amended its NEPA regulations last year, and should act swiftly to reverse the Trump administration’s categorical exclusion rulemaking. Each LNG export decision should involve a thorough, science-based review that discloses the project’s true environmental impacts, including the greenhouse gas emission-related climate impacts and marine species impacts.

Sincerely,



Liz Jones
Staff Attorney
Center for Biological Diversity
ljones@biologicaldiversity.org
(213) 785-5402

⁵ National Environmental Policy Act Implementing Procedures, 85 Fed. Reg. 78,197, 78,197 (Dec. 4, 2020).

⁶ Department of Energy Technical Support Document, Notice of Proposed Rulemaking, National Environmental Policy Act Implementing Procedures (May 2020); National Environmental Policy Act Implementing Procedures, 85 Fed. Reg. 78,197, 78,202 (Dec. 4, 2020).