

**UNITED STATES DEPARTMENT OF THE INTERIOR
BOARD OF LAND APPEALS**

SHELL GULF OF MEXICO INC. and
SHELL OFFSHORE INC.

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) IBLA-2016-48
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) **MOTION TO INTERVENE**
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Pursuant to 43 C.F.R. §§ 4.406 and 4.407, Alaska Wilderness League, Center for Biological Diversity, Friends of the Earth, Greenpeace, Inc., National Audubon Society, Northern Alaska Environmental Center, Pacific Environment, Sierra Club, and The Wilderness Society (Proposed Intervenors) move to intervene in support of the Bureau of Safety and Environmental Enforcement’s (BSEE) denial of Shell Offshore Inc. and Shell Gulf of Mexico Inc.’s (collectively, Shell) request for an initial five-year suspension of operations (SOO) on their oil and gas leases in the Beaufort and Chukchi Seas. BSEE properly denied Shell’s request, and Proposed Intervenors seek to ensure that the Interior Board of Land Appeals (Board) upholds the agency’s decision.

Proposed Intervenors are nonprofit conservation organizations whose members would be adversely affected by a ruling reversing BSEE’s decision. Proposed Intervenors learned of the appeal on December 15, 2015 from a news article published shortly after Shell filed its notice of appeal. See Jennifer A. Dlouhy, *Shell Seeks to Preserve U.S. Drilling Rights in Arctic Ocean*, Bloomberg (Dec. 15, 2015), available at <http://www.bloomberg.com/politics/articles/2015-12-15/shell-bid-aims-to-preserve-u-s-drilling-rights-in-arctic-ocean>. They timely seek to intervene to protect vital interests at stake in these proceedings. 43 C.F.R. § 4.406(a).

The regulations governing appeals to the Board permit intervention by a person who “would be adversely affected if the Board reversed, vacated, set aside, or modified the decision” under review. *Id.* § 4.406(b)(1).¹ Although the term “adversely affected” is not defined in the intervention context, the term is defined by the regulation specifying who may appeal decisions to the Board. *Id.* § 4.410(d). In that context, an appellant is adversely affected if it “has a legally cognizable interest, and the decision on appeal has caused or is substantially likely to cause injury to that interest.” *Id.*

Legally cognizable interests include recreational, aesthetic, and conservation values. *See WildEarth Guardians*, 183 IBLA 165, 170-71 (2013); *W. Watersheds Project*, 182 IBLA 1, 7 (2012). Such interests may be deemed injured by an agency decision where the appellant asserts “colorable allegations of adverse effect and . . . a causal relationship between the action taken and the injury alleged.” *N.M. Wilderness All.*, No. IBLA 2013-204, 2013 WL 7790487, at *3 (IBLA 2013) (quoting *Santa Fe Nw. Info. Council*, 174 IBLA 93, 103 (2008)). The appellant “need not prove that an adverse effect will, in fact, occur”; the threat of injury must simply be “more than hypothetical.” *Santa Fe Nw. Info. Council, Inc.*, 174 IBLA at 103. To make this showing, an appellant may present evidence either of actual use of areas that are the subject of a decision, or of interests in other areas or resources affected by the decision, showing how the decision has caused or is substantially likely to cause injury to those interests. *N.M. Wilderness All.*, 2013 WL 7790487, at *3; *WildEarth Guardians*, 183 IBLA at 170; *W. Watersheds Project*, 182 IBLA at 9. An organization demonstrates that it would be adversely affected through the declarations of its members. *N.M. Wilderness All.*, 2013 WL 7790487, at *3.

¹ Party status is not a prerequisite to intervening in support of a decision. *See* 43 C.F.R. § 4.406(b)(1).

Under these principles, Proposed Intervenors would be adversely affected if the Board reversed BSEE’s denial of Shell’s SOO request. First, in considering whether a person is adversely affected, the Board has looked to court decisions discussing whether a plaintiff has demonstrated an “injury in fact.” *W. Watersheds Project*, 182 IBLA at 8. Because Proposed Intervenors have standing to challenge—and almost all have challenged—the sale of many of the leases at issue here, *see Native Vill. of Point Hope v. Jewell*, 740 F.3d 489 (9th Cir. 2014), they would logically be adversely affected if the terms of those leases were extended by the SOO Shell seeks. Moreover, all of the Proposed Intervenors provide evidence of how they and their members will be adversely affected if Shell’s lease terms are extended. *See* Ex. 1-12. Their members use the Beaufort and Chukchi Seas near the leaseholds at issue for recreation and aesthetic enjoyment. Ex. 3 at 2-3, 7, 9, ¶¶6, 17, 24-25 (Decl. of Dan Ritzman); Ex. 4 at 7, 11, ¶¶15, 22 (Decl. of Nils Warnock); Ex. 2 at 7-8, ¶18 (Decl. of Cindy Shogan); Ex. 7 at 5, ¶9 (Decl. of Elisabeth B. Dabney); Ex. 5 at 3-5, ¶¶8-9 (Decl. of Marcelin E. Keever); Ex. 6 at 3-4, ¶7 (Decl. of Kevin Harun); Ex. 10 at 6-7, 10, ¶¶12-13, 22 (Decl. of Richard G. Steiner); Ex. 9 at 1-2, 10-11, ¶¶2, 14 (Decl. of Nicole Whittington-Evans); Ex. 8 at 3-4, ¶¶6-9 (Decl. of Lois N. Epstein); Ex. 11 at 5, ¶12 (Decl. of Miyoko Sakashita); Ex. 12 at 3-4, 5-6, ¶¶8, 12, 14 (Decl. of John Hamlin Deans). Proposed Intervenors and their members also have an interest in conserving the ecological values of these areas and protecting species that could be affected by oil and gas activities connected with the leases, both for subsistence and for non-consumptive uses. Ex. 1 at 2-5, ¶¶5, 7, 10-14 (Decl. of Earl Kingik); Ex. 3 at 3, 7-10, 12, ¶¶7, 18-22, 25-27, 32-33 (Decl. of Dan Ritzman); Ex. 4 at 7-9, ¶¶15, 20 (Decl. of Nils Warnock); Ex. 2 at 7-8, ¶18 (Decl. of Cindy Shogan); Ex. 7 at 5, ¶9 (Decl. of Elisabeth B. Dabney); Ex. 5 at 3-5, ¶¶8-9 (Decl. of Marcelin E. Keever); Ex. 6 at 4, ¶8 (Decl. of Kevin Harun); Ex. 10 at 6-8, 10, ¶¶12-17, 22

(Decl. of Richard G. Steiner); Ex. 9 at 1-2, 10-11, ¶¶2, 14 (Decl. of Nicole Whittington-Evans); Ex. 8 at 3-4, ¶¶6, 8-9 (Decl. of Lois N. Epstein); Ex. 11 at 5, ¶12 (Decl. of Miyoko Sakashita); Ex. 12 at 3-4, 5-6, ¶¶8, 12 (Decl. of John Hamlin Deans). They have expressed concern that a suspension of Shell's leases, and a commensurate extension of the lease terms, *see* 43 U.S.C. § 1334(a)(1); 30 C.F.R. § 250.169, would pose a heightened and prolonged threat to their interests in the form of oil spills, noise, vessel and aircraft traffic, and climate change effects caused by industrial oil operations related to the exploration and development of the leases. Ex. 1 at 5-8, ¶¶15-23 (Decl. of Earl Kingik); Ex. 3 at 2-3, 10-16, ¶¶6, 28-31, 34-41 (Decl. of Dan Ritzman); Ex. 4 at 7-8, ¶¶15-18 (Decl. of Nils Warnock); Ex. 2 at 8-9, ¶¶19-21 (Decl. of Cindy Shogan); Ex. 7 at 2-3, 5-6, ¶¶4, 9, 11-12 (Decl. of Elisabeth B. Dabney); Ex. 5 at 3-5, ¶¶8-9 (Decl. of Marcelin E. Keever); Ex. 6 at 4-7, ¶¶9-10, 12-15 (Decl. of Kevin Harun); Ex. 10 at 8-10, ¶¶17-21 (Decl. of Richard G. Steiner); Ex. 9 at 10-11, ¶¶13-14 (Decl. of Nicole Whittington-Evans); Ex. 8 at 4-5, ¶¶10-12 (Decl. of Lois N. Epstein); Ex. 11 at 5-6, ¶¶12-14 (Decl. of Miyoko Sakashita); Ex. 12 at 3-4, 6, ¶¶8-9, 13, 16 (Decl. of John Hamlin Deans). As these statements establish, Proposed Intervenors will be adversely affected unless the Board affirms BSEE's decision.

Where a proposed intervenor otherwise meets the regulatory criteria, the Board may deny a motion to intervene only for good cause, such as when intervention would disadvantage the rights of existing parties or unduly delay adjudication of the appeal. 43 C.F.R. § 4.406(c)(2). Denial may thus be appropriate when a person files a motion to intervene after all briefs have been submitted and the appeal is ripe for adjudication. *See* 72 Fed. Reg. 10,454, 10,457 (Mar. 8, 2007). There is no good reason to deny Proposed Intervenors' participation in this case. Proposed Intervenors seek to intervene in a timely fashion, before BSEE's response to Shell's statement of reasons is due, *see* 43 C.F.R. § 4.414(a)—indeed before Shell has even filed its

statement of reasons. Their participation would in no way diminish Shell's rights or unduly delay adjudication. In sum, Proposed Intervenors' full participation in this appeal comports with applicable regulations, would not disadvantage Shell, and would help inform the Board's decision through a fuller understanding of the interests at stake.

For the foregoing reasons, Proposed Intervenors request that the Board grant their motion to intervene.

Respectfully submitted this 13th day of January, 2016.



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CERTIFICATE OF SERVICE

I hereby certify that on January 13, 2016, a copy of foregoing MOTION TO INTERVENE, with attachments was served in accordance with the applicable rules by electronic mail on:

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