

STEPHEN E. ROADY

Professor of the Practice of Law: Duke University School of Law
Professor of the Practice, Marine Science and Conservation: Duke School of the Environment
Faculty Fellow: Duke Nicholas Institute for Environmental Policy Solutions

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Education

Duke University School of Law, J.D., 1976.
Davidson College, B.A., *cum laude*, 1971.

Prior Professional Experience

Managing and Senior Attorney for Oceans, Earthjustice **2002 – 2016**

Protected ocean, coastal, and mountain ecosystems and defended air and water quality. Pursued litigation and advocacy related to federal environmental statutes, including the Clean Water Act, Clean Air Act, National Environmental Policy Act (NEPA), Endangered Species Act (ESA), and the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Assisted several Pacific Small Island Developing States in seeking relief from the effects of climate change.

President, Oceana **2001 – 2002**

Founding president of international, non-profit ocean conservation organization dedicated to protecting life in the sea through education, advocacy, communication, science, and litigation. Led Oceana from four staffers to forty, developed initial programs, secured foundation support, opened offices in the United States, and initiated planning for offices in Europe and South America.

Director, Ocean Law Project, Earthjustice Legal Defense Fund **1998 – 2001**

First leader of litigation and counseling project designed to protect United States ocean ecosystems by invoking NEPA, the ESA, and the MSA. Coordinated challenges to government fishery management decisions and negotiated regulatory responses to demands for ocean resources.

Environmental lawyer in private practice **1976 – 1989 and 1990 – 1998**

Counseling and litigation on matters arising under NEPA, the Clean Air Act, the Clean Water Act, the ESA, and other environmental statutes in administrative proceedings and in various federal courts. Partner at Brown & Roady, Andrews & Kurth, and Swidler & Berlin.

Minority Counsel, U.S. Senate Committee on Environment and Public Works 1989 – 1990

Legal advisor to U.S. Senator John H. Chafee (R.- R.I.) on environmental issues. Closely involved with the Clean Air Act Amendments of 1990 and coastal/water quality initiatives.

Representative Environmental Litigation

National Environmental Policy Act cases

American Bird Conservancy, et al. v. Federal Communications Commission, 516 F.3d 1027 (D.C. Cir. 2008) (conservation groups challenging failure to evaluate communications tower impacts; ruling set NEPA precedent for meaningful analysis of effects of towers on birds).

Environmental Defense Fund, Inc., et al. v. Alexander, 467 F. Supp. 885 (N.D. Miss. 1979), *affirmed in part and reversed in part sub nom Environmental Defense Fund, Inc., et al. v. Marsh*, 651 F.2d 983 (5th Cir. 1981) (conservation group and affected citizens challenging environmental analysis by U.S. Army Corps of Engineers for Tennessee-Tombigbee Waterway; case set precedent for NEPA supplemental environmental impact statements).

Ocean and coastal ecosystem cases

Gulf Restoration Network v. Jewell, et al., 2016 U.S. Dist. LEXIS 18231 (S.D. Ala. 2016) (environmental group invoking NEPA and the Oil Pollution Act to challenge allocation of money – nominally designated to help restore natural resources damaged by BP Deepwater Horizon oil spill – for construction of a proposed new resort project along the Alabama coast; ruling requires government to analyze alternatives to the project).

Anglers Conservation Network, et al. v. Pritzker, et al., 2015 U.S. Dist. LEXIS 135320 (D.D.C. 2015) (remedy order entered January 19, 2016) (fishermen challenging government failure to protect river herring and shad; ruling requires government to comply with NEPA by evaluating the environmental effects of neglecting to manage forage fish populations).

American Oceans Campaign, et al. v. Daley, 183 F.Supp. 2d 1 (D.D.C. 2000) (conservation groups challenging government failure to minimize adverse effects of fishing on ocean floor habitat; ruling set NEPA precedent requiring government to closely analyze such effects).

Natural Resources Defense Council, et al. v. Daley, 209 F.3d 747 (D.C. Cir. 2000) (conservation groups invoking the MSA and NEPA to challenge government fishing quota for summer flounder that had less than a 20% chance of rebuilding the population; noting that the government position would have been reasonable “[o]nly in Superman Comics’ Bizarro World,” the ruling required quotas to demonstrate at least a 50% chance of success).

Center for Biological Diversity v. National Marine Fisheries Service, 977 F. Supp. 2d (D.P.R. 2013) (request for clarification denied February 5, 2016) (conservation groups challenging government failure to protect threatened Caribbean corals by allowing fishing on parrotfish; ruling set ESA precedent for meaningful monitoring of fishing effects).

Conservation Law Foundation v. Pritzker, 2014 U.S. Dist. LEXIS 46543 (D.D.C. 2014) (conservation group challenging government failure to prevent overfishing in New England; ruling set MSA precedent for preventing overfishing by rejecting government approval of unused fishing quota).

Blue Ocean Institute, Inc. v. Gutierrez, 585 F. Supp. 2d 36 (D.D.C. 2008) (conservation group seeking to protect western Atlantic bluefin tuna by challenging government refusal to limit longline fishing in the Gulf of Mexico; opinion led to MSA rule restricting longline fishing in critically important bluefin tuna spawning area).

Coastal Conservation Assoc., et al. v. Gutierrez, 512 F. Supp. 2d 896 (S.D. Tex. 2007) (conservation groups challenging government failure to halt overfishing of red snapper in the Gulf of Mexico; case set MSA precedent for rebuilding fish populations and led to dramatic rebound of red snapper populations).

Mountains, rivers, streams, and water quality cases

Ohio Valley Environmental Coalition, et al. v. U.S. Army Corps of Engineers, 479 F. Supp. 2d 607 (S.D. W.Va. 2007), *reversed sub nom Ohio Valley Environmental Coalition v. Aracoma Coal Co.*, 556 F.3d 177 (4th Cir. 2009) (citizens challenging mountaintop removal coal mining and valley stream destruction in Appalachia under NEPA and the Clean Water Act; case resulted in guidance directing the Corps of Engineers to consider both the function and the structure of streams destroyed by mountaintop mining when evaluating mitigation).

State of Missouri v. Andrews, 586 F. Supp. 1268 (D. Neb. 1984), *affirmed sub nom Missouri v. Andrews*, 787 F.2d 270 (8th Cir. 1986), *affirmed sub nom ETSI Pipeline Project v. Missouri*, 484 U.S. 495 (1988) (coalition challenging use of the Missouri River for a coal slurry pipeline from Wyoming to Louisiana as a violation of NEPA and the 1944 Flood Control Act; ruling set precedent for protecting the Missouri River).

Air quality cases

New York Public Interest Research Group, Inc. v. Johnson, 427 F.3d 172 (2d Cir. 2005) (public interest organization challenging violations of the permitting requirements of the Clean Air Act; ruling set precedent for public protection under the Act).

Indianapolis Power and Light Company v. United States Environmental Protection Agency, 58 F.3d 643 (D.C. Cir. 1995) (utility seeking to establish baseline for emissions allowances under the Clean Air Act Amendments of 1990; ruling clarified method to set allowances).

Legislative and Administrative Advocacy

Ensuring the continuing vitality of the National Environmental Policy Act

Negotiated with the Council on Environmental Quality over proposed revisions to the National Environmental Policy Act designed to mesh the environmental evaluation requirements of that Act with the fishery management requirements of the Magnuson-Stevens Act (2007-2008).

Enhancing air quality

Worked as a principal staff member for the Senate Committee on Environment and Public Works on the permitting and enforcement titles of the Clean Air Act Amendments of 1990. Drafted statutory language, wrote sections of committee reports, negotiated with Senators and staff over key provisions, assisted with the Conference Committee report, and collaborated with regulators, industry, and non-government groups to formulate the final version of the statute (1989-1990).

Protecting mountains and streams

Negotiated with the United States Environmental Protection Agency, the United States Army Corps of Engineers, and the Council on Environmental Quality over guidance and regulatory actions necessary to reduce and ultimately terminate mountaintop removal mining in Appalachia, and advised various parties on strategy for the negotiations (2008-2016).

Protecting oceans and coastal communities

Negotiated with the National Marine Fisheries Service, the National Oceanic and Atmospheric Administration, the Department of Commerce, and the Office of Management and Budget over proposed revisions to key statutes, regulations, and guidelines governing the management of fisheries in United States ocean waters (1998-2016).

Provided guidance to the Council on Environmental Quality in the preparation of Executive Order No. 13547: "Stewardship of the Ocean, Our Coasts, and the Great Lakes," creating a new National Ocean Policy (2009-2010).

Designing measures to protect against climate change

Worked with Pacific Small Island Developing States on measures to increase the resilience of their ocean resources, and provided advice to the government of Palau on steps necessary to transform its Exclusive Economic Zone into a protected marine reserve (2010 – 2016).

Prior Teaching Experience

Senior Lecturing Fellow, Duke University School of Law **2004 – 2016**

Ocean and Coastal Law and Policy course (cross-listed with Duke's Nicholas School of the Environment). Separate semester-long Environmental Litigation seminars in 2004 and 2007.

Visiting Scholar/Adjunct Faculty, Nicholas School of the Environment **2003 – 2016**

Semester-long course in Ocean and Coastal Law and Policy for students enrolled both at the Duke University Nicholas School of the Environment and at Duke Law School.

Instructor, Marine Conservation Summer Institute, Duke Marine Lab **July 2014/2015**

Week-long class on marine vertebrate conservation and related United States statutes and international regimes (co-instructor with Professor Andrew J. Read).

Professorial Lecturer, Johns Hopkins School of Advanced International Studies **2010-2015**

Semester-long courses in international ocean law and climate policy. Co-lecturer for semester-long course in fundamentals of global energy and the environment during 2011-2014.

Visiting Professor, University of Hawaii School of Law **Fall 2002/J-Term 2014**

Semester-long course in domestic ocean and coastal law class during the fall of 2002. Week-long seminar in ocean conservation law and policy during the January Term of 2014.

Instructor, Scripps Institution of Oceanography **Summer sessions: 2007 - 2015**

Lectures on legislation, regulations, and litigation related to managing ocean fisheries at the Scripps Center for Marine Biodiversity and Conservation (during one week annually).

Adjunct Faculty, Washington College of Law, American University **1978 – 2008**

Semester-long seminar in Environmental Litigation, taught at the College of Law starting in the early 1980's. Lecturer in Legal Research and Writing during 1978 and 1979.

Selected Publications

Hannah Lily and Stephen E. Roady, *International Seabed Authority Rules for Environmental Management: Filling Regulatory Gaps* (in press 2019).

Ori Sharon, Sydney N. Fishman, J.B. Ruhl, Lydia Olander, Stephen E. Roady, *Ecosystem Services and judge-made law: A review of legal cases in common law countries*. *Ecosystem Services* 32 (2018) 9-21.

Sara L. McDonald, Rebecca L. Lewison, Stephen E. Roady, Randall J. Kramer, Deborah Rigling-Gallagher, Andrew J. Read, *Comparing stakeholder perceptions with empirical outcomes from negotiated rulemaking policies: Is participant satisfaction a proxy for policy success?* *Marine Policy* 73 (2016) 224-230.

Stephen E. Roady, *The Public Trust Doctrine*. Chapter 2 in *Ocean and Coastal Law and Policy*, Baur, D., Eichenberg, T., Hancock, G., Sutton, M. (eds.), (2nd ed. 2015). American Bar Association.

Mary Turnipseed, Michael C. Blumm, Duncan E.J. Currie, Kristina M. Gjerde, Peter Sand, Mary C. Wood, Julie A. Hambrook Berkman, Ryke Longest, Gail Osherenko, Stephen E. Roady, Raphael D. Sagarin, Larry B. Crowder, *Using the Public Trust Doctrine to Achieve Ocean Stewardship*. Chapter 21 in *Rule of Law for Nature: New Dimensions and Ideas in Environmental Law*, Voigt, C. (ed.), (2013). Cambridge University Press.

Charles H. Peterson, Felicia C. Coleman, Jeremy B.C. Jackson, R. Eugene Turner, Gilbert T. Rowe, Richard T. Barber, Karen A. Bjorndal, Robert S. Carney, Robert K. Cowan, Jonathan M. Hoekstra, James T. Hollibaugh, Shirley B. Laska, Richard A. Luettich, Jr., Craig W. Osenberg, Stephen E. Roady, Stanley Senner, John M. Teal, and Ping Wang. *A Once and Future Gulf of Mexico Ecosystem: Restoration Recommendations of an Expert Working Group* (September 2011). Pew Environment Group.

Mary Turnipseed, Stephen E. Roady, Raphael D. Sagarin, Larry B. Crowder, *The Silver Anniversary of the United States' Exclusive Economic Zone: Twenty-Five Years of Ocean Use and Abuse, and the Possibility of a Blue Water Public Trust Doctrine*. 36 *Ecology Law Quarterly* (2009) 1-70.

Mary Turnipseed, Larry B. Crowder, Raphael D. Sagarin, Stephen E. Roady, *Legal Bedrock for Rebuilding America's Ocean Ecosystems*. (2009) 324 *Science* 183-184.

Mary Turnipseed, Larry B. Crowder, Raphael D. Sagarin, Stephen E. Roady, Response to Letters on *Legal Bedrock for Rebuilding America's Ocean Ecosystems*, (2009) 326 *Science* 44-46.

Alison Rieser, Charlotte Gray Hudson, Stephen E. Roady, *The Role of Legal Regimes in Marine Conservation*. Chapter 21 in *Marine Conservation Biology: The Science of Maintaining the Sea's Biodiversity*, Norse, E.A. and Crowder, L.B. (eds.), (2005). Island Press.

Clara G. Poffenberger and Stephen E. Roady, *Modifying Operations under CAA Permitting and New Source Review Requirements*. Environmental Permitting (1993) 485-499.

Stephen E. Roady, *Permitting and Enforcement Under the Clean Air Act Amendments of 1990*. (April 1991) 21 Environmental Law Reporter 10178-10205.

Selected Presentations

Lecture on federal regulation of the ocean ecosystem and the challenges of managing vital fisheries in the Exclusive Economic Zone of the United States. Yale Law School and the Yale School of Forestry and Environmental Studies. October 6, 2015.

Presentation on statutory and judicial approaches in the United States to the challenge of protecting important ocean habitats. Pew Fellows Program in Marine Conservation Annual Meeting. November 7, 2014.

Briefing for Members of the Irish Parliament and interested non-governmental organizations, Dublin, Ireland: The United States experience with fishery management and lessons for revising and implementing the Common Fisheries Policy of the European Union. October 2013.

Briefing for staff to the German government and interested non-governmental organizations, Berlin, Germany: The United States experience with fishery management and lessons for revising and implementing the Common Fisheries Policy of the European Union. October 2013.

Lecture on protecting ocean ecosystems under the Law of the Sea. Duke University Center for International Studies, Ocean Policy Working Group, and Nicholas School of the Environment: Panel on United Nations Convention on the Law of the Sea. April 12, 2013.

Lecture (with Erika Rosenthal) titled "The Other CO₂ Problem: International Law Approaches to Ocean Acidification." University of Hawaii Richardson School of Law: International Symposium Tribute to Professor Jon Markham Van Dyke. February 1, 2013.

Lecture on the Law and Policy Implications of Ocean Acidification. Heinz Center for Science, Economics and the Environment: Horizons@Heinz. November 14, 2012.

Presentation on ocean conservation litigation at a panel titled "Over 40 years in the Struggle for Ocean Policy." Capitol Hill Ocean Week. June 8, 2012.

Presentation on ocean conservation litigation at a session titled “Beyond the Obituaries: Success Stories in Ocean Conservation.” International Marine Conservation Congress. May 14, 2011.

Lecture on legal challenges to federal government failures to manage and protect ocean resources in a sustainable manner. Stanford Law School Symposium: *Climate Change and Marine Ecosystems – Managing for Resiliency*. April 10, 2009.

Lecture on the changing conservation landscape in Washington. Yale School of Forestry and Environmental Studies: *The Trifecta of NGO Political Strategy*. April 2, 2009.

Recent Graduate Students

Sara Lynne McDonald, Ph.D., Duke University:
A Social and Ecological Evaluation of Marine Mammal Take Reduction Teams (2014).

Mary P. Turnipseed, Ph.D., Duke University:
Re-Imagining the Public Trust Doctrine to Conserve United States Ocean Resources (2011).

Margaret E. Peloso, Ph.D., Duke University:
Adapting to Rising Sea Levels (2010).

Court and Bar Admissions

Supreme Court of the United States.
United States Courts of Appeal: D.C., Second, Fourth, Fifth, Eighth, & Eleventh Circuits.
United States District Court for the District of Columbia.
United States District Court for the Northern District of Florida.
United States District Court for the Southern District of Georgia.
Member of the District of Columbia Bar.

Awards, Honors, and Commendations

Phi Beta Kappa, Davidson College (1971).

Professor of the Year Award, Duke Nicholas School of the Environment (2008).

Harvard Law School Wasserstein Public Interest Fellow (2007 – 2008).

Selection Committee, Pew Fellows Program in Marine Conservation (2008 – 2010).

Sierra Club commendation for contributions to the Clean Air Act Amendments of 1990.

National Association of Attorneys General commendation for enhancing the quality of States’ advocacy before the Supreme Court of the United States.