

May 9, 2024

The President
The White House
1600 Pennsylvania Ave, N.W.
Washington, DC 20500

The Honorable Pete Buttigieg, Secretary
Admiral Ann C. Phillips, Administrator, Maritime Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Mr. President, Secretary Buttigieg, and Admiral Phillips:

The undersigned urge the White House and Department of Transportation (DOT) to halt and reevaluate its licensing review of proposed deepwater crude oil export facilities to update and ensure the validity of the agency's "national interest" determinations and related Deepwater Port Act (DWPA) project review.¹ The licensing of massive deepwater crude oil exports leads to disastrous climate-disrupting pollution and environmental injustices and would lock in decades of fossil fuel dependence that undercut the pathway to a clean energy economy. Tens of thousands of people across the country have weighed in to urge DOT to reconsider its review of these deepwater ports in light of this Administration's stated commitments to combat climate change and environmental injustices. We are calling for the Biden Administration to heed the calls of frontline communities and young people and take action.

At minimum, we ask the Administration to update its outdated analysis under the DWPA and National Environmental Policy Act (NEPA) to address the harms generated by expansive oil

¹ Such action is consistent with this Administration's January 26, 2024 announcement to pause licensing review of proposed liquefied natural gas (LNG) exports, the purpose of which is to "update assessments used to inform whether additional LNG export authorization ... are in the public interest." "DOE to update Public Interest Analysis to Enhance National Security, Achieve Clean Energy Goals, and Continue Support for Global Allies," Dep't of Energy (Jan. 26, 2024), *available at* <https://www.energy.gov/articles/doe-update-public-interest-analysis-enhance-national-security-achieve-clean-energy-goals> (The Department of Energy (DOE) and Secretary Granholm explain the action represents a commitment to equitable economic opportunities, strengthening energy security, protecting Americans against climate change, and achieving a clean energy future. An updated public interest assessment "must use the most complete, updated, and robust analysis possible on market, economic, national security, environmental considerations, including current authorized exports compared to domestic supply, energy security, greenhouse gas emissions including carbon dioxide and methane, and other factors.") (hereinafter "DOE Action").

exports on the climate, as well as consequences for environmental justice communities along the Gulf Coast, and for the national interest in energy sufficiency.

There are at least four deepwater crude oil export facilities under review or recently authorized by DOT. In late-2022, DOT reached a decision to issue a conditional license for the Sea Port Oil Terminal (SPOT); a final license for the facility was issued on April 8, 2024 authorizing the loading and export of up to two-million barrels of domestically-produced crude each day for thirty years, on tankers the size of the Empire State Building. Despite requiring compliance with all conditions *before* issuing the license,² the final authorization appears to leave numerous conditions set forth in the Record of Decision unsatisfied, including permitting and compliance with federal and local laws critical to ensuring the project will not result in environmental and public health disaster.³ The rush to prematurely issue a final license is especially troubling given recent reports that demand for this decades-long polluting project may not even exist.⁴ Three other similar deepwater crude export projects are proposed in the Gulf of Mexico ranging in capacity from one- to two-million barrels per day. Each new terminal represents a significant share of total U.S. oil export volumes and stands to drastically increase export levels and induce significant oil production and consumption.⁵

Notably, the recent Fifth Circuit Court of Appeals decision affirming DOT's NEPA and DWPA review of SPOT explicitly provides that the role of the Court is *not* to determine whether the agency made the best decision, or reached the correct conclusions in its review or choice of economic studies and scientific data, only that it ensure the agency made an informed decision.⁶ Given the intensity and destructive nature of the climate crisis and the long-time

² Record Of Decision on the Deepwater Port License Application of Spot Terminal Services LLC, Dep't of Transportation, 94 (Nov. 21, 2022) (hereinafter "SPOT ROD").

³ License to Own, Construct and Operate a Deepwater Port Issued to SPOT Terminal Services, LLC, U.S. Dep't of Transportation, Annex A (Apr. 8, 2024). The public record fails to show whether numerous license conditions, including permit authorization under Section 404 of the Clean Water Act and the Dune Protection Permit required from the Village of Surfside Beach, have been satisfied.

⁴ "Focus: As shale oil output slows, one deepwater port struggles for customers," REUTERS (April 22, 2024), available at <https://www.reuters.com/markets/commodities/shale-oil-gains-slow-deepwater-port-struggles-customers-2024-04-22/>; "Texas Deepwater Oil Export Projects Stall," Oil Price (April 23, 2024), available at <https://oilprice.com/Energy/Crude-Oil/Texas-Deepwater-Oil-Export-Projects-Stall.html>.

⁵ Other proposed Gulf Coast deepwater crude oil export facilities with pending applications include: Bluewater (384-million barrels-per-year capacity, sited approximately 15 miles off San Patricio County, Texas); Texas GulfLink (360-million barrels-per-year capacity, sited approximately 30 miles off Brazoria County, Texas); and Blue Marlin (730-million barrels-per-year capacity, sited 99 miles off Cameron Parish, Louisiana). In 2017, MARAD approved Delfin LNG (657.50 million standard cubic feet per day peak throughput capacity, sited approximately 40 miles off Cameron Parish, Louisiana), but DOT recently refused to issue a final license due to significant project design and funding changes on which the original authorization relied.

⁶ *Citizens for Clean Air & Clean Water in Brazoria Cnty. v. United States Dep't of Transportation*, 98 F.4th 178, 190 (5th Cir. Apr. 4, 2024).

suffering of frontline communities from fossil fuel industry pollution, to which this Administration has committed to resolving,⁷ it is abundantly clear that more is required of the agency to meet its statutory duty of ensuring licensing decisions are consistent with the “national interest,” and “environmental quality” and “energy sufficiency” policy goals.⁸ As described in detail below, the agency’s most recent deepwater crude export licensing review incorporates misinformed assumptions about future oil demand and the continued operations of existing nearshore export terminals; it lacks any explanation of health impacts from project air pollution emissions in one of the nation’s most severely impaired air quality regions in which pollution-induced respiratory illness and cancers are pervasive; it overlooks the most recent science regarding the risk of species level consequences to the critically endangered Rice’s whale resulting from injury or death of even one whale from vessel noise, strikes or oil spills. Just as the Administration is strengthening and updating public interest evaluations for LNG exports,⁹ it is imperative that DOT take similar action for the national interest determinations of deepwater oil export facilities.

Our coalition of frontline community groups, environmental organizations, and thousands of Gulf Coast residents and citizens nationwide have worked tirelessly to disclose to decision makers the harms posed by these ill-conceived deepwater fossil fuel export projects that contradict this Administration’s commitment to combat climate change and environmental injustice in the Gulf South. Moreover, these projects put domestic energy sufficiency at risk by sending our nation’s future energy supplies abroad. We urgently request that the Administration pause its ongoing licensing review and certification of pending deepwater fossil fuel export facilities to ensure that DOT is properly executing its Deepwater Port Act duties, guaranteeing that the licensing of any such facility is indeed in the “national interest.”

The Deepwater Port Act’s National Interest Review

The Deepwater Port Act prohibits the Department of Transportation from licensing a deepwater fossil fuel export facility unless it determines the project is in the “national interest.”¹⁰ Similarly, the Department of Energy’s (DOE) Natural Gas Act mandate requires a finding that LNG exports are consistent with the “public interest.”¹¹ But the Deepwater Port Act commands more; the “national interest” determination and DOT’s ultimate approval must demonstrate that construction and operation of deepwater ports are “consistent with national security and other national policy goals and objectives, including energy sufficiency and environmental quality.”¹² The statute and implementing regulations set forth explicit review

⁷ “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,” Exec. Order 13990, 86 Fed. Reg. 7037 (Jan. 25, 2021); “Tackling the Climate Crisis at Home and Abroad” Exec. Order. 14008, 86 Fed. Reg. 7619 (Feb. 1, 2021) (hereafter “Executive Orders”).

⁸ 33 U.S.C. § 1503.

⁹ DOE Action, *supra* note 1.

¹⁰ 33 U.S.C. § 1503.

¹¹ 15 U.S.C. § 717b(a).

¹² 33 U.S.C. § 1503(c)(3).

criteria for evaluating deepwater port applications, including effects on the marine environment, alternative uses of the oceans and navigable waters, danger to deepwater ports from weather and ocean conditions, effects of connected land-based development, and effects on human health and welfare.¹³ The Department must evaluate the proposed facility, both individually and cumulatively, encompassing the deepwater port's ocean and connected land-based infrastructure, as well as the vessel operations serving the deepwater facility.¹⁴

Despite unambiguous review mandates, DOT has failed to consistently and rigorously apply the statutory criteria when approving deepwater ports for the export of fossil fuels. The recently authorized SPOT project provides a glimpse into DOT's flawed review which relies on misinformed assumptions and overlooks relevant scientific data, ultimately threatening the national interest, including environmental quality and energy sufficiency objectives. These consequential shortcomings, described below, plainly undermine the DWPA and the Administration's declared national interest goals of building a clean energy economy while mitigating the climate crisis and alleviating destructive industrial pollution centered in the Gulf of Mexico.¹⁵ With the Administration's recent pause on LNG export approvals to ensure rigorous, up-to-date public interest review, a similar imperative exists to provide clear guidance and updated assessments for reviewing deepwater crude export applications.

Accordingly, DOT must correct existing deficiencies in its deepwater export project evaluations and update information required to analyze factors the Department must consider in determining whether a project is consistent with the national interest and environmental quality and energy sufficiency national policy goals. As set forth below, this includes project effects on climate change; environmental justice; public health and welfare; natural resources such as air and water quality, marine ecosystems and imperiled species; and domestic energy supply.

Climate Impacts

Notably, DOT's national interest and environmental review of applications for deepwater crude export facilities fails to reckon with the fact that the proposed massive oil export expansions would generate a climate-wrecking net increase in greenhouse gas pollution on top of other environmental and public welfare harms. In fact, a single proposed facility could

¹³ 33 U.S.C. § 1505; *see* U.S.C. § 1504 (i)(3); *and see* 33 C.F.R. § 148.707 (further defining that national interest based on environmental considerations, including impacts on endangered species, water, air, coastal and marine ecosystems, human health and welfare, including socioeconomic impacts, environmental justice and protection of children from environmental health and safety risks); 33 C.F.R. § 148.710 (emphasizing projects must be in the national interest and consistent with energy sufficiency and environmental quality goals; and further requiring the use of best available control technology to minimize adverse effects if such determinations are made).

¹⁴ 33 C.F.R. § 148.705.

¹⁵ Executive Orders, *supra* note 7.

produce emissions equivalent to operating nearly ninety new coal fired power plants.¹⁶ To date, DOT's review incorrectly assumes deepwater ports would replace or substitute existing nearshore export operations on a one-to-one basis based on applicant claims that deepwater facilities would alleviate existing nearshore export bottlenecks.¹⁷ But that conclusion is both unsubstantiated and illogical given the more limited maximum capacity of existing nearshore operations and the absence of any evidence they would shut down if larger offshore ports come online. The Department's assumption is also contradicted by industry executives touting to investors that nearshore export operations will *not* remain idle with the addition of massive deepwater export facilities.¹⁸

Further, DOT fails to justify its assumption that project lifecycle greenhouse gas emissions and associated increased crude production and combustion would occur regardless of whether the facility comes online.¹⁹ In reality, the Department's review of massive deepwater oil export facilities evades disclosure of the changes that would occur to upstream U.S. oil field production levels all together,²⁰ and attempts to make the unsubstantiated case that construction and operation of unbounded, large-scale U.S. exports will have no effect on global demand and resulting production.²¹ DOT illogically claims that global demand for crude

¹⁶ Outside experts calculate SPOT's associated lifecycle greenhouse gas emissions at approximately 367 to 396 million tons of CO₂e every year. Letter from Sierra Club et al. to Yvette Fields, Maritime Administration & William Nabach, U.S. Coast Guard, Re: Comments on SPOT Terminal, LLC, National Environmental Policy Act Draft Environmental Impact Statement, Docket No. MARAD-2019-0011 (June 1, 2020), 29-31, 42-86 (attached Expert Declaration of Petra Pless), <https://www.regulations.gov/comment/MARAD-2019-0011-1171>. Inputting SPOT's emission levels into the U.S. Environmental Protection Agency's Greenhouse Gas Equivalencies Calculator provides that emissions associated with the project would be equivalent to operating as much as 89 coal plants each year. Greenhouse Gas Equivalencies Calculator, Environmental Protection Agency, <https://www.epa.gov/energy/greenhouse-gasequivalencies-calculator#results>. SPOT Terminal, LLC, Final Environmental Impact Statement, Docket No. MARAD-2019-0011 (July 2022), 5-55, available at <https://www.regulations.gov/document/MARAD-2019-0011-5032> (hereafter "SPOT FEIS").

¹⁷ SPOT FEIS at 1-10, 2-62-63.

¹⁸ The Motley Fool, Tr. from Enterprise Product Partners' Second Quarter 2021 Earnings Call (June 30, 2021), available at <https://www.fool.com/earnings/call-transcripts/2021/07/28/enterprise-products-partners-epd-q2-2021-earnings> (Brent Secrest, Executive Vice President and Chief Commercial Officer, Enterprise Products: Reassuring investors no conflict exists between the company's proposed offshore VLCC terminal and its existing onshore terminals' oil-export business, "There's still a need for what we have existing, and then it would be more of an optimization as it relates to the joint venture partners. But between petchem and NGLs, there's ways to use those docks' crude oil."); *see also* "Focus: As shale oil output slows, one deepwater port struggles for customers," REUTERS (April 22, 2024), available at <https://www.reuters.com/markets/commodities/shale-oil-gains-slow-deepwater-port-struggles-customers-2024-04-22/> (changing flows, uncertainty for shippers, more ships going to Europe mean less need for supertankers and deepwater ports).

¹⁹ SPOT FEIS at 5-53 – 57.

²⁰ SPOT FEIS at 5-57.

²¹ *Id.*

will remain high, regardless of whether these facilities are built and even in the face of impending domestic and international climate change policies that mandate stemming fossil fuel use.²² Such unsupported assertions fail to satisfy statutory and regulatory requirements to forecast the reasonably foreseeable impacts of projects on the environment.

Indeed, largescale deepwater export facilities of unprecedented size would result in a net increase in exports that would lead to expanded upstream production and downstream combustion that would not otherwise occur under existing infrastructure limitations.²³ By itself, SPOT would increase U.S. 2023 crude export levels by half, an amount equivalent to over 15 percent of domestic oil supplies.²⁴ And SPOT is the first of several deepwater oil export facilities under review by DOT that has been licensed. With a lifespan of thirty years, this infrastructure buildout along with new long-term export contracts, makes prolonged fossil fuel dependence unavoidable. In overlooking this reality, DOT never quantifies or analyzes the full scope of project impacts, including effects on climate and increased risk of oil spills and ozone-causing air pollution in the already inundated environmental justice community of Freeport. Nor has the Department properly assessed the cumulative effects of SPOT and other proposed export operations, such as Texas GulfLink sited just seven miles from SPOT.

Likewise, DOT's limited review of project emissions and climate effects also ignores the latest science on climate change and fails to establish metrics for evaluating "social cost of carbon" and analyzing the project's impacts compared to international climate commitments that must be considered in any valid "national interest" determination.²⁵ Specifically, recent

²² SPOT FEIS at 2-63; McKinsey & Co., *Global Energy Perspective 2022*, Public Exec. Summ. (Apr. 2022), 6, <https://www.mckinsey.com/~media/McKinsey/Industries/Oil%20and%20Gas/Our%20Insights/Global%20Energy%20Perspective%202022/Global-Energy-Perspective-2022-Executive-Summary.pdf>.

²³ Earthjustice et al Comments on DEIS for Bluewater Texas Terminal LLC, Exhibit 1 - Report of Peter Erickson, MARAD-2019-0094-0919, available at <https://www.regulations.gov/comment/MARAD-2019-0094-0919> (finding that the lower-capacity Bluewater Texas terminal could induce increased U.S. onshore production for export by 330,000 b/d to 1 million b/d, resulting in a net global increase in oil consumption between 110,000 and 330,000 b/d); Sierra Club et al Comments on SDEIS for SPOT Terminal, LLC, Docket No. MARAD-2019-0011, 15-17 (Dec. 13, 2021), available at <https://www.regulations.gov/comment/MARAD-2019-0011-5005> (indicating that SPOT could induce much greater crude production given its capacity is double that of Bluewater).

²⁴ See 2023 Exports, Petroleum & Other Liquids, U.S. Energy Info. Admin. (accessed Mar. 27, 2024), https://www.eia.gov/dnav/pet/pet_move_exp_dc_NUS-Z00_mbbldpd_a.htm (providing that U.S. crude oil exports were averaging around 4 million barrels per day in 2023); see 2023 Crude Oil Production, Petroleum & Other Liquids, U.S. Energy Info. Admin. (accessed Mar. 27, 2024), https://www.eia.gov/dnav/pet/pet_crd_crpdn_adc_mbbldpd_a.htm (providing that U.S. crude oil production was averaging roughly 13 million barrels per day in 2023); SPOT FEIS at 1-11.

²⁵ See *Petition To Maritime Administration to Halt The Approval of Deepwater Port Infrastructure Licenses as Contrary To National Interest* (Nov. 10, 2022), 5-8, available at https://www.biologicaldiversity.org/programs/climate_law_institute/pdfs/Maritime-Administration-climate-petition-2022-11-10.pdf; see also National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, 88 Fed. Reg. 1196, 1198 (Jan. 9, 2023). (The Council

Intergovernmental Panel on Climate Change (IPCC) Assessment Reports identified the maximum remaining amount of carbon dioxide that can be emitted to maintain a chance of meeting the 1.5°C Paris Agreement climate limit, known as the “carbon budget.”²⁶ These assessments and tens of thousands of other studies make clear that fossil-fuel driven climate change is a “code red for humanity,”²⁷ and that every additional ton of CO₂ and fraction of a degree of temperature rise matters. Even half a degree of warming above 1.5°C would cause catastrophic damage,²⁸ harming every facet of the national interest. To preserve a 67 percent chance of limiting temperature rise to 1.5°C, the United States must end all oil and gas production by 2031;²⁹ for a 50 percent chance of limiting temperature rise to 1.5°C, the U.S. must reduce oil and gas production 74 percent by 2030 and end production by 2034.³⁰ Accordingly, new fossil fuel infrastructure projects, including import and export terminals that induce further oil and gas production, are inconsistent with meeting a 1.5°C limit.³¹ Research shows that the committed carbon emissions from existing fossil fuel infrastructure in the energy and industrial sectors exceed a carbon budget that limits warming to 1.5°C, meaning that no new fossil fuel infrastructure can be built, and much existing infrastructure must be retired early to avoid catastrophic climate harms.³² In short, there is no emission space within

on Environmental Quality’s 2023 guidance for NEPA review recommends that agencies provide additional context for GHG emissions through the use of the best available social cost of GHG estimates); *see also* Environmental Protection Agency, “EPA Report on the Social Cost of Greenhouse Gases: Estimates Incorporating Recent Scientific Advances,” (Nov. 2023), *available at* https://www.epa.gov/system/files/documents/2023-12/epa_scghg_2023_report_final.pdf; *see also* Hasselman, J. & Erickson, P. “NEPA review of fossil fuels projects – principles for applying a “climate test” for new production and infrastructure” (May 2022) *available at* https://earthjustice.org/wp-content/uploads/climate_test_-_hasselman_erickson.pdf.

²⁶ Dan Calverley & Kevin Anderson, *Phaseout Pathways for Fossil Fuel Production Within Paris-compliant Carbon Budgets* (2022), https://research.manchester.ac.uk/files/213256008/Tyndall_Production_Phaseout_Report_final_text_3.pdf

²⁷ United Nations Secretary-General, Secretary-General’s statement on the IPCC Working Group 1 Report on the Physical Science Basis of the Sixth Assessment (Aug. 9, 2021), https://report.ipcc.ch/ar6/wg1/IPCC_AR6_WGI_FullReport.pdf; *see also* IPCC, 2023: Summary for Policymakers, *Climate Change 2023: Synthesis Report* (2023) 19-20, *available at*: https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf.

²⁸ *Id.*; *see also* Dan Calverley & Kevin Anderson, *supra* note 26.

²⁹ *Id.*

³⁰ *Id.*

³¹ Dan Tong et al., Committed emissions from existing energy infrastructure jeopardize 1.5°C climate target, 572 *Nature* 373 (2019), <https://www.nature.com/articles/s41586-019-1364-3>; SEI, IISD, ODI, E3G, and UNEP, *The Production Gap: The discrepancy between countries’ planned fossil fuel production and global production levels consistent with limiting warming to 1.5°C or 2°C* (2020), <https://productiongap.org/2020report/>; Alexander Pfeiffer et al., *Committed emissions from existing and planned power plants and asset stranding required to meet the Paris Agreement*, 13 *Environmental Research Letters* 054019 (2018), <https://iopscience.iop.org/article/10.1088/1748-9326/aabc5f/meta>.

³² Tong et al., *supra* note 31.

the IPCC's carbon budget of 1.5°C for any nation to develop new fossil fuel infrastructure and production facilities of any kind, including thirty-year deepwater export terminals.

Indeed, DOT's limited review of the climate impacts of large-scaled deepwater crude export operations to date directly undercuts the Administration's and Congress' goals of combatting the climate crisis and creating a clean energy future.³³ Moreover, the Council on Environmental Quality's regulations and guidance for NEPA review further demonstrate DOT's flawed review of project effects on climate change. Specifically, the guidelines, published in January 2023, require agencies to quantify "reasonably foreseeable" direct and indirect; upstream and downstream; and gross, net and cumulative GHG emissions changes, including increases and reductions, annually and over a project's lifetime.³⁴ DOT's assessment of deepwater export applications to date fail to accurately and rigorously evaluate these effects, undermining a valid national interest determination in violation of statutory requirement. Such errors warrant development of updated licensing review guidance.

Environmental Justice and Air Pollution Impacts

To date, DOT has failed to conduct a meaningful environmental justice review of proposed deepwater crude oil export facilities. It is indisputable that fossil fuel production and infrastructure disproportionately harm Black, Brown, Indigenous and low-income communities in many ways and at every phase of the fossil fuel lifecycle. The onshore infrastructure that supports deepwater ports, such as terminals and pipelines, are very often concentrated in and directly harm communities that are already overburdened with air and water pollution. They present disproportionately high health risks and harms, and cause destruction of natural resources, depression of property values and other negative impacts. Communities in the Gulf region, where proposed oil and gas export expansion is concentrated, suffer from increased rates of asthma, respiratory illness and cancer; that is the direct result of decades of federal authorizations to construct and operate fossil fuel and other industrial facilities in and along the Gulf of Mexico. Adding thirty more years of polluting oil and gas infrastructure flouts the Administration's commitments to reverse this toxic legacy.

In particular, DOT never explains or discloses health harms of these major emitting facilities, and, in SPOT's case, it failed to quantify the project's massive contributions to the region's total ozone pollution, including pollution generated by the hundreds of vessels serving the project each year.³⁵ The Department failed to provide any evaluation of the facility's full

³³ Executive Orders, *supra* note 7; "FACT SHEET: One Year In, President Biden's Inflation Reduction Act is Driving Historic Climate Action and Investing in America to Create Good Paying Jobs and Reduce Costs," The White House (Aug. 16, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/08/16/fact-sheet-one-year-in-president-bidens-inflation-reduction-act-is-driving-historic-climate-action-and-investing-in-america-to-create-good-paying-jobs-and-reduce-costs/>.

³⁴ "National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change," 88 Fed. Reg. 1196 (Jan. 9, 2023).

³⁵ SPOT FEIS at 3-357, 360-361.

scope of health impacts and contributions to the region’s existing poor air quality conditions, which were recently downgraded by EPA to “severe nonattainment” status for ozone in the broader Houston region where the project would be built.³⁶ Ozone pollution, or smog, causes respiratory conditions like asthma. Individually and together, these failures result in gross underestimates of adverse public health and welfare impacts that SPOT and other surrounding projects would have on local communities already enduring decades of impaired air quality from pervasive fossil fuel industry pollution.

Impacts to Critically Endangered Rice’s whales

DOT has ignored updated science on threatened and endangered species. In particular, recent science on the critically endangered Rice’s whale demonstrates that increased risk of vessel strike, underwater noise, and oil pollution generated by just one of these deepwater crude export facilities, and cumulatively with other existing and proposed oil and gas development operations in the region, could lead to the species’ extinction.³⁷ The Rice’s whale, considered one of the planet’s most endangered marine mammals, numbers fewer than 100 individuals, with a current best estimate of 50 whales that exclusively inhabit Gulf of Mexico waters directly impacted by oil and gas export operations.^{38, 39} This Administration recently

³⁶ “Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Areas Classified as Serious for the 2008 Ozone National Ambient Air Quality Standards,” 87 Fed. Reg. 60,926 (Oct. 7, 2022).

³⁷ See, e.g., 84 Fed. Reg. 15,446, 446-488 (Apr. 15, 2019) (listing decision, determining that the whale is at a “high risk of extinction” under three statutory factors); see e.g., NMFS, “Rice’s whale,” available at <https://www.fisheries.noaa.gov/species/rices-whale> (accessed March 2024); P.E. Rosel, P.J. Corkeron, L. Engleby, D. Epperson, K. Mullin, M.S. Soldevilla, and B.L. Taylor, Status review of Bryde’s whales (*Balaenoptera edeni*) in the Gulf of Mexico under the Endangered Species Act, at iv, 130-32 (2016) (NOAA Tech. Memo. NMFS-SEFSC-692); see also Comment from NRDC et al. *Re: Proposed critical habitat designation for Rice’s whale (NOAA-2023-0028)*, available at: <https://www.regulations.gov/comment/NOAA-NMFS-2023-0028-25145> (Providing a summary of the recent science on the Rice’s whale and threats to the species, including evidence of the species’ persistent occurrence in central and western Gulf waters and direct threats of vessel strikes, noise and spills from oil and gas development).

³⁸ M.S. Soldevilla, A.J. Debich, L.P. Garrison, J.A. Hildebrand, and S.M. Wiggins, Rice’s whales in the northwestern Gulf of Mexico: call variation and occurrence beyond the known core habitat, *Endangered Species Research* 48: 155-74 (2022); S.A. Hayes, E. Josephson, K. Maze-Foley, P.E. Rosel, J. McCordic, and J. Wallace, eds., *U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments 2022*, 114-22 (2023) (NOAA Tech. Memo. NMFS-NE-304). (According to NMFS’ most recent Stock Assessment Report for the Rice’s whale (2022), the minimum population size for the species is 34. And the data suggests that approximately one whale can be lost to human impacts every fifteen years.)

³⁹ The Deepwater Horizon oil spill disaster led to the loss of 22 percent of the Rice’s whale population. NOAA Fisheries, “Rice’s Whale: In the Spotlight,” available at <https://www.fisheries.noaa.gov/species/rices-whale/spotlight>. Thus, the risk of oil spills from new and expanded oil export operations including from vessels and hundreds of miles of on and offshore pipeline and loading infrastructure, pose a significant threat to the species’ long-term survival.

proposed critical habitat for the species⁴⁰ that directly overlaps with proposed oil and gas export projects as well as the recently authorized SPOT facility, including their ongoing vessel operations and the path of forecasted oil spills.⁴¹ This designation, expected to become final this year, is substantiated by the Administration’s own recently published science detailing the highly imperiled status of the species and threats posed by fossil fuel infrastructure.^{42, 43} The DWPA’s explicit mandate to evaluate effects on endangered species,⁴⁴ combined with Endangered Species Act requirement to prioritize conservation of protected species in all federal actions,⁴⁵ demand meaningful consideration of the latest science on the species which, to date, has been largely ignored.

Energy Sufficiency

To date, DOT’s licensing decisions fail to directly address the effects of large-scale deepwater exports on “energy sufficiency.”⁴⁶ Notably, the Deepwater Port Act was initially enacted to promote the importation of crude oil and natural gas to the United States, not for authorization of oil and gas exports. It was only after Congress lifted the crude oil export ban in 2015 that the statute was amended to allow for crude oil exports.⁴⁷ No further statutory or regulatory amendments were made to further define licensing review in light of this change, despite the potentially significant implications that exporting oil could have on domestic energy supply and other statutory criteria. Notably, DOT’s decision to license SPOT fails to explicitly explain the project’s consistency with national energy sufficiency goals,⁴⁸ despite the possible impacts that permitting the export of more than 15 percent of U.S. oil production annually for

⁴⁰ “Endangered and Threatened Species; Designation of Critical Habitat for the Rice’s Whale,” 88 Fed. Reg. 47,453 (Jul. 24, 2023), *available at* <https://www.govinfo.gov/content/pkg/FR-2023-07-24/pdf/2023-15187.pdf>.

⁴¹ NOAA Map of Proposed Rice’s Whale Critical Habitat, comprised of the 100 – 400 meter isobaths extending throughout the northern Gulf of Mexico, *available at* <https://www.fisheries.noaa.gov/s3/2023-07/Rices-Whale-Proposed-CH-Map-508-Final.pdf>.

⁴² “Endangered and Threatened Wildlife and Plants; Endangered Status of the Gulf of Mexico Bryde’s Whale”, 84 Fed. Reg. 15,446, 15,474-76 (Apr. 15, 2019), *available at* <https://www.federalregister.gov/documents/2019/04/15/2019-06917/endangered-and-threatened-wildlife-and-plants-endangered-status-of-the-gulf-of-mexico-brydes-whale>; NMFS, Endangered Species Act Rice’s Whale Critical Habitat Report: Proposed Information Basis and Impact Considerations of Critical Habitat Designation (July 2023), *available at*: <https://www.fisheries.noaa.gov/s3/2023-07/Critical-Habitat-Report-508-Final.pdf>; Endangered and Threatened Species; Designation of Critical Habitat for the Rice’s Whale, *supra* note 40.

⁴³ *See also Rice’s Whales Spotted in the Western Gulf of Mexico*, NOAA (Apr. 30, 2024), <https://www.fisheries.noaa.gov/feature-story/rices-whales-spotted-western-gulf-mexico> (evidence of recent sightings off Texas’ coastline close to proposed deepwater oil export facilities and vessel traffic routes).

⁴⁴ 33 C.F.R. § 148.707(b)(1)(i).

⁴⁵ 16 U.S.C. § 1536(a); 50 C.F.R. § 402.01(a).

⁴⁶ 33 U.S.C. § 1503(c).

⁴⁷ The Continuing Appropriations Act, 2016, Pub. L. No. 114-53, Div. O, Title I, § 101.

⁴⁸ SPOT ROD, *supra* note 2, at 50-52 (mentioning “energy sufficiency” *only* when citing statutory text).

the next thirty years would have on U.S. oil supply. The Department also failed to consider this factor or conduct any project evaluation⁴⁹ when, in 2018, it allowed the Louisiana Offshore Oil Project (LOOP) to reverse its U.S. import operations for oil exports.⁵⁰ No environmental review, national interest determination or formal licensing decision exists on public record for this significant operational change. This severely flawed decision-making precedent has the potential to pose significant threats to national security, domestic energy supplies and environmental quality that undermine the national interest. Indeed, a pressing need exists for clear guidance on implementing the DWPA's rigorous licensing review standards.

* * * *

The issues described herein and DOT's failure to meaningfully evaluate project review criteria in light of clear national interest goals established by the DWPA and this Administration, render invalid recent export licensing determinations as well as the ongoing review of similar pending applications. The Department's failure to satisfactorily evaluate the national interest and project consistency with national energy sufficiency and environmental quality goals, including consideration of relevant and timely science and data, must be corrected. These errors demand a licensing pause and/or new review of deepwater fossil fuel export applications. DOT must establish clear guidance and updated scientific, economic, and public welfare standards for project assessment consistent with DWPA rigor and the climate and justice goals on which this Administration has promised to deliver. Such action is consistent with this Administration's pause on LNG export licensing and the criteria the Administration has outlined for reviewing LNG export applications.

We would welcome the opportunity to meet and discuss these issues of critical national importance. Thank you for your consideration.

Sincerely,



Devorah Ancel
Senior Attorney
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⁴⁹ No evidence of DOT's project review of LOOP's import to export reversal exists in the public record. Approved Applications, Dep't of Transportation Maritime Administration, <https://www.maritime.dot.gov/ports/deepwater-ports-and-licensing/approved-applications>.

⁵⁰ LOOP was originally authorized in 1977 as a deepwater port to exclusively import oil to the U.S.

Cc:

Ali Zaidi, National Climate Advisor, White House Office of Domestic Climate Policy
Admiral Linda L. Fagan, Commandant of the United States Coast Guard
Yvette Fields, Director, MARAD Office of Deepwater Port Licensing
Jaime Pinkham, Acting Assistant Secretary of the Army for Civil Works
Dr. Earthea Nance, Regional Administrator, EPA Region 6
Katherine Tai, U.S. Trade Representative

On behalf of:

Better Brazoria
Center for Biological Diversity
Center for Oil and Gas Organizing
Chispa Texas - League of Conservation Voters
Climate Conversation Brazoria County
Earthjustice
Earthworks
Fisherman Involved in Sustaining our Heritage
For a Better Bayou
GreenFaith
Habitat Recovery Project
Ingleside on the Bay Coastal Watch Association
Oil Change International
Seeding Sovereignty
Sierra Club
Sunrise New Orleans
Texas Campaign for the Environment
Turtle Island Restoration Network
Vessel Project of Louisiana