

CONTACT

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PRACTICES

Endangered Species & Wildlife
Hydropower
Litigation & Investigations
Native Affairs
Public Lands

EDUCATION

University of Washington School
of Law
Duke University
Davidson College

BAR AND COURT ADMISSIONS

District of Columbia Bar
Washington State Bar
U.S. Supreme Court
U.S. Court of Appeals for the
District of Columbia Circuit
U.S. Court of Appeals for the Fifth
Circuit
U.S. Court of Appeals for the
Ninth Circuit
U.S. District Court for the District
of Columbia
U.S. District Court for the Western
District of Washington

TYSON C. KADE
PARTNER



Professional Background

Tyson Kade represents clients before federal agencies and state and federal courts on a broad range of matters involving natural resources and energy law. Tyson provides strategic guidance on Endangered Species Act, National Environmental Policy Act, Marine Mammal Protection Act, Migratory Bird Treaty Act, and Clean Water Act compliance and liability issues, advises on permitting for energy development and hydropower projects, and counsels seafood companies on Magnuson-Stevens Fishery Conservation and Management Act matters related to West Coast and Alaska fisheries. Tyson also advises a range of Alaskan clients, including Alaska Native corporations, Tribes, and municipal governments, on issues associated with economic and resource development, domestic and international management of subsistence species, and regulatory and permitting compliance.

Tyson serves as the firm's Deputy General Counsel.

Representative Experience

Permitting and Regulatory Compliance

- Counsel various clients on Endangered Species Act rulemaking and compliance issues, including species listings, critical habitat designations, Section 7 consultations, habitat conservation plans, and reintroduction of listed species.
- Advise automotive company on Endangered Species Act issues associated with siting, development, and operation of several manufacturing facilities.
- Counsel hydropower owners and operators on Endangered Species Act issues associated with relicensing proceedings, incidental take liability, and establishment of experimental populations.
- Advise developer on Endangered Species Act, Migratory Bird Treaty Act, and National Environmental Policy Act issues regarding construction of a multi-state renewable energy transmission line.
- Counsel to national coalition on legislative, regulatory, and policy matters under the Endangered Species Act.
- Advise Alaska Native organizations on the international and domestic laws affecting the harvest of subsistence resources and the development and implementation of co-management agreements.
- Assist pipeline and LNG companies with responses to PHMSA enforcement orders, pipeline asset jurisdictional analyses, and regulatory compliance.
- Advise public utilities in developing and revising their Open Access Transmission Tariffs and associated business practices in response to FERC's Order Nos. 890 and 1000.
- Counsel fishing companies on a variety of regulatory and policy matters, including allocation and management of fishing quotas, vessel discharges, incidental take and bycatch issues, and transactional and governance agreements.

Civil Litigation and Administrative Appeals

- *Long Island Power Authority et al. v. FERC* (D.C. Circuit) – Represented a municipal authority in challenge to contested settlement agreement regarding the allocation of costs associated with certain high-voltage electrical transmission facilities.
- *Sovereign Inupiat for a Living Arctic et al. v. BLM* (D. Alaska and Ninth Circuit) – Represented an Alaska municipal government in defending challenges to the master development plan for an oil and gas

project in the National Petroleum Reserve – Alaska.

- *Gwich'in Steering Committee et al. v. Bernhardt* (D. Alaska) – Represented an Alaska municipal government, Alaska Native Tribe, and Alaska Native village corporation in defending against preliminary injunction motions in multiple lawsuits challenging an oil and gas leasing program on the North Slope.
- *Center for Biological Diversity v. Bernhardt* (Ninth Circuit) – Represented an Alaska municipal government as amicus curiae in defending against challenge to decision not to list the Pacific walrus under the Endangered Species Act.
- *North Slope Borough et al. v. Ross* (D. Alaska) – Represented Alaska municipal government, Alaska Native regional corporation, and regional tribal government in challenging the failure of the National Marine Fisheries Service to make a timely decision on an Endangered Species Act petition and negotiating the recovery of attorney fees.
- *Friends of the River v. NMFS* (Ninth Circuit) – Represented electric utilities and hydropower project owners as amici curiae in defending against challenges regarding Endangered Species Act Section 7 consultation and Section 9 take liability for operation of hydropower projects.
- *Weyerhaeuser Co. v. USFWS* (Fifth Circuit and Supreme Court) – Represented trade organizations as amici curiae in challenge to designation of critical habitat for the dusky gopher frog under the Endangered Species Act.
- *Alaska Oil and Gas Association et al. v. NMFS* (D. Alaska and Ninth Circuit) – Represented Alaska Native regional corporations, municipal governments, and regional tribal government in challenge to the Endangered Species Act listing of a subspecies of ringed seal.
- *Alaska Oil and Gas Association et al. v. Pritzker* (D. Alaska and Ninth Circuit) – Represented Alaska Native regional corporations, municipal governments, and regional tribal government in challenge to the Endangered Species Act listing of a distinct population segment of bearded seal.
- *Alaska Oil and Gas Association et al. v. Jewell* (D. Alaska and Ninth Circuit) – Represented an Alaska municipal government in challenge to the Endangered Species Act designation of critical habitat for the polar bear.
- *National Wildlife Federation v. FEMA* (W.D. Wash.) – Represented group of property owners and industry associations in defending implementation of a biological opinion on the National Flood Insurance Program in the Puget Sound region.
- *Richert v. City of Tacoma* (Wash. State) – Represented Washington municipality in defending against state law property damage claims associated with relicensing of hydroelectric project.
- *National Association of Home Builders et al. v. Defenders of Wildlife* (Supreme Court) – Drafted amici curiae brief on behalf of hydropower entities and associations in challenge to determination that Endangered Species Act Section 7 consultation applies to non-discretionary federal agency actions.
- Counsel to various pipeline operators in PHMSA enforcement proceedings involving notices of probable violations, proposed civil penalties, proposed compliance orders, and petitions for reconsideration.

Government Service

U.S. District Court for the Western District of Washington

Judicial Extern, Hon. James L. Robart, 2005

U.S. Department of Justice

Law Clerk, Environment & Natural Resources Division, 2004

U.S. Department of Commerce - National Marine Fisheries Service

Fisheries Management Specialist, 2000-2003

Articles and Presentations

- ABA Publishes Van Ness Feldman's ESA Regulatory Revisions Article, American Bar Association,

02/09/2022

- VNF Live - Post Election Natural Resources Policy Outlook, 11/13/2020
- NSB Fish and Game Management Committee , Barrow AK, 06/20/2019
- American Bar Association Spring Conference, Denver CO, 03/29/2019
- American Bar Association Webinar , Washington DC, 10/03/2018
- National Hydropower Association Annual Conference, Washington DC, 04/29/2015
- Chapter 1: National Environmental Policy Act, Washington Real Property Desk Book, Washington State Bar Association (4th ed. 2013), Vol. 7, 10/01/2013
- Land Use Appeals, Washington Lawyers Practice Manual, Part 16, Vol. 23 (2013), 10/01/2013
- Federal District Court Upholds Criminal Conviction Under the Migratory Bird Treaty Act for Bird Deaths Resulting from Oil Refinery Operations, The Environmental Counselor, Vol. 292 pp. 5, 12/01/2012
- Growth Management and Land Use Conference, Law Seminars International, Seattle WA, 11/09/2012
- Legal and Policy Implications of the Perception of Property Rights in Catch Shares, Washington Journal of Environmental Law & Policy, Vol. 2 pp. 283, 10/02/2012
- Endangered Species Act, Impacts of Compliance in Alaska, Alaska Business Monthly, pp. 42, 08/01/2010
- Endangered Species Act - Impacts on Alaska Conference, Law Seminars International, Anchorage AK, 02/25/2010
- Clean Water Act Enforcement: EPA Issues New Action Plan, The Water Report, Issue 69, 11/15/2009
- The Exxon Valdez Reopener: Natural Resources Damage Settlements and Roads Not Taken, Alaska Law Review, Vol. 22 pp. 135-211, 06/01/2005
- Characterization of Montmorillonite Colloids Containing a Clay-Adsorbed Bipolar Poly(pyridyl)osmium(II) Complex, Journal of the Chemical Society, Issue 17 pp. 1821-1823, 06/01/1995

Alerts

- Administration Rescinds ESA Regulatory Procedures for Exclusions from Critical Habitat, 07/28/2022
- Federal Judge Vacates Three Trump-Era Endangered Species Act Rules, 07/12/2022
- NMFS Issues Highly Anticipated Salish Sea Nearshore Programmatic Biological Opinion, 07/08/2022
- Administration Rescinds ESA Definition of "Habitat", 06/28/2022
- Administration Proposes First Wave of Endangered Species Regulatory Revisions, 11/05/2021
- Changes to the Migratory Bird Treaty Act Enforcement Regime Take Flight, 10/08/2021
- Final Rule Codifying Exemption of Incidental Take Under the Migratory Bird Treaty Act Faces Substantial Hurdles, 02/02/2021
- Updated: CEQ Issues Final Rule to Modernize NEPA Regulations, 08/07/2020
- CEQ Issues Final Rule to Modernize NEPA Regulations, 07/20/2020
- Executive Order Seeks to Promote Economic Recovery by Expediting Environmental Reviews for Project Development, 06/08/2020
- U.S. Fish and Wildlife Service Proposes to Codify Exemption of Incidental Take Under the Migratory Bird Treaty Act, 01/31/2020
- Administration Issues Significant Revisions to Endangered Species Act Implementation, 08/13/2019
- Culvert Treaty Fishing Rights Litigation: While the Ninth Circuit Denies Rehearing; Does the Dissent Provide Passage to the Supreme Court?, 06/20/2017
- Trump Order Sets Up Rollback of Obama Energy and Climate Action, 03/30/2017

- Administration Marches Ahead on Critical Habitat:
Final Rules and Exclusion Policy Lay Groundwork for Broader Designation of Critical Habitat and Reshape the Adverse Modification Inquiry, 02/22/2016
- Fish and Wildlife Service Contemplates Expansive Permitting Regime to Address Incidental Take of Migratory Birds, 06/08/2015
- Fifth Circuit Holds that Federal Power Act Preempts Certain State Property Damage Claims, 10/17/2013
- National Ocean Council Releases Final Ocean Policy Implementation Plan, 04/25/2013
- Federal District Court Orders Washington State Agencies to Repair Culverts that Block Fish Passage in Violation of Tribes' Treaty Fishing Right, 04/11/2013