

Tuesday, July 23, 2013

12:00-12:15

More Powerful Tools For Global Citizens, Small Island States, and Conservation Professionals -- John M. Fitzgerald, Counsel to SCB

The bottom line: each of us has the power to help turn back the major threats to biodiversity, I will tell you how to do it and enjoy it. There are many tools you can use and here are just a few:

- 1) On Climate Change – as I will explain by adding a little more detail to what we heard on Monday there are opportunities in Obama’s Climate Plan for you to help shape US regulations and there are powerful opportunities he did not cover. Among these are international bodies and efforts. The Marshall Islands and other small island states may need expert witnesses, from SCB’s Oceania Section, in a civil lawsuit seeking climate change relief or a simple advisory opinion or declaratory judgment in the International Court of Justice. Other groups, for example, are preparing petitions to the International Criminal Court to investigate the individuals, such as perhaps, Prime Minister Harper of Canada or the CEOs of major fossil fuel companies, who are most responsible for the release of hazardous climate gases that are forcing coastal dwelling people and whole island nations to leave their homelands;
- 2) To halt the poaching rhinos, elephants, tigers and sharks to extirpation and extinction – help prepare and augment petitions to the Secretaries of Interior and Commerce to invoke the broad trade sanctions against China and Vietnam that we adopted in the US in support of the UN Resolution to stop high seas drift-netting;
- 3) Move the Money. Organize your families, schools, societies, churches, Federal, state and local government pension funds and 401Ks, and other groups to consider the UN Principles for Responsible Investment and the UN Environment Program’s Finance Initiative, and move your investments from companies that deal in fossil fuels and fluorocarbons to those that foster neutral or restorative and renewable technologies <http://gofossilfree.org/mymoney/> and reduce investments in companies that avoid environmental controls by outsourcing their polluting production to weaker jurisdictions;

- 4) Call 202-224-3121 if you are an American citizen and schedule a meeting to talk with your three members of Congress or their staffs to ask for their continuing help in this effort and to report to you often on how they are helping and do the same in any jurisdiction where you have a vote or work; and
- 5) Start your conversation with members of Congress by saying that the Pacific and Atlantic Free Trade Agreements, and all trade agreements, must require proof that international conservation laws are in place and enforced – from invasive species protection to anti-smuggling systems -- before allowing affect products to flow in international commerce, and not the reverse.

Here is what I promised that this **symposium** would cover:

Older policies or older enforcement modes are no longer adequate to ensure regional or global conservation, but the roots of reform can be found within our legal and administrative systems so that we need not start from scratch.

This symposium will identify both the roots of reform and the new growth that must be fostered across the legal and governmental systems of the world by using and serving stakeholders, not only as recipients but as drivers.

Here is what I said my **own presentation** would provide:

- 1) an overview of the symposium (after the fact);
- 2) How SCB members can part use SCB's "Recommendations to the Obama Administration 2.0" and other SCB policy statements,
- 3) Help to attendees in becoming "Ambassadors of Science" in the climate debate, and
- 4) Initiatives that SCB, its members and conference attendees can take to help integrate the best available science in policy globally, nationally and locally.

No problem.

In that regard, I said I would describe:

- 1) powerful but underused elements of international and domestic conservation law, and

- 2) key terms, which, if better defined in light of modern science, could become more effective tools for conservation and for ensuring that science drives policy processes,
- 3) a description of how agencies' funding expert participation in the rulemaking process could improve final agency decisions, and
- 4) ideas for how to empower proactive conservation and climate policies in the arena of international trade.

Every person in this audience can play a part in this process, or choose to abdicate or shirk his or her responsibility as an educated citizen, whether that education is as a natural scientist, lawyer, or economist, and whether that active role in shaping governmental and corporate policies is as a petitioner, voter, investor or consumer. That role can be as an individual but will be more powerful as one who organizes or asks others for help.

Shy people can do this too.

For example, we are all investors or owners of bank accounts. Most of us have through these accounts provided largely unchecked, unrestrained access to our own money by corporations that are causing global warming and extinctions. Since we all have bank accounts and belong to organizations that have or provide pensions, endowments, and/or bank accounts of their own.

So here are some of the most powerful tools we can use as individuals, or in working with others:

- 1) We can help small island states to sue Canada and other large, or high-per-capita emitters, in the International Court of Justice for compensation and other relief for damage resulting from climate changes that are due directly to emissions caused by actions under their control or jurisdiction, at any point in the chain of commerce from extraction to burning. Canada has abrogated, that is withdrawn, its ratification of the Kyoto Protocol in order to increase production of tar sands and in 1994 it submitted itself to the full jurisdiction of the ICJ. Other nations that are large per capita emitters are also members of the club of nations that fully respect international law as interpreted by the ICJ. These include the UK, Australia, New Zealand, India, Pakistan, Sweden, Norway, and the Netherlands, among others. A

small island state could sue other countries and ask them to allow ICJ to adjudicate the case or perhaps seek from the ICJ an opinion as advisory if not binding with respect to them.

2) Citizens can file Pelly petitions in the U.S.—
(a) Certification to President

(1) When the Secretary of Commerce determines that nationals of a foreign country, directly or indirectly, are conducting fishing operations in a manner or under circumstances which diminish the effectiveness of an international fishery conservation program, the Secretary of Commerce shall certify such fact to the President.

(2) When the Secretary of Commerce or the Secretary of the Interior finds that nationals of a foreign country, directly or indirectly, are engaging in trade or taking which diminishes the effectiveness of any international program for endangered or threatened species, the Secretary making such finding shall certify such fact to the President.

(3) In administering this subsection, the Secretary of Commerce or the Secretary of the Interior, as appropriate, shall--

(A) periodically monitor the activities of foreign nationals that may affect the international programs referred to in paragraphs (1) and (2);

(B) promptly investigate any activity by foreign nationals that, in the opinion of the Secretary, may be cause for certification under paragraph (1) or (2); and

(C) promptly conclude; and reach a decision with respect to; any investigation commenced under subparagraph (B).

- 1) (4) Upon receipt of any certification made under paragraph (1) or (2), the President may direct the Secretary of the Treasury to prohibit the bringing or the importation into the United States of any products from the offending country for any duration as the President determines appropriate and to the extent that such prohibition is sanctioned by the World Trade Organization (as defined in section 3501(8) of Title 19) or the multilateral trade agreements (as defined in section 3501(4) of Title 19). Alien Tort Claims Act suits against individuals such as the heads of tar sands investment and extraction companies?

- ESA and other US environmental lawsuits to protect the whooping crane of Canada and the US from tar sands water pollution and other direct injuries.
- Petitions to India's Supreme Court, for example, by citizens to enforce their constitutional right to a healthy environment.
- The CBD's article 3 states that no country should harm the environment of another. Article 14.1 includes the duty of countries posing such harm to warn those about to be harmed. Article 8(1) directs party nations to control activities harmful to biological diversity. Article 14.2 says the CBD's COP will determine how much has to be paid for such harm.
- The ICC has specific jurisdiction over the intentional forced removal of whole communities or nations – as in Canada's decision to expedite tar sands and flood small island states, and flood communities downstream of large glaciers, removing their occupants. International Criminal Court has a fund to help small countries or communities pay for experts to help make their cases against those harming them. ICC prosecutors have the power to review NGO submissions and to assess whether to bring charges of genocide against perpetrators. The Prime Minister Harper of Canada has led Canada in reducing the power of her environmental laws and abrogating her pledge to reduce emissions as required under the Kyoto Protocol. This is contributing more than any other single set of actions to forcing the entire nations of Kiribati, the Marshall Islands, Tokelau, Tuvalu and others to plan to abandon now parts and finally all of their ancestral island homes in search of higher ground and fresh water. Who will help these countries determine whether the power of the ICC should be brought to bear on this decision to pollute for profit and not for survival that has is doing profound, permanent and complete harm to their countries? Who will help them file for redress of civil wrongs under the CBD?
- Trade sanctions – from tariffs to embargoes.
- Divestment and Reinvestment -- President Obama mentioned divestment from carbon in his speech on Climate Change. The World Bank's Extractive Industries Review essentially called for that in 2003 and SCB called for that in 2009 so now let's get it done. Let's deploy joint or cooperative Dis-Investment and Re-Investment Decisions as many of our colleges did in the divestment campaign to end apartheid in South Africa. UNPRI provides an official process and secretariat to help along with the UNEP-Finance Initiative. Will SCB

extend its footprint analysis and reduction project to its own investments? Will SCB Chapters lead their universities and cities to reinvest in a restoration economy?

What if one organization were to devote itself to helping natural scientists, economists, lawyers, investment brokers and other professionals across the globe to act powerfully for conservation, restoration and stewardship?

What would it look like? It would be a coalition of groups and individuals, serving each other and saving the earth. It would build a restoration economy with its own members' investments and purchases. It would finance the steps necessary for environmental justice when small communities or plaintiffs cannot do it by themselves.

SCB will help just by doing what it does, but we need to organize lawyers and modern corporate leaders who are not afraid of the future but want to shape a better one, and other experts, so that have all the tools we need in the key places.

Whoever wants to explore how to take the next steps can contact me at johnmfitzgerald@earthlink.net.

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