

# Dugong Swimming in Uncharted Waters: US Judicial Intervention to Protect Okinawa's "Natural Monument" and Halt Base Construction

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**Dugong Swimming in Uncharted Waters: US Judicial Intervention to Protect Okinawa's "Natural Monument" and Halt Base Construction** were plaintiffs.

Hideki Yoshikawa



Dugong and sea turtle in Oura Bay (courtesy of Higashionna Takuma)

## Unexpected Dugong Victory

On September 15, 2007, Higashionna Takuma and Makishi Yoshikazu were en route from Okinawa, Japan to San Francisco for hearings in what had come to be known as the "dugong lawsuit," scheduled to be held two days later in the US district court for the northern district of California. Higashionna, eco-tour guide, and Makishi, award-winning architect, both well-recognized environmental activists in Okinawa,



Dugong supporters in front of US court building (courtesy of Higashionna Takuma)

Anxious and excited about the public hearing and eventual outcome of the lawsuit, Higashionna half-jokingly said, "Among the many environmental suits you have been associated with, this may be the most winnable. Because it is taking place in the US." Smiling, Makishi responded, "You may be right. In the Japanese courts I lose, but I may win this case because it is taking place in the US." "Democracy may be more mature in the US than in Japan."

Four months later, that prediction became reality. On January 24, 2008, the Honorable Judge Marilyn Hall Patel delivered a historical ruling in favor of the plaintiffs.[1] She found that the U.S. Department of Defense (DoD) had violated the National Historic Preservation Act (NHPA) Section 402: by failing to "take into

account” in the planning of the construction of a US military base in Henoko and Oura Bays the effects of the construction on the dugong (*Dugong dugon*), a Japanese “natural monument”. She ordered the DoD to comply with NHPA Section 402 by generating and taking information into account “for the purpose of avoiding or mitigating adverse effects” on the dugong.

The court’s ruling was justification for the claim by the plaintiffs and those opposed to the construction plan that the US government should be held accountable for its role in the construction plan. It also created hope that the lawsuit could help bring an end to their seemingly endless battle against the Japanese and US governments. Now with the submission of additional documents to the court by both plaintiff and DoD lawyers completed, the anti-construction camp waits for the judge’s next move as to how exactly the DoD should comply with the law.

In the following, I will discuss the Okinawan context of the dugong lawsuit from the point of view of an Okinawan who has been engaged in the anti-construction movement on the environmental front.[2] In particular, I will show in detail how the dugong lawsuit has become entangled with the Japanese government’s Environmental Impact Assessment (EIA) for the construction plan, thereby shaping the anti-construction camp’s perceptions of the lawsuit and the anti-construction movement in Okinawa. I will then discuss how current local efforts to engage with the lawsuit could further reshape Okinawa’s struggle against the construction plan.

### **Internationalization of the Anti-Base Movement**

The dugong lawsuit is the brainchild of the Japanese Environmental Lawyers Federation (JELF) and a manifestation of the collaboration among Okinawan, Japanese, and US lawyers, individuals, and environmental NGOs.[3] It is one of many strategies of a loosely organized, but increasingly environment-oriented and internationalized social movement against the

Japanese and US governments’ plan to construct a US Marine base in the waters of Henoko and Oura Bays in northern Okinawa, an area of great natural beauty and the habitat of some 50 endangered Okinawa dugongs.

Following the rape incident of a 12-year old Okinawan girl by three US Marines in September 1995, anger and anti-US base sentiments swept through Okinawa. Reacting to this explosive situation, the Japanese and US governments established the Special Action Committee on Okinawa (SACO) to reduce the burden of US military presence on the people of Okinawa.

In December 1996, SACO submitted its final report, proposing a plan to construct a sea based facility off the east coast of Okinawa Island, where the Futenma Marine Air Station would be relocated from the heavily populated area of Ginowan City.[4] The governments swiftly decided on the sparsely populated area of Henoko, Nago city, as the construction site. Henoko has been the home to the US Marine base Camp Schwab for more than 50 years.

The plan, then known as the “heliport plan,” immediately encountered strong local opposition. Elders of the Henoko community led the formation of an anti-construction group, the *Inochi o mamoru kai* (Save Life Society) and began sit-in protests. The citizens of Nago held a city referendum in which they voted down the construction plan. Through these actions, local opposition began to transform into a larger social movement while the Japanese government sought to generate local support for the construction plan.[5]

The anti-base construction movement then took an environmental turn in an unexpected way: a document presented in 1997 to Ginowan City by the Naha Defense Facilities Administration Agency (DFAA) revealed that the Naha DFAA had spotted a dugong in Henoko and Oura Bays during its preliminary survey for the construction plan earlier that year. Local and national media began publicizing the presence of dugongs in the

proposed construction site. The dugong, which many people in Okinawa had thought were extinct, was on its way to become a symbol of the still pristine environment of Henoko and Oura Bays.[6]

Local environmental groups such as the Love Dugong Network (later Dugong Network Okinawa) and the *kyugon hogo kikin* (Dugong Protection Fund) were formed. Some of them had exclusively environmental agendas while others were more politically oriented. These groups began to conduct research, called for the protection of the surviving dugongs, and were vocal against the construction plan. National environmental organizations such as WWF-Japan and the Natural Conservation Society-Japan (NACS-J) also came to support the local environmental groups.

In 2000, these local and national environmental groups took the issue of the construction plan to the International Union of Conservation for Nature and Natural Resources (IUCN) Congress held in Amman, Jordan. The IUCN Congress adopted Recommendation 2.72, which urged both Japanese and US governments to conduct a proper EIA and establish a protected area for the dugongs.[7]

It was in this increasingly environmental and internationalizing process of the anti-construction movement that JELF lawyers contacted anti-construction activists in Okinawa including Makishi, and discussed filing a lawsuit against the DoD in a US court.

The environmental lawyers' initial intent was to file a lawsuit under the US Endangered Species Act (ESA).[8] At first it appeared logical: Japanese environmental laws were deemed too "weak" to work with; the base to be constructed is a US base; and the dugong is protected as an endangered species under the US ESA. However, the lawyers concluded that using the ESA would be a liability.[9] Given that the Endangered Species Act has no explicit international clause,[10] they realized that it would be difficult

to have the case tried in US court. They were also concerned that, even if the case was tried in a US court, with the Bush administration's attempts to abate US environmental laws, the case would become an unfavorable precedent, putting the law itself at risk.[11]

Meanwhile, in July 2002, the Japanese government, having abandoned the heliport plan, proposed a new "offshore plan" to construct a military-civil airport atop coral reefs in Henoko Bay. The plan was a compromise between the Japanese and US governments on one hand who wanted to transfer all existing functions from the Futenma marine base to the new facility, and then-Okinawa Governor Inamine Kenichi and his supporters on the other hand who needed public approval for his endorsement of the relocation of Futenma within Okinawa.[12]

To counteract the offshore plan, Makishi and the Japanese environmental lawyers contacted Peter Galvin of the Center for Biological Diversity (CBD), an environmental NGO in the US. Galvin and CBD had just won a lawsuit against the DoD, halting military exercises on the Northern Marianas.[13] Invited to a conference held in Okinawa on military activities and the environment in March 2003, Calvin suggested to his Japanese counterparts that they file a lawsuit against the DoD under the US NHPA.[14] The choice of the NHPA made sense. The dugong is registered as a "natural monument" on the Japanese Register of Cultural Properties, a law equivalent to the US National Register; the Japanese Law for the Protection of Cultural Properties prohibits disturbances of their habitat; the NHPA has an "international" clause, Section 402, which could allow a case in a foreign country to be tried in US court.[15]

On September 23, 2003, represented by Earthjustice (a US environmental law firm), the dugong, Makishi, Higashionna, JELF, CBD and others filed a lawsuit against the Pentagon and its Secretary Donald H. Rumsfeld in the US district court for the northern district of California,

charging that they had violated NHPA Section 402 by failing to take into account the adverse effects of base construction plan on the dugong in drawing up the construction plan. In March 2005, the court delivered a mid-term ruling against the DoD's motion to dismiss the case, ensuring this unprecedented case to be tried in the US court under the NHPA.[16]

### **The Dugong Lawsuit and the Japanese Government's Environmental Impact Assessment**

One of the most intriguing aspects of the lawsuit in the context of Okinawa is how it has become entangled with the Japanese government's EIA process for the base construction plan. While Okinawan and Japanese anti-construction activists and environmentalists criticize and protest against the Japanese government's EIA in Okinawa, the DoD has come to claim in the US court that Japan's EIA should produce results sufficient to help the DoD fulfill the requirements of the NHPA.

For both the Japanese government and anti-construction activists and environmentalists, EIA has been (and continues) to be a critical area of contention. The Japanese government views its EIA as a "rubber stamp" to carry forward government projects: once the EIA process starts and as long as its procedural formalities are followed, it becomes extremely difficult to stop the project.[17] Yet anti-construction activists and environmentalists perceive this "weak" and often abused legal framework of EIA as a legal framework they might be able to use to halt construction.[18] Thus, the contention between the two sides has been manifested most intensely over the issues of EIA, as seen in the anti-construction activists' "sit-on the water protests" against the EIA drilling surveys by the Japanese government in Henoko in 2004.[19]



**Anti-base construction protesters in Henoko in 2004  
(courtesy of HigashionnaTakuma)**

In May 2006, after withdrawing the offshore plan,[20] the Japanese and US governments proposed a new "coastal" plan, now in the framework of the US-Japan Roadmap for Realignment Implementation.[21] The new plan was to construct a military airport with two runways in a V-shape in Cape Henoko and the adjacent water areas of Henoko and Oura Bays. The Japanese government swiftly obtained agreement on the coastal plan from both the Okinawa prefectural government and Nago city on general terms. The issue of the exact location of the airport was, however, left unsettled and remains so today.[22]

In May 2007, the Japanese government began "preliminary surveys" to collect "basic data" on the environment of the Henoko and Oura areas before officially beginning its EIA process. Anti-construction activists and environmentalists denounced the surveys, arguing that incorporating the results of the preliminary surveys into the yet-to-be-began EIA process was against the EIA law.[23] They also criticized some of the methods used in the surveys as scientifically unproven and harmful to the dugongs and the environment.[24] Some anti-construction activists launched sit-ins on the ground and waters of Henoko and Oura Bays.





**Video-camera set up in the dugong's pathway (courtesy of Higashionna Takuma)**

The Japanese government showed its determination to carry out the preliminary surveys and the construction plan at any cost, dispatching the Maritime Self-Defense Force minesweeper Bungo to “support” the surveys. The dispatch outraged many people in Okinawa including pro-construction Governor Nakaima Hirokazu, who described the dispatch as “likely to stir in Okinawan minds memories of living under American bayonets.”[25]

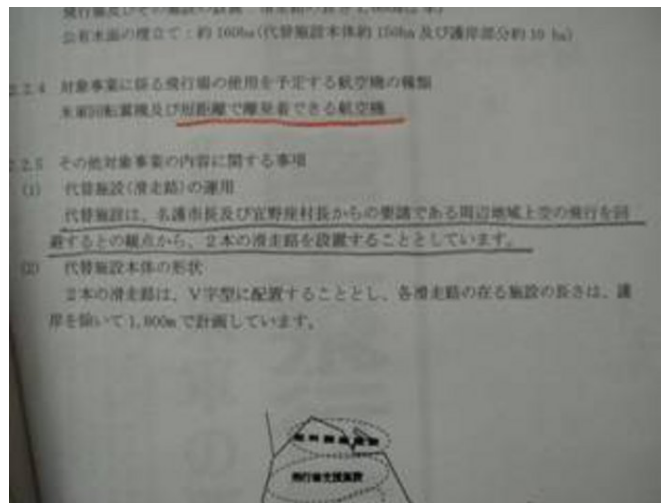
With this unsettling prelude, in August 2007, the Naha Defense Facilities Administration Agency began its EIA process by submitting a “scoping document” for a 30-day public viewing. As expected, the scoping phase of the EIA met harsh criticism. Criticism came not only from anti-construction activists, environmentalists, and concerned citizens, but also from Governor Nakaima and pro-construction Nago city Mayor Shimabukuro Yoshikazu, both of whom refused to recognize the legitimacy of the scoping document.[26]

There were two main reasons for the widespread criticism of the scoping document. First, it lacked necessary information regarding the construction plan, making the scientific validity of the EIA’s final outcome questionable.[27] It provided no clear information on the types of aircraft that would be operated and flight routes that the

aircraft would take; it failed to mention the dugong as an “endangered species” listed in Okinawa prefecture’s “red list” although the document recognized the dugong as a “natural monument” listed in the Japanese Register of Cultural Properties; and it provided no information on mitigation and/or avoidance measures, should there be any negative effects on the dugongs.



**The scoping document showing a crude outline of the airport (courtesy of Makishi Yoshikazu)**



**The scoping document’s description of the types of aircraft to be used at the airport: “US military rotary wing aircraft and short takeoff and landing aircraft.” (courtesy of Makishi Yoshikazu)**

Second, public viewing of the document was extremely problematic. There were five public viewing sites allocated by the Defense Agency, one being the agency's main office in Naha City. Both Governor Nakaima and Mayor Shimabukuro refused to have public viewings in their offices, and as a result no public viewing took place in the prefectural building in Okinawa's capital city of Naha, while in Nago city public viewing was held in a local hotel.[28] Moreover, people were required to read the document on site only; making copies was not allowed and internet viewing facilities were not provided.

It was with this intensifying contention between the Japanese government and the anti-construction camp over the EIA process and with the Okinawa prefectural government and Nago city office caught in the middle, that a public hearing of the dugong lawsuit took place in San Francisco on September 17, 2007.

As Makishi and Higashionna, who had been at the forefront of criticizing the Defense Agency's EIA in Okinawa, sat in the San Francisco courtroom, two important developments took place. First, the DoD lawyers admitted that the plan was a "bilateral agreement" between the US and Japanese governments, the DoD thus admitting its responsibility in drawing up the construction plan.[29] They insisted however that the DoD had been complying with the requirements of the NHPA, by incorporating data on the Okinawa dugong, some of which came from studies done by anti-construction environmental NGOs.

Second, to the dismay of Makishi and Higashionna, the DoD lawyers claimed that the Japanese government's EIA would produce sufficient results to enable the DoD to comply with the "take into account" requirements of the NHPA Section 402. The DoD planned to wait for the results of the Japanese government's EIA, claiming that conducting the DoD's own EIA would infringe upon Japanese sovereignty. The plaintiffs' lawyers counteracted that the DoD was required to conduct its own assessment,

regardless of the Japanese EIA.

At the end of the hearing, while the plaintiffs and their lawyers were hopeful that the judge would rule in their favor, the entanglement between the Japanese government's EIA and the dugong lawsuit was evident, pointing to further complication and difficulties.[30]



**Higashionna Takuma interviewed after public hearing in San Francisco (courtesy of Makishi Yoshikazu)**

### **Truth Inadvertently Revealed**

In late September 2007, just as public viewing of the EIA scoping document had come to an end in Okinawa, the dugong lawsuit intersected in a critical way with the Japanese government's EIA process, now conducted by the Okinawa Defense Bureau (as the Naha Defense Facilities Administration Agency became known from September 2007, following the elevation of the Japanese Defense Agency to Ministry of Defense). Upon returning from San Francisco, Makishi and Higashionna launched a public campaign against the Okinawa Defense Bureau's EIA and the construction plan by divulging previously concealed information regarding the facilities and operational requirements in the construction plan. The information came from the dugong lawsuit documents submitted to the court by the DoD.[31]



**DoD court documents (courtesy of Makishi Yoshikazu)**

The information had important implications for both the Japanese government and the anti-construction movement. According to a memorandum sent by a colonel to Commanding General in III Marine Expeditionary Force in April 2006, US aircraft would “overfly” the local communities,[32] contrary to the Japanese government’s publicly declared position. In fact, it was on the basis of this no overflying policy that the Japanese government had obtained agreement from the Okinawa prefectural government and Nago city for the coastal plan.[33]

The memorandum also revealed that “the JDA [Japan Defense Agency] appeared adamant that they did not want to depict flight paths over land” and that “the US feels the need to be open with the local Okinawans because their acceptance of the plan is tied to the operational requirement of building the airfield.” It went on to state “If all aspects of the plan are not brought to light, it will fail.”[34] The Naha Defense Facilities Administration Agency’s scoping document did not mention this flight route.

Another DoD document revealed that the proposed military base would include “a 214 meter wharf” and a “CALA” (Combat Aircraft Loading Area), neither of which was “shown on drawings” presented by the Japanese government to the DoD.[35] While these facilities should

present serious concerns to the local communities and the Okinawan public in general, the scoping document did not mention them.

Holding press conferences and public meetings, Makishi, Higashionna, and this author addressed the extensive nature of the construction plan and criticized the Japanese government for dishonesty and secrecy. The demand by anti-construction activists and environmentalists’ to “redo the scoping document” intensified.

The Japanese government, however, downplayed the information, insisting that additional information regarding the construction plan would be officially provided when it become available from the DoD.[36] It also avoided confronting the anti-construction camp’s criticism by insisting that it was not in a position to make any comment on the documents obtained from an on-going lawsuit in a foreign country.[37] The Okinawa prefectural government and Nago city office simply reiterated the Japanese government’s position.[38]

Thus, although the issues of flight route and the concealed facilities were debated in the National Diet’s National Security Committee meetings, and although the Japanese government finally admitted that aircraft would indeed fly over the communities,[39] the new information did not enable the anti-construction camp to seriously challenge the construction plan. Nor was it able to hold the Japanese government to account for concealing the information.

The contention over the scoping document and the divulged information was channeled through the formal EIA process. At the stage of public commenting, anti-construction activists, environmentalists, and citizens expressed their concerns in “comment letters” to the Okinawa Defense Bureau. Some of the letters referred to the divulged information.[40] As the Japanese EIA law does not require direct public consultation or public hearing, however, the submission of these letters was the extent to which these people were able to engage in discussing the scoping document with the Defense Bureau within the



framework of the EIA process.

The task of examining the scoping document and discussing the public concerns directly with the Okinawa Defense Bureau now fell to the Okinawa Prefectural EIA Review Committee. This committee grilled the Defense Bureau, highlighting the lack of information in the scoping document as well as the information obtained from the court documents. The Defense Bureau however managed to evade the committee's challenge by insisting that they had incorporated as much information as possible into the scoping document and that they would incorporate more information as it becomes available from the DoD.[41]

On December 17, 2007, the committee submitted to Governor Nakaima its first report. Stating that the scoping document did not have enough information for accurate assessment to be made, the report recommended that Governor Nakaima request the Okinawa Defense Bureau to "redo" the scoping document process.[42] When Governor Nakaima submitted on December 22, 2007 his "Governor's Comments," which are considered the formal response from the prefecture and its people at the scoping phase of the EIA process, however, the pro-construction Nakaima merely requested the Defense Bureau to "rewrite" (not "redo") the scoping document. This meant that the Bureau could proceed with the EIA process as long as additional information, when available, was incorporated into the EIA process. Nakaima rationalized his decision by insisting that the Defense Bureau had followed the procedural requirements stipulated by the EIA law although the scoping document lacked necessary information.[43]

Then, on January 11, 2008, the Okinawa Defense Bureau surprised the review committee by submitting an "additional" 150-page document during an EIA review meeting.[44] The new document contained some detailed information on the facilities and operational requirements, including the information obtained from the court

documents. The Defense Bureau's additional document also revealed that 17 million cubic meters of sand were to be excavated from the coastal area of Okinawa Island for reclamation, which would have a severe impact on the environment. In the meeting and another meeting that followed, the committee challenged the bureau, repeatedly asking why the additional document was presented at this stage of the EIA. No satisfactory answers were forthcoming [45].

On January 18, 2008, the committee submitted a second report to Governor Nakaima. The second report recommended that the governor request the Okinawa Defense Bureau "rewrite" the scoping document.[46] However, Nakaima reiterated his previous "rewrite" stance, enabling the Defense Bureau to move on with the heavily contested EIA process.[47]

Although the anti-construction movement was able to challenge the Defense Bureau's EIA, making use of the information obtained from the court documents,[48] the Defense Bureau and the Japanese government were able to proceed with the EIA process, taking advantage of the on-going status of the lawsuit and the very nature of the Japanese EIA, especially its procedural formalities.

### **A Historic Court Ruling in the US and Japan's "Worst EIA Ever"**

Against the background of this intensifying contention between the Japanese government and the anti-construction camp over the Okinawa Defense Bureau's EIA process, people in Okinawa heard the news that the US Federal District Court in San Francisco delivered on January 24, 2008 its historical ruling in favor of the plaintiffs.

Anti-construction activists, environmentalists, and concerned citizens praised the ruling as a most encouraging development and applauded the court as a functioning democratic institution in the US (in contrast to its Japanese counterparts).[49] They held meetings and public forums, informing and discussing the meaning



and implications of the ruling and the problematic nature of the Defense Bureau's EIA. Meanwhile, the Japanese government attempted to downplay the importance of the court's ruling. Immediately after the ruling, the Chief Cabinet Secretary Machimura Nobutaka stated the Japanese government's stance: "It's a foreign court's ruling which is still on going and it is inappropriate for the Japanese government to comment on it." [50] Similar phrases were uttered by the Okinawa prefectural government and Nago city office. [51]

Two aspects of the ruling, however, had particular importance. First, as the ruling made clear that the DoD had violated the NHPA Section 402 in drawing the plan to construct a US military base in Henoko and Oura Bays, the US DoD was finally held accountable for its role in the construction plan. [52]

Until the ruling, with the Japanese government insisting that it was the only entity responsible for the construction plan, the US government had been able to play the role of an innocent bystander, able to foist operational requirements and designs of the proposed base on its Japanese counterparts while eschewing all responsibilities associated with the construction plan. This in turn enabled the Japanese government to evade responsibility for explaining the details of the construction plan. As shown above, when it found it inconvenient to discuss details of the construction plan, the Japanese government referred to its formal stance that the matter could not be discussed because the DoD has not provided information. The 2008 ruling created the possibility of ending this cycle of non-accountability, which both the Japanese government and the US DoD had used to push forward the construction plan.

Second, the ruling inevitably put the Okinawa Defense Bureau's EIA under scrutiny in the most ironic way: [53] the court ordered the DoD to examine the "scope" and "range" of the Japanese EIA in order to determine how and to what extent the DoD can incorporate the results of the

Defense Bureau's EIA in its own compliance process with the NHPA section 402 "for the purpose of avoiding or mitigating adverse effects" on the dugong.

Of course, the court has been very clear that it cannot make and does not make any judgment on the Okinawa Defense Bureau's EIA process or on Japanese EIA in general. [54] The ruling has nonetheless opened up the possibility that what the anti-construction activists and environmentalists saw as the problems of the Okinawan EIA process might be addressed by the DoD. [55] In fact, many anti-construction activists and environmentalists believe that the DoD's EIA would produce more reliable and favorable results for them and the dugong than the Japanese government's EIA. Moreover, the ruling has also opened the possibility that the Japanese government and the DoD might conduct a joint EIA. This is because, while the Japanese EIA does not deal with the cultural and historical aspects of the dugong, the main contention of the lawsuit under the NHPA is the issue of the cultural and historical importance of the dugong (see below). Japanese environmental NGOs have long advocated that Japanese and US governments should jointly conduct the EIA. [56]

On February 5, 2008, two weeks after the US court ruling and five months after the Okinawa Defense Bureau ended the public viewing of the scoping document, the Defense Bureau again submitted to the Okinawa prefectural government an over 360 page document "*Additions and Revisions to the Environmental Impact Assessment Scoping Document for Construction of the Futenma Replacement Facility.*" This document contained further detailed information on the facilities and operational requirements of the construction plan, and the reclamation plan. Further revised, the document was then re-submitted on March 14 2008 to the Okinawa prefecture government.

As Governor Nakaima approved this final version, the scoping phase of the EIA process officially

came to an end. The Defense Bureau then immediately moved to conduct of the survey, setting up EIA equipment in the waters and uplands of Henoko and Oura on March 17, 2008, while remaining silent on the relationship between the court's ruling in the US and its submission of the additional documents.

Shimazu Yasuo, former president of the Japanese Environmental Impact Assessment Association, called the Okinawa Defense Bureau's EIA the "worst EIA" in the history of Japanese EIA.[57] He pointed out that while Japanese EIAs had seen steady improvement over the years, this case was a major setback.[58] Sakurai Kunitoshi, an EIA expert and president of Okinawa University, echoed Shimazu's comment by claiming that the Defense Bureau's EIA could not by any standard be regarded as an EIA.[59]

The final document still lacked crucial elements:[60] it failed to include reliable and detailed methodologies for prediction and evaluation of the impact of the construction on the dugong and the environment; many of the proposed methodologies in the document might harm or intimidate the dugong; and it still lacked detailed information on the facilities and operational requirements. This raised serious questions as to the scientific validity of the process. Moreover, the so-called "additional documents" submitted by the Okinawa Defense Bureau bypassed public involvement and scrutiny, undermining the fundamentals of the EIA .

The EIA experts' vehement criticism resonated with the frustration and fear long held by the anti-construction activists, environmentalists, and concerned citizens: the bilateral security relationship between the US and Japan was overriding domestic EIA law.

In Okinawa where the Japanese government's willingness to disregard the requirements of its own EIA law has prevailed, anti-construction activists, environmentalists, and EIA experts have come to perceive the US court ruling not only as an antithesis to the Okinawa Defense Bureau's

EIA, but also as a possible process through which the predicaments of the Bureau's EIA process might be addressed.

### **Linking US Judicial and Japanese Environmental and Political Considerations**

As much as the ruling of the dugong lawsuit created hope for the anti-construction movement in Okinawa, there were two critical problems stemming from the complicated inter-relationship between the lawsuit and Okinawa's Defense Bureau's EIA.

First, the anti-construction camp in Okinawa as a whole has not been able to comprehend fully the nature of the lawsuit and the meanings of the court ruling. Rather, as Kawamura Masami pointed out, many have incorrectly perceived the lawsuit as exclusively about the environment.[61]

To be sure, the NHPA is a US law designed to protect properties with cultural and historical significance.[62] The dugong needs to be protected not only because they are an endangered species, but because they are culturally and historically significant to the people of Okinawa. Moreover, the hallmark of the NHPA is Section 106 and, in this case Section 402, the international equivalent of Section 106.[63] The law does not automatically require the DoD to halt the construction plan even if there are possible adverse effects on the dugong from the construction plan. Rather, it requires the DoD to "consult with" stakeholders in determining the construction plan's effects on the dugong, and to seek means to resolve such effects.

These critical aspects of the NHPA have not been emphasized or they have been overlooked in the context of Okinawa. Despite the plaintiffs' US lawyers' caution,[64] even those who have been closely involved with the lawsuit, including the Okinawa plaintiffs and this author, have portrayed the lawsuit as an environmental lawsuit, emphasizing that the scientific aspects of the dugong and the environment would be examined under the law.[65] The media in Okinawa

followed them and eagerly portrayed the lawsuit and the ruling as environmental after the deliverance of the court ruling.[66]

Despite the recent publication of a detailed work by Sekine Takamichi,[67] the absence of Japanese experts on the NHPA and the unprecedented nature of the lawsuit have contributed to this situation. This case is the first in which the NHPA is being applied to an animal as a cultural and historical property: it is also the first case in which the NHPA has been applied to a US federal project taking place in a foreign country.[68]

The “ongoing” status of the lawsuit and the strategic nature of the plaintiff’s engagement with the lawsuit have also complicated the situation. The judge’s ruling in January 2008 was not the final action; rather it required the DoD and the plaintiffs’ lawyers to negotiate in order to come up with an agreed upon process according to which the DoD would fulfill its obligations under the NHPA. Although the process of negotiation was completed in early January 2009, no such agreement has been reached. The difficulties have been compounded by the need to translate all documents from English to Japanese and vice versa.

Thus, despite the initial hope and positive implications which emerged from the court ruling, the anti-construction camp in Okinawa as a whole has not yet been able to take advantage of the ruling. It has not developed strategies to challenge the US government as well as the Japanese government based upon the cultural and historical importance of the dugong in Okinawa.

Secondly, as the entanglement has necessitated the knowledge and skills of EIA, laws, and English to be incorporated into the anti-construction movement, the anti-construction movement as a whole has become, to some extent, an arena of experts, activists and citizens. As a result, it has, however temporally, filtered out some of the most important people and elements of the anti-construction movement from their own movement.

The entanglement has made less visible the importance of the Oji and Oba (elderly people) of Henoko, who have long been the backbone of this social movement motivated by a strong conviction for peace and the anti-military stance rooted in their experiences of WWII and living with the US bases.[69] Kayo Sougi, an 87 year old Henoko resident who has been participating in the sit in protest in Henoko over the last 10 years, told the author: “the local elders’ experiences and knowledge of their lived environment have yielded to the scientific understanding of the environment as well as to the legal realms of the EIA.”[70] In fact, since the passing away in May 2007 of Kinjyo Yuji, leader of the *Inochi o mamoru kai* (Save Life Society), who connected this local organization with other groups including the plaintiffs and lawyers in the dugong suit, the distance between the elders and other groups has widened.



**Kayo Sougi, 87 year old Henoko resident, speaks at a rally in Henoko (Photo by Hideki Yoshikawa)**

The feeling of being “out of place” in their own struggle against the construction plan is also shared by some of the “protestors on the sea” whose strong conviction for peace and anti-military stance has led them to use canoes, small boats and their bodies to stop the EIA process on and in the waters. One protester, Taira Etsumi insisted: “I would be on the sea protesting against the construction plan even if there was no dugong in the waters. I am out in the open sea, protesting



not for the environment sake, but for a peaceful world without military bases.”[71]

Thus, while these people recognize the importance of the lawsuit and the anti-construction movement’s shift towards discrediting the Okinawa Defense Bureau’s EIA, they have also become perturbed about their seemingly diminishing roles and the side-lining of the anti-military and pro-peace stance in this new direction of the anti-construction movement.

### A New Dawn for the Dugong?

Efforts are being made to address these problems and to increase public interest and engagement in the lawsuit and the anti-construction movement. Through workshops and meetings with JELF lawyers, and correspondence with an NHPA expert in the US, local people, although few in number, are beginning to understand the nature of the NHPA. They are also recognizing, cautiously, that local understanding of the cultural and historical significance of the dugong could indeed empower people in Okinawa within and beyond the framework of the lawsuit.

To be sure, the dugong has always been of cultural and historical significance in Okinawa in the “conventional” sense of culture.[72] In the *Omoro Soshi*, the 16<sup>th</sup> century compilation of ancient poems and songs of Okinawa and Amami, the dugong was depicted as a symbol of abundance and happiness. During the era of the Shuri Kingdom, dugong meat was regarded as a delicacy and a tribute to the King. Legends of the dugong, as a messenger of the sea god who warned people to avoid tsunami or as a creature who taught human beings how to procreate, have been passed on from generation to generation. Rituals portraying the dugong as a messenger of the Sea God are still performed in some communities.[73] It is these historical and cultural aspects of the dugong that define the dugong as a “natural monument” in Japan and that brought about the dugong lawsuit in the first place.



Ryukyu Postal’s stamp to commemorate the dugong’s designation as a natural monument in 1966 (courtesy of SDCC)

Given the decade long struggle against the base construction plan and the emergence of general environmental awareness in Okinawa, however, the dugong has become a symbol of Okinawa’s struggle against base construction and the desire for peace and a healthy environment. This new and more political and environmental significance of the dugong is now being expressed in song and literature. The song, *jugong no mieru oka* (the Hill of Dugongs), by Cocco, a well known Okinawan musician, has become very popular since its release in September 2007.[74] A number of children’s books, using the dugong as their main character, have been published.[75] They connect Okinawa’s experiences of World War II, the notion of *nuchido takara* (life is treasure), and the importance of the environment now and for the future.

Moreover, this new significance of the dugong has been merged and resonated with the historical and cultural meanings of the dugong. Umisedo



Yutaka, a well known local musician and a Kaminchu (priest or literally God-person) for the community of Henza, worships, sings, and tells about the dugong as a messenger of the sea god and a symbol of peace.[76]



**Praying to the sea god is an integral part of the anti-base construction movement (photo by Hideki Yoshikawa)**

Indeed, like many other significant icons and practices of “Okinawan culture” such as songs and Eisa dance,[77] the dugong has come to be understood in reference to contemporary political realities of Okinawa, enabling people to seek ways to negotiate and confront the US and Japanese governments while asserting Okinawa’s distinctive identity and existence.[78]

Thus, when (or if) opportunity for public hearing and/or consultation with the DoD is provided in Okinawa under NHPA 402, this multifaceted significance of the dugong will be emphasized. The DoD would have to listen not only to what makes the dugong a “natural monument” but also to what the dugong stands for in the context of the Okinawan people’s long held desire for peace and a healthy environment. It will also be contended that the historical and cultural significance of the dugong, however defined, relies upon whether the dugong can continue to live in their habitat in Henoko and Oura Bays, feeding upon the seagrass and reproducing in a

manner that enables them to sustain a healthy population. Whatever measures it proposes to protect the historical and cultural significance of the dugong under the NHPA, the DoD has to act to prevent further damage to the fragile environment of Henoko and Oura Bays. In other words, documentation and “museumization,” which have been common measures adopted to protect and ensure the historical and cultural significance of properties under the NHPA[79], might not be enough to ensure this symbiotic relationship between culture and creature expressed by the dugong.

Of course, these contestations could be challenged and dismissed by those, including the DoD, who would prefer conventional notions of culture, history, politics and the environment. There is also no guarantee that presentation of these contentions would even be allowed in public hearings and in “consultations.” As King explains, unlike the NHPA Section 106, which is applied domestically, NHPA Section 402 does not have “clear implementing regulations and an agency to perform the advocacy functions” for them.[80] The law also stipulates that the DoD has discretion over who can be consulted.

It remains to be seen whether these local efforts to understand and engage with the dugong lawsuit could bring about any positive outcome for the anti-construction movement. It depends largely upon the court’s next move as to how the DoD should comply with NHPA Section 402 as well as the DoD’s reaction to the court’s move. Nonetheless, the dugong lawsuit, because it raises historical and cultural issues, presents the possibility of re-incorporation into the anti-construction movement of those who have been filtered out from their own social movement in the process of the anti-construction movement’s scientific and legal engagement with the EIA and the lawsuit. It also raises the possibility of more public interest and involvement in the lawsuit and the issues of the base construction plan. Anti-construction activists, environmentalists, and concerned citizens in Okinawa are preparing to

make the best possible use of the dugong lawsuit.

### Unexpected Intervention by Law

After the end of World War II, the presence of US military bases became a fixed part of Okinawa. The reversion of Okinawa to Japan in 1972 did not change the situation. Today, while many people in Okinawa still see the presence of US military bases as a predicament, others have come to see it as an inevitable reality that they have to accept, in the name of the economy, national security, or simply power difference.

Despite these different understandings, however, Okinawans share one experience. In our daily life with US military bases, we have been told over and over that Japanese laws do not apply to the US bases in Okinawa because they are not Japanese bases; at the same time we have also been told that US laws do not apply to the bases because they are in Japan and not the US [81]. Even the laws and regulations agreed upon by both governments regarding the US bases and their operations in Okinawa are easily and repeatedly bent. US aircrafts make thunderous noise over residential areas day and night despite measures for reduction of noise levels adopted in SACO. Assault on Okinawa's environment continues despite the existence of the Japan Environmental Governing Standard, a standard agreed upon by both the Japanese and US governments to monitor environmental problems on US bases in Japan.

As for the Japanese and American governments, this is normalcy. The deals done in Tokyo and Washington should be carried out without legal difficulty. For the Okinawan people, democratic institutions and policies, both domestic and bilateral, always fail Okinawa when it comes to the US military bases. Our long experience has taught many to think of the law primarily as an instrument of governmental control and to rely only on struggle, in the streets, on the beaches and even in the sea.

The San Francisco court ruling marks an

unexpected turn in Okinawa's long-running struggle in which the odds have always been heavily stacked against popular environmentalist and pacifist forces and on the side of government. All parties were taken aback by Judge Patel's ruling. Most likely, the Japanese and US governments were even more surprised than were the Okinawan people at the outcome.

With the dugong lawsuit and its ruling, people in Okinawa are realizing that our present situation of living with the US bases need not be permanent. With support from legal experts, environmentalists, cultural experts, and concerned citizens from Japan and the world, we have seen a glimpse of how US laws can be applied to US bases in Okinawa precisely because they are US bases. And we are preparing to make use of the dugong lawsuit while continuing to employ quintessential Okinawan ways of dealing with base issues, whether in the form of rallies, sit-ins, or other forms of non-violent resistance.

For many people in Okinawa, the dugong has come to symbolize our struggle against the presence of US military bases and both the Japanese and US governments. Protecting the dugong has come to mean protecting ourselves, our land, the sea, and our future.

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## Notes

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[1] The text of the court ruling can be accessed at the Earthjustice's website ([http://www.earthjustice.org/library/legal\\_docs/dugong-decision-12408.pdf](http://www.earthjustice.org/library/legal_docs/dugong-decision-12408.pdf)).

[2] For discussion of the court ruling, see Koji Taira, "Okinawan Environmentalists Put Robert Gates and DOD on Trial. The Dugong and the Fate of the Futenma Air Station," *Japan Focus*, July 17, 2008; Miyume Tanji, "U.S. Court Rules in the Okinawan Dugong Case: Implications for U.S. Military Bases Overseas," *Critical Asian Studies*, Vol. 40, No. 3, 2008, pp. 475-487.

[3] For legal information on the dugong lawsuit, see the Japan Environmental Lawyers Federation's website (<http://homepage3.nifty.com/sizenokenri/Dugong/index-d.html>). See also Kagohashi Takaaki, "Okinawa jugon to hoteki seigi [Okinawa Dugong and Legal Justice], *Kankyou to seigi* Vols. 34, 35, and 36, 2000. These articles can be accessed here (<http://homepage3.nifty.com/sizenokenri/Dugong/ESAreport.html>).

[4] The text of the SACO Final Report can be accessed here (<http://www.mofa.go.jp/region/n-america/us/security/96saco1.html>).

[5] Masamichi Inoue, *Okinawa and the U.S. Military: Identity Making in the Age of Globalization* (New York: Columbia University Press, 2007), particularly Chapters 5 and 6; Miyume Tanji, *Myth, Protest and Struggle in Okinawa*, (New York: Routledge, 2006),

## Chapter 9.

[6] For an account of environmentalization of the anti-construction movement through the dugong, see Miyagi Yasuhiro, "Jyan no umi: Aru tatakai no kiroku" [Dugong's Sea: A Document of A Struggle], in Save the Dugong Campaign Center ed., *Jugon no umi to Okinawa: Kichi no shimaga toitudukerumono* [Dugong's Sea and Okinawa: Questions that an Island with Military Bases are Asking], (Tokyo: Koubunken, 2002), pp. -.

[7] The full text of the IUCN Recommendation 2.72 "Conservation of Dugong (*Dugong dugon*), Okinawa Woodpecker (*Sapheopipo noguchii*) and Okinawa Rail (*Gallirallus okinawae*)" can be accessed at the IUCN website ([http://cmsdata.iucn.org/downloads/resolutions\\_recommendation\\_en.pdf](http://cmsdata.iucn.org/downloads/resolutions_recommendation_en.pdf)).

[8] See Kagohashi Takaaki, "Okinawa jugon to hoteki seigi [Okinawa Dugong and Legal Justice], *Kankyou to Seigi* Vols. 34, 35, and 36, 2000. These articles can be accessed here (<http://homepage3.nifty.com/sizenokenri/Dugong/ESAreport.html>).

[9] Personal communication with Sekine Takamichi in San Francisco on September 17, 2007.

[10] Sekine Takamichi, *Minamino shima no kankyo hakai to gendai kankyo soshou: Kaihatsu to amamino kurousagi, okinawa Jugon, yanbaru kuina no mirai* [Environmental destructions on Southern Islands and Modern Environmental Lawsuit: Development and Amani Black Rabbits, Okinawa Dugong, and Future of Yanbaru Rail]. (Hyougo: Kwansei Gakuin Daigaku Shuppan, 2007), pp. 93-95.

[11] Personal communication with Sekine Takamichi on September 17, 2007.

[12] Gavan McCormack, *Client State: Japan in the American Embrace*, (London: Verso, 2007), p 163.

[13] The Center for Biological Diversity, represented by Earthjustice, filed a lawsuit ([http://www.biologicaldiversity.org/news/press\\_releases/NAVY5-1-02.HTML](http://www.biologicaldiversity.org/news/press_releases/NAVY5-1-02.HTML).) against the US Navy for violating the Migratory Bird Treaty Act at the island of Farallon de Medinilla (FDM). The US court on March 13, 2002, declared that the US Navy's use of FDM violates the law.

[14] Personal communication with Peter Calvin in San Francisco on September 17, 2007.

[15] For an analysis of the application of the NHPA to this case, see Thomas F. King, "Creatures and Culture: Some Implications of Dugong V. Rumsfeld," *International Journal of Cultural Property*. Vol. 13, 2006, pp. 235-240.

[16] King argues that "the most novel feature" of the court's mid-term ruling was that "a living, breathing animal might meet the criteria of eligibility for inclusion in the U.S. National Register." King, "Creatures and Culture: Some Implications of Dugong V. Rumsfeld," p239.

[17] Shimazu Yasuo, *Shiminkara no kankyo asesumento: Sanka to jittsen no michi* [Citizens' Environmental Impact Assessment: Participation and Practices], (Tokyo: NHK Books, 1997), pp. 14.

[18] The result of the Nago city referendum in 1997, which delivered a "NO" to the construction plan, was overturned by then Nago Mayor Higa Tetsuya. Many people in Okinawa saw this event as a sign of the limits of democratic processes and institutions in Okinawa with regard to the so-called "base issues."

[19] Urashima Etsuko, *Henoko: Umi no tataikai* [Henoko: Struggle on the Sea], (Tokyo: Impact Shuttpan Kai, 2005).

[20] Takahara Kanako, "Japan, U.S. Agree on a New Futenma Site," *Japan Times*, October 27, 2005. Prime Minister Koizumi Jyunichiro was

quoted as saying his government was "unable to implement the relocation plan because of a lot of opposition,"

[21] US-Japan Roadmap for Realignment Implementation (<http://www.state.gov/r/pa/prs/ps/2006/65517.htm>).

[22] Although both the Japanese and US governments insist that the present plan is final and no changes can be made to it, Governor Nakaima and Nago Mayor Shimabukuro still officially maintain their election campaign promise that the proposed location is unacceptable. See *Okinawa Times* ([http://www.okinawatimes.co.jp/news/2008-12-27-M\\_1-001-1\\_003.html](http://www.okinawatimes.co.jp/news/2008-12-27-M_1-001-1_003.html)), December 28, 2008.

[23] Harashina Yukihiro, an EIA expert who participated in the drawing up of the present Japanese EIA law, commented that although the Naha DFAA's preliminary surveys were against the "spirit of the EIA law," it was not against the EIA law to conduct such a survey as long as the results of the surveys are not intentionally incorporated into the EIA. He presented this comment at a seminar "Henoko jizenchousa ha asesuhou ihan: Takae heripattdo ha asesu wo yarinaose" [Preliminary surveys in Henoko are against the law: redo the EIA for the helipads construction in Takae] in Naha, Okinawa on February 25, 2007.

[24] Higashionna Takuma presented his observation of the preliminary surveys conducted by the Naha DFAA at a forum "Yuntaku shukai: henoko/oura wan no shizen to beigun kichi kensetsu" [Yuntaku Meeting: The Nature of Henoko and Oura Bays and the US Base Construction] in Naha, Okinawa, July 15, 2007.

[25] See Gavan McCormack, "Fitting Okinawa into Japan the "Beautiful Country," *Japan Focus*, May 30, 2007. See also *Nishinihon Shimbun*, May 19, 2007.



- [26] Ryukyu Shimpo, 8 August 2007.
- [27] Shimazu Yasuo (<http://www.jriet.net/ases/081206.htm>), “Futenma daitai hikojo shisetsu mondai no jyunen” [10 Years of the predicament: Futenma airfield replacement facility] (<http://www.jriet.net/ases/081206.htm>).
- [28] Ryukyu Shimpo, August 14, 2007.
- [29] United State District Court Northern District of California, No. C 03-4350 MHP., Transcript of Proceedings, Okinawa Dugong (*dugong dugon*), et al., vs. Robert M. Gates, Secretary of Defense, et al., September 17, 2007.
- [30] Hideki Yoshikawa, “Jugon soshou no yukue, chuu” [The Dugong Lawsuit: Where to from here, Part 2], Okinawa Times, January 18, 2008.
- [31] I thank Makishi Yoshikaze for giving me the opportunity to help review and analyze the lawsuit documents.
- [32] United State District Court Northern District of California, Case 3:03-cv-04350-MHP, Document 94, Government Exhibit 15.
- [33] Okinawa Times, April 8, 2006.
- [34] United State District Court Northern District of California, Case 3:03-cv-04350-MHP., Document 94, Government Exhibit 15.
- [35] Ibid., Case 3:03-cv-04350-MHP., Document 94-2, Filed 06/29/2007, Government Exhibit 17. The document is titled “FRF Review Comments-Discussed with GOJ 4/20/06.”
- [36] For the Japanese government’s official stance on the divulged information, see the transcript (<http://kokkai.ndl.go.jp/SENTAKU/syugiin/168/0015/16810190015002a.html>) of the national diet security committee meeting held on October 19, 2007.
- [37] Ibid.
- [38] The Nago city office presented to Makishi, Higashionna, and the author its official stance similar to that of the Japanese government during an informal meeting on November 5, 2007. See Okinawa Times (evening version), November 6, 2007. Governor Nakaima and Mayor Shimabukuro questioned the Japanese government whether the divulged information was valid at the 4<sup>th</sup> Three Party Meeting on November 7, 2007. For a summary transcription of the meeting, click here (<http://www.kantei.go.jp/jp/singi/hutenma2/dai4/4gijiroku.pdf>).
- [39] During a National Diet Security Committee meeting held on October 19, 2007, after being grilled by lower diet members Akamine Seiken and Tsujimoto Naomi, Ishiba Shigeru, Defense Minister and Kanazawa Hironori officer at the Ministry of Defense admitted that US military aircraft would fly over the communities. For the transcript of the meeting, click here ([http://www.shugiin.go.jp/itdb\\_kaigiroku.nsf/html/kaigiroku/001516820071019002.htm](http://www.shugiin.go.jp/itdb_kaigiroku.nsf/html/kaigiroku/001516820071019002.htm)).
- [40] Okinawa Kankyo Assesument Kanshidan (Okinawa Environment Impact Assessment Oversight Group). N.D.
- [41] Okinawa Times, December 11, 2007.
- [42] The first report of the Okinawa Prefectural EIA Review Committee to Governor on the “scoping document” can be accessed here (<http://www3.pref.okinawa.jp/site/contents/attach/14905/futenmadaitai-houhousho-toushin-jourei.pdf>).
- [43] For the text of Nakaima’s “Governor’s Comments” and critiques of the Governor’s Comments,” see Okinawa Times, December 22, 2007; Ryukyu Shimpo, December 22, 2007.
- [44] Okinawa Times, January 12, 2008; Ryukyu Shimpo, January 12, 2008.

- [45] Okinawa Times, January 17, 2008; Ryukyu Shimpo, January 17, 2008.
- [46] The second report of the Okinawa Prefectural EIA Review Committee to Governor on the “scoping document” can be accessed [here](http://www3.pref.okinawa.jp/site/contents/attach/14905/futenmadaitai-houhousho-toushin-houritsu.pdf) (<http://www3.pref.okinawa.jp/site/contents/attach/14905/futenmadaitai-houhousho-toushin-houritsu.pdf>).
- [47] Okinawa Times, January 22, 2008; Ryukyu Shimpo January 22, 2008.
- [48] In an interview by the Okinawa Times, Sakurai Kunitoshi argued that the information obtained from the dugong lawsuit made it very difficult for the Japanese government to keep concealing the details of the construction plan, thus the “additional documents.” See Okinawa Times, April 27, 2008.
- [49] Okinawa Times, January 25, 2008; Ryukyu Shimpo, January 25, 2008.
- [50] Yomiuri Shinbun, January 25, 2008.
- [51] Okinawa Times, January 25, 2008; Ryukyu Shimpo, January 25, 2008.
- [52] See Koji Taira, “Okinawan Environmentalists Put Robert Gates and DOD on Trial. The Dugong and the Fate of the Futenma Air Station”; Miyume Tanji, “U.S. Court Rules in the Okinawan Dugong Case: Implications for U.S. Military Bases Overseas.”
- [53] For a border discussion of this particular aspect of the ruling, see Miyume Tanji, “U.S. Court Rules in the Okinawan Dugong Case: Implications for U.S. Military Bases Overseas,” pp. 482-484.
- [54] United State District Court Northern District of California, No. C 03-4350 MHP., Transcript of Proceedings, Okinawa Dugong (dugong dugon), et al., vs. Robert M. Gates, Secretary of Defense, et al., September 17, 2007.
- [55] Hideki Yoshikawa, “Jugon soshou no yukue, ge” [The Dugong Lawsuit: Where to from here, Part 3], Okinawa Times, January 21, 2008.
- [56] Japanese environmental NGOs have taken the idea to the IUCN Congress on three occasions in 2000, 2004, and 2008 respectively, where the idea was adopted by in the forms of IUCN recommendations, 2.72, 3.114, and MOT027. The text of these IUCN recommendations can be accessed [here](http://cmsdata.iucn.org/downloads/resolutions_recommendation_en.pdf) ([http://cmsdata.iucn.org/downloads/resolutions\\_recommendation\\_en.pdf](http://cmsdata.iucn.org/downloads/resolutions_recommendation_en.pdf)).
- [57] Shimazu Yasuo (<http://www.jriet.net/ases/081206.htm>), “Futenma daitai hikojo shisetumonndai no jyunen [10 Years of the Predicament: Futenma Airfield Replacement Facility].
- [58] Shimazu Yasuo, Personal communication, January 14, 2008.
- [59] Sakurai Kunitoshi, “Kekkan shouhin no boueikyoku asesu” [Okinawa DB’s Flawed Assessment], Okinawa Times, April 7, 2008.
- [60] Ibid.
- [61] Kawamura Masami, “The Dugong’s Day in IUCN Congress and US Court,” presentation at the American Anthropological Association Meeting in San Francisco, November 22, 2008.
- [62] For a lucid discussion of what can be considered historically and culturally significant under the NHPA, see Thomas F. King, *Saving Places that Matter: A Citizen’s Guide to the National Historic Preservation Act*, (Walnut Creek: Left Coast Press, 2007), Chapter 1.
- [63] For understanding of the NHPA Section 106, see Thomas F. King, *Saving Places that Matter: A Citizen’s Guide to the National*

*Historic Preservation Act.*

[64] Sarah Burt, an Earthjustice lawyer, came to Okinawa to report the ruling of the dugong lawsuit at a symposium “Okinawa jugon shizen no kenri soshou shinpo [Okinawa Dugong Lawsuit: The Right of the Nature Symposium] held in Naha on April, 20, 2008. She presented an overview of the ruling of the lawsuit while emphasizing the procedural nature of the lawsuit.

[65] Hideki Yoshikawa, “Jugon soshou no yukue, ge” [The Dugong Lawsuit: Where to from here, Part 3], Okinawa Times, January 21, 2008.

[66] Okinawa Times, January 26, 2008; Ryukyu Shimpo, January 26, 2008.

[67] Sekine Takamichi, *Minamino shima no kankyo hakai to gendai kankyo soshou: Kaihatsu to amamino kurousagi, okinawa Jugon, yanbaru kuina no mirai* [Environmental destructions on Southern Islands and Modern Environmental Lawsuit: Development and Amani Black Rabbits, Okinawa Dugong, and Future of Yanbaru Rail]. (Hyougo: Kwansei Gakuin Daigaku Shuppan 2007), Chapter 3 and Chapter 4.

[68] Thomas F. King, “Creatures and Culture: Some Implications of Dugong V. Rumsfeld,” *International Journal of Cultural Property*. pp., 238-239.

[69] For discussions on the roles of Henoko elders in the anti-construction movement, see Masamichi Inoue, *Okinawa and the U.S. Military: Identity Making in the Age of Globalization*, particularly Chapter 5; Miyume Tanji, *Myth, Protest and Struggle in Okinawa*, (New York: Routledge, 2006). Inoue and Tanji offer somewhat different accounts on the roles of elders due in part to their differing theoretical perspectives: Inoue emphasizes class division while Tanji stresses gender. Tanji provides in the concluding section a lucid

discussion on the roles of Okinawan people’s experiences and memories of WWII and living with US bases as a unifying cause for social movement in Okinawa.

[70] Personal communication with Mr. Kayo Sogi on May 30, 2008.

[71] Personal communication with Mrs. Taira Etsumi on May 30, 2008.

[72] Maeda Issue, “Okinawa no jugon to murabito no seikatsu” [Okinawa Dugong and Life of Local Community], *Kankyo to seigi* vol. 75, 2004. pp. 77. See also Okinawa Prefectural Government Nature Conservation Division, *jugon no hanashi: Okinawa no jugon* [The Story of the Dugong: Dugong in Okinawa], (Okinawa Prefectural Government: 2008). *Jugon no hanashi* can be accessed here (<http://www3.pref.okinawa.jp/site/view/contvie w.jsp?cateid=70&id=16608&page=1>).

[73] QAB Ryukyu Asahi Hoso (Ryukyu Asahi Broadcasting), “*Ningyo no sumu umi*” [Ocean of Mermaid], aired on April, 29, 2008. This program can be accessed here (<http://www.qab.co.jp/08mermaid/>).

[74] An English version of Cocco’s “The Hills of Dugongs” video can be accessed here (<http://jp.youtube.com/watch?v=TwA-e3d-3qA&feature=related>).

[75] See for example Kinjo Akemi, *Ao jugon: Okinawa, heiwa, futoko: kokoro sabiishi tomodachi e*, [The Blue Dugong: Okinawa Peace, Truant, To the lonely ones...], (Naha: Okinawa Times-sha, 2005); Kenshu Kudeken, *Dugon to tarah* [Dugong and Tara], (Naha: Akebono Shuppan, 2001).

[76] Personal communication with Umisedo Yutaka on October 13, 2008.

[77] James E. Roberson, “Uchina Pop: Place and Identity in Contemporary Okinawan Popular Music,” in *Island of Discontent*:

*Okinawan responses to Japanese and American Power*, eds., Laura E. Hein and Mark Selden, (Oxford: Rowman & Littlefield, 2003), pp. 192-227; Shirota Chika, "Dancing beyond the U.S. Military: Okinawan Eisa as Identity and Diaspora," *Theatre InSight* Vol. 10, No. 1, 1999, pp., 4-13.

[78] For a general discussion on the role of culture in Okinawa's struggle against the Japanese and the US governments, see Laura E. Hein and Mark Selden, "Culture, Power and Identity in Contemporary Okinawa," in *Island of Discontent: Okinawan responses to Japanese and American Power*, eds., Laura E. Hein and Mark Selden, (Oxford: Rowman & Littlefield, 2003), 1-38.

[79] For a discussion on resolving adverse effects on properties with historical and cultural significance, see Thomas F. King, *Saving Places that Matter: A Citizen's Guide to the National Historic Preservation Act*, (Walnut Creek: Left Coast Press, 2007), Chapter 9.

[80] Thomas F. King, "Creatures and Culture: Some Implications of Dugong V. Rumsfeld," *International Journal of Cultural Property*. pp. 239.

[81] Yoshida Kensei, "US Bases, Japan and the Reality of Okinawa as a Military Colony" (translated by Rumi Sakamoto and Matt Allen), *Japan Focus*, August 19, 2008.