

An Appeal from Okinawa to the US Congress. Futenma Marine Base Relocation and its Environmental Impact:: U.S.

Responsibility 沖縄から米議会への訴え 普天間基地移設と環境影響 米国の責任は

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Introduction

Much has been written on this site on recent developments in the long-running saga over the U.S. and Japanese governments' plan to construct a U.S. military air base, the Futenma Replacement Facility (FRF), in Henoko, Okinawa, Japan (Henoko plan).¹ On July 1, 2014, 17 years after the plan was first conceived, the Okinawa Defense Bureau (the government of Japan) started the "construction phase" amid protest from local citizens and municipal governments. Just over a month later, on August 14, the U.S. Congressional Research Service released a report, *The U.S. Military Presence in Okinawa and the Futenma Base Controversy* (the *CRS Report*).² The *CRS Report* provides a useful and up-to-date (though, as noted below, in one major respect incomplete) file of information, paying for the most part due attention to local, national, and international factors.

As warned in the *CRS Report*, the Japanese government is now using "heavy handed actions" to push forward the Henoko plan, escalating the tensions between it and Okinawa." "Most Okinawans," the *CRS* authors write, "oppose the construction of a new U.S. base for a mix of political, environmental and quality of life reasons."

The fact that the governments of Japan and the United States should be committed to a project against the wishes of "most" of the people of Okinawa should in itself be cause for strong

Congressional concern, particularly since a major Okinawan newspaper now writes to ask "if there has ever been a case like this, where the government has trampled on the will of the overwhelming majority of people in a prefecture elsewhere in Japan." "This," the *Ryukyu shimpo* goes on, "is a barbaric action by the government, and so shameful if the international community just stands by."³ What follows here, however, is not a general disquisition on that "barbarism," but a focused consideration of the environmental aspects of the base construction plan. What we offer here is the perspective of Okinawan civil society, through the medium of its environmental NGOs.

We draw the attention of Congress to the lacunae in the *CRS* report which fails to address the involvement of the US justice system (through a Californian court) and the U.S. National Historical Preservation Act (NHPA) and U.S. Marine Mammal Commission (MMC), in the environmental aspects of the Henoko plan. The U.S. government bears a distinct legal responsibility, even though the Environmental Impact Assessment (EIA) and the Okinawa prefectural government's land reclamation permit approval process are both primarily responsibilities of the government of Japan. This paper complements the *CRS Report* by discussing these matters. It concludes by offering four recommendations as to how the U.S. military and the U.S. government can (and should) deal with their legally prescribed environmental responsibilities.



Henoko: Drilling Survey and Protesters, Camp Schwab in Background, September 2014.

Photograph: ©Tomoyuki Toyozato

Background

The Henoko plan emerged as a response to the rape of a twelve-year schoolgirl by three U.S. soldiers in Okinawa in 1995 and the outrage and demand for base reversion it sparked. The U.S. and Japanese government established the Special Action Committee on Okinawa (SACO) “to reduce the burden on the people of Okinawa and thereby strengthen the Japan-US alliance.”⁴ SACO drew a plan to close the U.S. Marine Corps Air Station Futenma, situated in the middle of the crowded Ginowan City, Okinawa, and to relocate it to Henoko in the northern part of the island. Henoko was always described as “less congested” and it undoubtedly was, but it was rarely described as of such paramount environmental importance as to warrant the utmost protection; but that too it undoubtedly was.

By 1999, then Okinawa Governor Inamine Keiichi and then Nago City Mayor Kishimoto Tateo had “accepted” the first Henoko plan, for construction of an air base with a 2,000 meters runway in the bay offshore on the reef’s edge at Henoko.⁵ However, that “acceptance” was

hedged by conditions (especially that of a 15-year term and joint civil-military usage) which were quite unacceptable to either the U.S. or the Japanese government. The nominal “acceptance” was therefore a virtual rejection.

Ignoring those conditions, preliminary survey works then began in 2004. Facing fierce protest from local people for political, environmental and quality of life reasons, however, they were stopped and that plan was withdrawn in 2005.

In May 2006, the “U.S.-Japan Roadmap for Realignment Implementation” spelled out the second Henoko plan (the design still current).⁶ It called for the construction of a base featuring two 1,800 meter-runways in a V-shape, extending from the existing U.S. Marine Corps facility at Camp Schwab into Oura Bay to the West and Henoko Bay to the East.



Location of Proposed Futenma Replacement Facility at Henoko, Nago City

Source: Google Maps.

In 2007, the Okinawa Defense Bureau (ODB) began its Environmental Impact Assessment (EIA) process in accord with this design. Five years later, it released a Final Environmental

Impact Statement (Final EIS), concluding that the FRF would have no significant impact on the environment. As noted in the *CRS Report*, however, the EIA has been heavily criticized by scientists, EIA experts, NGOs, and local citizens (p. 7).

The *CRS Report* refers to the Japanese government wielding “unprecedented pressure and inducements” to persuade local politicians of the ruling Liberal Democratic Party to reverse their previous stance and accept the Henoko plan (p. 9). Despite the resort to such dubious means, this paved the way for Governor Nakaima Hirokazu to approve the permit for reclamation in the waters of Henoko and Oura Bay, which he did in December 2013.

On July 1, 2014, the ODB started the construction phase of the Henoko plan on Camp Schwab amid fierce protest from local citizens and municipal governments. The Japanese government had adopted heavy-handed approaches to carry out the Henoko plan. With approval from the U.S. military, the Japanese government created new “temporary restricted water areas,” expanding the previous off-limit zone of 50 meters off-shore from Camp Schwab to two kilometers,⁷ mobilizing an armada of vessels under the command of the Japanese Coast Guard and beginning to drive away, or to “capture” and “release” protesters venturing towards the site in canoes and kayaks,⁸ threatening them with prosecution under the infamous *keitoku ho* (a draconian, rarely used, “special” criminal law dating to 1952.⁹ The Okinawan media reported (September 12) that “[a]cts of violence are taking place on a daily basis,” and that assault proceedings had been initiated against three of the Coast Guard officers.¹⁰



Henoko: Protesting Canoeist seized by Coastguard, (Photo: ©Tomoyuki Toyozato)

As the *CRS Report* (summary) warned, Okinawa’s opposition to the Henoko plan, manifest in the form of opinion polls, elections, rallies, and now civil disobedience, continues. Remarkably, in the face of stepped up inducements and intimidation from Tokyo, it even appears to intensify. Recent public opinion polls record opposition to the construction plan running as high as eighty percent.¹¹

Many people in Okinawa do not see the Henoko plan serving to “reduce the burden on the people of Okinawa and thereby strengthening the Japan-US alliance” set forth in the SACO agreement. Of all the US military bases/facilities in Japan, 74 percent are already concentrated in Okinawa, which accounts for only 0.6 percent of Japan’s land mass. The FRF would expand the existing Futenma military functions by adding fresh air and sea operational capabilities. Its construction would inevitably damage the environment. Given these factors, many people in Okinawa regard the Henoko plan as nothing but additional burden for Okinawa. For them, as mentioned in the *CRS Report* (p. 7), reducing the burden on the people of Okinawa means to close down the dangerous Futenma without substitution.

The Environmental Impact Assessment and Land Reclamation Approval Processes

The *CRS Report* points out that two administrative processes, the Environmental Impact Assessment (EIA) and the land reclamation permit approval, were completed as required by law before the construction phase of the Henoko plan was initiated in July 2014. The Okinawa Defense Bureau (ODB) conducted the EIA and the Okinawa Prefectural Government was in charge of the reclamation permit approval process. Both processes concluded that the construction and operation of the FRF would have no significant impact on the environment.

As noted in the *CRS Report*, however, the EIA process and its conclusions have been heavily criticized by scientists, EA experts, NGOs and local citizens (p. 7).

Critics argue that the government's EIA did not assess accurately the value and vulnerability of the environment, and that it grossly underestimated the effects of the construction and operation of the FRF on the environment while overestimating effectiveness of the mitigation measures it proposed.¹² Dr. Shimazu Yasuo, a leading expert on EIA and former chairperson of the Japan Society for Impact Assessment, denounced the government EIA as the worst EIA in the history of Japanese EIA.¹³ Governor Nakaima and his prefectural government also questioned the validity of the Environmental Impact Statement (EIS) in his "Governor's Comments" in 2012.¹⁴ He stated that that the construction "should cause tremendous problems in terms of environmental conservation" and that "even with the conservation measures provided in the EIA, the conservation of the livelihood of the local people and of the environment in the area affected is *impossible*."

Although the EI survey concluded that "the feeding trails of dugongs in the seagrass beds

were confirmed in the seagrass beds of the Kayo District [i.e. several kilometers distant from the designated base site], but none were confirmed in the Henoko district"¹⁵ subsequent surveys, both by NGO teams¹⁶ and by the Japanese government itself (Okinawa Defense Bureau),¹⁷ called into question the accuracy of the EI surveys and, much more significantly, the accuracy and wisdom of the conclusion that the FRF would have no adverse effects on the dugong. The "no adverse impacts" prediction of the EIS, based upon its survey results, collapses.



Dugong and Turtle, (Photograph by Higashionna Takuma, a plaintiff in the San Francisco Court action), [Oura Bay, March 2004]

Governor Nakaima's approval of the reclamation permit, *which the CRS Report* describes as an "apparent breakthrough on Futenma base relocation" (p. 2), has been criticized on procedural as well as environmental grounds.¹⁸

The *Act on Reclamation of Publicly-owned Water Surface*, under which the permit approval process proceeded, stipulates that the Governor cannot issue a permit unless the project pays sufficient consideration to

environmental conservation and disaster prevention (Article 4-1-2). Given the environmental issues and concerns discussed above, the Governor's approval cannot be seen as based upon scientific evidence or in accordance with the law. In fact, as the *CRS Report* alludes, it was under "heavy (political) pressure" from the Tokyo government that Governor Nakaima decided to approve the reclamation. Or more precisely and more importantly, it was under pressure from Governor Nakaima and the Tokyo government, three middle rank prefectural officials from the Department of Civil Engineering and Construction undertook the task of examining the ODB's reclamation application and approved the reclamation permit.

These officials have admitted that they have no expert knowledge or experience regarding conservation of dugong, coral, alien species, or military operations.¹⁹ Such expert knowledge and experience should have been an indispensable element in making such a decision. They also admitted that they did not consult with other experts or scientists in making the decision for approval for the permit. In other words, the scientific grounds for the approval were extremely shaky.

The main environmental issues and concerns raised in the Okinawan context with regard to the EIA and Land Reclamation Approval processes include:

1. The coastal area of Henoko and Oura Bay is designated as "Assessment Rank I" (the highest) in the Okinawa Prefectural Government's *Guidelines on the Conservation of the Natural Environment*.²⁰ For such areas, strict protection and conservation of the natural environment is required. The construction and operation of the FRF should be incompatible with observance of this legal requirement.
2. The area of Henoko and Oura Bay is a

critical habitat for the dugong, a manatee like marine mammal species. The Dugong is designated as "endangered" under the U.S. Endangered Species Act (ESA) and as "critically endangered" and a "natural monument" in Japan. Okinawa is the northernmost habitat for the Dugong and the Henoko and Oura Bay area presents the largest area in Okinawa where seagrass, upon which dugong feed, is to be found. The construction and operation of the FRF would plainly undermine the intent of the US Endangered Species Act and the Japanese "critically endangered" classification. It would threaten the extinction of the Okinawa dugong population.

3. The Japanese government plans to use twenty-one million cubic meters of sand and rock in reclamation of land for the FRF construction. Seventeen million cubic meters of sand and rock would have to be transported from other parts of Japan across different waters and climate zones to the Henoko area. Apart from the sheer immensity of this task, it entails risk of the possible introduction and spread of invasive alien species such as Argentine ants, which could devastate the intricate ecosystems and the environment of the entire Okinawa Island.²¹

These environmental issues were not adequately addressed in the EIA or the land reclamation permit approval process. As alluded to in the *CRS Report*, a new governor, once elected in Okinawa's gubernatorial election in November, 2014, could challenge the land reclamation permit by bringing up these issues and concerns (p. 11).



Fact finding meeting between NGOs and Okinawa Prefectural Government, June 6, 2014 (author with arm raised, speaking) (Photograph: Kazue Huber-Nakamura)

U.S. Responsibility

While the primary responsibility for the construction of the FRF at Henoko falls on the Japanese government, the U.S. military also bears a share of responsibility. Consequently, two U.S. institutions, the U.S. District Court for the Northern District of California San Francisco Division (the Court) and the Marine Mammal Commission (MMC), have been involved in examining the responsibility of the U.S. military or the U.S. Department of Defense (DoD) for the Henoko plan.

In 2008, the Court ruled in favor of Okinawan, Japanese and U.S. plaintiffs who sued the DoD for failing to comply with the National Historical Preservation Act (NHPA) in the drawing up the Henoko plan.²² The Court found that the DoD failed to take into account the impacts of the FRF on the Okinawa dugong required by Section 402 of the NHPA. The Court ordered the DoD to comply with the law by “taking into account” the effects of the FRF on the dugong.

In February 2012, recognizing that “the matters to be considered by defendants and

then by the court [were] far from finalized,” the Court decided to hold the case in abeyance until “plans for Henoko become more finalized or are abandoned.”²³

However, in April 2014, unexpectedly, the DoD notified the Court and the plaintiffs that it had completed the “take into account” process by filing the *U.S. Marine Corps Recommended Findings* (the Findings).²⁴ Based upon both the DoD’s analysis of the Japanese government EIA and the study it commissioned, the Findings concluded that the FRF would have no significant adverse impact on the dugong.²⁵ This conclusion apparently enabled the Japanese government to start the construction phase of the Henoko plan. Prior to this notice, according to a press conference held by the plaintiffs in Japan on August 2014, the plaintiffs were not informed that the DoD was engaging in the “take into account” process. The DoD has not made public the related documents, or its translations and analysis of the Japanese EIA documents.

Center for Biological Diversity, Turtle Island Restoration Network, Japan Environmental Lawyers Federation, Save the Dugong Foundation, Anna Shimabukuro, Takuma Higashionna, and Yoshikazu Makishi

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

SAN FRANCISCO DIVISION

Center for Biological Diversity, Turtle Island Restoration Network, Japan Environmental Lawyers Federation, Save the Dugong Foundation, Anna Shimabukuro, Takuma Higashionna, Yoshikazu Makishi,

Plaintiffs,
v.
CHUCK HAGEL,
in his official capacity as the Secretary of
Defense; and U.S. Department of Defense,
Defendants.

As I noted earlier,

“The problem is this: we, including the Okinawan plaintiffs in the lawsuit, do not know how and when the DoD conducted its investigation. Nor have we seen any statements and documents coming out of the process. Did the DoD conduct the entire process and hold all the documents in secret while issuing entry permits to the Japanese government to start the construction?”²⁶

Seeking an answer to this question, in July 2014 the plaintiffs submitted a *Supplemental Complaint* pointing out that, despite the DoD’s submission of the Findings, it has not fulfilled the Court’s 2008 order in terms of either procedure or substance.²⁷

The main points of contention presented in the *Supplemental Complaint* include:

- 1) The DoD failed to consult the plaintiffs as interested parties in the “take into account” process. This violates Section 402 of the NHPA.
- 2) The DoD failed to provide information to the public about the proposed FRF and its potential effects on the Okinawa dugong and to seek public comment and input. This violates the “take into account” requirement of section 402 of the NHPA.
- 3) The DoD’s failure to consult the plaintiffs in the “take into account” process and failure to provide information to the plaintiffs and the public developing its Findings in violation of section 402 of the NHPA is “arbitrary,

capricious, an abuse of discretion, or otherwise not in accordance with law and without observation of procedure required by law under the APA (U.S. Administrative Procedure Act).”

4) The DoD’s conclusions that the construction and operation of the FRF will have no adverse effect on the Okinawa Dugong are “arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with law.”

5) The *Supplemental Complaint* therefore asks the Court to issue an order that “the DoD complies with section 402 of the NHPA” and that it (DoD) “not undertake any activities in the furtherance of the FRF project.”

It remains to be seen how the Court and the DoD respond to this *Supplemental Complaint*. This new action has, however, stirred renewed interest on the part of the Okinawan public and mainland Japanese media in the lawsuit and the responsibility of the DoD in the Henoko plan.²⁸ It may well be that, in its eagerness to advance the project at whatever cost, the Government of Japan set aside important legal requirements and should it now be required to attend to them, construction works, which have just began, might have to be put on hold until the DoD complies with the law.

Meanwhile, the U.S. Marine Mammal Commission (MMC), an independent federal agency tasked with the protection and conservation of marine mammals, has since 2001 paid close attention to the implications of the Henoko plan for the Okinawa dugong. Importantly, the 2009 MMC’s *Annual Report to Congress* states (p. 36):

If, after the review of the relocation plan, the proposal 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 when it becomes available.²⁹

When Nago city Mayor Inamine Susumu, accompanied by environmental NGO representatives, visited the MMC in May 2014, the Commission assured them of its intention to review and comment. However, over subsequent months it has not done so. One reason is presumably the non-cooperation of the DoD, which withholds from the public its analysis of the impact of the FRF on the Okinawa dugong and related documents.



Okinawan NGOs and Nago Mayor Inamine, May 20, 2014, author at bottom right (Photograph: Ken Huber-Nakamura)

It remains to be seen whether the MMC will be able to access and review the DoD's analysis and how it would respond to it. The San Francisco Court's handling of the dugong case will undoubtedly influence the MMC's response.

Four Recommendations

The environmental issues and concerns discussed above have profound implications for the U.S. military and U.S. government. The

assurances of the Japanese EIA and the U.S. DoD's "take into account" process under the NHPA that there will be no adverse impact from the FRF on the environment remain to be properly tested. They are improbable, as many scientists, EIA experts, NGOs and citizens insist.

The failure to give proper scientific consideration to the environmental impact of the base project has resulted in a poorly informed and unwise decision. If the Henoko plan is forcefully carried out, it will threaten the environment of Henoko and Oura Bay and exacerbate the already strained relationship between both governments and Okinawa. Along with the Japanese government, the U.S. Military and the U.S. government have a responsibility under their respective laws to not harm or destroy the environment of Henoko and Oura Bay.

Although preliminary environmental works at Henoko commenced in July 2014, administrative and legal mechanisms under the NHPA and the MMC remain available and significant environmental destruction can still be avoided.

We Okinawan citizens therefore call upon the Government of the United States, through the elected representatives of the American people gathered in Congress, to ensure the following steps be taken in accordance with U.S. laws and procedures.

1) The DoD undertakes an appropriate and sufficient "take into account" process as ordered by the Court under the NHPA. To do so would presumably require referral to an impartial, scientific, international panel, which should include representatives of Okinawan civil society. That panel would have to consider evidence on the presence of dugong in Oura Bay and the compatibility of such presence with the uses to which the Marine Corps would intend to subject the Bay should construction go ahead. *In camera* proceedings by a

government appointed commission do not qualify as “appropriate” and “sufficient.”

2) The US Marine Mammal Commission reviews and comments on the DoD’s analysis.

3) Congressional hearings take up environmental issues in the Henoko plan.

4) Pending satisfactory resolution of the above three matters, the Government of the United States should call upon the Government of Japan to suspend base construction works at Henoko.



Nago Mayor Inamine Addresses Henoko Beach Protest Meeting, September 20, 2014 (photograph: Hideki Yoshikawa)

Author

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Related article

The Economist, [A Weak Link in an Island Chain](#)

Notes

¹ See, for example, Gavan McCormack (introduced and commented), “Okinawa Facing a Long, Hot Summer,” (June 9, 2014) and “Okinawa’s ‘Darkest Year’,” (July 28, 2014) and my own (Yoshikawa) “[Urgent Situation at Okinawa’s Henoko and Oura Bay: Base Construction Started on Camp Schwab](#),” July 8, 2014.

² Emma Chanlett-Avery and Ian E. Rinehart *The U.S. Military Presence in Okinawa and the Futenma Base Controversy*, Congressional Research Service, August 14, 2014. (updating previous report dated August 3, 2012, with the same title).

³ “[Abe administration signals future reign of terror in Henoko](#),” editorial, *Ryukyu shimpo* (in English), August 18, 2014.

⁴ See the [SACO Final Report](#) December 2, 1996.

⁵ See [the official letters](#) exchanged in 1999 between Governor Inamine Keiichi, Nago Mayor Kishimoto Tateo and the Japanese government.

⁶ *U.S. and Japan Roadmap for Realignment Implementation*, May 2006.

⁷ “Tokyo Steamrolling U.S. base plan ahead of Okinawa governor race,” *Asahi shimbun*, August 15, 2014.

- ⁸ Jon Mitchell, “Thousands march on Henoko base site” *Japan Times*, 23 August 2014.
- ⁹ “Kaiho henoko kougi no gonin kousokushi kao satsuei [Japanese coast guard captured and photographed five protesters in Henoko]” *Okinawa Times*, September 13, 2014.
- ¹⁰ “Japanese coast guard officers should not use brute force against Henoko protesters,” *Ryukyu shimpo* (in English), September 12, 2014.
- ¹¹ “Yoron chosa henoko chushi hachiju pasento isetsu kyoko hanpatsu hirogaru [Public Opinion Polls: With the government’s heavy handed approaches, 80 percent oppose the Henoko plan], *Ryukyu shimpo*, August 26, 2014.
- ¹² See the Nature Conservation Society Japan’s Comments on the final EIS for the FRF [here](#).
- ¹³ See “Futenma hikojo daitaishisetsu no asesu setsumeikai ni sankashite [Notes on Participation in Public Hearing on Draft Environmental Impact Statement for the FRF]” by Yasuo Shimazu.
- ¹⁴ “Governor’s Comments” to the Defense Bureau’s Environmental Impact Statement, February 2012.
- ¹⁵ See *Futenma Replacement Facility Construction Project Final Environmental Impact Statement Abstract* prepared by the Okinawa Defense Bureau and the Ministry of Defense.
- ¹⁶ From May to mid-July 2014, the Nature Conservation Society of Japan (NACS-J) and Team Zan of the Association to Protect the Northernmost Dugong conducted surveys and found more than 110 dugong feeding trails in the planned base construction site. See [the press release](#) (n.d., August 2014?).
- ¹⁷ *Schwab (H23) suiki seibutsu to chousa houkokusho* [Report on Schwab Water Area Creatures] by the Okinawa Defense Bureau and IDEA Consultants, INC. 2013.
- ¹⁸ “Extra Edition: Okinawa Governor approves Henoko landfill for relocation of U.S. Futenma base” *Ryukyu shimpo*, 28 December 2013.
- ¹⁹ See [this report](#) by Citizens’ Network for Biodiversity in Okinawa, June 9, 2014.
- ²⁰ See Okinawa Prefectural Government’s “Shizen kannkyou no hozon ni kansuru shishin [Guidelines on the Conservation of the Natural Environment]”.
- ²¹ See [this letter of request](#) sent by Citizens’ Network for Biodiversity in Okinawa and other NGOs to the Invasive Species Specialist Group, International Union for Conservation of Nature.
- ²² For the Court’s decision see [here](#).
- ²³ See *Center for Biological Diversity, et al., Plaintiff(s), vs. Leon Panetta, Secretary of Defense, et al., Defendant(s). Case3:03-cv-04350-MHP Document147*. The chronology of the case is summarized in the First Supplemental Complaint submitted by the Plaintiffs. See the [First Supplemental Complaint](#).
- ²⁴ See [Exhibit 1 U.S. Marine Corps Recommended Findings April 2014](#).
- ²⁵ In July 2009, at the direction of the San Francisco court, the US Marine Corps appointed a group of experts – an ethnographer, an archaeologist, archival researchers, and a marine biologist – to investigate the cultural significance of the dugong. The Corps then relied on that report, sometimes known as “Welch 2010,” in reaching its conclusion that the base project “will have no adverse effect on the dugong.” However, the Corps’ reluctance to make the findings public is enough to rouse suspicions that that may not be so. (Exhibit 1, *ibid.*)
- ²⁶ “Urgent Situation at Okinawa’s Henoko and

Oura Bay: Base Construction Started on Camp Schwab,” July 8, 2014.

²⁷ See the *Supplemental Complaint*.

²⁸ See for example “Kyosei chakko ni tachihadakaru henoko no jyugon soshou

[“Dugong lawsuit” confronts the start of base construction at Henoko],” *Tokyo shimbun*, August 28 2014.

²⁹ See the *Marine Mammal Commission Annual Report to Congress 2009*.