



## Background Research for NHPA Section 402 and 1954 Hague Convention

Project # 09-422

### Background:

Section 402 of the NHPA involves international federal activities affecting historic properties. Section 402 is the subject of a recent court case involving DoD's planned actions in Japan and their potential adverse effects to historic properties (specifically, a marine mammal [Dugong] considered "historic" by the Government of Japan). This is the first time Section 402 has been the subject of a court case. Although a final court order has not been handed down, it is important that the DoD understand the potential ramifications of Section 402's application.

The 1954 Convention on the Protection of Cultural Property During Times of Armed Conflict was ratified by the US in March 2009. DoD impacts from the US implementation of the provisions are unknown. More information is needed to "cross-walk" existing policies and procedures against certain provisions of the convention, specifically the first and second protocols.

### Objective:

1. Compile information relevant to DoD operations as effected by the court decision from *Dugong v. Gates*.
2. Compile information relevant to DoD operations as effected by the ratification of the 1954 Hague Convention for the Protection of Cultural Property During Times of Armed Conflict

### Summary of Approach:

1. Work with DFPO and others to locate all available information related to NHPA Sec. 402 and the '54 Hague Convention.
2. Compile the information into a bibliography
3. Compile an analysis document that presents all collected information and outlines possible data gaps and inaccuracies
4. Format the bibliography for distribution to the DoD CR field in a report and the DENIX website
5. Present a summary of the process and the analysis document to the DoD HPWG and Archaeology Committee; edit findings base on the presentation and discussions.
6. Submit final report of efforts prior to departure from OSD.

### Benefit:

A report outlining an improved understanding of DoD's obligations under Section 402 and the '54 Hague Convention will assist the military services in complying with the NHPA and the provisions of the convention. This improved compliance will also support a foundation upon which the military services will be able to build strong CR management programs overseas. The information collected, reviewed, analyzed, and disseminated under this project will be provided to the services for their use in overseas compliance. Additionally, the research conducted under this project will be made available to the Director, consideration and possible inclusion in the OSD policy documents, such as the new Cultural Resources Management DODI and the OEBGD.

### Accomplishments:

- Compiled background information regarding the *Dugong v. Gates* case
- Created spreadsheet of countries relevant to DoD operations, comparing their respective historic preservation laws
- Used data to provide analysis of case for future DoD operations
- Created bibliography of relevant sources for Section 402 and *Dugong v. Gates* decision
- Compiled information on 1954 Hague Convention
- Used gathered information to provide analysis of DoD's role under the Hague Convention
- Created bibliography of relevant sources regarding the 1954 Hague Convention

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