

**The NAS Committee on America's Climate Choices -
Request for Written Input on Geo-engineering:
To: accinput-main@nas.edu
RESPONSE**

Practical, legal, and ethical issues associated with geo-engineering.
A legal update on ocean fertilization from IUCN—The International Union for the Conservation of Nature

Summary:

- International concern about the potential dangers of ocean fertilization is so great that Parties to the Convention on Biological Diversity (CBD) in May 2008 called for a de facto moratorium, subject to very few exceptions.
- Parties to the 1972 London Convention on the Prevention of Marine Pollution by the Dumping of Wastes and other Matter and its 1996 Protocol (LC/LP), two international agreements regulating the dumping of wastes at sea, have issued a resolution stating that ocean fertilization activities other than 'legitimate scientific research' are contrary to the aims of the Convention and Protocol, do not currently qualify for any exemptions, and should not be allowed.
- The Parties to the LC/LP are currently developing rules to regulate 'legitimate scientific research' related to ocean fertilization activities, to address, *inter alia*, its potential for harming the marine environment.
- Similar caution is warranted for other geo-engineering schemes.

Under international law, states have the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or to areas beyond national jurisdiction (see e.g., Convention on Biological Diversity, article 3).

In addition to the provisions of the United Nations Convention on the Law of the Sea, which have been described elsewhere (see Verlaan, P), other relevant treaties, including the CBD and the LC/LP, must be considered in the context of ocean fertilization as well as other geo-engineering activities that may affect the marine environment.

The CBD applies to processes and activities carried out under a state's jurisdiction or control that may significantly affect biodiversity of other states or in areas beyond their national jurisdiction (CBD article 4(b)). When commercially-sponsored fertilization experiments appeared on the horizon in 2008, the CBD Conference of Parties adopted a decision requesting Parties and urging other governments to ensure that ocean fertilization activities do not take place until three conditions are satisfied: 1) there is an adequate scientific basis on which to justify such activities; 2) a global, transparent and effective control and regulatory mechanism is

in place; and 3) any authorized research activities in coastal waters be subject to stringent controls and not be used for generating and selling carbon offsets or any other commercial purposes. (Decision IX/16 (section C, para. 4) <http://www.cbd.int/decision/cop/?id=11659>)

Resolution LC-LP.1 (2008) "On The Regulation Of Ocean Fertilization adopted by the LC/LP in October 2008 is available at

http://www.imo.org/includes/blastDataOnly.asp/data_id%3D24337/LC-LP1%2830%29.pdf.

The Technical Working Group on Ocean Fertilization under the LC/LP has met twice to develop a draft assessment framework for 'legitimate scientific research', which will be considered by the Parties to the LC/LP in October 2009.

Similar caution and rigorous assessment frameworks for any authorized research activities are warranted for other geo-engineering schemes, as these, by definition, may have large-scale impacts on the terrestrial and marine environments of other states as well as on areas beyond national jurisdiction, and thus may be contrary to international law.

For further information, contact

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