

July 10, 2020

Dr. Peter O. Thomas  
Executive Director  
The Marine Mammal Commission  
4340 East-West Highway, Suite 700  
Bethesda, Maryland 20814  
U.S.A.

Letter of Request to the U.S. Marine Mammal Commission

Dear Dr. Thomas,

We, the seventy-one undersigned Okinawan and Japanese civil society organizations and groups (including one Philippine organization), express our appreciation to the Marine Mammal Commission (MMC) for its continuing attention to and support for the conservation of the dugong in Okinawa (the Okinawa dugong) in relation to the U.S. and Japanese governments' plan to construct a U.S. military base at Henoko-Oura Bay, Okinawa, Japan. To the people of Okinawa, the dugong is important. It is not only a globally recognized endangered species and Japan's *Natural Monument*, but also Okinawa's cultural and historical icon as a messenger of the Niraikanai Gods and a manifestation of abundance and fertility, and now in the present context a symbol of Okinawa's struggle to protect its environment and peaceful life. We are grateful that the MMC provided opportunities for members of the civil society to convey our concerns to the MMC in Hawaii in 2009 and at the MMC's office in Maryland in 2014 and 2015. We are also obliged that the MMC provided financial support for a workshop organized by the Sirenia Specialists Group of the International Union for Conservation of Nature (IUCN) in Mie, Japan in September 2019. The workshop produced a crucial research plan for the dugong in Okinawa and the Nansei region, and we are determined to make the best use of it.

Today, we write to make an urgent request that the MMC review and comment on the U.S. Department of Defense's efforts for the conservation of the Okinawa dugong in relation to base construction in its capacity stipulated by the US Marine Mammal Protection Act and

in line with its statement in the MMC 2009 Annual Report to the Congress:

If, after the review of the relocation plan, the proposal (of the base plan) remains unchanged, the Commission intends to review and comment on the Department of Defense's analysis of impacts on dugongs under the National Historic Preservation Act (NHPA) when it becomes available. (p.36)

We contend that the DoD's analysis has been available since 2018<sup>1</sup> and that three recent developments warrant our request. First, as the MMC is well aware, in December 2019 the IUCN recognized the dugong in the Nansei region (which includes Okinawa and the southern part of Kagoshima prefecture) as a sub-population and designated them as "Critically Endangered" in its Red List.<sup>2</sup> This is a dire warning concerning the vanishing population of dugongs in the waters of Okinawa. The IUCN's listing was based upon an extensive review of studies and information of the dugong, including some of the DoD's analyses related to the construction of the base. The IUCN Red List regards the land reclamation of Henoko-Oura Bay for base construction as one of the threats to the survival of the Okinawa dugong.

Second, also in December 2019, the Japanese government announced that base construction would continue into the 2030s, at least a 12-year delay from the original schedule with an estimated budget of ¥930 billion exceeding the initial ¥350 billion.<sup>3</sup> The Japanese government had admitted in January 2019 (though their documents indicate that they had known this at least since 2016) that the seafloor on the Oura Bay side of the construction

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<sup>1</sup> The 9<sup>th</sup> Circuit Court of Appeals' ruling in favor of the Plaintiffs in August 2017 initiated the Administrative Record Process, and through the process, the DoD released documents pertaining to its analysis, which had not been previously available to the public.

<sup>2</sup> The IUCN's original assessment of the dugong in the Nansei region was completed in August 2019, and the assessment became public in December in the IUCN Red List. See "Dugong: Dugong dugon (Nansei subpopulation)" at the IUCN Red List. <https://www.iucnredlist.org/species/157011948/157011982>, accessed on May 19, 2020.

<sup>3</sup> "Editorials: Delays and cost overrun at Henoko," *The Japan Times*, December 29, 2019. <https://www.japantimes.co.jp/opinion/2019/12/29/editorials/delays-cost-overruns-henoko/#.XsRvaNW2wy4>, accessed on May 19, 2020.

site is extremely fragile (N-value 0), requiring changes in construction design and major reinforcement work.<sup>4</sup> That is, 71,000 sand compaction piles need to be implanted into the seafloor as deep as 300 feet below the water surface. While such reinforcement work taking place in over a ten-year duration is sure to impact marine creatures including the dugong, it was not discussed in the Japanese Environmental Impact Assessment (EIA) for the base (and thus was absent also in the DoD's analysis).

Finally, in May 2020, the U.S. 9<sup>th</sup> Circuit Court of Appeals ruled in favor of the Department of Defense in the Dugong case under the NHPA. The Court held that “the Department met its procedural obligations [required by Section 402 of the NHPA] and that its finding of ‘no adverse impact’ [from the base on the dugong] was not arbitrary and capricious,” and therefore the Court “affirm(ed) that the district court’s grant of the Department of Defense’s for summary judgment.”<sup>5</sup>

We had hoped that the Court’s examination by the DoD would take into account process and its conclusions would be more scientifically rigorous and that the scope of the case would be extended to take into consideration the disappearance of dugongs from Henoko-Oura Bay and its vicinities after the start of construction work in August 2014. We had also hoped that legal remedies would be provided to rectify the situation. However, disappointingly but understandably, the dugong case stayed within its NHPA’s procedural framework; the court ruling focused solely upon the DoD’s “take into account” process which took place from 2008 to April 2014,<sup>6</sup> and then agreed with the DoD’s no impact conclusion.

As a consequence, we have an extremely unsettling situation: the dire situation of the

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<sup>4</sup> “EDITORIAL: Henoko project clearly doomed; time to open talks with U.S.” *The Asahi Shimbun*, February 24, 2019. <http://www.asahi.com/ajw/articles/AJ201902230024.html>, accessed on May 20, 2020.

<sup>5</sup> *Center for Biological Diversity et al. v. Esper*, No. 18-16836 (9th Cir. 2020).

<sup>6</sup> The only exception to this was a letter of request sent in April 2018 from late Okinawa Governor Takeshi Onaga to the DoD. See the letter at this site: <https://www.pref.okinawa.jp/site/chijiko/henoko/documents/requestsd.pdf>, accessed on May 19, 2020. The letter was mentioned in the briefs submitted by both the plaintiffs and the DoD to the U.S. 9<sup>th</sup> Circuit Court of Appeals. The letter described the critical status of the Okinawa Dugong in relation to the construction of the base at Henoko-Oura Bay and request that the DoD consult with the Okinawa prefectural government.

Okinawa dugong, indicated by the IUCN's scientific review, in stark contradiction with the no-adverse-impact conclusion of the U.S. Findings and the U.S. Court ruling. While the Okinawa Dugong continues to face extinction and this seemingly never ending construction work in their habitat, this contradiction is undermining the integrity and reputation of the DoD, NHPA, the U.S. legal system, MMPA, and MMC in the eyes of the international community.

We argue that the root cause of this disturbing situation are the Okinawa Defense Bureau's flawed Environmental Impact Assessment (EIA) completed in 2012 and the Bureau's failure to implement necessary mitigation measures since the start of construction work in August 2014, especially their failure to monitor construction sound for its effect on the dugong. The Bureau's EIA erroneously concluded that there would be no adverse impacts from the construction and operation of the base because dugongs are rarely present at Henoko-Oura Bay. Unfortunately, the DoD incorporated the Bureau's EIA at its face value into its own assessment of the impacts of the base on the dugong. And the DoD appears to have been indifferent to the Okinawa Defense Bureau's failure to monitor construction sound.

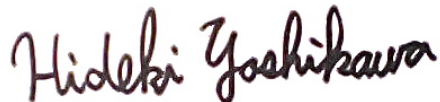
We believe that no U.S. federal institution should be undermined and compromised by the Okinawa Defense Bureau's flawed EIA and its failure to implement necessary mitigation measures. As a first step to redress this situation and to help save the Okinawa dugong, we request that the MMC review and comment on the U.S. Department of Defense's efforts for the conservation of the Okinawa dugong in relation to base construction.

We provide the MMC with the following documents with the hope that they will be of help for the MMC's review and comments process. They are *The USMC Findings April 2014*, *An Anthropological Study of the Significance of the Dugong in Okinawa Culture* (Welch 2010 ed), *The SuMMO Project Final Report* (2013), the Okinawa Prefectural Government's Document regarding Revocation of Land Reclamation Permit, two letters of request from Governors of Okinawa Prefecture to the DoD, and a NGO (Okinawa Civil Society) report. The first three documents are U.S. DoD reports. The NGO report is a rebuttal to *The USMC Findings April 2014*. It describes the current dire situation of the Okinawa dugong, refute the DoD's claim for the extremely low probability of dugongs

being present in the APE,” and discusses the Okinawa Defense Bureau’s failure to monitor construction noise.

If you have any questions and/or requests, please let us know.

Sincerely,

A handwritten signature in dark ink that reads "Hideki Yoshikawa". The signature is written in a cursive, flowing style.

Hideki Yoshikawa

Contact:

Hideki Yoshikawa

Director, Okinawa Environmental Justice Project

International Director, Save the Dugong Campaign Center

yhidekiy@gmail.com

Organizations and Groups

(Environmental organizations and groups in Okinawa)

1. Diving Team Rainbow
2. Dugong Network Okinawa
3. Dugong no Sato
4. Dugong Protection Foundation
5. Okinawa Environmental Justice Project
6. Okinawa Environmental Network
7. Okinawa Reefcheck and Research Group
8. Okumagawa Basin Protection Foundation
9. Protect Northernmost Dugong Team Zan
10. Save Awasehigata Association (SAA)
11. Save the Dugong Campaign Center

(Peace, human rights and other organizations and groups in Okinawa)

12. All Okinawa Council for Human Rights (AOCHR)
13. Association of Nightingales, Medical Professionals, and Students for the Protection of Life
14. East Asian Community Institute Ryukyu Okinawa Center
15. Henoko Blue
16. Minshuku Yaponesia
17. Nago Democracy
18. No Helipad Takae Resident Society
19. "No Heliport Base" Association of 10 Districts North of Futamai
20. Nuchi du Takara o keisyosurukai
21. Okinawa Citizens Network for Peace
22. Okinawa Nobel Peace Prize Action Committee
23. Okinawa Women Act Against Military Violence
24. Project Disagree
25. The Conference Opposing Heliport Construction
26. Wabiai no Sato Foundation
27. Veterans for Peace Ryukyu-Okinawa

(Environmental organizations and groups in Japan)

28. Association for Conservation of Amami Forests, Rivers, and Coastal Ecosystems
29. Association for Conservation of Marine Communities
30. Environmental Network AMAMI (ENA)
31. Iruka & Kujira (Dolphin & Whale) Action Network
32. Japan Environmental Lawyers for Future (JELF)
33. Japan Wetlands Action Network
34. Nature Conservation Society of Japan
35. Pan-Seto Inland Sea Congress
36. Protect Henoko and Takae! NGO Network
37. Ramsar Network Japan
38. The Nature and Culture Conservation Group of Amami (NCA)  
Save the Dugong Campaign Center (also listed in the above section)

(Peace, human rights, labor, and other organizations and groups in Japan and the Philippines)

39. Ainokai Aitou
40. Airin Community Center
41. AKAY JAPAN
42. AKCDF-MAPALAD KA (The Philippines)
43. All Japan Dockworkers' Union (JDU) Kansai Regional Osaka Branch
44. Anti-war Network
45. Budounokihoikuen
46. East Asian Community Institute
47. Family Home Suzuran
48. Family Home Sansouen
49. Family Home Yamayuri
50. Henoko dosha hanshutsu hantai zenkoku renraku kyougikai
51. Henoko ni kichi wo Zettai Tsukurasenai Osaka Kodo
52. Henoko no Umi ni Kichi wo Tsukurasenai Kobe Kodo
53. Kyoto Shimin Center
54. Myougasan Tennpoji
55. Nonoyurihoikuen
56. NPO Active Center Uda
57. NPO Myogamura
58. NPO Sansouen Kazoku
59. NPO Warabemura
60. Ohagi Myogamura
61. Ohisama Firm Ryudo Shizen Noen
62. Peaceforum-Yamaguchi
63. Social Democratic Party Miyazaki
64. Social Welfare Organization SHUKO-GAKUEN
65. Stop! Henoko Reclamation Campaign
66. STOP ! Henoko Shinkichikensetsu Osaka Action
67. Straight Inc.
68. The Association for Military Base Free Peaceful Okinawa
69. Yokaichi Megumi Nursery School
70. Yuntaku Takae
71. ZENKO, National Assembly for Peace and Democracy