

# International legal action on climate change

*Critical roles for science  
and scientists*

Presentation to ICCB 2013  
July 22, 2013



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Center for International  
Environmental Law



# Key Messages

- Climate policy moves slower than climate change.
- Around the world, new legal strategies are helping accelerate action.
- Science is critical to the success of these strategies.
- There are important roles for scientists beyond the science itself



# UN Framework Convention on Climate Change

- Diplomatic stalemate and political inertia
- Progress around the margins, but...
- Weak ambition
- Lack of binding commitments by US and other key emitters
- Little prospect for major breakthroughs in the near-term
- Goal is a new agreement with binding commitments by 2015 to take effect after 2020



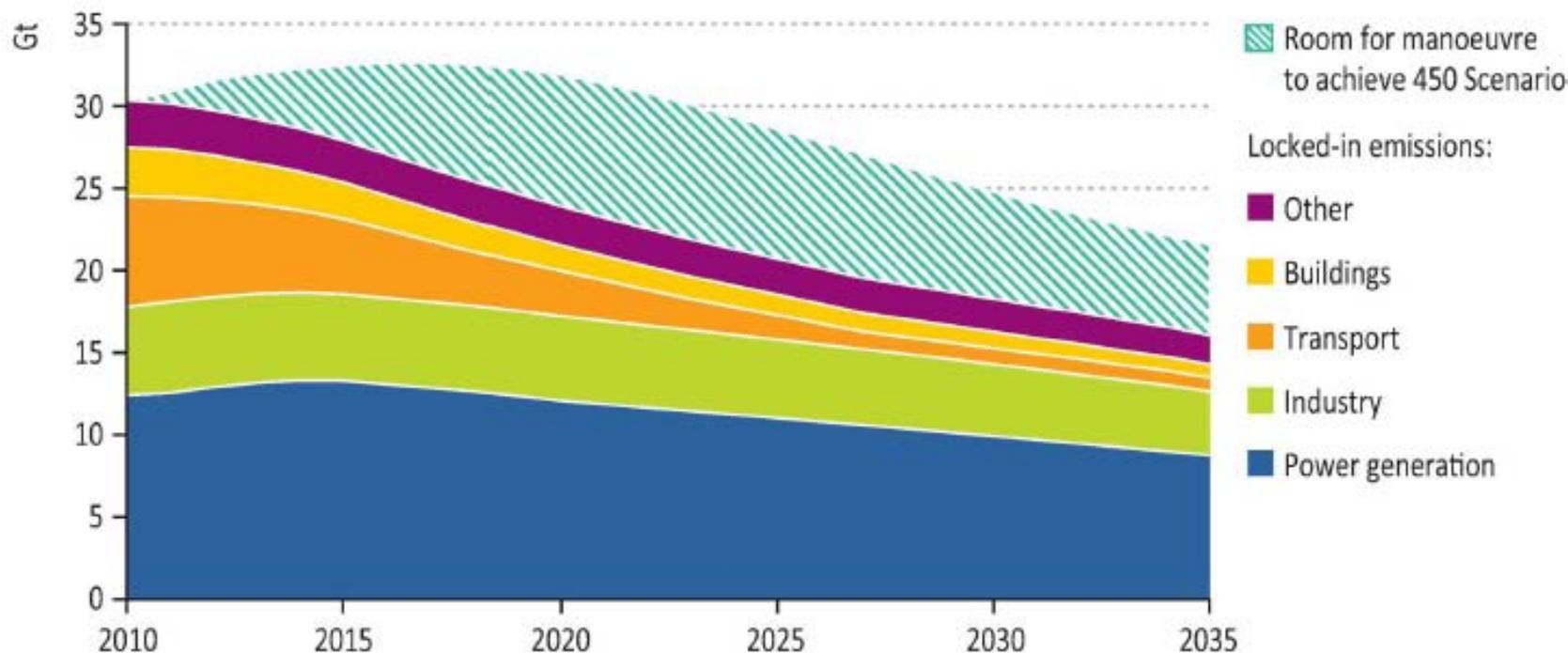
# And....

- Montreal Protocol
- Intl Aviation & Shipping Bodies
  - World Bank
  - Arctic Council
- Convention on Biological Diversity
- UN Security Council



*The door to 2°C is closing,  
but will we be “locked-in” ?*

Figure 6.12: World energy-related CO<sub>2</sub> emissions from locked-in infrastructure in 2010 and room for manoeuvre to achieve the 450 Scenario



*Without further action, by 2017 all CO<sub>2</sub> emissions permitted in the 450 Scenario will be “locked-in” by existing power plants, factories, buildings, etc*



# Where politics breaks down, law can break through

- Around the world, people are using the law to accelerate climate action





- Legal actions in US, UK, Canada, Germany, France, India, Philippines, Poland, Turkey, South Africa....and more
- Against coal plants, coal mines, terminals, tar sands, pipelines, unsustainable transportation systems...
- To protect ecosystems, species, cultures, communities, and the rights of current and future generations



# Emerging International Strategies

- Based on:
  - Treaties
  - Customary law
  - Human Rights
  - IGO Standards
  - Transboundary applications of domestic law
- Variety of forms, forums and parties

# State to State Strategies

- Cases between two or more sovereign nations
- “Why doesn’t country X just sue country Y for climate change?”
- Challenges:
  - Getting jurisdiction over the right countries
  - Holding them to a meaningful standard
  - Political and Economic pressure on potential plaintiffs
  - Getting an enforceable judgment



# International Court of Justice

- Principal judicial organ of the UN
- Jurisdiction limited by State consent



Photo by United Nations

- Advisory Opinion
- Palau

# UNCLOS

- Near Universal Ratification
- Binding Standards and ITLOS
- Relief for acidification
- Broad definition of pollution
- U.S. not a party



# UN Climate Convention (UNFCCC)

- Art.14- Dispute settlement
- Can be invoked unilaterally
- Mandatory Conciliation process
- Outcomes not legally binding but likely to have moral weight
- Applies to United States
- Never invoked



Provided by UNFCCC

# Convention on Biological Diversity

- Dispute resolution mechanism similar to but potentially stronger than UNFCCC
- Several CBD Provisions might be invoked
- Challenge of vague language/standards
- US not a Party to CBD



# World Heritage Convention



Submission on behalf of the Australian Climate Justice Program, the Climate Action Network Australia and Friends of the Earth Australia

To the Ad Hoc Working Group on Further Commitments for Annex 1 Parties Under the Kyoto Protocol

State Parties Responsibilities under the World Heritage Convention in the Context of Climate Change - Absolute Minimum Temperature Rise Necessary for Compliance with the World Heritage Convention

September 2008

*"We can talk endlessly, but with limited results, about how climate change is severely threatening biological diversity worldwide. However, if we point out that a World Heritage site is under extreme pressure from climate change and may be irreversibly damaged, causing loss in biodiversity at the same time, our message and call to action may be heard more clearly.....the World Heritage Convention can contribute a voice that may break through the din when others cannot."*

Executive Secretary  
Convention on Biological Diversity  
April 2008

# Human Rights Bodies

- Inter-American Commission on Human Rights (IACHR)
  - Inuit petition
  - Athabaskan petition
- Human Rights Council



Photo by United Nations



# World Bank Inspection Panel



Photo: Groundwork

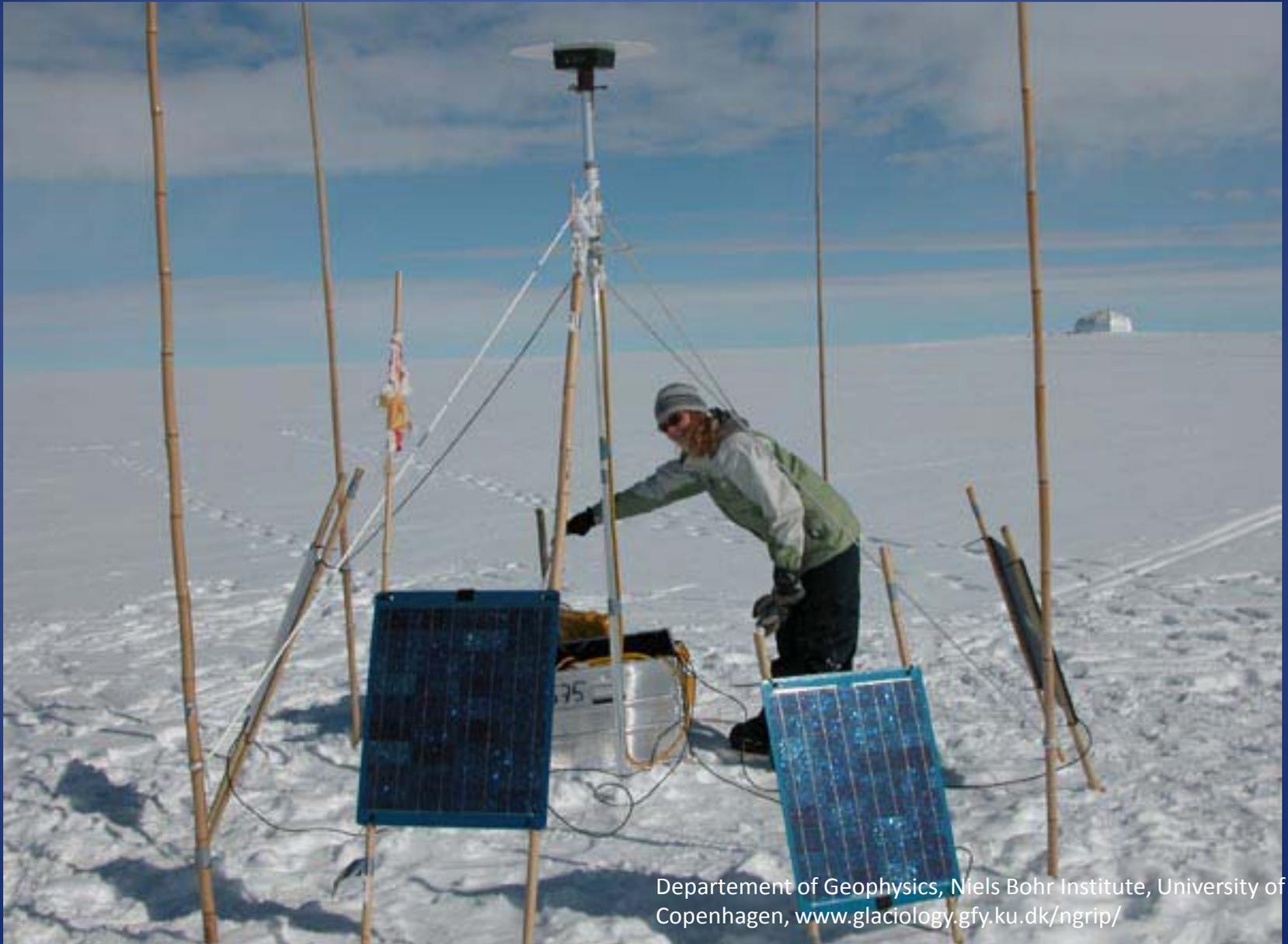


# National Courts

- Transnational environmental assessment cases
  - Federated States of Micronesia
  
- Transnational torts
  - Alien Tort Statute



# Good Law Needs Good Science



Department of Geophysics, Niels Bohr Institute, University of Copenhagen, [www.glaciology.gfy.ku.dk/ngrip/](http://www.glaciology.gfy.ku.dk/ngrip/)



Photo by United Nations

# Why?

- Standing
  - Documenting a particularized harm
- Causation
  - Linking that harm to climate change
  - Linking climate change to defendant
- Redressability
- Remedy

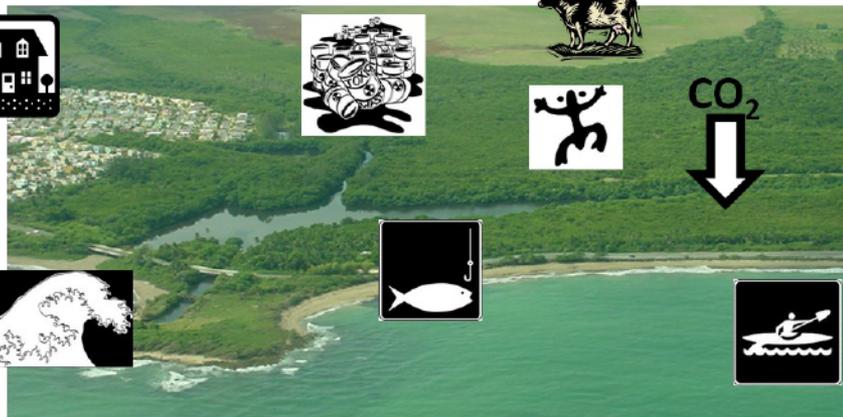
# Biology: Linking local impacts to global change





# Puerto Rico's State of the Climate

## Assessing Puerto Rico's Social-Ecological Vulnerabilities in a Changing Climate



Protection of coastal communities from floods, storm surges, and tsunamis



Protection of public infrastructure like roads and parks from floods, storm surges, and tsunamis



Contaminant retention from land-based sources of pollution (including unwanted sediment from inland development)



Nursery areas benefit recreational and commercial fishing



Increase recreation and tourism values



Retention of nutrient runoff from agriculture



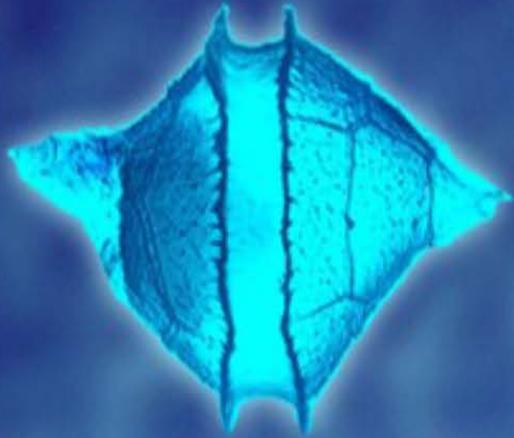
Cultural values and mental well-being from aesthetically pleasing viewshed



Carbon sequestration



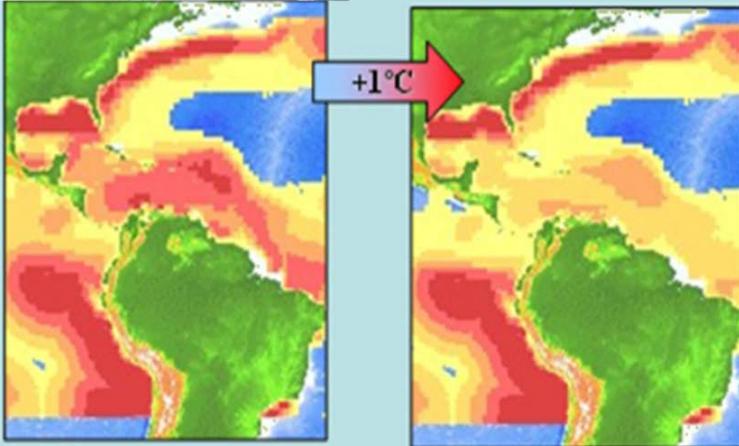
# BIOLUMINESCENT BAYS



## Loss of Yellowfin Tuna Habitat in the Caribbean



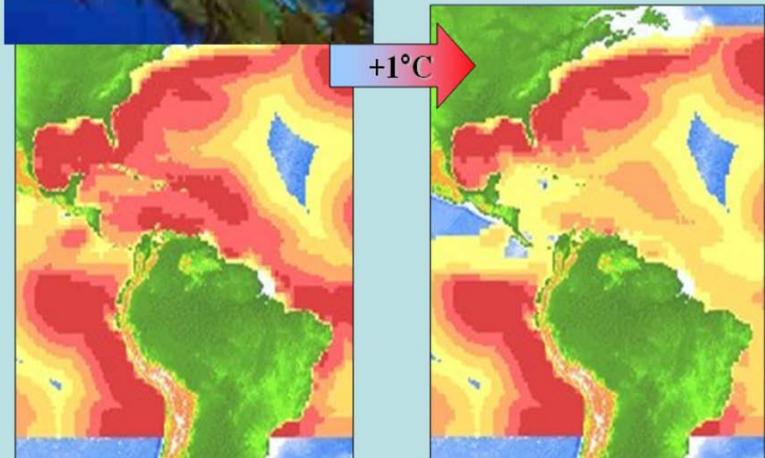
Habitat becomes less favourable with +1°C of warming



## Loss of Dolphin Fish Habitat in the Caribbean



Habitat becomes less favourable with +1°C of warming



# Lemna

EA 4272

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## Impacts of climate variability on the tuna economy of Seychelles

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Patrice GUILLOTREAU (\*\*) & (\*\*\*\*\*)  
Ramòn JIMENEZ-TORIBIO (\*\*\*)  
Frédéric LANTZ (\*\*\*\*)  
Lesya NADZON (\*\*\*\*) & (\*\*\*\*\*)  
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Calvin GERRY (\*)  
Francis MARSAC (\*\*)

2009/36

(\*) Seychelles Fishing Authority  
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(\*\*\*) MEMPES-AEA, University of Huelva, Spain  
(\*\*\*\*) IFP, Rueil-Malmaison  
(\*\*\*\*\*) LEMNA, Université de Nantes

# Documenting the links between subsistence, culture & ecosystem change

**PETITION TO THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS  
SEEKING RELIEF FROM VIOLATIONS OF THE RIGHTS OF  
ARCTIC ATHABASKAN PEOPLES  
RESULTING FROM RAPID ARCTIC WARMING AND MELTING  
CAUSED BY EMISSIONS OF BLACK CARBON BY CANADA**

SUBMITTED BY THE ARCTIC ATHABASKAN COUNCIL  
ON BEHALF OF ALL ARCTIC ATHABASKAN PEOPLES OF THE ARCTIC REGIONS OF CANADA  
AND THE UNITED STATES, INCLUDING:

Cindy Dickson, *The impact of climate change on traditional food*, GRID Arendal Polar Environment Times 3, 3 (2003), <http://www.grida.no/files/publications/environment-times/poltimesp3.pdf>; Ashley Downing & Alain Cuerrier, *A synthesis of the impacts of climate change on the First Nations and Inuit of Canada*, 10 Indian Journal of Traditional Knowledge 1, 59,60 (2011) <http://nopr.niscair.res.in/bitstream/123456789/11066/1/IJTK%2010%281%29%2057-70.pdf>.

Arctic Athabaskan Council (AAC), *About Us*, <http://www.arcticathabaskancouncil.com/aac/?q=about>, (last visited May 2012). Arctic Athabaskan traditional culture is closely tied to the ecosystems of the tundra and boreal forests, which include a mosaic of rivers, lakes, wetlands, black spruce forests, white spruce forests, paper birch and trembling aspen forests, and riparian forests of white spruce and balsam poplar. Gary Kofinas et al., *Resilience of Athabaskan Subsistence Systems to Interior Alaska's Changing Climate*, 40 Can. J. For. Res 1347, 1350, 1353 (2010), [http://www.lter.uaf.edu/pdf/1462\\_Kofinas\\_Chapin\\_2010.pdf](http://www.lter.uaf.edu/pdf/1462_Kofinas_Chapin_2010.pdf);

# Documenting the causal links of harm, such as exposure pathways

Inspection Panel  
World Bank  
1818 H Street NW Washington DC, 20433  
USA

## **TECHNICAL ANNEX TO THE REQUEST FOR INSPECTION ON THE PROPOSED KOSOVO POWER PROJECT**

**Complaint addressed to the World Bank Inspection Panel regarding the Kosovo Power Project**

<sup>47</sup> PHYSICIANS FOR SOCIAL RESPONSIBILITY, COAL'S ASSAULT ON HUMAN HEALTH (Nov. 2009), *available at* <http://www.psr.org/coalreport> *citing* W.J. Gauderman et al., *The Effect of Air Pollution on Lung Development from 10 to 18 Years of Age*, 351 NEW ENGL. J. MED. 1057 (2004). [2009 PSR Report]

<sup>58</sup> See J. Falandysz and L. Bielawski, *Mercury Content of Wild Edible Mushrooms Collected near the Town of Augustow*, 10 Polish Journal of Environmental Studies 67, 68 (2001) (noting higher concentration of contaminants in produce grown in areas that were closer to a smelting plant in Slovakia).



Ethyl Corporation v. EPA  
542 F.2d 1 (D.C. Circuit 1976)

“ Contrary to the apparent suggestion of some of the petitioners, we need not seek a single dispositive study that fully supports the Administrator's determination. Science does not work that way; nor, for that matter, does adjudicatory fact-finding. . . . **By its nature, scientific evidence is cumulative: the more supporting, albeit inconclusive, evidence available, the more likely the accuracy of the conclusion.**”

# Scientists in the Courtroom

- Expert witnesses
- Advisors
- Amicus curiae



# Scientists as Plaintiffs and Affiants

- “Vocational standing”
- Friends of the Earth v. Watson (ExIm/OPIC case)

62. Climate change is a significant factor responsible for this loss of coral.

Climate change harms Dr. Dustan because its effects contribute to diminished opportunities for fundamental biological research and his ability to pursue his profession. Dr. Dustan states that the impacts on coral reefs are “tantamount to going to Sequoia National Forest and finding every 90 out of 100 trees dead or on the ground. I cannot keep my head in the sand and keep studying the pure physiology and evolutionary biology of corals. I have to speak up.”

# Climate Scientist Sees No Choice but to Risk Arrest at Keystone XL Protests

Jason Box, known for his study of glaciers, says oil sands mining is a moral issue that he feels compelled to address. The two-week sit-in begins Saturday

By Elizabeth McGowan, InsideClimate News

Aug 18, 2011



Ohio State University professor Jason Box is the only climate scientist so far who has registered to join about 2,000 activists who will be protesting TransCanada's proposed Keystone XL pipeline in Washington this month.

WASHINGTON—His climatology career at Ohio State University is advancing swimmingly. He's never had a brush with the law. And his wife is eight months pregnant with their first child.

So staying home for the next several weeks in Columbus, Ohio, rather than risking arrest in the nation's capital certainly seems the ideal choice for professor Jason Box.

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But the 38-year-old has never reveled in the idea of an intellectual or physical comfort zone.

Thank you.

