

## Save the Okinawa Dugong

### Background

The construction of a new US military facility off the coast of the Japanese island of Okinawa threatens to harm the last remaining members of the Okinawa dugong, a genetically distinct species of marine mammal. The Okinawa dugong is significant in Okinawan culture and it is included in Japan's official list of protected cultural properties.



### Case Summary

*Dugong v. Gates*, 453 F.Supp.2d 1082 (N.D. Cal. 2008)

In 2003 a coalition of US and Japanese organizations and individuals, represented by Earthjustice, filed a lawsuit in the United States District Court for the Northern District of California seeking to compel the US Department of Defense to assess the impacts of constructing a sea-based airbase off the coast of Okinawa, Japan on the last remaining feeding grounds of the endangered Okinawa dugong. The lawsuit alleged that the Defense Department's involvement in the construction of the facility violates the National Historic Preservation Act ("NHPA"), which requires that US agencies take certain actions "[p]rior to the approval of any federal undertaking outside the United States which may directly and adversely affect a property which is on ... the applicable country's equivalent of the National Register." 16 U.S.C. § 470a-2.

In March 2005, the court denied the Defense Department's motion to dismiss, holding that the NHPA requires US agencies to assess the impacts of their overseas activities on the officially recognized cultural properties of foreign governments. On January 25, 2008, the district court granted the Plaintiffs' motion for summary judgment, holding that the Defense Department's violated the National Historic Preservation Act by failing to take into account the impact of the project on the Okinawa dugong. The court upheld the law's applicability to actions abroad and found that the law requires not only identification, but also mitigation, of adverse impacts to heritage sites abroad caused by U.S. agency actions.



### Current Status

On April 23, 2008, the Defense Department submitted a plan for compliance with the requirements of the law, and Plaintiffs filed a response. The parties now await a final decision from the court regarding compliance.

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