IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FRIENDS OF THE EARTH, et al., *Plaintiffs*, v. DEBRA A. HAALAND, et al., *Defendants*, STATE OF LOUISIANA, *Intervenor-Defendant.*	Case No. 1:21-cv-02317-RDM

MOTION OF THE AMERICAN PETROLEUM INSTITUTE FOR LEAVE TO INTERVENE AS A DEFENDANT AND SUPPORTING STATEMENT OF POINTS AND AUTHORITIES

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INTRODUCTION

Pursuant to Fed. R. Civ. P. 24 and Local Civil Rule 7(j), the American Petroleum Institute ("API") respectfully moves for leave to intervene in the above-captioned action filed against the United States Department of the Interior and its officials ("Interior").[1] API asks the Court to grant intervention of right pursuant to Federal Rule of Civil Procedure 24(a)(2) because: (1) API's intervention is timely; (2) API and its members have a significant protectable interest in Gulf of Mexico ("GOM") Outer Continental Shelf ("OCS") Region-Wide Oil and Gas Lease Sale 257 ("Lease Sale 257"), which the Complaint seeks to prevent or further delay; (3) disposition of this action without API's involvement will practically impair its ability to protect its interests and the interests of its members; and (4) the current parties cannot adequately represent the interests of API and its members. Alternatively, API seeks permissive intervention pursuant to Federal Rule of Civil Procedure 24(b), because API will raise common legal issues and defenses with the main action. Counsel for API has conferred with counsel for each party in this matter. Plaintiffs state that they will submit their position after API makes it filing and by no later than October 15, 2021. Federal Defendants have so far taken no position on API's intervention. Intervenor-Defendant, the State of Louisiana, does not oppose.

STATEMENT OF ISSUES TO BE DECIDED

Whether, under Federal Rule of Civil Procedure 24(a)(2), proposed intervenor American Petroleum Institute ("API") is entitled to intervene of right as a defendant in this action.

Alternatively, whether, under Federal Rule of Civil Procedure 24(b), API may permissively intervene as a defendant in this action.

[1] In support of its motion, API submits the Declaration of Kevin O'Scannlain (Oct. 8, 2021) [*hereinafter* the "O'Scannlain Declaration"], attached hereto as Exhibit 1.

BACKGROUND

I. Legal Framework

A. The Federal Oil and Gas Leasing Program

Enacted nearly 70 years ago, the Outer Continental Shelf Lands Act, 43 U.S.C. 1331 et seq. ("OCSLA") mandates that the OCS is a "vital national resource reserve held by the Federal Government for the public," which the Secretary of the Interior shall make "available for *expeditious and orderly development*, subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs." 43 U.S.C. § 1332(2) (emphasis added). The OCSLA mandates that Interior "shall prepare and periodically revise, and maintain an oil and gas leasing program to implement the policies of [OCSLA]." 43 U.S.C. § 1344. Preparing a Five-Year Leasing Program is an extensive undertaking involving multiple steps, including preparation and publication of a proposed leasing map, proposed Five-Year Leasing Program, various periods for public comment, an environmental analysis under NEPA, *etc*. This process usually takes two and a half years to complete,[2] and all federal offshore lease sales must be conducted according to a final, approved Five-Year Leasing Program. 43 U.S.C. § 1344(d)(3). Implementing OCSLA, Interior has continuously published and maintained a Five-Year Leasing Program since 1980.

B. Current Five-Year Leasing Program and Lease Sale 257 (Originally Scheduled for March 2021)

In January 2017, Interior finalized a Five-Year National Oil and Gas Leasing Program for 2017-2022 (the "2017-2022 Leasing Program"). The 2017-2022 Leasing Program specifies that Gulf of Mexico lease sales would be "region-wide and include unleased acreage not subject to

[2] Frequently Asked Questions and Answers About BOEM, BOEM, https://www.boem.gov/frequently-asked-questions (last visited Oct. 8, 2021).

moratorium or otherwise unavailable … to provide greater flexibility to industry, including more frequent opportunities to bid on rejected, relinquished, or expired OCS lease blocks." Record of Decision and Approval of the 2017-2022 Outer Continental Shelf Oil and Gas Leasing Program 3 (January 17, 2017). The program provided for a total of 11 lease sales, including GOM OCS Oil and Gas Lease Sale 257, to be held in 2021.

In accordance with the 2017-2022 Leasing Program, on November 18, 2020, the Bureau of Ocean Energy Management ("BOEM") published a Proposed Notice of Sale for Lease 257. *See* 85 Fed. Reg. 73508 (Nov. 18, 2020). On January 21, 2021, Interior issued a Record of Decision approving the Notice of Sale (the "Jan. 2021 ROD"). 86 Fed. Reg. 6365 (Jan. 21, 2021). Lease Sale 257 was scheduled for March 17, 2021. *Id.*

C. The Directed Leasing Pause and the Preliminary Injunction Thereof

On January 27, 2021 President Biden issued Executive Order 14008 (the "Jan. 2021 E.O."), which (*inter alia*) instructed the Secretary of the Interior to "pause new oil and natural gas leases on public lands or in offshore waters pending completion of a comprehensive review and reconsideration of Federal oil and gas permitting and leasing practices[.]" Executive Order 14008, Sec. 208. Based on the Jan. 2021 E.O., on February 18, 2021, Interior rescinded the Jan. 2021 ROD. 86 Fed. Reg. 10132 (Feb. 18, 2021).

On March 24, 2021, 13 states filed suit in the United States District Court for the Western District of Louisiana, seeking a judgment declaring Executive Order 14008's directed pause on federal leasing unlawful and permanently enjoining Interior from implementing that leasing pause. Complaint, *Louisiana et al. v. Biden*, 2:21-cv-00778 (W.D. La. *filed* Mar. 24, 2021). On March 31, 2021, the Plaintiff-States in *Louisiana et al.* filed a Motion for Preliminary Injunction, requesting that the court order the federal Defendants "to disregard" the leasing pause directed by Executive Order 14008 and "to execute the statutory duties of their offices regarding oil and gas

leasing" as though the directed leasing pause "did not exist." Motion for Preliminary Injunction, *Louisiana et al. v. Biden*, 2:21-cv-00778, ECF Doc. 3 (W.D. La. *filed* Mar. 31, 2021). On June 15, 2021, the court issued an order granting the Plaintiff-States' motion and ordering that the federal Defendants are "enjoined and restrained from implementing the [directed pause] of new oil and natural gas leases on public lands or in offshore waters" and from "implementing said [p]ause with respect to Lease Sale 257[.]" *Louisiana et al. v. Biden*, 2:21-cv-00778, 2021 U.S. Dist. LEXIS 112316, at *64-65 (W.D. La. June 15, 2021).[3]

The 2017-2022 Leasing Program is set to expire on July 1, 2022, but Interior has not published a Five-Year Leasing Program that will succeed the 2017-2022 Leasing Program. Without any subsequent Five-Year Leasing Program in place, the only potential offshore lease sales in the foreseeable future are those lease sales contemplated by the 2017-2022 Leasing Program, including Lease Sale 257. Lease Sale 257 is one of only three remaining Gulf of Mexico lease sale provided for by the 2017-2022 Leasing Program.

D. API's Pending Lawsuit Challenging the Directed Leasing Pause

On August 16, 2021, API and several other trade associations filed a lawsuit in the Western District of Louisiana challenging the directed leasing pause. *API et al. v. Interior et al*., 2:21-cv-02506 (W.D. La. *filed* Aug. 16, 2021) [*hereinafter* the "API Complaint"]. In that lawsuit, API asserts that the directed leasing pause (*inter alia*) unlawfully violates OCSLA and the Administrative Procedure Act ("APA"). Among several other arguments, API asserts that Interior's implementation of the directed leasing pause is "arbitrary and capricious" under the APA because Interior implemented that directed leasing pause "without a reasoned explanation" or

[3] In August, the federal Defendants appealed the Western District of Louisiana's June 15, 2021 order to the Fifth Circuit Court of Appeals. Notice of Appeal, *Louisiana v. Biden*, 21-30505 (5th Cir. Aug. 17, 2021). The appeal remains pending before the Fifth Circuit.

record support. API Complaint ¶¶ 85, 93. API further asserts that Interior's implementation of the directed leasing pause, including Interior's rescission of the initial ROD for Lease Sale 257, violates the OCSLA (*Id.* at ¶¶ 112-117) and the APA's notice-and-comment rulemaking requirements (*Id.* at ¶¶ 132-138). API also challenges Interior's failure to adopt a new Five-Year Leasing Program to succeed the 2017-2022 Leasing Program. *Id.* at ¶¶ 118-125.[4]

E. The August 2021 Record of Decision

In an August 24 filing in *Louisiana et al.*, the federal Defendants represented that Interior is taking steps to comply with the preliminary injunction, including (*inter alia*) by preparing a new Record of Decision for Lease Sale 257. *Louisiana et al.*, *supra* at Doc. 155 (*filed* Aug. 24, 2021). In keeping with its August 24 filing, Interior published a new Record of Decision for Lease Sale 257 on August 31 (the "Aug. 2021 ROD"). 86 Fed. Reg. 50160 (Sept. 7, 2021). And, on October 4, 2021, Interior issued a final notice of sale for Lease Sale 257, which sets the lease sale for November 17, 2021. *See* 86 Fed. Reg. 54728 (Oct. 4, 2021); *see also* Lease Sale 257 Bureau of Ocean Energy Management (boem.gov).

F. Plaintiffs' Legal Challenge

Plaintiffs' Complaint asserts that the environmental analyses underlying the Aug. 2021 ROD are insufficient. *See* Complaint ¶ 94 ("The Bureau's three EISs failed to properly examine the climate impacts of a lease sale in the Gulf of Mexico. In particular, the Bureau failed to properly estimate the global greenhouse gas emissions associated with Lease Sale 257."). On that premise, Plaintiffs ask the Court to "declare that Interior's decisions [sic] to hold Lease Sale 257

[4] Several additional lawsuits have been filed challenging Interior's implementation of the directed leasing pause. *See e.g.*, Complaint, *Western Energy Alliance et al. v. Biden*, 0:21-cv-00013, Doc. 1 (D. Wyo. *Filed* Jan. 27, 2021); Complaint, *State of Wyoming v. U.S. DOI et al.*, 21-cv-00056, Doc. 1 (D. Wyo. *Filed* Mar. 24, 2021); Complaint, *State of North Dakota v. Interior et al.*, 1:21-cv-00148, Doc. 1 (D.N.D. *Filed* July 7, 2021).

violates NEPA and the APA, to vacate the [] decision to hold Lease Sale 257, and to vacate or enjoin any leases issued pursuant to [] Lease Sale 257." Complaint ¶ 8; Complaint ¶¶ 169-184 (First Cause of Action – "Violation of NEPA and APA: Failure to Take a Hard Look at the Effects of Lease Sale"); Complaint ¶¶ 185-195 (Second Cause of Action – "Violation of NEPA and APA: Failure to Supplement EIS"); Complaint, Request for Relief.

G. API's Interest in Plaintiffs' Legal Challenge

API is the primary national trade association of the oil and natural gas industry, representing more than 600 companies involved in all aspects of that industry, including the exploration, production, shipping, transportation, and refining of crude oil. *See* O'Scannlain Declaration ¶ 3. Together with its member companies, API is committed to ensuring a strong, viable U.S. oil and natural gas industry capable of meeting the energy needs of our Nation in an efficient and environmentally responsible manner. *Id.*

API's members are deeply engaged in the exploration for and development of offshore oil and gas resources as leaseholders, lease operators, and service companies, including in the Gulf of Mexico. *See* O'Scannlain Declaration ¶ 5. Currently, API's members hold interests in hundreds of federal offshore leases located in the Gulf of Mexico. *Id.* at ¶ 14. API's members are actively engaged in the required regulatory process underlying Interior's lease sales. *Id.* at ¶ 12. Accordingly, API submitted comments during the notice and comment process that resulted in Interior's adoption of the 2017-2022 Leasing Program, and API submitted comments on the proposed Notice of Lease Sale regarding Lease Sale 257. *See id.* at ¶ 13.

Each year, API members invest billions of dollars to further development of domestic oil and gas resources from federal leases in the Gulf of Mexico, including through bidding on leases offered during lease sales like Lease Sale 257. O'Scannlain Declaration ¶ 14. Further, many of API's members have already invested millions of dollars in acquiring and exploring leases in

reliance on the availability of adjacent or nearby lease tracts for leasing in scheduled lease sales, including Lease Sale 257. *Id.* at ¶¶ 15-16. If lessees and operators are unable to obtain the additional adjacent or nearby lease tracts, their substantial investments may be lost or significantly limited. *Id*. This is particularly important in the context of deepwater leases, where access to leasing is necessary to sufficiently plan for high cost capital-intensive exploration and development activities that can span more than a decade. *Id.*

API's members are thus directly affected by the instant legal challenge. *See* O'Scannlain Declaration ¶ 18. API's filing of the API Complaint in the Western District of Louisiana highlights API's significant interest in Interior's compliance with the 2017-2022 Leasing Program, including by holding Lease Sale 257. Further, given that Interior has yet to adopt a Five-Year Leasing Program to succeed the 2017-2022 program, it is critically important to API and its members that the lease sales authorized by the 2017-2022 Leasing Program take place. *Id.* at ¶ 17.

ARGUMENT

I. API Is Entitled To Intervene As Of Right.

Federal Rule of Civil Procedure 24(a)(2), "the court must permit anyone to intervene" (i) who timely moves to intervene, (ii) who "claims an interest relating to the property or transaction that is the subject of the action," (iii) who "is so situated that disposing of the action may as a practical matter impair the movant's ability to protect its interest," and (iv) whose interests are not adequately protected by the existing parties. *See Amador Cty., Cal. v. U.S. Dep't of the Interior*, 772 F.3d 901, 903 (D.C. Cir. 2014) (*citing Karsner v. Lothian*, 532 F.3d 876, 885 (D.C. Cir. 2008)); *see also Connecticut v. DOI*, 344 F. Supp. 3d 279, 304 (D.D.C. 2018), *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 731 (D.C. Cir. 2003). Additionally, "movants for intervention in the D.C. Circuit are required to 'demonstrate Article III standing.'" *Campaign Legal Ctr. v. FEC*, No.

19-2336, 2019 U.S. Dist. LEXIS 198305, *5 (D.D.C. Nov. 15, 2019) (*quoting Crossroads Grassroots Policy Strategies v. FEC*, 788 F.3d 312, 316 (D.C. Cir. 2015)). Rule 24(a)(2) is liberally applied to favor permitting intervention. *See Wilderness Soc. v. Babbitt*, 104 F. Supp. 2d 10, 18 (D.D.C. 2000) ("the D.C. Circuit has taken a liberal approach to intervention"); *Nuesse v.* Camp, 385 F.2d 694, 702 (D.C. Cir. 1967) (emphasizing "the need for a liberal application of [Rule 24(a)] in favor of permitting intervention").

As explained more fully below, API satisfies each of these factors.[5] Moreover, allowing API to intervene of right in this case would be consistent with the numerous times that federal courts – including this Court – have found that oil and gas trade associations – including API – were entitled to intervene in litigation challenging Interior's offshore oil and gas leasing program, including in litigation challenging lease sales. *See, e.g., Ctr. for Sustainable Economy v. Jewell*, 779 F.3d 588 (D.C. Cir. 2015) (intervened in challenge to five-year leasing program); *Ctr. for Biological Diversity v. U.S. DOI*, 563 F.3d 466 (D.C. Cir. 2009) (granting API intervention in

[5] For purposes of applying the requirements of Rule 24, API may assert the interests of its members. An association may act on behalf of its members when its members would otherwise have standing in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. *See, e.g., Friends of the Earth, Inc. v. Laidlaw Envtl. Serv., Inc.*, 528 U.S. 167, 181 (2000); *City of Waukesha v. EPA*, 320 F.3d 228, 233 (D.C. Cir. 2003). API's showing that the Rule 24 standards are met in this case also establishes that its members would themselves have standing. *E.g., Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 233 (D.C. Cir. 2003); *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 821 n.3 (9th Cir. 2001). Representation in litigation is germane to API's overall purposes of advancing the interests of the oil and gas industry, and "mere pertinence between litigation subject and organizational purpose is sufficient." *Nat'l Lime Ass'n v. EPA*, 233 F.3d 625, 636 (D.C. Cir. 2000); *see also Sierra Club v. Glickman*, 82 F.3d 106, 108–10 (5th Cir. 1996) (goals of suit to limit farmers' water pumping germane to association purpose to advance farmers' interests); *see* O'Scannlain Declaration ¶ 3. It is not necessary for API members to be included in this case individually, especially because no monetary relief is being sought. *See City of Waukesha*, 320 F.3d at 236; *Hunt v. Washington State Apple Adver. Comm'n*, 432 U.S. 333, 343–44 (1977). API thus satisfies the three requirements of associational standing.

challenge to offshore five-year leasing program); *Natural Res. Def. Council, Inc. v. Hodel*, 865 F.3d 466 (D.C. Cir. 1988) (same); *California v. Watt*, 712 F.2d 584 (D.C. Cir. 1983) (same); *California v. Watt*, 668 F.2d 1290, 1294 n.1 (D.C. Cir. 1981) (same); *Healthy Gulf, et al. v. Bernhardt, et al.*, No. 19-cv-00707 (D.D.C. June 10, 2019) (ECF Doc. 10) (granting API intervention in challenge to offshore lease sale); *Healthy Gulf v. Zinke, et al.*, No. 18-cv-01674 (D.D.C. Dec. 7, 2018) (ECF Doc. 35) (granting API intervention in challenge to offshore lease sale); *WildEarth Guardians v. Jewell*, No. 16-cv-1724 (D.D.C. Nov. 23, 2016) (ECF Doc. 19) (intervened in challenges to lease sales in Colorado, Utah and Wyoming); *Oceana v. Bureau of Ocean Energy Mgmt.*, 37 F. Supp. 3d 147 (D.D.C. 2014) (intervened in challenge to lease sales); *Sierra Club, et al. v. Angelle*, No. 19-cv-03263 (N.D. Cal. Oct. 7, 2019) (ECF Doc. 42) (granting API intervention in challenge to the 2019 Well Control Rule) (subsequently transferred to E.D. La., No. 19-cv-13966); *Defenders of Wildlife v. Bureau of Ocean Energy Mgmt.*, 684 F.3d 1242 (11th Cir. 2012) (intervened in challenge to lease sales and agency use of categorical exclusions to approve exploration plans); *Defenders of Wildlife v. Minerals Management Serv.*, No. 10-cv-254, 2010 WL 3169337 (S.D. Ala. Aug. 9, 2010) (intervened in challenge to lease sale).

A. API Has Standing under Article III.

"To establish standing under Article III, a prospective Intervenor – like any party – must show (1) injury-in-fact, (2) causation, and (3) redressability." *Wash. All. Of Tech. Workers v. U.S. Dep't of Homeland Security*, 395 F. Supp. 3d 1, 15 (D.D.C. 2019); *see also Campaign Legal Ctr. v. FEC*, 334 F.R.D. 1, 6 (D.D.C. 2019). Each of these factors is satisfied here.

This court has "generally found a sufficient injury in fact 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 Grassroots Policy Strategies v. FEC*, 788 F.3d 312, 317 (D.C. Cir. 2015). Here, Plaintiffs challenge BOEM's decision to move forward with Lease Sale 257.

See, e.g., Complaint ¶¶ 8, 98-100, 104, 108. API members are actively involved in the process leading to offshore lease sales and were actively involved in the process that led to Aug. 2021 ROD. *See* O'Scannlain Declaration ¶ 13. Further API members make up a large percentage of the bidders for new offshore leases at each offshore lease sale and other API members include service and supply companies that rely on servicing federal oil and gas leases. *Id.* at ¶ 14. Thus, there is no question that API's members would benefit from Interior holding Lease Sale 257. A ruling in favor of Plaintiff in this lawsuit would result in the cancellation or indefinite delay of Lease Sale 257 and, therefore, substantially limit, and potentially eliminate, that benefit. *Crossroads Grassroots Pol'y Strategies*, 788 F.3d at 317 (proposed intervenor satisfied this factor where it obtained a "significant benefit" from the agency action challenged in the lawsuit). Further, although Plaintiff brings this lawsuit against Federal Defendants, the "object of" the litigation is industry's conduct of operations pursuant to leases that may be issued through Lease Sale 257. *See Sierra Club v. EPA*, 292 F.3d 895, 899-900 (D.C. Cir. 2002) (party has standing when its activities are the ultimate object of the legal challenge).

The "causation" factor of the standing analysis is also satisfied here because the potential injury to API and its members is "directly traceable" to Plaintiff's lawsuit. Indeed, but for Plaintiff's lawsuit, Lease Sale 257 would proceed and the ability of API's members to obtain leases through that lease sale and to obtain work supporting operations conducted under the authority of those leases would not be at risk. *Crossroads Grassroots Policy Strategies*, 788 F.3d at 316 (injury "directly traceable" to lawsuit where lawsuit would jeopardize the benefits that proposed intervenor obtained from agency action challenged in lawsuit). Finally, the "redressability" factor of the standing analysis is satisfied because API can protect the interests of its members against

Plaintiff's claims by defeating Plaintiff's claims in the instant lawsuit. *See id.* For the foregoing reasons, API and its members have Article III standing to participate in the instant litigation.

B. API's Motion to Intervene Is Timely.

The timeliness of a motion to intervene is judged "in consideration of all the circumstances, including the need for intervention as a means of preserving the applicant's rights and the probability of prejudice to those already parties in the case." *See Sault Ste. Marie Tribe of Chippewa Indians v. Bernhardt*, 331 F.R.D. 5, 12 (D.D.C. 2019) (internal quotations omitted); *see also 100Reporters LLC v. U.S. DOJ*, 307 F.R.D. 269, 274 (D.D.C. 2014). The determination of "[w]hether a motion to intervene is timely lies in the court's discretion[.]" *In re Enf't of Phil. Forfeiture judgment*, No. 16-1339, 2019 U.S. Dist. LEXIS 117439, at *11 (D.D.C. July 15, 2019).

This motion to intervene is timely because it has been filed promptly and within six weeks following the Plaintiffs' filing of the lawsuit, one month before the Federal Defendants are required to file their Answer, and before the commencement of merits briefing. *See Fund for Animals, Inc. v. Norton*, 322 F.3d at 735 (motion timely filed "less than two months after the plaintiffs filed their complaint and before the defendants filed an answer"); *Connecticut v. DOI*, 344 F. Supp. 3d 279, 304 (D.D.C. 2018) (motion timely filed "within a month of when Plaintiffs filed the complaint"); *WildEarth Guardians v. Jewell*, 320 F.R.D. 1, 3 (D.D.C. 2017) (motion timely when filed "approximately sixteen weeks after the initial complaint was filed"). Further, the Court has not made any merits determinations in this case yet. *See Waterkeeper All., Inc. v. Wheeler*, 330 F.R.D. 1, 6 (D.D.C. Jan. 29, 2019) (motion to intervene timely when filed "before this Court had occasion to make any merits decisions."). Further, API does not seek any adjustment to the briefing schedule provided in the Court's September 22, 2021, Order (ECF Doc. 24). Instead, if API's motion to intervene as a Defendant is granted, API would comply with the deadlines imposed by the Court's September 22, 2021 Order for the federal Defendants and Intervenor Defendant State

of Louisiana. Therefore, API's intervention will not prejudice the existing parties or cause any delay. Finally, and as explained in more detail below, API's involvement in this litigation is critical to preserve the rights of API and its members. *See Sault Ste. Marie Tribe of Chippewa Indians*, 331 F.R.D. at 12, *quoted supra*; *Waterkeeper All., Inc. v. Wheeler*, 330 F.R.D. at 6 (that the motion was filed "for the legitimate purpose of defending against a challenge to" an EPA action weighed in favor of finding that motion was timely). Considering "all the circumstances," API's motion to intervene is timely.

C. API Has a Cognizable Interest in the Litigation.

Intervention of right under Rule 24(a)(2) targets disposition of "disputes with as many concerned parties as may be compatible with efficiency and due process." *100Reporters LLC*, 307 F.R.D. at 275. Therefore, the test for whether a proposed intervenor has a sufficient interest in the action under Rule 24(a)(2) "operates in large part as a practical guide." *Id.* (internal quotations omitted). In the D.C. Circuit, a proposed intervenor need only demonstrate that its interest in the litigation is "of such a direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment." *Defs. Of Wildlife v. Jackson*, 284 F.R.D. 1, 6 (D.D.C. 2012), *aff'd in part, appeal dismissed sub nom. Defs. Of Wildlife v. Perciasepe*, 71 F.3d 1317 (D.C. Cir. 2013). Further, courts in the D.C. Circuit "generally treat the standing analysis for intervention of right as equivalent to determining whether the intervenor has a 'legally protected' interest under Rule 24(a)."[6] *100Reporters, LLC*, 307 F.R.D. at 276.

[6] API's demonstration above that it has constitutional standing also establishes that API has an interest in this litigation sufficient for intervention of right under Fed. R. Civ. Proc. 24(a)(2). *See Fund for Animals, Inc.*, 322 F.3d at 734 ("Our conclusion that the NRD has constitutional standing is alone sufficient to establish that NRD has an interest relating to the property or transaction which is the subject of the action." (internal quotations omitted)); *Campaign Legal Ctr. v. FEC*, 2019 U.S. Dist. LEXIS 198305, *10 (D.D.C. Nov. 15, 2019) ("Because [Intervenors] have constitutional standing, they *a fortiori* have an interest relating to the property or transaction which is the subject of this action."); *see also Wash. All. Of Tech Workers*, 395 F. Supp. 3d at 19-20;

Offshore oil and gas development is carried out exclusively through private oil and gas companies, which acquire leases through a sealed bidding process and then engage in exploration efforts that, if successful, will lead to development and production. *See, e.g.*, 43 U.S.C. §§ 1337, 1340, 1351; *See* O'Scannlain Declaration ¶ 4. Operations for the exploration and development of oil and gas resources on a lease are conducted pursuant to plans and permits that Interior must approve. *See* 30 C.F.R. § 550.201; 30 C.F.R. §§ 550.211– 235; 30 C.F.R. §§ 550.241–273; 30 C.F.R. § 550.281(a)(1); 30 C.F.R. §§ 250.410–418; 30 C.F.R. §§ 250.465–469. API members are directly engaged in every aspect of the offshore leasing program administered by Interior, from participation in Interior's development of Five-Year Leasing Programs, to commenting on specific lease sales, to bidding for offshore leases, to participating in the exploration and development activities authorized by federal offshore leases (both in the capacity as lessees and in the capacity as contractors supporting lease operations). *See* O'Scannlain Declaration ¶ 12.

API members include leaseholders that have expended millions of dollars to obtain leases from the Government for the opportunity to explore for and develop valuable oil and gas resources. *See* O'Scannlain Declaration ¶ 15. In keeping with this trend, it is certain that multiple of API members will bid on leases in Lease Sale 257. *Id.* Further, other API members include service and supply companies that support lessees in developing and producing offshore leases, and those API members would be directly involved in supporting exploration and development of and production from leases issued in Lease Sale 257. *Id.* at ¶¶ 3, 15. Given the importance of offshore leasing to API's members, it comes as no surprise that API regularly represents the interests of its members throughout the leasing process, including with respect to Lease Sale 257. *Id.* at ¶ 13.

Sault Ste. Marie Tribe of Chippewa Indians, 331 F.R.D. at 12-13 ("because they have shown they have Article III standing, the movants have necessarily shown that they have a legally protectable interest in this action.").

API commented on the 2017-2022 Leasing Program, which included the lease sale, and API commented on the proposed notice of lease sale for Lease Sale 257. *Id.* at ¶ 13. API's engagement in the process that will culminate in Interior's holding of Lease Sale 257 highlights API's genuine interest in this litigation.

There is no doubt that API's members are subject to the "direct and immediate" impact of the resolution of Plaintiff's lawsuit. If the court grants the relief requested by Plaintiff, then API's members will lose the opportunity to bid for leases in Lease Sale 257 and the opportunity to provide services and support for leases issued through Lease Sale 257 for an indefinite period of time; on the other hand, if the court rules against Plaintiff, then API's members will enjoy the opportunity to bid on leases offered in Lease Sale 257 and to engage in the activities authorized by leases issued through that lease sale. *Defs. Of Wildlife v. Jackson*, 284 F.R.D. 1, 6 (D.D.C. 2012), *aff'd in part, appeal dismissed sub nom. Defs. Of Wildlife v. Perciasepe*, 71 F.3d 1317 (D.C. Cir. 2013) (intervention proper where the issue is "of such a direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment").[7]

D. The Disposition of This Action May Impair API's Ability to Protect Its Interest and the Interests of Its Members.

In determining whether disposition of an action may impair or impede a proposed intervenor's ability to protect its interests, courts consider the "practical consequences of denying intervention." *Fund for Animals, Inc.*, 322 F.3d at 735; *100Reporters LLC*, 307 F.R.D. at 278 ("In

[7] *See also, e.g., California ex rel. Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir. 2006) ("[A] party has a sufficient interest for intervention purposes if it will suffer a practical impairment of its interests as a result of the pending litigation."); Fed. R. Civ. P. 24 advisory committee's note on the 1966 amendments ("If an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene . . . .").

determining whether an applicant's interests will be impaired, courts in this circuit look to the 'practical consequences' that the applicant may suffer if intervention is denied."). Further, when an applicant demonstrates the existence of a significant, protectable interest, as API has in this case, courts generally have "little difficulty concluding that the disposition of the case may, as a practical matter, affect" that interest. *Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 898 (9th Cir. 2011) (internal quotations omitted).

Here, Plaintiffs seek to cancel Lease Sale 257, the only offshore lease sale that could possibly be held before the end of this year (and, one of only three sales remaining in the 2017-2022 Leasing Program). If granted, the relief requested by Plaintiffs would impact the ability of API's members to acquire additional lease interests and to have additional opportunities to support operations authorized by federal leases that would otherwise be issued through Lease Sale 257. Further, cancellation or further delay of Lease Sale 257 would, in many cases, impact the ability of lessees and operators to continue to develop *existing* leases, where continued development is dependent on the availability of adjacent or nearby lease blocks. The substantial impact of the relief sought by Plaintiffs on the business of API's members cannot be overstated. *See Conservation Law Found. of New England v. Mosbacher*, 966 F.2d 39, 43 (1st Cir. 1992) (granting intervention where relief sought by plaintiff would "affect the proposed intervenors' business, both immediately and in the future."); *See Fund for Animals*, 322 F.3d at 735 (finding that the disposition of the action would, as a practical matter, impede proposed intervenor's ability to protect its interest because, *inter alia*, "loss of revenues during any interim period would be substantial and likely irreparable."). Finally, Lease 257 could conceivably be API members' last opportunity to bid on leases in the Gulf of Mexico for years, as Interior has not yet issued any of its regular notices to hold the remaining two lease sales in the Gulf of Mexico under the current

2017-2022 Leasing Program (being, GOM OCS Region-wide Lease Sale 259 (also originally proposed to be held in 2021) and GOM OCS Region-wide Lease Sale 261 (proposed to be held during the first half of 2022)),[8] the 2017-2022 Leasing Program expires on July 1, 2022, and Interior has not yet performed the steps necessary to ensure a subsequent Five-Year National OCS Oil and Gas Leasing Program will be in place on July 1, 2022.

API can represent the interests of its members by intervening in this action. If API is not permitted to intervene, there is no doubt that API and its members stand to suffer severe "practical consequences."

E. No Other Party Can Adequately Represent the Interests of API and Its Members.

The burden to demonstrate that current parties in the litigation cannot adequately represent a proposed intervenor's interests is "not onerous." Indeed, "[t]he Supreme Court has held that this 'requirement [of Rule 24(a)(2)] is satisfied if the applicant shows that representation of his interest 'may be' inadequate; and the burden of making that showing should be treated as minimal.'" *Fund for Animals, Inc.*, 322 F.3d at 735 (*quoting Trbovich v. United Mine Workers*, 404 U.S. 528, 538 (1972)). Further, "partial congruence of interests … does not guarantee the adequacy of representation." *Id.* at 737.

API's intervention in this litigation will ensure adequate protection of the oil and gas industry's interests in this litigation. Plaintiff cannot adequately represent API's interests because Plaintiff's legal position and relief sought in this litigation are adverse to the interests of API and its members. *See United States v. Stringfellow*, 783 F.2d 821, 828 (9th Cir. 1986) ("When a party

[8] 2017–2022 Outer Continental Shelf Oil and Gas Leasing Proposed Final Program S-4 (Nov. 2016), *available at* https://www.boem.gov/sites/default/files/oil-and-gas-energy-program/Leasing/Five-Year-Program/2017-2022/2017-2022-OCS-Oil-and-Gas-Leasing-PFP.pdf.

possesses interests adverse to those of a prospective intervenor, that party cannot adequately represent the intervenor's interests."). Federal Defendants also cannot adequately represent API and its members' interests in this litigation. Courts have "often concluded that governmental entities do not adequately represent the interests of aspiring intervenors." *Fund for Animals*, 322 F.3d at 736. This is particularly true where, as here, the proposed intervenor (or its members) is directly regulated by the governmental party.[9] *Id.* at 737 (governmental defendant could not adequately represent interests of proposed intervenor); *Crossroads Grassroots Pol'y Strategies*, 788 F.3d at 321 (same). Additionally, the history behind and context of this lawsuit – including the Jan. 2021 E.O.; the district court's June 15, 2021 decision in the *Louisiana* lawsuit and Interior's pending appeal of that decision; and API's own pending challenge to the directed leasing pause filed on August 16, 2021 – demonstrate that Federal Defendants cannot adequately represent API and its members' interests in this litigation. Finally, although the State of Louisiana has a financial interest in Lease Sale 257 going forward, Louisiana's interest are qualitatively different than the interests of API's in conducting exploration and production operations on the Gulf of Mexico OCS.

In short, neither Plaintiff, nor Federal Defendants, nor Intervenor State of Louisiana can adequately represent the interests of API and its members in this litigation.

[9] *See Crossroads Grassroots* 788 F.3d at 321 ("We look skeptically on government entities serving as adequate advocates for private parties."); *Wash. All. Of Tech* Workers, 395 F. Supp. 3d at 20 ("it is well-established that governmental entities generally cannot represent the more narrow and parochial financial interest of a private party …. [T]herefore, the Court is satisfied that the Organizations have made the requisite minimal showing that the Government may not adequately represent the Organizations' interests[.]" (internal quotations and citations omitted)); *Hardin v. Jackson*, 600 F. Supp. 2d 13, 16 (D.D.C. 2009) (*citing Fund for Animals*, 322 F.3d at 736).

II. In The Alternative, API Respectfully Requests That The Court Use Its Discretion To Permit Intervention.

If the Court denies API's motion to intervene of right, then API respectfully moves the Court for an order permitting API to intervene under Federal Rule of Civil Procedure 24(b)(1)(B), which allows the Court, in its discretion, to permit intervention by an entity that "has a claim or defense that shares with the main action common questions of law or fact." If intervention is permitted, API will defend against the central legal claims and relief sought by Plaintiffs in this litigation. Further, and as discussed above, given API's prompt filing of its motion to intervene, intervention will not "unduly delay or prejudice" the parties. *See* Fed. R. Civ. P. 24(b)(3). Finally, intervention is appropriate here because it will "contribute to the equitable resolution of the case" given the "magnitude" of the impacts on "large and varied interests" if Plaintiffs' relief were granted. *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1111 (9th Cir. 2002). Thus, if the Court determines that API is not entitled to intervene of right, then API respectfully requests that the Court exercise its discretion to permit API's intervention in this lawsuit.

CONCLUSION

API has demonstrated that it is entitled to intervene of right in this litigation because: (i) API's motion is timely filed; (ii) API and its members have significant, protectable interest in Lease Sale 257; (iii) disposition of this action may impair API's ability to protect its interests and the interests of its members; and (iv) neither Plaintiffs, federal Defendants, nor Intervenor-Defendant the State of Louisiana can adequately represent the interests of API and its members in this litigation. Further, API has demonstrated that, if intervention of right is unavailable to API, then good cause exists for the Court's exercise of its discretion to permit API's intervention in this case.

For the foregoing reasons, API respectfully moves the Court for an Order granting API's Motion to Intervene.

October 8, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of October 2021, I caused a true and correct copy of the foregoing Motion to Intervene as a Defendant and Supporting Statement of Points and Authorities to be filed with the Court electronically and served by the Court's CM/ECF System upon all attorneys of record.

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