

February 2012 LOSC Brown Bag

Department of the Interior International Programs
and Legal Issues

Part IV. National Park Service

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*National Park Service
international programs and legal issues
presentation outline*

**All errors and typos are mine.*

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NPS Contacts for International Program and National Register of Historic Places

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NHPA Addendum Sections 401 and 402:

two very different provisions with a shared origin. Both arise from the Convention Concerning the Protection of the World Cultural and Natural Heritage (World Heritage Convention)

- *Section 401* provides for US participation in the World Heritage Sites program.
- Like the National Register of Historic Places, World Heritage Sites meet criteria and are inscribed on a list.
- *Section 402* provides for Federal agencies to take into account the effects of their undertakings on foreign properties.
- Like the NHPA Section 106 process, this taking into account must occur before decisions are made.

A. World Heritage Convention of 1972 and the United Nations Educational, Scientific and Cultural Organization (UNESCO)

73.1 Purpose. The purpose of these rules is to set forth the policies and procedures that the Department of the Interior, through the National Park Service (NPS), uses to direct and coordinate U.S. participation ... which was ratified by the Senate on October 26, 1973. ...

The purpose of the World Heritage Convention is to enhance worldwide understanding and appreciation of heritage conservation, and to recognize and preserve natural and cultural properties throughout the world that have outstanding universal value to mankind.

NPS regulations, 36 CFR Part 73 (1982, amended 1997, 2001)

Facts about the Convention and the Program

- US was first country to ratify the Convention (1973)
- It has been ratified by more countries than any other UN treaty: 187 parties as of July 2011
- It was proposed in 1972 by President Nixon
- Sites are selected from Tentative Lists submitted periodically by member countries, most recent US Tentative List was submitted in 2008
- The World Heritage List has 936 sites worldwide, in 153 countries
- 21 sites are in US, mostly publicly owned
- Sites can be for cultural values, natural values, and both (mixed)
- There is a List of World Heritage in Danger: 35 sites in 28 countries; can only be listed if on World Heritage List
- Only US site on Danger List: Everglades National Park, removed by US and then added back by US
- Most recent US addition, a mixed site, inscribed July 30, 2010

Papahōnaumokuākea National Monument

*NHPA Addendum Section 401 (1980) // 16 USC 470a-1
World Heritage Convention*

(a) The Secretary of the Interior shall direct and coordinate United States participation in the Convention Concerning the Protection of the World Cultural and Natural Heritage, approved by the Senate on October 26, 1973, in cooperation with the Secretary of State, the Smithsonian Institution, and the Advisory Council on Historic Preservation. Whenever possible, expenditures incurred in carrying out activities in cooperation with other nations and international organizations shall be paid for in such excess currency of the country or area where the expense is incurred as may be available to the United States.

(b) The Secretary of the Interior shall periodically nominate properties he determines are of international significance to the World Heritage Committee on behalf of the United States. No property may so be nominated unless it has previously been determined to be of national significance. Each such nomination shall include evidence of such legal protections as may be necessary to ensure preservation of the property and its environment (including restrictive covenants, easements, or other forms of protection). Before making any such nomination, the Secretary shall notify the Committee on Natural Resources of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate.

Legislative restrictions activated in October 2011

The US announced that as a result of UNESCO voting to admit Palestine as a member, the US could not make financial contributions to UNESCO pursuant to two longstanding legislative restrictions, although the US would maintain its membership and participation.

Estimates of the US contribution to UNESCO that was withheld range from \$60-\$80 million; 22% of UNESCO's annual budget.

- Pub. L. 103-236, Title IV, 108 Stat. 454 (April 30, 1994) no funding if full membership granted to non-state
- Pub. L. 101-246, Title IV, 104 Stat. 70 (February 16, 1990) no funding if PLO given same standing as state, although State can reprogram funds

Restrictions now, and then...

- These legislative restrictions bar current US funding for UNESCO and the World Heritage Program, but not US participation.
- Later this month, the World Heritage 25th Anniversary Celebration is being held in New Mexico at the Aztec Ruins National Monument, administered by NPS as part of Chaco Canyon NHP, a World Heritage Site inscribed in 1987.
- From 1984 to 2003, the US withdrew itself from UNESCO and the World Heritage Program, but continued to provide annual voluntary contributions until 2000.
- In 2004, the US again became an active participant.

B. *National Historic Preservation Act – Okinawa dugong litigation Authorities*

NHPA Addendum Section 402 (1980) // 16 USC 470a-2 Federal undertakings outside US

- Prior to the approval of any Federal undertaking outside the United States which may directly and adversely affect a property which is on the World Heritage List or on the applicable country's equivalent of the National Register, the head of a Federal agency having direct or indirect jurisdiction over such undertaking shall take into account the effect of the undertaking on such property for purposes of avoiding or mitigating any adverse effects.

“Secretary of the Interior’s Standards and Guidelines for Federal Agency Historic Preservation Programs Pursuant to the National Historic Preservation Act,” April 24, 1998 *Federal Register* at page 20504.

Standard 4, (m) through (o), Foreign Historic Properties

- (m) consider effects
- (n) qualified personnel
- (o) in consultation with host country

NHPA Section 110 // 16 USC 470h-2
Federal Agency Historic Preservation Programs

Comparing Section 402 to Section 106

16 USC 470a-2 Federal undertakings outside US // 16 USC 470f Advisory Council on Historic Preservation comment on Federal undertakings

- **Section 402** Prior to the approval of any Federal undertaking outside the United States which may directly and adversely affect a property which is on the World Heritage List or on the applicable country's equivalent of the National Register, the head of a Federal agency having direct or indirect jurisdiction over such undertaking shall take into account the effect of the undertaking on such property for purposes of avoiding or mitigating any adverse effects.
- **Section 106** The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State
- **Section 106 con't**
- and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking.

*B. National Historic Preservation Act – Okinawa dugong
litigation*

The Okinawa dugong cases

Okinawa Dugong v. Gates

- 543 F. Supp. 2d 1082,
(N.D. Ca. 2008)

*Okinawa Dugong v.
Rumsfeld*

- 2005 U.S. Dist. LEXIS
3123 (N.D. Ca. 2005)