

REVISED
Energy, Development, and Climate Change
RWU SOL Marine Law Summer Program 2008
Class schedule: July 7-23, 2008, 1:00-3:45

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Office hours: 9:00 -11:00 a.m. and 4:00 -5:00 or by appointment

OVERVIEW:

Climate Change has emerged as the most important environmental issue and one of the key issues regardless of subject matter national and globally. This two credit course will explore the developments in climate change law and policy. We will begin with climate change science and equity, examining the UNFCCC and the compliance mechanisms established under Kyoto Protocol. The course will then consider “litigation” approaches at the international level (e.g., petitions to the World Heritage Committee). We will also examine U.S. initiatives at the federal and state levels and domestic litigation approaches (*Mass v. EPA* and nuisance actions) after considering one potential long-term solution to climate change. Other policy approaches will be reviewed, insights from the fields of conservation biology and ecological economics will be integrated into the discussions, and guest speakers will help round out the understanding of the richness and complexity of the issues.

COURSE MATERIALS:

1. GLOBAL CLIMATE CHANGE AND U.S. LAW, Michael Gerrard, ed.
2. Handouts and web materials

EVALUATION:

70% Presentation of Legal and Factual Memo re: impacts of climate change will be held on the last day of class. The memo will be due on Monday, July 28 by 9:00 a.m.

20% Student Lead Class Discussion

Each member of the class will prepare to lead two class discussions, providing analysis and critique of the reading for three classes – the two classes for which you are a discussion leader plus one more of your choice.

10% Class Participation

Being a short, intensive course that considers both international and domestic law in a burgeoning area with a focus on policy in addition to law, much of the course will not be structured around the “case” method. While I will lead discussions and present material, the success of this endeavor will depend on your active participation, discussion and insights. I am a firm believer that reading the assigned material before each class benefits you and the community, which is comprised of the members of this class. Thus, you are required to have read the material—no free-riding permitted.

**Class 1: July 7: Climate Change Science and Ethics and the Global
Institutional Response**

Readings:

Examine:

- Global Climate Change and U.S. Law: Chapter 1, Section III: The Legal Context, pp. 3-14; 18-27; pp. 36-52.
- United Nations Framework Convention on Climate Change, http://unfccc.int/essential_background/convention/background/items/2853.php
- Kyoto Protocol, http://unfccc.int/essential_background/kyoto_protocol/items/2830.php
- Bali Action Plan, http://unfccc.int/files/meetings/cop_13/application/pdf/cp_bali_action.pdf

Read:

- Intergovernmental Panel on Climate Change (IPCC), Summary for Policymakers, (2007), http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4_syr_spm.pdf
- IPCC's Working Group II Report, "Impacts, Adaptation and Vulnerability," Summary for Policymakers, 2007. <http://www.ipcc.ch/pdf/assessment-report/ar4/wg2/ar4-wg2-spm.pdf> (SKIM)
- IPCC's Working Group III Report, "Mitigation of Climate Change," Summary for Policymakers, 2007. <http://www.ipcc.ch/pdf/assessment-report/ar4/wg3/ar4-wg3-spm.pdf> (SKIM)
- Hadjilambrinos C., For Richer or for Poorer? The Role of Science, Politics, and Ethics in the Global, Climate Change Policy Debate, *Bulletin of Science, Technology & Society*, 19(6): 521-531 (1999), http://ceep.udel.edu/publications/energy/publications/1999_es_for_richer_for_poorer.pdf
- Ott, Herman E., Climate Policy Post-2012 – A Roadmap. The Global Governance of Climate Change, A discussion paper for the Tällberg Forum, http://www.wupperinst.org/uploads/tx_wibeitrag/Ott_Taellberg_Post-2012.pdf

**Class 2: July 8: The national framework: U.S. law and policy relating to
climate change**

Guest speaker: Janet Freedman, Coastal Geologist, RI Coastal Resources Management Council

Readings:

- Chapter 3: U.S. Policy, pp. 61-99
- Section 145: Climate Change and Sea Level Rise of the RI Coastal Resources Management Plan, <http://www.crmc.ri.gov/regulations/programs/redbook.pdf>
- James G. Titus, "Does the U.S. Government Realize that the Sea is Rising? How to Restructure Federal Programs so that Wetlands and Beaches Survive," 718 GOLDEN GATE UNIVERSITY LAW REVIEW Vol. 30:4 (2000).
- James G. Titus, "Rising Seas, Coastal Erosion, and the Takings Clause: How to Save Wetlands and Beaches Without Hurting Property Owners," 57 MARYLAND LAW REVIEW 1279-1399 (1998).

- Meg Caldwell and Craig Holt Segall, “No Day at the Beach: Sea Level Rise, Ecosystem Loss, and Public Access Along the California Coast.” *Ecology Law Quarterly* Vol. 34:533 (2007)
- (SKIM) Pam Rubinoff, Nathan D. Vinhateiro, and Christopher Piecuch, *Summary of Coastal Program Initiatives that address Sea Level Rise as a result of Global Climate Change*,
http://seagrant.gso.uri.edu/ccd/slr/SLR_policies_summary_Mar6_final.pdf
- Chapter 9, Hilary Sigman, *Legal liability as climate change policy*, 155 U. Pa. L. Rev 1953, 1959 (2007).
- Bush Administration Climate Change Fact Sheet,
<http://www.whitehouse.gov/news/releases/2005/05/20050518-4.html>
- US Actions to address climate change (fact sheet and brochure),
<http://www.state.gov/g/oes/climate/>
- RGGI, www.rggi.org

Class 3: July 10: Climate Change Litigation

Threshold questions:

Article III standing; is global warming a political question? Are public nuisance claims preempted by the Clean Air Act? Can the public trust doctrine be used by states as a “background principle” in defeating a takings claim?

The pursuit of civil remedies will be examined through a number of court holdings and prospects for enforcement that will define the relevance of these judicial and other governmental institutions invoked through litigation.

Readings:

- *Friends of the Earth v. Watson*, 2005 WL 2035596 (N.D. Cal. 2005)
- *Connecticut v. Am. Elec. Power Co.*, 406 F. Supp. 2d 265 (S.D. NY)
- “Tort-Based Climate Litigation”, David A. Grossman chapter from ADJUDICATING CLIMATE CHANGE: SUB-NATIONAL, NATIONAL, AND SUPRA-NATIONAL APPROACHES (William C.G. Burns & Hari M. Osofsky, eds.) (forthcoming 2008, Cambridge University Press).
- Holly Doremus, Polar Bear Politics,
http://www.slate.com/id/2182307/pagnum/all/#page_start
- Chapter 13 (Part I)—NEPA; (Part II)—Clean Water Act; and (Part III)—Endangered Species Act and Chapter 15—Threshold Questions (David Hunter, Chris Wold, & Melissa Powers, *Climate Change and the Law* (forthcoming 2009)).

Class 4: July 11: Climate Change under Existing Federal Environmental Statutes and Climate Change in the Courts

Guest speaker: Tricia Jedele, Special Assistant Attorney General Environmental Advocate, Rhode Island Attorney General’s Office

Readings:

- Gerrard, Chapter 5: Clean Air Regulation and Chapter 6, pp. 183-218

- Section 202 of the Clean Air Act: Title II Emission Standards for Moving Sources; Part A - Motor Vehicle Emission and Fuel Standards
- 42 U.S.C. § 7543 (a), CAA § 209(a) Prohibition: Motor Vehicle Emission Standards with Federal Status
- Massachusetts v. EPA, 127 S.Ct. 1438 (2007)
- Center for Biological Diversity v. NHTSA, 508 F.3d 508 (9th Cir. 2007)
- Randall S. Abate, Automobile Emissions and Climate Change Impacts: Employing Public Nuisance Doctrine as Part of a “Global Warming Solution” in California. 40 CONN LAW REV 3 (2008).
- CA Order 693 (*emailed on July 8, 2008*).
- In re quantification of Environmental Costs, 578 N.W. 2d 794 (Minn. Ct App. 1998)

Class 5: July 14: Other International Responses to Climate Change

Guest speaker: Dr. Kate Moran, Associate Dean for Research & Administration, URI Graduate School of Oceanography

Examine

- Chapter 11-- Climate Change in Other International Environmental Regimes (David Hunter, Chris Wold, & Melissa Powers, *Climate Change and the Law* (forthcoming 2009)).
- Inter-American Commission on Human Rights (ICHR), <http://www.cidh.org/>
- Petition to the Inter American Commission On Human Rights Seeking Relief From Violations Resulting From Global Warming Caused by Acts and Omissions of The United States, <http://www.inuitcircumpolar.com/files/uploads/icc-files/FINALPetitionICC.pdf>
- (for reference) World Heritage Convention, <http://whc.unesco.org/en/about/>; <http://whc.unesco.org/archive/convention-en.pdf>
- (for reference) Australia Blue Mountain Petition to the World Heritage Committee, <http://www.climatelaw.org/cases/country/intl/unescobmtns/>
- (SKIM) Thorson, E., The World Heritage Convention & Climate Change: The Case for Climate-Change Mitigation Strategy Beyond the Kyoto Protocol, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=981643#PaperDownload
- **WATCH:** *ICHR hearing on Human Rights and Global Warming (March 1, 2007), <http://www.cidh.org/audiencias/select.aspx> (<http://www.cidh.org/audiencias/127/Global%20warming%20and%20human%20rights.mp3>)

Class 6: July 15: Potential Efforts to Change Nation-State Behavior Through the U.N. Fish Stocks Agreement; and Climate Change Litigation and International Environmental Law

Guest speaker: Seth Macinko, Professor, URI's Marine Affairs Department

Reading:

- International Covenant on Civil and Political Rights, UN (emailed on July 10, 2008)
- (SKIM) Iceland's Govt response (emailed on July 10, 2008)
- (SKIM) Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (<http://www.nmfs.noaa.gov/sfa/>) and Reauthorization: <http://www.nmfs.noaa.gov/msa2005/>
- (SKIM) Seth Macinko and Daniel W. Bromley, "Who Owns America's Fisheries?"
- Burns Chapter on U.N. Fish Stocks Agreement, "Potential Causes of Action for Climate Change Impacts under the United Nations Fish Stocks Agreement"
- United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks (final act dated August 1995)
http://www.un.org/Depts/los/fish_stocks_conference/fish_stocks_conference.htm

Class 7: July 17: Climate change and energy

The class will discuss renewable energy options, both nationally and internationally. The discussion will focus on the Energy Policy Act of 2005 and its transfer of jurisdictional authority from the US Army Corps of Engineers to the Minerals Management Service regarding leases on the Outer Continental Shelf. Marine renewable energy projects; permitting; regulatory regime; and state's rights will be addressed.

Guest speakers: *Kristen Sherman, Esq., Environmental Practice Group, Adler Pollock & Sheehan and Co-Chair of the R.I. Chapter of the Environmental Business Council of New England, Diana Ducharme McInerney, Esq., Hinckley Allen Snyder, LLP and Dr. Michelle Portman, Woods Hole Oceanographic Institution, Marine Policy Center*

Readings:

- Gerrard, pp. 68-72
- Testimony of J. Mark Robinson, Director, Office of Energy Projects, FERC, before the Committee on Energy and Natural Resources (7/7/07) (accessible on TWEN)
- *State of Washington Dept. of Ecology v. FERC*, No. 08-1191 (D.C. Cir. filed 5/15/2008)
- *New Jersey v. Delaware*, 128 S. Ct. 1410, 2008 WL 833218 (2008).

For reference only:

- Rabe, "Race to the Top: The Expanding Role of U.S. State Renewable Portfolio Standards," *Pew Center for Global Climate Change papers*, 1-36 (June 2006).
(<http://www.pewclimate.org/docUploads/RPSReportFinal.pdf>)
- *Tackling Climate Change in the U.S.: Potential Carbon Emissions Reductions from Renewable Energy from Energy Efficiency and Renewable Energy by 2030*, American Solar Energy Society, Charles F. Kutscher, ed. (January 2007),
http://www.ases.org/climatechange/climate_change.pdf
- Hoffert, "Renewable Energy Options-An Overview" in *The 10-50 Solution: Technologies and Policies for a Low-Carbon Future* (Pew Center on Global Climate Change, March 2004), see workshop papers, 1-19
- Danish Offshore Wind: Key Environmental Issues
http://www.ens.dk/graphics/Publikationer/Havvindmoeller/havvindmoellebog_no_v_2006_skrm.pdf

- Minerals Management Service, Outer Continental Shelf Alternative Energy Final Programmatic EIS, <http://www.ocsenergy.anl.gov/news/index.cfm#fpeis>
- Massachusetts Technology Collaborative, U.S. Department of Energy, and General Electric, “A Framework for Offshore Wind Energy Development in the United States” (2005). (http://www.mtpc.org/offshore/final_09_20.pdf)
- FERC White Paper on Hydrokinetic Power Licensing (2008)
<http://www.ferc.gov/industries/hydropower/indus-act/hydrokinetics.asp>

Class 8: July 18: Rhode Island’s Renewable Energy Plan

Leading with a class discussion on Governor Carcieri’s mandate for the state’s energy supply to consist of 15% of renewable methods of producing energy by 2020, the class will then meet with Brother Joseph Byron, project leader of the Portsmouth Abbey wind turbine, to discuss permitting of wind turbines in Rhode Island.

Field trip to Portsmouth Abbey Wind Turbine—meet at Portsmouth Abbey at 1:15.

Readings:

For an overview of what’s happening in RI, check out:

RI Energy Office request for proposals:

<http://www.purchasing.ri.gov/RIVIP/StateAgencyBids/7067847.PDF>

RI Offshore Wind Stakeholders Report

http://www.energy.ri.gov/documents/renewable/RI_Offshore_Wind_Stakeholders_Final_Report_February_2008.pdf

Portsmouth Abbey Wind Turbine updates:

<http://www.energy.ri.gov/programs/renewable.php#windFinal>

Class: 9: July 21: Marine Initiatives to combat the effects of climate change on the ocean

Guest speaker: Caroly Shumway, Director of Conservation Science, The Nature Conservancy (RI)

Readings:

- Clean Water Act chapter of Gerrard
- “The Impacts of Climate Change in Coastal Marine Systems,” Christopher D. G. Harley, et al., Ecology Letters, (2006) 9: 228–241
- Ecological Resilience--In Theory and Application, Lance H. Gunderson, *Annual Review of Ecology and Systematics*, Vol. 31. (2000), pp. 425-439.
(<http://links.jstor.org/sici?sici=0066-4162%282000%2931%3C425%3AERTAA%3E2.0.CO%3B2-3>)

For reference:

- *Effects on the marine environment of ocean acidification resulting from elevated levels of CO₂ in the atmosphere*, Document prepared by an intersessional working group convened by Norway and the United Kingdom (Peter M. Haugan, Carol Turley and Hans-Otto Poertner) <http://www.ospar.org/eng/doc/Ocean%20acidification.doc>
- NOAA/Pacific Marine Environmental Law <http://www.pmel.noaa.gov/co2/OA/> and <http://www.noaa.gov/climate.html>

Assignment:

Work on presentations

Class 10: July 22: Presentations on Factual and Legal Memos re: impacts of climate change