

## **Japanese Government, Chairing Conference for Environment, might file an appeal to the ‘Revive the Ariake Sea!!’ Court Case**

“Revive the Ariake Sea” Court Case Associations Plaintiffs, Lawyers and Supporters

It was reported in local media that the Government of Japan is preparing to file an appeal to the court against the decision of the Saga District Court. This is against the commitment of the Government of Japan to build the country for the environment. It is a lawsuit to save the ecosystem and fisheries of the Isahaya Bay and the outer Ariake Sea. The ecosystem and the fishermen in the Ariake Sea are at stake and there is not much time left for them. Filing the appeal to the higher court will further delay action in accordance with the decision, and it is to burden the ecosystem and the fishermen for several years more. We, the associations of plaintiffs and lawyers and supporters, would like the media of the world to take note on this deceitful action of the Japanese Government.

Saga District Court handed out a decision in the “Revive the Ariake Sea” lawsuit being brought by 2,533 fishermen and citizens around the Ariake Sea that calls for the dike built for the Isahaya Bay Land Reclamation Project to be removed, or for gates that was closed 15 years ago in the dike to be opened. The court handed down a landmark decision that ordered the government to open the gates within 3 years of the decision, and thereafter to keep them open for 5 years.

The fishermen have been successful, with the help of scientists, citizens and lawyers, in revealing mechanisms of the impact of reclamation on abnormalities in the Ariake Sea. The decisions so far of the court and the Environmental Dispute Coordinating Commission all admitted some impacts but pointed out the lack of scientifically exact evidence.

The court ordered the Ministry of Agriculture, Forestry, and Fisheries to open the gates to survey evidence whether the Reclamation Project is the cause of the impact on the Isahaya Bay and the Ariake Sea. The court ordered to the ministry as a responsibility of the proponent of the project since it will be impossible for individuals to give precise evidence.

We hope the media of the world to take note of this issue and appeal this to the people of the world that are interested in the result and outcome of the G8 Conference.

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[Supporting Material]

Statement on opening gates in the Isahaya Bay Land Reclamation Project dike

## Historic Saga District Court Ruling: Open Gates in the Isahaya Dike Now to Support Fishing and Farming

29 June, 2008

“Revive the Ariake Sea” Court Case Lawyers’ Association

On June 27th, the Saga District Court handed down its decision in the “Revive the Ariake Sea” lawsuit being brought by 2,533 fishermen and citizens around the Ariake Sea that calls for the dike built for the Isahaya Bay Land Reclamation Project to be removed, or for gates in the dike to be opened. The court handed down a landmark decision that ordered the government to open the gates within 3 years of the decision, and thereafter to keep them open for 5 years.

The Isahaya Land Reclamation Project has given rise to severe environmental degradation and damage to fisheries, in Isahaya Bay as soon as the project started construction, and in the Ariake Sea as a whole following closure of the dike across Isahaya Bay on 14 April 1997. Damage to the environment has been both serious and widespread throughout the Ariake Sea, so much so that the damage was called the Ariake Disaster and the final closing of the Isahaya dike is still being referred to as “the guillotine” that cuts off the neck of Isahaya Bay that supported innumerable lives supported in the Bay.

In view of the seriousness of several aspects of the Ariake Disaster suffered from the Isahaya Land Reclamation Project, it can be considered the worst case of environmental damage in Japan’s history. First, the natural environment destroyed was an extremely valuable area of large-scale muddy tidal flats and shoals that was important on an international level; second, the damage extended to the entire Ariake Sea, including parts of four prefectures (Nagasaki, Saga, Fukuoka and Kumamoto); and third, it has resulted in serious stagnation of Ariake Sea fisheries, leading fishermen suffering adverse circumstances to go bankrupt or even commit suicide, resulting also in wholesale destruction of local fishing communities.

The Isahaya Land Reclamation Project, including justifications for its necessity, was widely criticized from its planning phase. The Isahaya Land Reclamation Project’s role in causing ecological change in the Ariake Sea was pointed to by fishermen based on their daily observations of their familiar fishing grounds, and many researchers published results of scientific surveys that affirmed this.

In this context, the national government was forced to make an effort to elucidate the causes for ecological change in the Ariake Sea, and had to organize the so-called Third-party Committee on Laver Seaweed. As the results of surveys commissioned by this committee, the Third-party Committee concluded, “The Isahaya Bay Land Reclamation Project has caused changes in tidal currents and sediment loads, important environmental factors, and it can be assumed that it has had impacts on the environment not only of Isahaya Bay itself but also on the Ariake Sea as a whole.” It also proposed that, for further clarification, short-, mid- and long-term surveys be carried out with gates in the dike opened.

However, despite the expectations of fishermen and many others, the national government only carried out short-term open-gate surveys, which were moreover significantly smaller in scale than those proposed by the Third-party Committee, and it deliberately deferred carrying out the main mid- and long-term surveys.

This resulted in greater cumulative damage to fisheries, and aggravated the conflict between the national government and fishermen calling for a complete re-examination of the land reclamation project and restoration of the Ariake Sea.

The present decision by the Saga District Court strongly censures the national government for evading its responsibility to carry out the mid- and long-term surveys, saying that "It would not be an overstatement to say that this is indistinguishable from obstructing the procurement of evidence." In addition, it orders the government to open gates in the dike, giving it 3 years from the date of the court order to undertake the necessary preparations, and further to keep the gates open for the 5 years deemed necessary to undertake the mid- and long-term surveys. It adds that, "This court feels compelled to request that this decision will afford the government an opportunity to speedily implement the mid- and long-term surveys, and based on the survey results, to take appropriate measures." It is unusual for a court to add this type of request.

The government should respect this unusual request from the judiciary branch, and sincerely carry it out to the letter, "speedily" opening the gates. It should not further put off resolution of the conflict by filing a nuisance appeal.

At present, an immense sum of the taxpayers' money is being spent on sand capping and other restoration work in the Ariake Sea. However, without the mid- to long-range open gate surveys needed to determine the cause of the problems, such remedies quite naturally have had little effect so far. Undertaking restoration work in this fashion is being criticized as merely throwing good money after bad.

Fishermen now find themselves in a position of even greater urgency as damage accumulates over the years. Putting off measures that can deal with the problem until after the fishery has been completely ruined and there is no longer anybody willing to fish does not even bear thinking about.

With respect to the agriculture that has already commenced on the reclaimed land in Isahaya Bay, we naturally do not condone forcing the sacrifice of the 41 agricultural enterprises that are now farming this land for the sake of relieving the fishermen by opening the gates in the dike. On the contrary, opening the dikes should serve them well as an opportunity for securing sources of agricultural water other than the project's reservoir. Such alternative water sources are an unavoidable necessity for these farming enterprises.

Water quality in the reservoir was expected to meet environmental standards for agricultural water by the end of project construction, but in fact it has not met these standards even though farming on the reclaimed land has begun. In this respect, on the same day the Saga District Court handed down its decision, the Ministry of the Environment published an opinion statement on a follow-up report on the Isahaya Bay Land Reclamation Project Environmental Impact Assessment Review. This statement makes some stern comments on how well the Follow-up Report assesses the need for more dependable measures to secure water quality and the potential impacts of releasing water from the dike into the adjacent marine area. In fact, there is little hope that reservoir water quality will be able to dependably meet environmental standards. The example of Kojima Bay in Okayama prefecture clearly illustrates the danger that a huge sum of the taxpayer's money will be spent over the course of many years without water quality ever meeting standards.

In addition, the abnormal *aoko* algal blooms now present in the Isahaya reservoir are toxic, and so from the viewpoint of food safety as well, it is not a good idea to use water from the reservoir for agriculture.

Therefore, to make new efforts to secure possible agricultural water sources will be better policy for managing agriculture on the reclaimed land than spending large amounts of tax money on measures that are not likely to improve water quality in the reservoir, and thus will also lead to truly successful agricultural management of the reclaimed land.

Fishermen and citizens have already proposed a number of possible sources of agricultural water independent of the reservoir, including re-use of treated water from the Isahaya Central Water Purification Center (sewage treatment facility) located right next to the reclaimed agricultural land, using surplus water from the Nitanda River or other local rivers, constructing a barrage in the estuary of the Honmyo River, building irrigation ponds, etc. Re-using water discharged from a sewage treatment facility is a tactic already being applied in Kumamoto City

and elsewhere around the country.

There are sufficient possible alternatives to the reservoir for agricultural water.

Also, with respect to safe methods for opening the gates in the dike, researchers have proposed a “sub-surface opening” (“submergible opening”) method. With respect to natural disaster prevention, the present Saga Court decision points out that “Alternatives to the present disaster prevention functions exhibited by the dike in question could be secured by undertaking new construction.”

For these reasons, there should remain no obstacles to opening gates in the dike; on the contrary, securing alternate agricultural water and opening the gates is the only way healthy farming and fishing can both be achieved.

Up until now, large public works projects in Japan have been thought to be unstoppable once they are under way, and the Isahaya Bay Land Reclamation Project is a typical example of an “unstoppable” public works project. The judiciary has now issued a court order to open gates in the Isahaya dike, which amounts to a call for completely re-examining the project even after its completion.

We sincerely call for the dikes to be opened in accordance with the court’s ruling in order to relieve the damage suffered by fishermen of the Ariake Sea, to take a certain and realistic step towards restoration of the Ariake Sea environment, and at the same time to create conditions in which agriculturalists can securely work on the reclaimed land at Isahaya. We are convinced that this will not only profit the fishermen and farmers of the area, but also have incalculable significance as a signal shift in the way Japan pursues public works project towards something more appropriate to our present “century of the environment.”

Every media organization that has reported the present decision of the Saga District Court has supported that decision. The voice of the whole nation is now calling for the gates to be opened. We strongly appeal to the Government of Japan to finally stop, muster the courage to look back and, eschewing fruitless pride, speedily open the gates in the Isahaya dike.

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[Note: This is a statement issued by lawyers’ team who are also member of the “Revive the Ariake Sea” Court Case Association of Plaintiffs, Lawyers and Supporters]