

ORAL ARGUMENT NOT YET SCHEDULED

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

AMERICAN PETROLEUM INSTITUTE,

Petitioner,

v.

UNITED STATES DEPARTMENT OF THE
INTERIOR and BUREAU OF OCEAN
ENERGY MANAGEMENT,

Respondents.

No. 24-1023

(Consolidated with No. 24-1024)

MOTION TO INTERVENE IN SUPPORT OF RESPONDENTS

Pursuant to Federal Rules of Appellate Procedure 15(d) and 27, and Rule 15(b) of this Court, Healthy Gulf, Alaska Community Action on Toxics, Bayou City Waterkeeper, Cook Inletkeeper, Friends of the Earth, Kachemak Bay Conservation Society, Natural Resources Defense Council, Oceana, Sierra Club, Surfrider Foundation, and Turtle Island Restoration Network (collectively, “Movants”) hereby move for leave to intervene in support of Respondents Department of Interior and Bureau of Ocean Energy Management (collectively, “Interior” or “Respondents”), in the above-captioned matter. The petition for review filed by Petitioner American Petroleum Institute (“Petitioner”) in this Court seeks review of Interior’s Record of Decision and Approval of the 2024-2029

National Outer Continental Shelf Oil and Gas Leasing Proposed Final Program (“2024-2029 Program” or “Program”). Counsel for all parties have been contacted for their position on the motion. Petitioner does not oppose this motion and Interior reserves its position.

INTRODUCTION

The Gulf of Mexico contains some of the most biodiverse ecosystems in the United States. The Gulf is also the nation’s primary offshore source of oil and gas, generating nearly all U.S. offshore oil and gas production. These extensive oil and gas operations have already caused serious harm to vulnerable Gulf ecosystems and communities.

Interior’s Program schedules three oil and gas lease sales over the next five years in the Gulf. The final Program significantly reduced the number of lease sales compared to the draft Program, which scheduled 10 sales in the Gulf and one in Cook Inlet, Alaska. While the final Program’s proposed three sales is the smallest number in any program to date, any new sales will increase future oil and gas production and compound the already severe harms of oil and gas development on communities and ecosystems.

In this case, Petitioner seeks review of Interior’s Program. Movants do not yet know what aspects of the Program Petitioner will challenge. However, in comments, Petitioner urged Interior to include the maximum number of sales, 10 in

the Gulf and one in Cook Inlet.¹ If Petitioner succeeds with its objective, additional oil and gas leasing will harm Movants and their members' interests in protecting public health, cultural resources, air and water quality, wildlife, and the climate. Movants are not adequately represented by Respondents, who are tasked with balancing the interests of environmental protection with demands for energy exploration and exploitation. Movants therefore respectfully request this Court grant their Motion to intervene to protect their and their members' interests in ensuring federal waters are not slated for additional oil and gas development.

BACKGROUND

The Gulf is one of the most productive ecosystems in the United States, providing a home to thousands of species, including the critically endangered Rice's whale, a species scientists estimate have fewer than 100 individuals remaining.² Millions of people living in Gulf states depend on this marine environment to support fisheries, tourism, and recreational opportunities.³

¹ American Petroleum Institute, Comment Letter on the 2023-2028 Proposed Program 2 (Oct. 5, 2022), https://downloads.regulations.gov/BOEM-2022-0031-6277/attachment_1.pdf.

² Bureau of Ocean Energy Management, *2024-2029 Program Final Environmental Impact Statement* 110–18 (Sept. 2023), https://www.boem.gov/sites/default/files/documents/oil-gas-energy/leasing/2024-2029NatOCSOilGasLeasing_FinalPEISVol1_0.pdf (hereinafter "EIS").

³ *Id.* at 118-21.

The poverty rate of residents in counties bordering the areas slated for additional oil and gas leasing exceeds the national average.⁴ Over 60% of these counties have majority residents of color.⁵ These populations are more vulnerable to natural and human-caused disasters.⁶ And this region is still recovering from recent hurricanes and oil spills that disproportionately affected low-income communities and communities of color, especially in coastal Louisiana.⁷

Existing oil and gas infrastructure in the Gulf outer continental shelf is extensive. As of February 2024, there are nearly 2,200 active leases that span nearly 12 million acres, supporting thousands of oil and gas platforms.⁸

Cook Inlet is an estuary ecosystem that provides home to many species, including the endangered Cook Inlet beluga.⁹ The inlet is also central to the culture and subsistence of many Alaska native communities,¹⁰ and supports tourism, recreation, and fishing.¹¹ The region's ecology, economy, and culture is extremely

⁴ *Id.* at 120.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Bureau of Ocean Energy Management, *Combined Leasing Report* (Feb. 1, 2024), <https://www.boem.gov/sites/default/files/documents/oil-gas-energy/leasing/Lease%20stats%202-1-24.pdf>.

⁹ BOEM, *2024-2029 National Outer Continental Shelf Oil and Gas Leasing Proposed Final Program* 8-8 (Sept. 2023) (hereinafter "Program"), https://www.boem.gov/sites/default/files/documents/oil-gas-energy/leasing/2024-2029_NationalOCSProgram_PFP_Sept_2023_Compliant.pdf.

¹⁰ *Id.* at 7-4.

¹¹ *Id.* at 7-4 to 7-5.

vulnerable to oil spills. As of February 2024, there are 15 active leases that span over 82,000 acres in Cook Inlet.¹²

Interior recognizes offshore oil and gas operations harm the environment through oil spills, bottom habitat destruction, marine debris, water pollution, noise from vessels and seismic surveys, and risk of vessel strikes on species, among other harms.¹³ These impacts impair fishing opportunities and recreational experiences.¹⁴ The infrastructure necessary to support offshore oil and gas activities pollutes air and water and degrades wetlands.¹⁵ Moreover, climate impacts from fossil fuel development harm Gulf and Alaskan ecosystems and communities through sea level rise, coastal erosion, and increased storms.¹⁶

The Outer Continental Shelf Lands Act (“OCSLA”) requires that, before issuing offshore oil and gas leases in the outer continental shelf, Interior prepare an oil and gas leasing program, consisting of a schedule of proposed lease sales that will “best meet national energy needs” for the five-year period following its approval. 43 U.S.C. §§ 1344(a), (d)(3), 1331(c). When selecting the timing and location of leasing in the Program, Interior must consider the potential impacts of oil and gas exploration on the marine, coastal, and human environments and

¹² BOEM, *supra* note, at 8.

¹³ EIS at 52-55.

¹⁴ *Id.* at 179.

¹⁵ *Id.* at 53-55.

¹⁶ *Id.* at 25-26.

balance the potential for environmental damage, the potential for the discovery of oil and gas, and the potential for adverse impact on the coastal zone. *Id.* § 1344(a)(1), (3).

On December 14, 2023, Interior signed a record of decision to approve the 2024-2029 Program, which sets a schedule of three proposed lease sales in the Gulf during that five-year period, one sale each in 2025, 2027, and 2029. Doc. 2040164, Attach. 1. The Program narrowed the number of proposed sales from eleven sales over five years to three, concluding that three sales “provide adequate access to the region’s oil and gas resources to meet national energy needs.”¹⁷ While Interior’s decision to hold any sales still harms Movants’ interests by enabling additional oil and gas leasing, Interior’s decision to limit the number of sales to three also significantly decreases the Program’s harms to Movants by reducing the extent of oil and gas activities that results from the Program, especially compared to the draft 11-sale Program.¹⁸

Movants are environmental organizations dedicated to protecting public health and the environment and have participated in the administrative proceedings related to the Program and in prior litigation related to Interior’s past leasing decisions. *See* attached hereto, Decl. of Pamela Miller ¶¶ 5-6 (Ex. A); Decl. of

¹⁷ Program at 6.

¹⁸ *Id.* at 5-10 tbl. 5-1.

Kristen Schlemmer ¶ 6 (Ex. B); Decl. of Sue Mauger ¶ 3, 10 (Ex. C); Decl. of Hallie Templeton ¶¶ 3, 7-9 (Ex. D); Decl. of Scott Eustis ¶¶ 3, 6 (Ex. F); Decl. of Roberta Highland ¶¶ 3-4 (Ex. H); Decl. of Jacqueline Savitz ¶¶ 3-10 (Ex. I); Decl. of Athan Manuel ¶¶ 4, 9 (Ex. K); Decl. of Pete Stauffer ¶¶ 4-5 (Ex. N); Decl. of Joanie Steinhaus ¶ 3 (Ex. P); Decl. of Joyce Yeung ¶¶ 7-9 (Ex. S). Movants also submitted their own petition challenging the Program's failure to consider various environmental harms under OCSLA. Doc. 2040164. The oil and gas production that results from leasing of public lands and waters to industry harms Movants' organizations, *id.*, and their members. Decl. of Kenneth Saxon ¶¶ 9-27 (Ex. E); Decl. of Louis Skrmetta ¶¶ 10-53 (Ex. G); Decl. of Robert Wiygul ¶¶ 7-26 (Ex. L); Decl. of Neil McQueen ¶¶ 7-32 (Ex. M); Decl. of George Schmahl ¶¶ 5-11 (Ex. O); Decl. of Micheal Guckian ¶¶ 3-10 (Ex. Q); Decl. of John Hildebrand ¶¶ 5-16 (Ex. R); Decl. of Justin Solet ¶¶ 5-10 (Ex. T); Mauger Decl. ¶ 12; Miller Decl. ¶ 10; Schlemmer Decl. ¶¶ 25-38. Movants would therefore be injured if Petitioner succeeds in overturning the Program on the basis that it has too few sales.

MOVANTS FOR INTERVENTION

HEALTHY GULF is a nonprofit organization committed to empowering people to protect and restore the natural resources of the Gulf of Mexico. Eustis Decl. ¶¶ 1, 3. Healthy Gulf's purpose is to collaborate with and serve communities who love the Gulf by providing research, communications, and coalition-building

tools to reverse the long-pattern of over-exploitation of the Gulf's natural resources. *Id.* ¶ 1. Healthy Gulf has been actively involved in efforts to strengthen oversight of the offshore oil and gas industry and end new oil and gas leasing in this region. *Id.* ¶¶ 6-8. Healthy Gulf is headquartered in New Orleans, Louisiana. *Id.* ¶ 1. Healthy Gulf's members live in the five Gulf states and nationwide. *Id.* ¶ 4.

ALASKA COMMUNITY ACTION ON TOXICS (ACAT) is a statewide non-profit environmental health and justice organization founded in 1997. Miller Decl. ¶ 5. ACAT's mission is to ensure environmental health and justice in Alaska. *Id.* ACAT empowers communities to eliminate exposure to toxics through collaborative research, shared science, education, organizing, and advocacy. *Id.* ACAT protects the rights to clean air, clean water, and toxic-free food; supports the rights of Indigenous peoples; and works to eliminate the release of toxic chemicals, including chemicals from offshore oil and gas activities, which may harm human health or the environment. *Id.*

BAYOU CITY WATERKEEPER is a nonprofit organization based in Houston, Texas. Schlemmer Decl. ¶ 5. Bayou City Waterkeeper's mission is to address environmental injustices caused by water pollution and infrastructure and promote equity and climate resilience in decisions affecting the waters and people across the Lower Galveston Bay watershed. *Id.* ¶ 6. Offshore oil and gas activities affect Bayou City Waterkeeper's and its members' interests by: (1) increasing

carbon emissions, which intensifies the major storms the region already faces and decreases communities' ability to prevent flooding and (2) by increasing onshore fossil fuel infrastructure development along the Texas coast and waterways, which results in destruction of wetlands and habitats, creates new pollution and health risks for neighboring communities, and affects the organization's recreational and aesthetic interests. *Id.* ¶ 22.

COOK INLETKEEPER is a nonprofit organization dedicated to protecting the Cook Inlet watershed and the life it sustains. Mauger Decl. ¶ 3. Since its inception in 1995, Cook Inletkeeper has relied on research, outreach, and advocacy to become a leader in watershed-based protections in the rich but threatened streams, lakes, and estuaries of the Cook Inlet watershed. *Id.* Cook Inletkeeper was lead petitioner in the effort to list the Cook Inlet beluga whale as endangered under the Endangered Species Act, and it has led and supported citizen-based science efforts to count, identify, and better understand the Cook Inlet beluga whale. *Id.* ¶ 9. Cook Inletkeeper has also been involved in efforts to protect the inlet from offshore oil and gas activities, including advocacy to remove Cook Inlet from all future leasing plans. *Id.* ¶ 10.

FRIENDS OF THE EARTH is a nonprofit organization headquartered in Washington, D.C. Friends of the Earth currently has over 8.6 million activists and over 282,000 members across the nation. Templeton Decl. ¶ 2. Friends of the

Earth's primary mission is to defend the environment and champion a healthier and more just world by collectively ensuring environmental and social justice, human dignity, and respect for human rights and peoples' rights. *Id.* Friends of the Earth and its members are dedicated to reducing carbon emissions and domestic reliance on fossil fuels and supporting a temporary pause on oil and gas leasing on federal public lands and water. *Id.* ¶ 3. Friends of the Earth's Climate & Energy and Oceans & Vessels programs directly engage in advocacy to protect the environment and society from climate change, pollution, and industrialization associated with fossil fuel development. *Id.* Friends of the Earth's members recreate and enjoy Gulf waters and wildlife. *Id.* ¶ 4.

Founded in 1983, KACHEMAK BAY CONSERVATION SOCIETY's ("KBCS") mission is to protect the environment of the Kachemak Bay region and greater Alaska by encouraging sustainable use of natural resources through advocacy, education, information, and collaboration. Highland Decl. ¶ 3. KBCS's members rely on it to advocate on their behalf, and they provide support for its advocacy. *Id.* ¶ 6. KBSC's members are concerned about the impacts of oil and gas development in Kachemak Bay, located in southern Cook Inlet, including the impacts of spills, impacts to beluga whales and the Lower Cook Inlet salmon fisheries, and the impacts of greenhouse gases and warming climate. *Id.*

NATURAL RESOURCES DEFENSE COUNCIL (“NRDC”) is a nationwide nonprofit organization incorporated under New York law. Yeung Decl. ¶ 3. NRDC’s mission is to safeguard the earth—its people, its plants and animals, and the natural systems on which all life depends. *Id.* ¶ 7. NRDC has over 450,000 members nationwide, including more than 20,000 in the Gulf region and over 700 in Alaska. *Id.* ¶ 6. NRDC’s advocacy to protect ocean and coastal ecosystems and wildlife, including the Gulf and its marine life, from the harms of oil production dates back decades. *Id.* ¶¶ 8-9.

OCEANA is a nonprofit organization dedicated to protecting and restoring the world’s oceans through policy, advocacy, science, law, and public education. Savitz Decl. ¶¶ 2-3. Oceana has over one million members and supporters in the United States, including nearly 150,000 members in Gulf states. *Id.* ¶ 2. Oceana is headquartered in Washington, D.C. with regional offices across the United States. *Id.* Oceana’s Climate and Energy Campaign uses science and advocacy to drive policies aimed at stopping climate change, with a focus on preventing offshore oil drilling, preventing seismic airgun blasting, and promoting responsible offshore wind energy. *Id.* ¶¶ 3, 7. Oceana’s staff and members have been engaged in opposing offshore oil drilling and have put significant resources and effort into advocating for permanent protection from offshore oil and gas drilling. *Id.* ¶¶ 5-14.

SIERRA CLUB is a not-for-profit organization dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. Manuel Decl. ¶ 4. Sierra Club has nearly 800,000 members nationally, including over 38,000 members in its Gulf chapters. *Id.* ¶¶ 4-5. Sierra Club members use public lands and waters throughout the Gulf, including those that would be affected by oil and gas activities, for quiet recreation, aesthetic pursuits, and spiritual renewal. *Id.* ¶ 6. Sierra Club members observe and enjoy wildlife found in the Gulf that may be harmed by oil and gas activities. *Id.* ¶¶ 6-8.

SURFRIDER FOUNDATION (SURFRIDER) is a nonprofit organization dedicated to the protection and enjoyment of the world's oceans, waves, and beaches. Stauffer Decl. ¶ 4. Surfrider has more than 350,000 supporters and members, *id.*, including members who live on the Gulf coast. *Id.* ¶ 6. Surfrider's members derive recreational, aesthetic, and economic benefits from the Gulf and the diverse marine life that resides there, including marine species that are likely to be harmed by oil and gas operations. *Id.* Surfrider's members' future use and enjoyment of Gulf waters depend on clean water and accessible coastal recreation, as well as healthy and sustainable populations of marine life. *Id.* ¶¶ 7-8.

TURTLE ISLAND RESTORATION NETWORK (“TIRN”) is a nonprofit organization based in California with offices in Galveston, Texas. Steinhaus Decl. ¶¶ 3-4. TIRN and its members work to protect and restore populations of endangered sea turtles and other vulnerable marine creatures as well as marine biodiversity and ecosystems throughout the Gulf. *Id.* TIRN has over 27,581 supporters in the Gulf region and nearly 100,000 members and supporters across the United States and the world. *Id.* ¶ 5. TIRN has fought for more than 30 years to make oceans healthier for humans and animals, including advocacy to end offshore oil and gas leasing in Gulf waters. *Id.* ¶ 3.

ARGUMENT

I. Movants Are Entitled to Intervene as of Right.

Under Federal Rule of Appellate Procedure 15(d), a motion to intervene need only “be filed within 30 days after the petition for review” and provide “a concise statement of the interest of the moving party and the grounds for intervention.” Fed. R. App. P. 15(d); *see also Synovus Fin. Corp. v. Bd. of Governors of Fed. Reserve Sys.*, 952 F.2d 426, 433 (D.C. Cir. 1991). In determining what constitutes appropriate grounds for intervention, this Circuit has looked to the standard for intervention in the district courts. *See Building & Const. Trades Dep’t v. Reich*, 40 F.3d 1275, 1282-83 (D.C. Cir 1994) (noting that “the policies underlying intervention [in district court] may be applicable in appellate

courts”) (alteration in original) (quoting *Int’l Union v. Scofield*, 382 U.S. 205, 216-17 n.10 (1965)); *Mass. Sch. of L. at Andover, Inc. v. United States*, 118 F.3d 776, 779 (D.C. Cir. 1997). Under Federal Rule of Civil Procedure 24(a)(2), a movant is entitled to intervention as-of-right whenever (1) its motion is “timely”; (2) the movant claims an “interest relating to the ... subject of the action”; (3) disposition of the action “may as a practical matter impair or impede the movant’s ability to protect its interest”; and (4) the existing parties may not “adequately represent” the movant’s interest. Fed. R. Civ. P. 24(a)(2); *see also Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 731 (D.C. Cir. 2003). Movants readily satisfy these standards here.

A. Movants Timely Filed This Motion.

Under Federal Rule of Appellate Procedure 15(d), motions to intervene are due within thirty days of the filing of a petition for review. Because the petition for review in the above-captioned case was submitted on February 12, 2024, Doc. 2040133, the thirty-day period expires March 13, 2024. *See* Fed. R. App. P. 26(a)(1)(C). This motion is therefore timely.

B. Movants Have Significant Interests in the Program That May Be Impaired by Petitioner’s Requested Relief.

Movants and their members have a clear “interest” in this matter, which will be impaired if Petitioner succeeds with its suit. *See* Fed. R. App. Proc. 15(d). Movants’ members work and recreate in or around public waters covered by the

Program. *See e.g.*, Schmahl Decl. ¶¶ 5-6. Oil and gas operations harm their recreational, scientific, and aesthetic interests, along with their health and welfare. *See e.g.* Schlemmer Decl. ¶¶ 28-35. If Petitioner succeeds with its suit, a program with additional oil and gas leasing would exacerbate these harms by increasing oil spills and water pollution, ship strikes and noise impacts from vessel traffic and seismic surveys, as well as air pollutant and greenhouse gas emissions that diminish members' ability to recreate, view wildlife, and that harm members' livelihoods. *See e.g., id.*; Schmahl Decl. ¶¶ 8-10.

Movants' members have already experienced harms from oil and gas development. For example, Healthy Gulf and Sierra Club member Robert Wiygul lives in Ocean Springs, Mississippi about 900 feet from Biloxi Bay. Wiygul Decl. ¶¶ 2-4, 6. Biloxi Bay connects to the Mississippi Sound, which transitions to the Gulf. *Id.* ¶ 2. Wiygul has been fishing recreationally in the Gulf and the outer continental shelf for decades. *Id.* ¶¶ 7-10. When fishing, Wiygul is harmed by the widespread devastation that oil and gas development has wrought in the Gulf, encountering rusting pipes and equipment, oil slicks, and damage to coastal marsh habitat. *Id.* Wiygul is also injured from climate change; sea level rise has already affected his property and his home is at risk from more frequent and more intense storms. *Id.* ¶¶ 22-23.

Likewise, Healthy Gulf member Louis Skrmetta owns a boat business, which takes visitors out to barrier islands off the Mississippi coast. Skrmetta Decl. ¶¶ 10-15. Skrmetta’s customers come to enjoy beautiful Gulf vistas and wildlife. *Id.* ¶¶ 13-15. His business therefore depends on clean waters, healthy wildlife, and clear ocean views. *Id.* ¶ 21. Skrmetta has observed that the presence of rigs has damaged property values and decreased tourism in nearby areas. *Id.* ¶ 34. Skrmetta was also harmed and continues to be harmed by the *Deepwater Horizon* oil spill, *id.* ¶¶ 43-44, which originated in the Gulf outer continental shelf from an area Interior leased under the authority of an earlier program. The year after that spill, Skrmetta’s business dropped from 50,000 visitors to only 11,000. *Id.* ¶ 44. Even now, storms resurface oil from that spill, which impairs his visitors’ experiences. *Id.* ¶ 40-42. Skrmetta states his customers are often upset when the water looks dirty, prompting some to write bad reviews, which can “immediately affect[] business.” *Id.* ¶ 42.

In addition, Movants have expended significant effort advocating for fewer leases in the outer continental shelf, challenging multiple lease sales in court and writing extensive comments on the draft Program, urging Interior to include as few sales as possible. *See, e.g., Healthy Gulf v. Haaland*, Civ. No. 23-cv-00604-APM (D.D.C., filed Mar. 6, 2023); *Healthy Gulf v. Haaland*, Civ. No. 23-cv-02487-APM (D.D.C., filed Aug. 25, 2023); *Cook Inletkeeper v. Dept. of the Interior*, No.

3:22-cv-00279-SLG (D. Alaska, filed Dec. 21, 2022).¹⁹ A successful challenge would undermine the years of work Movants have invested in this advocacy. *Cf. NRDC v. EPA*, 99 F.R.D. 607, 609 (D.D.C. 1983) (holding intervention is appropriate when an organization’s advocacy efforts “may be nullified” by the lawsuit at issue).

C. Movants’ Interests May Not Be Adequately Represented by Federal Respondents.

Movants satisfy their “minimal” burden to show Federal Respondents’ representation “‘may be’ inadequate.” *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972). Movants need not “predict now the specific instances” in which conflicts may arise, *NRDC v. Costle*, 561 F.2d 904, 912 (D.C. Cir. 1977); a “potential conflict,” *Dimond v. Dist. Of Columbia*, 792 F.2d 179, 193 (D.C. Cir. 1986); or a “possibility of disparate interests” is sufficient, *Costle*, 561 F.2d at 912. As this Court has observed, “doubtful friends may provide dubious representation.” *Crossroads Grassroots Pol’y Strategies v. FEC*, 788 F.3d 312, 314 (D.C. Cir. 2015).

Movants readily satisfy this “not onerous” standard. *Id.* at 321 (quoting *Fund for Animals*, 322 F.3d at 735). First, Respondents’ and Movants’ interests are

¹⁹ Healthy Gulf et al., Comment Letter on the 2023-2028 Proposed Program (October 6, 2022), https://downloads.regulations.gov/BOEM-2022-0031-6334/attachment_1.pdf.

partially adverse in this case. While Movants seek to defend portions of the Program, Movants are also *challenging* the Program for failing to consider various environmental harms under OCSLA. This adversarial posture shows Respondents may not serve as adequate representation for Movants.

Moreover, this Court “look[s] skeptically on government entities serving as adequate advocates for private parties,” *id.*, in part because the government is required to represent the public interest and therefore often has broader obligations than prospective intervenors. *See Fund for Animals*, 322 F.3d at 737 (explaining a government entity “represent[s] the public interest of its citizens” and “would be shirking its duty were it to advance [a] narrower interest at the expense of its representation of the general public” (quoting *Dimond*, 792 F.2d at 192-93)).

Here, Movants have particularized missions dedicated to environmental justice and protection that only partially align with the numerous and varied statutory obligations of Respondents. *See, e.g.*, Manuel Decl. ¶ 4. In contrast, Respondents’ authority under OCSLA calls for them to represent—and balance—competing interests, such as environmental interests, recreational uses, national energy needs and more.²⁰ Respondents’ broad and competing obligations

²⁰ *See, e.g.*, 43 U.S.C. § 1332(3) (stating these lands are “a vital national resource reserve held ... for the public, which should be made available for expeditious and orderly development, subject to environmental safeguards ... consistent with the maintenance of competition and other national needs”); *id.* § 1344(a)(1).

demonstrate that they cannot adequately represent Movants' more particularized concerns in this litigation. *See Friends of Earth v. Haaland*, Civ. A. No. 21-2317 (RC), 2021 WL 5865386, at *3 (D.D.C. Dec. 11, 2021) (explaining governmental entities do not adequately represent potential intervenors because intervenors' "interests are often more particular" than government's).

Respondents' broader interests may also cause the government to change its position or make litigation concessions with which Movants disagree. *See Humane Soc'y of the United States v. U.S. Dep't of Agric.*, Civ. A. No. 19-cv-2458 (BAH), 2023 WL 3433970, at *9 (D.D.C. May 12, 2023) (stating government often does not adequately represent aspiring intervenors because interests can diverge over the course of litigation). Indeed, Respondents' litigation strategies often diverge from those of environmental organizations. In *Environmental Defense v. Duke Energy Corp.*, 549 U.S. 561 (2007), for example, the United States declined to seek certiorari from an adverse court of appeals decision. Environmental intervenors did and eventually prevailed on the merits, despite the United States switching sides to align itself with Duke Energy. *Id.* at 582. Diverging interests are likely here where Movants have a long history of disagreeing with Respondents about when and under what conditions Interior can lease under OCSLA. Movants have litigated repeatedly (and currently are litigating) against Interior's decision to hold lease sales for oil and gas development in the Gulf and Alaska. As described above,

several Movants are engaged in pending litigation challenging Lease Sale 259 and Lease Sale 261 in the Gulf, and Lease Sale 258 in Cook Inlet. This adversarial history demonstrates Movants' interests diverge from those of Interior in the OCSLA context.

Movants cannot wait until disagreements manifest to intervene, because Federal Rule of Appellate Procedure 15(d) requires that motions to intervene “be filed within 30 days after the petition for review is filed.” More generally, two judges of this Court recently suggested that private parties are “on notice that [their] interests [a]re not the same as” the government’s and that if they wait to intervene only when their disagreements with the government as to remedy become clear, this Court could reject their intervention as untimely. *Humane Soc’y of the United States v. USDA*, 54 F.4th 733, 735-36 (D.C. Cir. 2022) (Tatel, J., concurring).

Finally, Movants will “serve as a vigorous and helpful supplement to [Interior’s] defense.” *Costle*, 561 F.2d at 912-13. Movants’ experience with the environmental requirements in OCSLA and their knowledge of Gulf and Alaskan ecosystems and communities provide them with a unique perspective on the issues at stake. And, consistent with this Circuit’s rules, Movants will “focus on points not made or adequately elaborated upon in the ... [government’s] brief, although relevant to the issues before this court.” D.C. Cir. R. 28(d)(2).

II. In the Alternative, Movants Should Be Granted Permissive Intervention.

In the alternative, Movants merit permissive intervention under Federal Rule of Civil Procedure 24(b). Permissive intervention is typically appropriate where an applicant's defense "shares a question of law or fact in common with the underlying action and if the intervention will not unduly delay or prejudice the rights of the original parties." *Acree v. Republic of Iraq*, 370 F.3d 41, 49 (D.C. Cir. 2004), *abrogated on other grounds by Republic of Iraq v. Beaty*, 556 U.S. 848 (2009).

Movants easily meet that threshold here. The case is still at a preliminary stage, and a briefing schedule has not been set. Movants seek to defend Interior's decision to limit sales to no more than three, so their arguments will share questions of law and fact with this case. In addition, Movants' deep experience with the environmental requirements of OCSLA, and their extensive participation in providing input to the draft Program, may be of use to the Court as it considers this case.

III. Movants Satisfy the Test For Standing.

Intervenors in petitions for review of agency action such as this one need not show Article III standing.²¹ To the extent this Court continues to require respondent-intervenors to do so, however, Movants' interests in this matter establish standing. This Court has already held conservation organizations like Movants here have standing to challenge oil and gas leasing programs under OCSLA. *Ctr. for Sustainable Econ. v. Jewell*, 779 F.3d 588, 597 (D.C. Cir. 2015). They therefore also should have standing to intervene in defense of a program. *See Crossroads*, 788 F.3d at 316 (“The standing inquiry for an intervening-defendant is the same as for a plaintiff.”).

Moreover, Movants satisfy the elements necessary to demonstrate associational standing: (1) at least one member of each organization has standing to defend in their own right; (2) the interests the organizations seek to protect are

²¹ An intervenor who seeks to support a respondent and does not seek any relief from a court is not affirmatively invoking the court's Article III jurisdiction and therefore does not need to establish standing. *See Va. House of Delegates v. Bethune-Hill*, 139 S.Ct. 1945, 1951 (2019) (explaining that “it was not ... incumbent on [a party] to demonstrate its standing” when it participated “as an intervenor in support of the... Defendants,” or “as an appellee” on appeal, “[b]ecause neither role entailed invoking a court's jurisdiction”). However, in one more recent opinion, this Court has continued to require that respondent-intervenors establish standing without referencing the inconsistent Supreme Court Opinion in *Virginia House of Delegates. Yocha Dehe v. U.S. Dep't of the Interior*, 3 F.4th 427, 430 (D.C. Cir. 2021).

germane to their purposes; and (3) neither the defense nor the relief requested requires the participation of individual members in the lawsuit. *Hearth, Patio & Barbeque Ass'n v. EPA*, 11 F.4th 791, 802 (D.C. Cir. 2021).

Under the first prong, the requirements for Article III standing include a showing of a concrete injury, causation, and redressability. *Crossroads*, 788 F.3d at 316. If a party seeking intervention in support of an agency's action demonstrates injury, then causation and redressability are also established. *See id.* ("if [movant] can prove injury, then it can establish causation and redressability."). Sufficient injury is established "where a party benefits from agency action, the action is then challenged in court, and an unfavorable decision would remove the party's benefit." *Crossroads*, 788 F.3d at 317. Here, if Petitioner succeeds with its objective to maximize sales, additional oil and gas development will aggravate the harms to Movants' members described above. The disposition of this case, therefore, "may as a practical matter impair or impede" Movants' interests. *Fund for Animals*, 322 F.3d at 735 (quoting Fed. R. Civ. P. 24(a)(2)). Likewise, Petitioner's success "would remove the [] benefit" Movants receive from the current Program, which constrains oil and gas leasing to a maximum of three sales and therefore limits the harm to Movants' members described above. *Crossroads*, 788 F.3d at 317; *see also Fund for Animals*, 322 F.3d at 733.

Also, the interests Movants seek to protect are germane to their organizational purposes of advocating for a just transition away from fossil fuels and protecting ocean ecosystems and communities. *See Ctr. for Sustainable Econ.*, 779 F.3d at 597. Further, Movants' defense does not require participation of their members because Petitioner will raise questions of law or fact that will be resolved on the administrative record without consideration of those members' individual circumstances. *Id.* at 597-99.

CONCLUSION

For years, Movants have advocated to reduce oil and gas leasing in federal waters. Petitioner's challenge to the Program threatens this advocacy, as well as the interests of Movants' members. This Court should accordingly grant leave for Movants to intervene.

Respectfully submitted this 13th day of March, 2024.

/s/ Brettmy Hardy

Brettmy Hardy (D.C. Cir. 62534)

Danika Desai (D.C. Cir. 65123)

EARTHJUSTICE

50 California St., Suite 500

San Francisco, CA 94111

415-217-2000 | Telephone

bhardy@earthjustice.org

ddesai@earthjustice.org

Christopher D. Eaton (D.C. Cir. 60490)

EARTHJUSTICE

810 Third Ave., Suite 610

Seattle, WA 98104

206-343-7340 | Telephone
ceaton@earthjustice.org

*Attorneys for Healthy Gulf, Alaska
Community Action on Toxics, Bayou City
Waterkeeper, Cook Inletkeeper, Friends of
the Earth, Kachemak Bay Conservation
Society, Oceana, Surfrider Foundation, and
Turtle Island Restoration Network*

/s/ Devorah Ancel

Devorah Ancel (D.C. Cir. 56116)
SIERRA CLUB
2101 Webster Street, Suite 1300
Oakland, CA 94612
415-845-7847 | Telephone
devorah.ancel@sierraclub.org

Attorney for Sierra Club

/s/ Julia K. Forgie

Julia K. Forgie (D.C. Cir. 60627)
NATURAL RESOURCES DEFENSE
COUNCIL
1314 Second Street
Santa Monica, CA 90401
310-434-2351 | Telephone
jforgie@nrdc.org

Melanie Calero (D.C. Cir. 65132)
NATURAL RESOURCES DEFENSE
COUNCIL
40 West 20th Street, 11th Floor
New York, NY 10011
212-727-2700 | Telephone
mcalero@nrdc.org

Tom Zimpleman (D.C. Cir. 60691)
NATURAL RESOURCES DEFENSE
COUNCIL
1152 15th Street NW, Suite 300
Washington, DC 20005
202-289-6868 | Telephone
tzimpleman@nrdc.org

Irene Gutierrez
NATURAL RESOURCES DEFENSE
COUNCIL
111 Sutter Street, 21st Floor
San Francisco, CA 94104
415-875-6100 | Telephone
igutierrez@nrdc.org

*Attorneys for Natural Resources Defense
Council*

CERTIFICATE OF COMPLIANCE

In accordance with Circuit Rule 28(a)(1) and Fed. R. App. P. 32(a)(7), the undersigned certifies that the accompanying brief has been prepared using 14-point Times New Roman typeface and is double-spaced (except for headings and footnotes).

The undersigned further certifies that the brief is proportionally spaced and contains 5,198 words, excluding the parts of the brief exempted by Circuit Rule 32(e)(1) and Fed. R. App. P. 32(f).

The undersigned used Microsoft Word 2016 to compute the word count.
Respectfully submitted this 13th day of March, 2024.

/s/Brettny Hardy

Brettny Hardy (D.C. Cir. 62534)