



# BREAKING THE LOGJAM:

Environmental Reform for the New Congress and Administration

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## The Project's Report

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The project's report makes five clusters of recommendations to Congress and the administration in order to break the environmental regulation logjam and deal effectively with both new and old environmental problems:

- 1. Climate Change and Air Pollution:** Adopt a cap and trade (or tax) program to cut greenhouse gases (GHGs) and simultaneously adopt a cap and trade program to control the most important conventional air pollutants now regulated under the Clean Air Act. These two programs must be linked and the Clean Air Act reformed in order to avoid serious clashes between the control of GHGs and the control of these conventional pollutants, achieve substantial reductions in them, and protect public health.
- 2. Oceans:** Adopt a system to zone the oceans in order to preserve ecologically valuable areas for future generations, recover declining fish populations, avoid conflicts, and make more sustainable use of the vast ocean resources under U.S. control.
- 3. Water, Lands, and Wildlife:** Use market- and property right-like mechanisms, together with better targeting of existing regulatory resources, to reduce water pollution, improve the management of federally owned public lands, and protect endangered species and biodiversity.
- 4. Nuclear Waste:** Adopt a comprehensive new approach to the management and disposal of nuclear waste to address the failures of past policies and resolve a key issue in the debate over whether to expand nuclear energy.
- 5. Institutional Innovations:** Strengthen legislative and administrative processes to promote smart and effective environmental protection by (a) assuring that cost benefit analysis is even-handed, (b) employing Internet techniques to enable many more independent experts to help agencies resolve technical issues, (c) empowering science advisory panels to work with agencies from the beginning to improve regulatory decisions, and (d) commissioning expert bodies to propose environmental legislation to Congress.

These proposals incorporate new, smarter approaches to enhance environmental protection without overburdening the economy. They would help break the legislative logjam that has kept Congress from passing any major environmental legislation since 1990. Finally, they address fundamental faults in our antiquated environmental statutes, which largely date from the 1970s:

- Our obsolescent statutes rely too heavily on hierarchical command-and-control regulation even when cap and trade and other new tools would achieve environmental objectives more effectively and economically.
- They heap so much responsibility for local environmental problems on federal agencies that they cannot deal expeditiously with national and international problems and states cannot deal flexibly with local problems.
- They force agencies to pretend that inevitable trade-offs are unnecessary and so prevent their being faced openly and on the basis of reliable information.
- They compartmentalize environmental protection into separate bureaucratic silos that work at cross purposes.

Each of these four faults stimulated a corresponding principle for reform. These four reform principles guided development of our proposals. Although these faults have long been widely recognized, change has been blocked in the political trenches. Now, however, a window of opportunity has been opened by the fast pace of climate change, the economic crisis, a new Congress and administration, and the availability of concrete, comprehensive proposals from the *Breaking the Logjam* project.

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**About *Breaking the Logjam*:** Begun in 2006, the project is jointly organized by New York Law School and New York University School of Law and led by Professors David Schoenbrod, Richard Stewart, and Katrina Wyman. They enlisted over 40 environmental law experts from around the country and across the ideological spectrum to propose statutory and institutional changes. These participants met in March 2008 at New York University, and their proposals are published in a special issue of the *New York University Environmental Law Journal*. Building upon this work, Professors Schoenbrod, Stewart, and Wyman have issued their own recommendations in a *Project Report*, together with an annex that goes into greater detail on the project's integrated approach to climate change and criteria air pollutants. For these documents and more information on the project, visit [www.breakingthelogjam.org](http://www.breakingthelogjam.org).

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