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17 IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
18 OAKLAND DIVISION

19 CENTER FOR BIOLOGICAL DIVERSITY,) Case No.: C-12-6325 (SBA)
20 PACIFIC ENVIRONMENT, and TURTLE)
ISLAND RESTORATION NETWORK,) **FIRST AMENDED COMPLAINT FOR**
21) **DECLARATORY AND INJUNCTIVE**
Plaintiffs,) **RELIEF**
22 v.)
23 EXPORT-IMPORT BANK OF THE)
UNITED STATES and FRED P.)
24 HOCHBERG, in his official capacity as)
Chairman and President of the Export-Import)
25 Bank of the United States,)
26 Defendants.)

INTRODUCTION

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2 1. This case challenges the Export-Import Bank of the United States' ("Ex-Im Bank")
3 decision to provide nearly \$4.8 billion USD in financing for the development and construction of two
4 separate liquefied natural gas ("LNG") projects in Australia's Great Barrier Reef World Heritage Area.
5 The projects, the Australia Pacific LNG Project and the Queensland Curtis LNG Project (collectively
6 "the Projects"), will each include gas drilling, pipeline construction, construction of an LNG production
7 facility and shipping terminal, and transport of LNG through the Great Barrier Reef. Ex-Im Bank, a
8 U.S. federal agency, funded these massive fossil fuel projects without properly consulting and
9 considering the Projects' substantial impacts on threatened and endangered species or on the Great
10 Barrier Reef World Heritage Area, as required by the U.S. Endangered Species Act ("ESA"), 16 U.S.C.
11 §§ 1531 *et seq.*, and the National Historic Preservation Act ("NHPA"), 16 U.S.C. §§ 470 *et seq.*

12 2. Specifically, the Australia Pacific LNG Project is located in Queensland, Australia and
13 will comprise the entire process of liquefied natural gas production. The Project's proponents will drill
14 up to 10,000 coal-seam gas wells in interior Queensland, install nearly 300 miles of pipeline to
15 transport the gas to the coast, construct and operate a massive LNG facility to condense the gas to
16 liquid and prepare it for transport, dredge the adjacent harbor, and then ship directly through the Great
17 Barrier Reef to export the liquefied gas around the world.

18 3. Similarly, the Queensland Curtis LNG Project will also be located in Queensland and
19 will include drilling up to 6,000 coal-seam gas wells in interior Queensland, installation of over 210
20 miles of pipeline, construction and operation of an LNG facility that will be located immediately south
21 of the Australia Pacific LNG facility, additional dredging of the adjacent harbor, and shipping of the
22 liquefied gas through the Great Barrier Reef.

23 4. Both of the Projects' LNG processing facilities and terminals will be located on Curtis
24 Island, partially within the boundaries of the Great Barrier Reef World Heritage Area, an area
25 renowned for its beauty and rare species habitat. Both LNG facilities will also be located within
26 designated habitat for the dugong, a species listed under the U.S. ESA as "endangered," and within
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1 habitat for U.S. threatened-listed green sea turtles, endangered loggerhead sea turtles, and threatened
2 saltwater crocodiles.

3 5. Despite the serious impacts that these Ex-Im Bank-funded Projects will have on ESA-
4 listed species, Ex-Im Bank did not initiate or complete consultations with the U.S. wildlife agencies as
5 required by the ESA before funding either project. 16 U.S.C. § 1536(a)(2). The ESA consultation
6 process is triggered whenever a U.S. federal agency, like Ex-Im Bank, “fund[s] . . . in whole or in part”
7 an activity that “may affect” a listed species. 50 C.F.R. §§ 402.02; 402.14. Consultation may have
8 resulted in mitigation of the Projects’ wildlife impacts.

9 6. Further, the United States is a party to the World Heritage Convention, under which the
10 Great Barrier Reef World Heritage Area is designated. In 2011, the UNESCO World Heritage
11 Committee expressed “extreme concern” regarding the effects these LNG facilities and other nearby
12 developments will have on the World Heritage Area, including impacts to species and water quality.

13 7. Despite these acknowledged impacts, Ex-Im Bank funded the Australia Pacific and the
14 Queensland Curtis LNG Projects but failed to “take into account the effect of the undertaking[s] . . . for
15 purposes of avoiding or mitigating any adverse effects” to the Great Barrier Reef World Heritage Area,
16 as required by the U.S. National Historic Preservation Act, which implements the World Heritage
17 Convention. 16 U.S.C. § 470a-2. The NHPA required Ex-Im Bank to generate and consider
18 information regarding the Projects’ impacts on the World Heritage Area, determine whether the effects
19 will be adverse, develop modifications to avoid or mitigate those impacts, and consult with Australia
20 and other interested entities.

21 8. Because Ex-Im Bank funded both the Australia Pacific LNG Project and the Queensland
22 Curtis LNG Project without first complying with the ESA or the NHPA, the agency has violated both
23 statutes and the Administrative Procedure Act (“APA”). 16 U.S.C. §§ 1536; 470a-2; 5 U.S.C. § 706.

24 9. Moreover, by failing to make a full and timely determination regarding the Center’s
25 request for records pertaining to the Projects and by failing to promptly provide responsive records, Ex-
26 Im Bank has violated the Freedom of Information Act (“FOIA”), 5 U.S.C. §§ 500 *et seq.*, and the APA,
27 *id.* § 706.

1 **JURISDICTION**

2 10. Jurisdiction over this action is conferred by the ESA’s citizen suit provision, 16 U.S.C.
3 § 1540(g), FOIA, 5 U.S.C. § 552(a)(4)(B), and 28 U.S.C. §§ 1331 (federal question), 2201 (declaratory
4 relief), and 2202 (injunctive relief). This cause of action arises under the laws of the United States,
5 including the ESA, the NHPA, FOIA, and the APA, and the implementing regulations established
6 pursuant to these federal statutes. An actual, justiciable controversy exists between Plaintiffs and
7 Defendants. The requested relief is proper under 28 U.S.C. §§ 2201 and 2202 and 5 U.S.C. §§ 552,
8 705, and 706.

9 11. Plaintiffs provided Defendants notice of their intent to bring this litigation by certified
10 mail dated August 2, 2012. Plaintiffs sent additional notice letters regarding the Queensland Curtis
11 LNG Project on December 10, 2012 and on January 2, 2013. On information and belief, Defendants
12 have not remedied the violations alleged in those notices.

13 **VENUE**

14 12. Venue is proper in the Northern District of California pursuant to 28 U.S.C. § 1391(e)
15 because Plaintiff organizations reside in this judicial district. Venue is also proper under 5 U.S.C.
16 § 552(a)(4)(B).

17 **INTRADISTRICT ASSIGNMENT**

18 13. Pursuant to Local Rules 3-5(b) and 3-2(c) and (d), assignment of this case to the San
19 Francisco or Oakland Division is appropriate. Plaintiffs Center for Biological Diversity and Pacific
20 Environment maintain offices in San Francisco County, and Plaintiff Turtle Island Restoration Network
21 maintains its office in Marin County.

22 **PARTIES**

23 14. Plaintiff Center for Biological Diversity (“the Center”) is a 501(c)(3) non-profit
24 corporation incorporated in the State of California. The Center maintains offices in San Francisco,
25 Tucson, and other cities in California and across the country. Through science, policy, and
26 environmental law, the Center advocates for the protection of threatened, endangered, and rare species
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1 and their habitats throughout the United States and abroad. The Center has programs that focus
2 specifically on ocean protection and combating climate change.

3 15. The Center has more than 48,000 active members and 625,000 online activists. Center
4 members reside throughout the United States and in many other countries, including Australia. The
5 Center has several members who live in Queensland and in the Gladstone area, near where the Projects'
6 LNG facilities will be located. For example, Center members work in the fishing industry in the
7 Gladstone Harbour/Port Curtis area and rely on these waters for their income. These Center members
8 view Gladstone Harbour each day from their homes and their workplace and attempt to spot sea turtles,
9 dugongs, and other rare wildlife species. These members also regularly recreate on Gladstone Harbour
10 and in the broader Great Barrier Reef World Heritage Area. These members are very concerned that the
11 Australia Pacific LNG Project, the Queensland Curtis LNG Project, and the associated dredging in
12 Gladstone Harbour has harmed and will continue to harm marine life, including the fisheries that
13 support their livelihoods, but also the species they enjoy viewing recreationally. These members have
14 witnessed the water in Gladstone Harbour become visibly muddier and less attractive and now see
15 fewer marine mammals and sea turtles. The members are concerned these aesthetic impacts will worsen
16 as the dredging, construction, and operation associated with the Projects continues. These members
17 have specific plans to continue their regular viewing, visits, and recreation in Gladstone Harbour and
18 the Great Barrier Reef World Heritage Area.

19 16. Other Center members live in other areas of Queensland, but visit the Gladstone area
20 each year or more frequently to meet with patients, friends, and colleagues and to view the area's
21 aesthetics, wildlife, and environment. For example, one Center member works for a wildlife protection
22 organization and visits Gladstone several times each year as part of her advocacy against the various
23 LNG facilities being constructed on Curtis Island. Another member is a doctor who regularly visits
24 patients in Gladstone who are affected by contamination in the Harbour. Another member is an aquatic
25 animal veterinarian who regularly samples Gladstone Harbour wildlife to evaluate the effects of the
26 dredging and construction on fish, scallops, and other marine species, including sea turtles. When
27 visiting Gladstone, these members work or recreate in and around the Harbour and the broader Great
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1 Barrier Reef World Heritage Area, including camping in the Area, to enjoy the aesthetics and to view
2 or attempt to view dugongs, sea turtles, crocodiles, and other rare wildlife species. These members have
3 specific plans to continue their regular visits and recreation in this area.

4 17. In addition, other Center members and staff reside in the United States but have specific
5 plans to visit both the Great Barrier Reef World Heritage Area generally and the Gladstone area
6 specifically to recreate and to view and enjoy the scenery. These members particularly plan to attempt
7 to view dugongs, sea turtles, saltwater crocodiles, and other wildlife that are being impacted as the
8 Australia Pacific and Queensland Curtis LNG Projects go forward. For example, one member who has
9 traveled around the world to view dugongs in the past has specific plans to visit northeastern Australia
10 between December 30, 2014 and January 27, 2015. While on this trip, he plans to visit Curtis Island,
11 the Australia Pacific and Queensland Curtis LNG Project sites, and the broader Great Barrier Reef
12 World Heritage Area to view the scenery and waters and attempt to view dugongs and other wildlife.

13 18. Plaintiff Pacific Environment is a non-profit environmental organization whose mission
14 is to protect the living environment of the Pacific Rim. Based in San Francisco, Pacific Environment
15 achieves its mission by strengthening democracy, supporting grassroots activism, empowering local
16 communities, and redefining international policies. Pacific Environment is particularly dedicated to
17 promoting international efforts to protect biodiversity and to protect rare and endangered species.
18 Pacific Environment has hundreds of supporters in the United States, many of whom live in California.
19 As part of Pacific Environment's broader mission to protect the Pacific Rim, it seeks to hold public
20 finance institutions, particularly Ex-Im Bank, accountable to local communities and the environment
21 through project monitoring to ensure that public money is used to support best environmental
22 protection practices.

23 19. Further, Pacific Environment members and staff live in the United States and have visited
24 and plan to continue to visit the Gladstone area. For example, one Pacific Environment member visited
25 Gladstone Harbour in October of 2012. He took a boat-based tour of the Australia Pacific and
26 Queensland Curtis LNG Project sites and the habitat surrounding the sites, visited Curtis Island, viewed
27 Gladstone Harbour's muddied waters, and attempted to view wildlife, including dugongs and sea
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1 turtles. The member has specific plans to return to Gladstone again next spring to view the area and its
2 wildlife, as he travels to an IUCN-administered whale panel meeting. Another member lives in China
3 but visited Gladstone in September 2013 and traveled by boat across Gladstone Harbour, viewing the
4 water and trying to view wildlife. He also visited Heron Island, outside Gladstone. He was particularly
5 disturbed by the Harbour's turbid water and the large number of boats crossing the Reef from the coast.
6 This member has specific plans to return to Gladstone and the portion of the Great Barrier Reef that can
7 be accessed from Gladstone in 2015, when he returns to Australia to attend a semi-annual river
8 conference.

9 20. Plaintiff Turtle Island Restoration Network ("Turtle Island") is a non-profit corporation
10 with its principal place of business in Marin County, California. Turtle Island operates the Sea Turtle
11 Restoration Project, which is dedicated to the protection and restoration of endangered and threatened
12 species of sea turtles. Turtle Island has over 6,300 members, including members in Australia, and more
13 than 70,000 online activists and supporters who follow and take action on its campaigns, and each
14 shares a commitment to the study, protection, enhancement, conservation, and preservation of the
15 world's marine ecosystems and the wildlife that inhabits the oceans. Turtle Island has worked
16 extensively to conserve and protect sea turtles in the Pacific from a variety of threats, including efforts
17 to conserve sea turtles and other marine wildlife in Australia.

18 21. Turtle Island has members who live in the Gladstone area, as well as staff members who
19 regularly visit Australia, including the Great Barrier Reef World Heritage Area. For example, one
20 Turtle Island member is a sea turtle expert who has studied both green and loggerhead sea turtles that
21 inhabit Australia. This member lives in the United States but regularly visits Australia, including as
22 recently as September 2012 and July 2013. Each time she visits Australia she observes or attempts to
23 observe sea turtles, including endangered loggerhead sea turtles. She has on several occasions assisted
24 with research at a major loggerhead sea turtle rookery south of Gladstone, and to reach this rookery, the
25 loggerheads migrate through the Great Barrier Reef near Gladstone. This member has also sailed along
26 a large portion of the Great Barrier Reef World Heritage Area, including the area outside of Gladstone,
27 and snorkeled and looked for wildlife, including sea turtles and dugongs. In July 2013, the member
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1 visited Gladstone and the Great Barrier Reef World Heritage Area, viewed Gladstone Harbour from the
2 shore, and looked for sea turtles and other wildlife. She also toured Gladstone Harbour and nearby
3 areas by air and boat, viewing the Australia Pacific and Queensland Curtis Project sites. This member
4 has plans to return to Australia to view sea turtles and other wildlife, as she has regularly in the past.

5 22. TIRN also has several members who live in or near Gladstone, Australia. One member
6 lives on Curtis Island in Southend, has visited the Australia Pacific and Queensland Curtis LNG Project
7 sites by boat, and has watched Gladstone Harbour degrade visually in recent years. She has seen an
8 increasing number of dead turtles on the beach near her home and is concerned that ongoing dredging
9 associated with the LNG Projects has caused the strandings. Another member is an avid sailor and
10 commercial skipper. She once regularly sailed from her home north of Curtis Island through the
11 Narrows and into Gladstone Harbour on recreational trips to view the wildlife and scenery, but now
12 avoids the area, sailing along the outer coast of Curtis Island due to the LNG facilities' construction.

13 23. The Center, Pacific Environment, and Turtle Island and their members have and will
14 continue to advocate against the Projects and Ex-Im Bank's funding, seek to discuss the Projects with
15 agency managers to encourage additional mitigation, and provide information to the public and the
16 media regarding the Projects and their impacts on wildlife, the Great Barrier Reef, and the greater
17 environment.

18 24. In May of 2012, Ex-Im Bank authorized a \$2.95 billion USD loan to the proponents of
19 the Australia Pacific LNG Project. In December of 2012, Ex-Im Bank authorized a \$1.8 billion USD
20 loan to the proponents of the Queensland Curtis LNG Project. Ex-Im Bank's funding of the Australia
21 Pacific LNG Project has and will cause harm to Plaintiffs' staff and members' recreational, economic,
22 scientific, and aesthetic interests in the species and habitats of the Gladstone area. Both separately and
23 cumulatively, Ex-Im Bank's funding of the Queensland Curtis LNG Project has and will cause harm to
24 Plaintiffs' staff and members' recreational, economic, scientific, and aesthetic interests in the species
25 and habitats of the Gladstone area.

26 25. Construction and operation of the Australia Pacific LNG Project and the Queensland
27 Curtis LNG Project, each facilitated and made possible by Ex-Im Bank's funding, will harm
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1 endangered and threatened dugongs, sea turtles, crocodiles, and other wildlife, as well the species'
2 habitats. Specifically, construction and operation of the Australia Pacific LNG Project and the
3 Queensland Curtis LNG Project will substantially diminish water quality and clarity, increase
4 underwater noise, cause vessel strikes, destroy and degrade habitat including through contamination of
5 the area with dredged toxic heavy metals, and otherwise harm dugongs, sea turtles, and other wildlife,
6 or cause wildlife to leave the area. The Projects' construction and operation will also alter the aesthetic
7 view of Curtis Island and the habitat in and around the Project sites. Dredging associated with the
8 Projects will increase turbidity, making the water appear muddier and diminishing the Harbour's
9 aesthetics, and also harming some members' economic interests in the fishing industry. The Projects
10 will also alter the Great Barrier Reef World Heritage Area by harming dugong, sea turtles, and other
11 wildlife for which the Area was designated and the species' habitats; by degrading water quality and
12 clarity; and by increasing shipping traffic through the Area.

13 26. Plaintiffs' staff and members are concerned that the Australia Pacific LNG Project and
14 the Queensland Curtis LNG Project's impacts will reduce their ability to view and study wildlife in the
15 Gladstone Harbour area; diminish the aesthetic view of the area, of the water, and of impacted habitat;
16 harm the wildlife populations that they study; and degrade their recreational experience and enjoyment.
17 Further, these members are concerned that the Australia Pacific LNG Project and the Queensland Curtis
18 LNG Project will degrade their recreational, scientific, and aesthetic enjoyment of the Great Barrier
19 Reef World Heritage Area by decreasing their ability to view species and diminishing the water quality.
20 By causing this harm to species, habitat, and the Great Barrier Reef World Heritage Area, Ex-Im
21 Bank's funding will injure Plaintiffs' staff and members by negatively impacting their recreational,
22 aesthetic, scientific, and economic interests.

23 27. Further, Ex-Im Bank has full authority to require mitigation of the Projects'
24 environmental impacts. Were Ex-Im Bank directed to complete the required ESA consultation and
25 NHPA processes, Ex-Im Bank may require additional environmental mitigation of the Projects'
26 impacts as a condition of its funding. Further, in order to conduct the required ESA and NHPA
27 processes without irreversibly committing resources, Ex-Im Bank may delay its provision of financing
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1 for the Projects, and thus delay the Projects’ construction or operation, or even cause the cancelation of
2 the Projects. Cancelation or delay of the Projects or implementation of additional environmental
3 mitigation measures would lessen and thus redress Plaintiffs’ staff and members’ injuries associated
4 with the Australia Pacific LNG Project and the Queensland Curtis LNG Project.

5 28. Additionally, Ex-Im Bank has failed to timely determine whether to respond to the
6 Center’s August 2012 FOIA request and has failed to promptly provide any responsive documents,
7 injuring Plaintiffs’ ability to obtain, utilize, and disseminate information regarding the Projects, the
8 Projects’ impacts, and Ex-Im Bank’s funding.

9 29. If Ex-Im Bank had complied with all ESA, NHPA, and FOIA procedures, the process
10 would have generated additional information on the Projects’ impacts to ESA-listed species, the Great
11 Barrier Reef World Heritage Area, and Ex-Im Bank’s funding. Plaintiffs and their members would have
12 access to this information and be better informed about the Projects and their impacts, improving their
13 ability to participate in decisionmaking and to suggest potential mitigation.

14 30. Defendant Export-Import Bank of the United States (“Ex-Im Bank”) is the official
15 export credit agency of the United States. Ex-Im Bank offers a variety of financial products, including
16 direct loans and loan guarantees, to support U.S. exporters. The Export-Import Bank Act of 1945, 12
17 U.S.C. §§ 635 *et seq.*, is Ex-Im Bank’s charter and governing statute. The agency is responsible for
18 complying with other statutory and regulatory mandates related to its financing decisions, including
19 ESA, NHPA, and FOIA requirements.

20 31. Defendant Fred. P. Hochberg is President and Chairman of the Export-Import Bank of
21 the United States. Mr. Hochberg is the federal official with the ultimate authority and responsibility for
22 ensuring Ex-Im Bank’s compliance with the law, including ESA, NHPA, and FOIA requirements.

23 **LEGAL BACKGROUND**

24 **A. The Endangered Species Act**

25 32. Congress enacted the Endangered Species Act (“ESA”) in 1973 “to provide a program
26 for the conservation of . . . endangered species and threatened species.” 16 U.S.C. § 1531(b).
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1 33. The ESA requires the U.S. Fish & Wildlife Service (“FWS”) and the National Marine
2 Fisheries Service (“NMFS,” or collectively, “the Services”) to “determine whether any species is an
3 endangered species or threatened species.” *Id.* § 1533(a)(1). The Services have listed numerous foreign
4 species as threatened or endangered. 50 C.F.R. § 17.11.

5 34. Once listed as an endangered species, the ESA prohibits the “take” or the harassment,
6 harm, hunting, or killing of a member of that species by any person, entity, or agency. 16 U.S.C.
7 §§ 1538(a); 1532(19). The Services have also extended the take prohibitions to all threatened species
8 automatically upon listing, unless the Services issue a species-specific rule providing alternative
9 protections. 50 C.F.R. § 17.31(a).

10 35. The ESA also establishes that it is “the policy of Congress that all Federal departments
11 and agencies shall seek to conserve endangered species and threatened species and shall utilize their
12 authorities in furtherance of the purposes” of the ESA. *Id.* § 1531(c)(1).

13 36. To implement this policy, Section 7(a) of the ESA requires that “[e]ach Federal agency
14 shall, in consultation with . . . the [Services], insure that any action authorized, funded, or carried out by
15 such agency . . . is not likely to jeopardize the continued existence of any endangered species or
16 threatened species.” 16 U.S.C. § 1536(a)(2). The Services’ joint regulations define an agency “action”
17 to mean “all activities or programs of any kind authorized [or] funded . . . , in whole or in part, by
18 Federal agencies . . .” 50 C.F.R. § 402.02; *see also id.* § 402.03 (“Section 7 . . . appl[ies] to all actions
19 in which there is discretionary Federal involvement or control.”).

20 37. To implement Section 7’s consultation requirements, an “agency shall . . . request” from
21 the Services information regarding whether any listed species “may be present” in a proposed action
22 area, and if so, the “agency shall conduct a biological assessment” to identify the species likely to be
23 affected. 16 U.S.C. § 1536(c); *see also* 50 C.F.R. § 402.12(b) (requiring preparation of a biological
24 assessment for “major construction activities”). An agency must then initiate formal consultation with
25 the Services if a proposed action “may affect” a listed species. 50 C.F.R. § 402.14(a). The “may affect”
26 threshold is extremely low; consultation is triggered by “[a]ny possible effect, whether beneficial,
27 benign, adverse, or of an undetermined character.” 51 Fed. Reg. 19,926 (June 3, 1986).

1 38. After formal consultation, FWS or NMFS issues a biological opinion that evaluates “the
2 current status of the listed species,” identifies the “effects of the action” including any “cumulative
3 effects,” and concludes whether the agency action is likely to “jeopardize” any species’ existence. 50
4 C.F.R. § 402.14(g); 16 U.S.C. § 1536(b). If the Services find jeopardy, the biological opinion may
5 specify reasonable and prudent alternatives to the action that will avoid jeopardy. 16 U.S.C.
6 § 1536(b)(3); 50 C.F.R. § 402.14(h). If the Services conclude jeopardy will not occur, the Services may
7 “suggest modifications” to the action to “avoid the likelihood of adverse effects.” 50 C.F.R. § 402.13.

8 39. Further, under ESA Section 7(d), once a federal agency initiates consultation on an
9 agency action, the agency “shall not make any irreversible or irretrievable commitment of resources
10 with respect to the agency action which has the effect of foreclosing the formulation or implementation
11 of any reasonable and prudent alternative measures.” 16 U.S.C. § 1536(d). The Section 7(d) prohibition
12 remains in effect until consultation has concluded.

13 40. The ESA does not limit the geographical scope of Section 7’s applicability. 16 U.S.C.
14 § 1536(a)(2) (“Each Federal agency shall . . . insure that *any* action . . . is not likely to jeopardize . . .
15 any endangered species or threatened species . . .”) (emphasis added).

16 41. The Services’ original Section 7 regulations, promulgated in 1978, expressly required
17 consultation for all agency actions “in the United States, upon the high seas, and in foreign countries.”
18 50 C.F.R. § 402.02 (1978); 43 Fed. Reg. 870 (Jan. 4, 1978).

19 42. However, in 1986, the Services amended their regulations and purported to limit Section
20 7’s scope to agency actions “in the United States or upon the high seas.” 50 C.F.R. §§ 402.01; 402.02;
21 51 Fed. Reg. 19,926 (June 3, 1986).

22 43. Several groups challenged the agencies’ 1986 regulatory amendment as unlawful, and
23 both the district and appeals courts held the agencies’ decision to exempt agency actions in foreign
24 countries from Section 7 consultation violated the ESA’s plain language. *Defenders of Wildlife v.*
25 *Hodel*, 707 F. Supp. 1082 (D. Minn. 1989), *aff’d Defenders of Wildlife v. Lujan*, 911 F.2d 117 (8th Cir.
26 1990). However, the Supreme Court granted review and found the plaintiffs had failed to establish
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1 standing, and without reaching the merits, reversed the lower court decisions. *Lujan v. Defenders of*
2 *Wildlife*, 504 U.S. 555 (1992). The Services have not amended their unlawful 1986 regulations.

3 **B. The National Historic Preservation Act**

4 44. In 1973, the United States ratified the World Heritage Convention. *See* Convention
5 Concerning the Protection of the World Cultural and Natural Heritage, Nov. 16, 1972, 27 U.S.T. 37.
6 The Convention recognizes that “parts of the cultural or natural heritage are of outstanding interest and
7 therefore need to be preserved as part of the world heritage of mankind,” and that “in view of the
8 magnitude and gravity of the new dangers threatening them, it is incumbent on the international
9 community as a whole to participate in the protection of” this heritage. *Id.*

10 45. Under the Convention, Parties nominate and the UNESCO World Heritage Committee
11 selects cultural and natural heritage properties that have “outstanding universal value” for the World
12 Heritage List. *Id.* Art. 11(1), (2). Parties then commit “to set up . . . services for the protection [and]
13 conservation” of cultural and natural heritage within their borders. *Id.* Art. 5. Further, “[e]ach State
14 Party . . . undertakes not to take any deliberate measures which might damage directly or indirectly the
15 cultural and natural heritage . . . situated on the territory of other States Parties.” *Id.* Art. 6.

16 46. In 1980, Congress amended the National Historic Preservation Act of 1966 (“NHPA”)
17 to implement the United States’ World Heritage Convention obligations. The NHPA requires that,
18 “[p]rior to the approval of any Federal undertaking outside the United States which may directly and
19 adversely affect a property which is on the World Heritage List,” each agency “shall take into account
20 the effect of the undertaking . . . for purposes of avoiding or mitigating any adverse effects.” 16 U.S.C.
21 § 470a-2.

22 47. The NHPA defines an “undertaking” as “a project, activity, or program funded in whole
23 or in part under the direct or indirect jurisdiction of a Federal agency, including . . . those carried out
24 with Federal financial assistance.” 16 U.S.C. § 470w(7). Further, an undertaking may affect a World
25 Heritage site if it alters the property’s characteristics, including destroying or damaging part of the
26 property. *See* 36 C.F.R. § 800.5(a).

1 48. Further, to properly “take into account” the effects of an undertaking on a World
2 Heritage site, an agency must: (1) generate, collect, consider, and weigh information on how the
3 undertaking will affect the listed property, (2) determine whether the effects will be adverse, (3) if
4 necessary, develop and evaluate alternatives or modifications to avoid or mitigate adverse effects, and
5 (4) consult with the host nation and other entities regarding the effects. *See* 36 C.F.R. Part 800.

6 **C. The Export-Import Bank Act of 1945**

7 49. Ex-Im Bank was created pursuant to the Export-Import Bank Act of 1945. 12 U.S.C.
8 §§ 635 *et seq.* The statute authorizes Ex-Im Bank to provide loans, loan guarantees, insurance, and
9 credits to facilitate the export of U.S. goods and services. *Id.* § 635(a)(1).

10 50. Ex-Im Bank provides export financing products that fill gaps in trade financing. The
11 agency assumes credit and country risks that the private sector is unable or unwilling to accept.

12 51. Ex-Im Bank’s organic statute requires the agency to “establish procedures to take into
13 account the potential beneficial and adverse environmental effects of goods and services for which
14 support is requested under its direct lending and guarantee programs.” *Id.* § 635i-5(a)(1).

15 52. To implement this requirement, in 1992, Ex-Im Bank adopted its Environmental
16 Procedures and Guidelines. Under the Environmental Procedures applicable at the time the Australia
17 Pacific and Queensland Curtis LNG Projects were approved, Ex-Im Bank was required to “screen and
18 categorize” all applications that “ha[ve] the potential for adverse environmental effects” and for which
19 Ex-Im Bank’s financial exposure exceeds \$10 million. *Env’tl Procedures & Guidelines* § I(2) (2012).
20 All applicants for “[l]arge” projects were required to submit an “Environmental Impact Assessment” or
21 equivalent documentation sufficient for Ex-Im Bank “to evaluate the nature and extent of the
22 environmental effects of a project, and effectiveness of proposed mitigation measures.” *Id.* §§ II; I(6),
23 (7).

24 53. Further, Annex A of the Procedures & Guidelines provided “the scope of the
25 environmental guidelines applicable to projects.” *Id.* § I(8). These “Performance Standards” require an
26 applicant to “[p]rotect and conserve biodiversity.” *Id.* Annex A, Performance Std. No. 6. Specifically,
27 in areas of natural habitat, the project “will not significantly convert or degrade” natural habitats unless
28

1 there are no viable alternatives. *Id.* Further, “[i]n areas of critical habitat,” a project may not cause
2 “measurable adverse impacts” to the habitat. *Id.* The Performance Standards also require pollution
3 mitigation and the protection of “cultural heritage.” *Id.* Annex A, Performance Std. Nos. 3 and 8.

4 54. An applicant must also submit an “Environmental and Social Management Plan” and an
5 “Action Plan” to Ex-Im Bank, setting out “specific mitigation measures and actions . . . required for the
6 project to comply with application laws, regulations and the requirements of the [] Performance
7 Standards.” *Id.* Annex A, Performance Std. No. 1.

8 55. Ex-Im Bank’s Board of Directors may “withhold financing from a project for
9 environmental reasons.” 12 U.S.C. § 635i-5(a)(2). Further, “[i]f a project does not meet the applicable
10 environmental guidelines,” the Board of Directors may “provide financial support conditioned on the
11 implementation of measures to mitigate the project’s adverse environmental effects.” *Env’tl Procedures*
12 *& Guidelines* § I(15).

13 56. Finally, Ex-Im Bank must “monitor the environmental performance of . . . projects . . . ,
14 particularly those aspects of projects subject to any Ex-Im Bank financing conditions pertaining to the
15 implementation of measures to mitigate a project’s environmental impacts.” *Id.* § V. The agency “shall
16 provide for the public disclosure of environmental assessments and supplemental environmental reports
17 required to be submitted to the Bank, including remediation or mitigation plans and procedures, and
18 related monitoring reports.” 12 U.S.C. § 635i-5(a)(1); *see also Env’tl Procedures & Guidelines* §
19 I(7)(c) (requiring Ex-Im Bank to provide “a comprehensive summary of the material environmental
20 requirements associated with its financial support” on its website and all environmental reports that
21 demonstrate compliance with Ex-Im Bank’s environmental guidelines and required mitigation
22 measures).

23 **D. The Freedom of Information Act**

24 57. The Freedom of Information Act (“FOIA”) requires that agencies “shall” upon request
25 “make [agency] records promptly available to any person.” 5 U.S.C. § 552(a)(3)(A).

26 58. Specifically, after receiving a FOIA request, an agency must, within twenty working
27 days “determine . . . whether to comply with such request and shall immediately notify the person
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1 making such request of such determination and the reasons therefor, and of the right of such person to
2 appeal to the head of the agency any adverse determination.” *Id.* § 552(a)(6)(A)(i). In “unusual
3 circumstances” and only after “written notice” to the requester, an agency may take ten additional
4 working days to make a determination. *Id.* § 552(a)(6)(B)(i).

5 59. Accordingly, within the twenty working days, or in thirty working days under unusual
6 circumstances, the agency must: (1) gather and review responsive documents, (2) determine and
7 communicate the scope of the documents it intends to produce and withhold and the reasons for
8 withholding any documents, and (3) inform the requester that it can appeal whatever portion of the
9 determination is adverse.

10 60. Upon a determination to comply with a FOIA request, “records shall be made promptly
11 available” to the requester. *Id.* § 552(a)(6)(C)(i).

12 61. FOIA states that a requester “shall be deemed to have exhausted his administrative
13 remedies . . . if the agency fails to comply with the applicable time limit provisions” provided under the
14 statute. *Id.*

15 **FACTUAL BACKGROUND**

16 **A. The Great Barrier Reef and Its Endangered Species**

17 62. Stretching more than 1600 miles along the northeastern Australian coast, the Great
18 Barrier Reef is the world’s largest coral reef ecosystem. Renowned for its spectacular natural beauty,
19 the Great Barrier Reef also supports a diverse array of habitats, accounting for a tremendous range in
20 biodiversity, including numerous rare, threatened, and endangered species.

21 63. The dugong (*Dugong dugon*) is a large, herbivorous marine mammal related to the
22 manatee. Dugongs can grow up to 10 feet long and weigh over 550 lbs. The dugong diet is largely
23 restricted to seagrass, and dugongs are typically found in wide, shallow, and protected bays, mangrove
24 channels, or on the lee shore of islands containing seagrass meadows. 68 Fed. Reg. 70,185 (Dec. 17,
25 2003).

26 64. The dugong was first listed as endangered in 1970 under the ESA’s precursor statute and
27 was subsequently included on the endangered list following the ESA’s enactment. 35 Fed. Reg. 18,319
28

1 (Dec. 2, 1970); 39 Fed. Reg. 1171 (Jan. 4, 1974). The species is listed as endangered throughout its
2 range. 68 Fed. Reg. 70,185 (Dec. 17, 2003). The dugong is also considered “Vulnerable” by the
3 International Union for Conservation of Nature and Natural Resources (“IUCN”). The species’ primary
4 threats include hunting and habitat destruction, as seagrass is extremely sensitive to human influence.
5 Seagrass beds can be destroyed from dredging and inland and coastal clearing, as these actions cause
6 turbidity and sedimentation. Underwater noise and vessel strikes are also threaten the dugong.

7 65. A large portion of the world’s dugongs inhabit Australia, including the Great Barrier
8 Reef. Dugongs occur in Port Curtis and Gladstone Harbour and near Curtis Island. In recent years, the
9 number of dugong strandings along the Queensland coast has increased, and the Gladstone area is
10 considered a hot spot for these strandings. Between January 2011 and September 2012, the Queensland
11 Department of Environment and Heritage Protection documented 17 dugong strandings in the
12 Gladstone area alone and a total of 41 dugong strandings throughout the state.

13 66. In 1997, Australia designated the Rodds Bay Dugong Protection Area B, which includes
14 the entire Port Curtis area, to protect dugong habitat.

15 67. The green sea turtle (*Chelonia mydas*) derives its common name from the green fat
16 underneath the turtles’ shells. Green sea turtles, like other sea turtles, can live up to 80 years and
17 migrate long distances between their foraging grounds and nesting beaches.

18 68. While green sea turtles are found in tropical and subtropical seas worldwide, one
19 breeding population nests in the southern Great Barrier Reef, including a major nesting area on the
20 islands of the Capricorn Bunker Groups, located immediately east of Gladstone. These islands include
21 Heron, Northwest, Wreck, Tryon, Masthead, Erskine, Fairfax, North Reef, and Wilson Islands. Minor
22 breeding aggregations also occur at Bushy Island, the Percy Islands, Bell Cay, and Lady Elliott Island,
23 on the mainland coast from Bustard Head to Bundaberg, and the northern part of Fraser Island. Very
24 low-density nesting can occur on almost any other beach within this area. Adult and juvenile green sea
25 turtles may occur in Port Curtis/Gladstone Harbour and near Curtis Island

26 69. Green sea turtle breeding colony populations in Florida and on the Pacific coast of
27 Mexico are listed as endangered under the ESA, while all other populations of green sea turtle,
28

1 including those in Australia, are listed as threatened. 43 Fed. Reg. 32,800 (July 28, 1978). The IUCN
2 has also deemed the entire species “endangered” and to have a “decreasing” population trend.

3 70. The loggerhead sea turtle (*Caretta caretta*) reaches up to 3 feet in length and has a
4 reddish-brown, slightly heart-shaped top shell.

5 71. While the loggerhead sea turtle is found in subtropical and tropical areas around the
6 world, loggerhead nesting aggregations in Oman, the United States, and Australia account for about 88
7 percent of nesting worldwide. Major loggerhead rookeries are found in the Great Barrier Reef,
8 including major nesting concentrations in the thirteen islands of the Capricorn Bunker Groups
9 (especially Wreck, Tryon, and Erskine Islands) immediately east of Gladstone. Loggerhead sea turtles
10 may occur in Port Curtis/Gladstone Harbour and near Curtis Island.

11 72. Listed as “endangered” by the IUCN, nine Distinct Population Segments (“DPS”) of
12 loggerhead sea turtles are listed under the ESA, including the South Pacific Ocean DPS in eastern
13 Australia, which is listed as endangered. 76 Fed. Reg. 58,868 (Sept. 22, 2011). Based on nest count
14 data from the mid-1970s through the early to mid-2000s, the South Pacific Ocean DPS is at risk and
15 thus likely to decline in the future.

16 73. Sea turtles in Australia, including both green and loggerhead sea turtles, face numerous
17 threats. In addition to bycatch in fisheries and vessel strikes, habitat degradation at nesting beaches and
18 feeding areas plays a significant role in the species’ declines. Habitat-related harm includes the
19 presence of lights in nesting areas, beach erosion, increased effluent and water contamination, and
20 increased underwater noise. Further, green sea turtles use seagrass habitats for foraging, and the
21 degradation or destruction of seagrass habitat may harm sea turtles.

22 74. Like the dugong, sea turtles in Queensland have experienced high levels of mortality
23 recently. The Queensland Department of Environment and Heritage Protection documented 296 sea
24 turtle strandings in the Gladstone area alone between January 2011 and September 2012.

25 75. The saltwater crocodile in Australia is listed as a threatened species under the ESA.
26 61 Fed. Reg. 32,356 (June 24, 1996). The species inhabits estuaries, mangrove swamps, and tidal
27 reaches of rivers. The saltwater crocodile reaches lengths well over 20 feet, making it the largest
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1 crocodilian species. Exploitation for hides significantly reduced the species' wild population. Although
2 saltwater crocodiles are not common in the area, the species may be found near Port Curtis/Gladstone
3 Harbour.

4 76. Several other ESA-listed wildlife species inhabit the Great Barrier Reef, including
5 endangered humpback whales and endangered sperm whales. Humpback whales have also been sited
6 within Gladstone Harbour.

7 77. The Great Barrier Reef World Heritage Area was added to the World Heritage List in
8 1981 due to its remarkable beauty and biodiversity, including rare fauna like dugong and several
9 species of sea turtles. In recommending the site for listing, the Advisory Body to the World Heritage
10 Committee specifically noted: “[t]he site includes major feeding grounds for the endangered dugong
11 (Sirenia: *Dugong dugon*) and nesting grounds of world significance for two endangered species of
12 marine turtle, the green (*Chelonia mydas*) and the loggerhead (*Caretta caretta*), . . . [and] given the
13 severe pressures being placed on these species elsewhere, the Great Barrier Reef may be their last
14 secure stronghold.” World Heritage Nomination, IUCN Technical Review (July 1981).

15 78. Although the Great Barrier Reef World Heritage Area largely coincides with the Great
16 Barrier Reef Marine Park, it extends beyond the Park's boundaries in some areas. The waters to the
17 west of Curtis Island are included in the Great Barrier Reef World Heritage Area. The Great Barrier
18 Reef World Heritage Area includes not only reef habitats, but also seagrass beds, sandy or muddy sea
19 beds, continental slope, and deep oceanic water habitats.

20 **B. The Australia Pacific LNG Project**

21 79. The Australia Pacific LNG Project will be located in Queensland, Australia. The Project
22 is a joint venture between Origin Energy, ConocoPhillips, and the China Petrochemical Corporation
23 (Sinopec).

24 80. The Project includes several components. In the “upstream” portion of the Project,
25 proponents will drill up to 10,000 coal-seam wells in the interior Surat and Bowen Basins west of
26 Brisbane. A nearly 300-mile underground pipeline will be installed to transport the gas to the coast,
27
28

1 including a marine crossing over the Narrows, a channel that separates the coast and Curtis Island. The
2 marine crossing will include dredging and direct destruction of seagrass beds.

3 81. The “downstream” portion of the Project includes the construction of an 18-million
4 metric tons per year-capacity LNG facility on Curtis Island to process gas, condense it to liquid, and
5 store it for transport. The LNG facility will also include a marine loading jetty to transport the liquefied
6 gas to tankers for shipping. The LNG facility will occupy 740 acres of land and over 800 acres of
7 seabed. Construction will require dredging and destruction of mangrove and seagrass habitat.

8 82. The Project also requires dredging of Gladstone Harbour to facilitate tanker access.
9 Once operational, tankers will transport the LNG across Port Curtis and typically, through the Great
10 Barrier Reef to destinations worldwide. At maximum capacity, the Project may increase shipping
11 through the Great Barrier Reef Marine Park by 13 percent.

12 83. Construction and operation of the Australia Pacific LNG Project will emit substantial
13 amounts of greenhouse gases. The Australia Pacific LNG Project will emit over 11 million tons of
14 carbon dioxide equivalents (“CO₂e”) per year at maximum capacity.

15 84. The Project’s proponents published an Environmental Impact Statement (“EIS”) in 2010
16 to document likely impacts from the Project’s construction and operation. This EIS was submitted to
17 Ex-Im Bank and constitutes the Project’s Environmental Impact Assessment or equivalent
18 documentation, pursuant to Ex-Im Bank’s Procedures and Guidelines. However, this EIS was not
19 issued by Ex-Im Bank in conformance with National Environmental Policy Act (“NEPA”) procedures,
20 and thus does not constitute compliance with that statute.

21 85. The Australia Pacific LNG Project will adversely impact the environment, including
22 both marine and terrestrial habitat and wildlife species.

23 86. The Project is located within the Great Barrier Reef World Heritage Area. The Project is
24 also located in the Rodds Bay Dugong Protection Area.

25 87. The Project may impact marine wildlife in the Port Curtis/Gladstone Harbour area
26 through the destruction or degradation of habitat from dredging, construction, or reclamation,
27 diminished water quality, vessel strikes, lighting impacts, or underwater noise. Dugongs, green sea
28

1 turtles, loggerhead sea turtles, saltwater crocodiles, or humpback and sperm whales may be affected by
2 the Australia Pacific LNG Project.

3 88. The construction and operation of the Australia Pacific LNG Project may directly and
4 adversely affect the Great Barrier Reef World Heritage Area.

5 **C. The Queensland Curtis LNG Project**

6 89. The Queensland Curtis LNG Project will be located in Queensland, Australia. The
7 Project's proponent is QGC Limited, a subsidiary of the United Kingdom-based BG Energy Holdings
8 Limited.

9 90. The Project includes several components. In the "upstream" portion of the Project,
10 proponents will drill up to 6,000 coal-seam wells in the interior Surat Basin west of Brisbane. A 210-
11 mile underground pipeline will be installed to transport the gas to the coast, including a marine crossing
12 over the Narrows.

13 91. The "downstream" portion of the Queensland Curtis LNG Project includes the
14 construction of a 12-million metric tons per year-capacity LNG facility on Curtis Island to process gas,
15 condense it to liquid, and store it for transport. The Queensland Curtis LNG facility will be located just
16 south of the Australia Pacific LNG facility. The LNG facility will also include a marine loading jetty to
17 transport the liquefied gas to tankers for shipping. Construction and dredging for the Project will
18 destroy mangroves and may smother seagrass habitat.

19 92. The Project also requires dredging of Gladstone Harbour to facilitate tanker access. The
20 Queensland Curtis LNG Project will include dredging of a new shipping channel and swing basin.
21 Once operational, tankers will transport the LNG across Port Curtis and typically through the Great
22 Barrier Reef to destinations worldwide. At maximum capacity, the Project may increase current large
23 vessel movements within the Great Barrier Reef by 6 percent.

24 93. Construction and operation of the Queensland Curtis Pacific LNG Project will emit
25 substantial amounts of greenhouse gases. The Queensland Curtis LNG Project will emit over 108
26 million tons CO₂e over the Project's lifetime.

1 94. The Project’s proponents published a Draft Environmental Impact Statement (“DEIS”)
2 in 2009 to document likely impacts from the Project’s construction and operation. The DEIS was later
3 supplemented, and the DEIS and supplement together constitute the Project’s Final EIS. This EIS was
4 submitted to Ex-Im Bank and constitutes the Project’s Environmental Impact Assessment or equivalent
5 documentation, pursuant to Ex-Im Bank’s Procedures and Guidelines. However, this EIS was not
6 issued by Ex-Im Bank in conformance with National Environmental Policy Act (“NEPA”) procedures,
7 and thus does not constitute compliance with that statute.

8 95. The Queensland Curtis LNG Project will adversely impact the environment, including
9 both marine and terrestrial habitat and wildlife species.

10 96. The Project is located within the Great Barrier Reef World Heritage Area. The Project is
11 also located in the Rodds Bay Dugong Protection Area.

12 97. The Project may impact marine wildlife in the Port Curtis/Gladstone Harbour area
13 through the destruction or degradation of habitat from dredging, construction, or reclamation,
14 diminished water quality, vessel strikes, lighting impacts, or underwater noise. Dugongs, green sea
15 turtles, loggerhead sea turtles, saltwater crocodiles, or humpback and sperm whales may be affected by
16 the Queensland Curtis LNG Project.

17 98. The construction and operation of the Queensland Curtis LNG Project may directly and
18 adversely affect the Great Barrier Reef World Heritage Area.

19 **D. UNESCO’s Response**

20 99. In 2011, the UNESCO World Heritage Committee expressed “extreme concern”
21 regarding Australia’s approval of liquefied natural gas facilities on Curtis Island and requested an
22 official monitoring mission to assess the impacts. The resulting report, issued in June 2012, found that
23 “the developments in Gladstone Harbour and on Curtis Island,” including the various LNG facilities
24 and associated dredging, “do have a negative impact on the OUV [Outstanding Universal Value] of the
25 property.” World Heritage Committee Mission Report, Reactive Monitoring to Great Barrier Reef:
26 WHC-12/36.COM/7B (June 2012). In response, the World Heritage Committee requested that
27 Australia formally report on the status of the Great Barrier Reef World Heritage Area, “with a view to
28

1 considering, in the absence of substantial process, the possible inscription of the property on the List of
2 World Heritage in Danger.”

3 **E. Ex-Im Bank’s Funding of the Australia Pacific LNG Project**

4 100. On May 3, 2012, Ex-Im Bank’s Board of Directors authorized \$2.95 billion in direct
5 loans for the Australia Pacific LNG Project.

6 101. The Australia Pacific LNG transaction was Ex-Im Bank’s second largest single-project
7 financing in its history.

8 102. The Australia Pacific LNG Project is a Category A project.

9 103. Upon information and belief, Ex-Im Bank’s support of the Australia Pacific LNG
10 Project is structured as limited recourse project finance.

11 104. Upon information and belief, the funding provided by Ex-Im Bank for the Australia
12 Pacific LNG Project was critical to the Project’s financing. The Australia Pacific LNG Project would
13 not likely proceed without Ex-Im Bank’s financial support.

14 **F. Ex-Im Bank’s Funding of the Queensland Curtis LNG Project**

15 105. On December 27, 2012, Ex-Im Bank’s Board of Directors authorized \$1.8 billion in
16 direct loans for the Queensland Curtis LNG Project.

17 106. The Queensland Curtis LNG Project is a Category A project.

18 107. Upon information and belief, Ex-Im Bank’s support of the Queensland Curtis LNG
19 Project is structured as limited recourse project finance.

20 108. Upon information and belief, the funding provided by Ex-Im Bank for the Queensland
21 Curtis LNG Project was critical to the Project’s financing. The Queensland Curtis LNG Project would
22 not likely proceed without Ex-Im Bank’s financial support.

23 **G. FOIA Request and Ex-Im Bank’s Failure to Respond**

24 109. On August 3, 2012, the Center submitted a FOIA request (#201200053F) to Ex-Im
25 Bank, seeking records regarding the agency’s decision to fund the Australia Pacific LNG Project and
26 the Queensland Curtis LNG Project.

1 110. On August 9, 2012, Ex-Im Bank acknowledged that it had received the Center’s request
2 on August 3, 2012.

3 111. Ex-Im Bank was required to determine whether to comply with the Center’s request,
4 provide its reasons, and notify the Center of its appeal rights by September 4, 2012.

5 112. However, to date, Ex-Im Bank has not notified the Center of which documents the
6 agency will release, which exemptions it will claim, or whether it will grant the Center’s request for a
7 fee waiver and has not informed the Center of its appeal rights. Moreover, Ex-Im Bank has not
8 produced any records in response to the Center’s request.

9 **CLAIMS FOR RELIEF**

10 **FIRST CLAIM FOR RELIEF**

11 **Violations of Section 7 of the Endangered Species Act**

12 113. Plaintiffs hereby incorporate by reference the allegations presented in all preceding
13 paragraphs.

14 114. Ex-Im Bank’s funding of the Australia Pacific LNG Project constitutes an “agency
15 action” under Section 7 of the ESA. 16 U.S.C. § 1536; 50 C.F.R. §§ 402.02; 402.03. Ex-Im Bank’s
16 funding of the Queensland Curtis LNG Project constitutes an “agency action” under Section 7 of the
17 ESA. *Id.*

18 115. Ex-Im Bank’s funding of the Australia Pacific LNG Project “may affect” ESA-listed
19 species. 50 C.F.R. § 402.14(a). Ex-Im Bank’s funding of the Queensland Curtis LNG Project “may
20 affect” ESA-listed species. *Id.*

21 116. Ex-Im Bank failed to request from the Services a list of endangered and threatened
22 species present in the action area and failed to prepare a biological assessment describing the impacts of
23 the Australia Pacific and Queensland Curtis LNG Projects on threatened and endangered species, as
24 required by the ESA. 16 U.S.C. § 1536(c); 50 C.F.R. § 402.12(b).

25 117. Ex-Im Bank failed to initiate or complete consultation with the Services regarding the
26 impacts of its actions on ESA-listed species, as required by the ESA. 16 U.S.C. § 1536(a)(2).
27
28

1 118. By failing to comply with the procedural mandates of Section 7 of the ESA, Ex-Im Bank
2 has failed to ensure its actions do not jeopardize any listed species, including dugong, loggerhead and
3 green sea turtles, saltwater crocodiles, and humpback and sperm whales. 16 U.S.C. § 1536(a)(2).

4 119. Defendants' failure to comply with Section 7's consultation requirements constitutes a
5 violation of the ESA.

6 **SECOND CLAIM FOR RELIEF**

7 **Violations of the National Historic Preservation Act and the Administrative Procedure Act**

8 120. Plaintiffs hereby incorporate by reference the allegations presented in all preceding
9 paragraphs.

10 121. Ex-Im Bank's funding of the Australia Pacific LNG Project constitutes an "undertaking"
11 that "may directly and adversely affect" the Great Barrier Reef World Heritage Area, pursuant to the
12 NHPA. 16 U.S.C. § 470a-2. Ex-Im Bank's funding of the Queensland Curtis LNG Project constitutes
13 an "undertaking" that "may directly and adversely affect" the Great Barrier Reef World Heritage Area,
14 pursuant to the NHPA. *Id.*

15 122. Ex-Im Bank failed to "take into account the effect . . . for purposes of avoiding or
16 mitigating any adverse effects" of the Projects on the Great Barrier Reef World Heritage Area, prior to
17 approving funding for the Projects. *Id.*

18 123. Ex-Im Bank failed to generate and collect information regarding the Projects' effects on
19 the Great Barrier Reef World Heritage Area, failed to determine whether the effects will be adverse,
20 failed to consider mitigation to avoid those effects, and failed to properly consult with all parties
21 regarding the effects.

22 124. Defendants' failure to properly take into account the Australia Pacific LNG and
23 Queensland Curtis LNG Projects' effects on the Great Barrier Reef World Heritage Area violates the
24 NHPA, is arbitrary, capricious, and otherwise not in accordance with law, and/or constitutes an action
25 unlawfully withheld under the APA. *Id.*; 5 U.S.C. §§ 551; 706.

1 **THIRD CLAIM FOR RELIEF**

2 **Violations of the Freedom of Information Act and Administrative Procedure Act**

3 125. Plaintiffs hereby incorporate by reference the allegations presented in all preceding
4 paragraphs.

5 126. Ex-Im Bank failed to determine whether it would comply with the Center’s August 3,
6 2012 FOIA request; notify the Center of the agency’s determination, the scope of responsive
7 documents, and the reasons for withholding any documents; or notify the Center of its appeal rights
8 within the statutory time period. 5 U.S.C. §§ 552(a)(6)(A)(i). Further, Ex-Im Bank failed to promptly
9 provide responsive records. *Id.* § 552(a)(6)(B).

10 127. Defendants’ failure to properly respond to the Center’s FOIA request violates FOIA and
11 constitutes an action unlawfully withheld and/or unreasonably delayed under the APA. *Id.* §§ 551; 552;
12 706.

13 **RELIEF REQUESTED**

14 For the reasons stated above, Plaintiffs respectfully request that the Court grant the following
15 relief:

16 1. Declare that Ex-Im Bank violated Section 7 of the ESA, 16 U.S.C. § 1536, by failing to
17 ensure through consultation that its funding of the Australia Pacific LNG Project and the Queensland
18 Curtis LNG Project did not jeopardize any ESA-listed species;

19 2. Declare that Ex-Im Bank violated the NHPA, 16 U.S.C. § 470a, and the APA, 5 U.S.C.
20 § 706, by failing to properly take into account the effects of the Australia Pacific LNG Project and the
21 Queensland Curtis LNG Project on the Great Barrier Reef World Heritage Area;

22 3. Declare that Ex-Im Bank violated FOIA, 5 U.S.C. § 552, and the APA, 5 U.S.C. § 706,
23 by failing to timely respond to the Center’s FOIA request and promptly provide requested records;

24 4. Set aside and remand Ex-Im Bank’s decisions to fund the Australia Pacific LNG Project
25 and the Queensland Curtis LNG Project and compel Ex-Im Bank to consult with the Services regarding
26 those decisions, to suspend any actions that might constitute irreversible and irretrievable commitments
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1 of resources pending completion of that consultation, and to properly take into account the Projects'
2 effects on the Great Barrier Reef World Heritage Area;

3 5. Order Ex-Im Bank to produce records in response to the Center's August 3, 2012 FOIA
4 request;

5 6. Award Plaintiffs their costs of litigation, including reasonable attorneys' fees; and

6 7. Grant Plaintiffs such other relief as the Court deems just and proper.

7
8
9 Dated: October 4, 2013

Respectfully submitted,

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