

Animals and the United States National Register of Historic Places

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Abstract

Can culturally significant animals—as well as archaeological sites, old buildings, and places of cultural importance to an American Indian tribe or other community, be eligible for the U.S. National Register of Historic Places—and hence eligible for special consideration in project planning by federal agencies? Two recent cases have raised this seldom-if-ever-before considered question. Although several answers are viable, I think the most efficient approach is to consider animals as possible elements that contribute to the eligibility of places—districts, sites, buildings, structures, or objects—for the National Register of Historic Places.

Introduction

In two recent instances, questions have come to my attention about the relevance of animals to the United States National Register of Historic Places, and vice-versa. I think this issue—which I confess I had not realized was an issue until it came up in these cases—merits some discussion, particularly among cultural anthropologists who may apply their skills to evaluating the National Register eligibility of places and things valued by living communities. We are fairly often asked to perform such evaluations because eligibility for the National Register triggers legal requirements for community and official consultation during the planning of federal agency actions like construction projects and the issuance of licenses. Properties are defined in regulation as “districts, sites, buildings, structures, and objects” (36 Code of Federal Regulations 60.4) and are determined eligible or ineligible for the National Register through consultation between federal agencies and state or tribal historic preservation officers. Or in contested cases, the keeper of the National Register, who is the U.S. National Park Service, makes the determination of eligibility.

Case One: The Klamath, A River in which Salmon Swim

One of the cases involves a river valued for its spawning salmon coming in from the sea, the Klamath River of Oregon and California. Salmon are tremendously important to the cultures and economies of the American Indian tribes that live along the river, and are deeply wrapped up in their spiritual lives—as are other fish and wildlife in and around the river, and

indeed the river itself. In the opinion of the tribes, and their cultural resource consultant (the author), the river is eligible for the National Register of Historic Places as a traditional cultural property under National Register criterion A (36 Code of Federal Regulations 60.4(a)). We argue that the fish, other wildlife, and plants native to the river, and particularly the salmon, are *contributing elements*, that is, elements that contribute to the river’s significance, because without them the river’s cultural integrity would be compromised (King 2004). Rather missing the point, the proponent of a project that affects the river has asserted that its effects on the river’s fish need not be reviewed under Section 106 of the National Historic Preservation Act of 1966 (NHPA), as amended, because “animals are not eligible for the National Register.” This case is currently under review before the Federal Energy Regulatory Commission, but all involved appear currently to accept, if grudgingly, the tribal argument that the river as a whole, with its fish, is eligible for the National Register.

Case Two: The Dugongs of Okinawa

The other case, argued before the U.S. District Court for the Northern District of California in San Francisco, is rather more complex. It involves application of Section 402 of the National Historic Preservation Act, which requires federal agencies to consider the effects of their actions on properties listed in a host country’s *equivalent* of the National Register (16 United States Code 470a-2)². The plaintiffs in the case, referred to as *Okinawa Dugong v. Rumsfeld*, argued that the U.S. Navy violated Section 402 by not considering the effects of a project in

which it is involved on Okinawa on a population of marine mammals that is listed on Japan's *cultural heritage registry*.

At issue, of course, was the equivalence of Japan's registry to the U.S. National Register of Historic Places. On March 2, 2005, District Court Judge Marilyn Hall Patel denied a motion by the U.S. Department of Defense to dismiss the lawsuit, which challenges plans to construct a new airbase in a bay on the eastern coast of Okinawa. The continuing concern is that the airbase would be built over a coral reef that comprises the remaining habitat of the endangered Okinawa dugong, a marine mammal that is a cultural icon of the Okinawan people and hence is listed in Japan's cultural heritage registry.

Supporters of the marine mammals, and their cultural resource consultant (the author), said the two lists are equivalent—that both

were designed to identify aspects of the human environment to which their respective societies attach historical and cultural significance, but achieved this purpose in slightly different ways. We argued that to demand that every nation's register be a mirror image of the

National Register would make Section 402 meaningless. We suggested

that if the marine mammals were in the United States, the National Register might very well recognize their cultural significance by listing the bay within which they make their home. The agency argued that the registers are not equivalent because "animals are not eligible for the National Register."

In her 31-page decision, Judge Patel essentially found for the plaintiffs (*Dugong v. Rumsfeld 2005*).

I do not want to dwell on the particulars of these cases. Instead, I would like to work through the question of whether and how animals—living animals, that is, not animal remains in archaeological sites or animals represented in art and

architecture—can in any sense be eligible for the National Register.

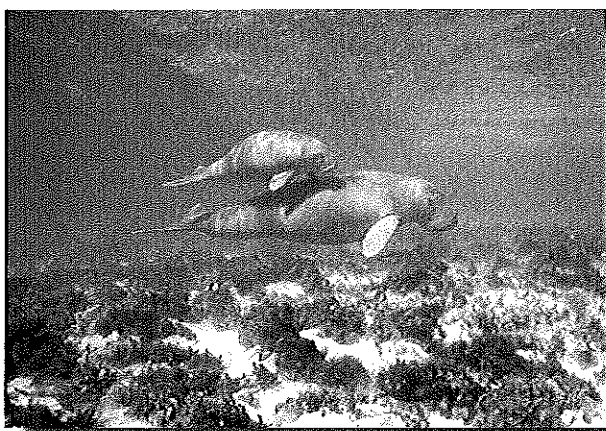
A Cow for the Keeper

Let us begin by accepting the obvious fact that the National Register of Historic Places is, by name, a register of *places*. A *place* in National Register parlance can be a *district*, a *site*, a *building*, a *structure*, or an *object*. We can engage in clever arguments about whether an animal might fit into one or more of these categories. Surely an animal is a *structure* made up of bone, flesh, sinew and skin; surely a whole herd of them comprises a *district*. But, we can counter-argue, they are not made by human beings. But, we can counter-counter argue, neither are many landscapes, but natural landscapes can still be eligible for the National Register because of events in history with which they are associated, the cultural freight they carry. The court in *Dugong v. Rumsfeld*

in fact concluded that in its view, an animal could meet the National Register definition of an *object*. The court pointed out that at least one tree had been regarded as eligible for the National Register, and suggested that what goes for a plant could go for an animal. But. ...

Let's skip all that and accept as given that if I were to propose a cow

as eligible for the National Register, the keeper of the National Register would not accept it. This would be so even if it were the first artificially cloned five-legged cow, carried the reincarnated soul of Teddy Roosevelt, was over 50 years old, and had single-hoofedly apprehended Osama bin Laden. For good or ill, and unlike people in some other countries, we do not nominate animals to the National Register. What we *do*, I believe—though we do not usually give it much thought—is regard animals as elements that contribute to those historic properties with which they're associated, and hence as aspects of such properties that should be considered in planning.



Okinawa dugongs similar to this pair (which are actually Australian dugongs) are the subjects of litigation in *Dugong vs. Rumsfeld*. Courtesy of Great Barrier Reef Marine Park Authority.

Contributing Elements and Their Kin

What is a *contributing element*? Although the term is widely used in an informal sort of way, I can find no published National Register definition. A search of the Internet on September 15, 2004, using the Google search engine for the terms *contributing element* and *National Register* yielded 608 combinations of the terms. In most cases, they involved sites and structures thought to contribute to National Register-eligible districts in the course of Section 106 review, tax credit certification, or actions by local historic district commissions.

The National Register does define a *contributing resource*—specifically with reference to historic districts—as “a building, site, structure, or object adding to the historic significance of a property” (National Register of Historic Places 1997). If we allow it, following this definition would take us back into debating whether a cow is a structure, or perhaps an object. But to generalize, it appears that a *contributing resource* in a historic district is an element of the district that helps make it the historical, architectural, or cultural entity it is. Various National Register bulletins provide direction that is generally consistent with this interpretation.

National Register Bulletin 15, How to Apply the National Register Criteria for Evaluation (Andrus and Shrimpton 2002) refers repeatedly to *important features* in discussing property integrity; this seems to mean the same thing as *contributing resource*, but is applied to a broader range of phenomena. Feature types alluded to in the bulletin include topographic features, vegetation, and specific elements of a building’s exterior or interior.

National Register Bulletin 16A, How to Complete the National Register Nomination Form (National Register of Historic Places 1997), directs nominators to list the *specific features* of a building, giving as examples porches, verandas, porticos, stoops, windows, doors, chimneys, and dormers. It also draws attention to *important decorative elements* like finials, pilasters, barge-boards, brackets, half-timbering, sculptural relief, balustrades, corbelling, cartouches, and murals or mosaics, and to interior features such as floor plans, stairways, functions of rooms, spatial

relationships, wainscoting, flooring, paneling, beams, vaulting, architraves, moldings, and chimney-pieces. With respect to historic districts, it directs the nominator to count contributing buildings, sites, structures, and objects. Something that contributes to a district

adds to the historic associations, historic architectural qualities, or archeological values for which a property is significant ... [because it either is eligible for the National Register in its own right or because] it was present during the period of significance, relates to the documented significance of the property, and possesses historic integrity or is capable of yielding important information about the period (National Register of Historic Places 1997).

National Register Bulletin 40, Guidelines for Identifying, Evaluating, and Registering Battlefields says that

contributing resources may include all buildings extant at the time of the battle (including buildings that served as headquarters, hospitals, or defensive positions); structures such as the original road network on the battlefield; stone walls or earthworks used as defensive positions, or bridges over important waterways, sites such as burial sites, or objects such as statues and markers (Andrus 1999).

National Register Bulletin 30, Guidelines for Evaluating and Documenting Rural Historic Landscapes (McClelland et al. 1999), discusses how a landscape displays *characteristics* that define its significance. Some of these characteristics are general influences on the landscape, such as *response to the natural environment* and *cultural traditions*, but others are more specific *components*, such as circulation networks, boundary demarcations, buildings, structures, and objects whether isolated or in clusters, archeological sites, and small-scale elements like footbridges and signs. Most relevant to the question of animals is this bulletin’s treatment of *vegetation related to land use*, also listed as a *component* that may help define a landscape’s character:

Various types of vegetation bear a direct relationship to long-established patterns of land use. Vegetation includes not only crops, trees, or shrubs planted for agricultural and ornamental purposes, but also trees that have grown up incidentally along fence lines, beside roads, or in abandoned fields. Vegetation may include indigenous, naturalized, and introduced species (McClelland et al. 1999).

While many features change over time, vegetation is, perhaps, the most dynamic. It grows and changes with time, whether or not people care for it. Certain functional or ornamental plantings, such as wheat or peonies, may be evident only during selected seasons. Each species has a unique pattern of growth and life span, making the presence of historic specimens questionable or unlikely in many cases. Current vegetation may differ from historic vegetation, suggesting past uses of the land (McClelland et al. 1999).

So in the case of a landscape, at least, living things can clearly be components that contribute to a property's character.

The relative importance of a property's different parts is often an issue in building maintenance and rehabilitation. Part II of the form used to apply for certification of a rehabilitation project for federal income tax credits requires that individual elements of a building to be rehabilitated be identified and described, including information about their relationship to the building (National Park Service n.d.). The applicant goes on to describe whether and how each such element will be modified by the rehabilitation work. The reason for this detailed treatment is not made very obvious by the instructions for completing the application form, but *Preservation Brief 32, Making Historic Properties Accessible* indicates that the rationale is to preserve that which contributes to the building's character. In this bulletin, Thomas Jester and Sharon Park (1993) emphasize the need to

identify which *character defining features and spaces* [italics mine] must be protected whenever any changes are anticipated ... [such as] ... construction materials, the form and style

of the property, the principal elevations, the major architectural or landscape features, and the principal public spaces.

Charles Birnbaum and Christine Capella Peters, in the *Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes* (1996), also refer to *character-defining features*, defining such a feature as any "prominent or distinctive aspect, quality, or characteristic of a cultural landscape that contributes significantly to its physical character." Although the examples they go on to provide are all relatively static, and in some cases non-living, namely, "land use patterns, vegetation, furnishings, decorative details and materials," they define the term *cultural landscape* itself as

a geographic area (including both cultural and natural resources and the *wildlife or domestic animals* [italics mine] therein) associated with a historic event, activity, or person or exhibiting other cultural or aesthetic values (Birnbaum and Peters 1996:4).

In summary, then, whether the term used is *contributing element*, *contributing resource*, *character-defining feature*, *important feature*, or just *component*, it is widely recognized that some elements of a property help to define its significance, character, and integrity while others do not.

Examining my own use of the term *contributing element*, and the use of the same and similar terms by others, I think we're all talking about the same thing. Those aspects of a district, site, building, structure or object that help define its character contribute to its significance and integrity, and hence to its eligibility for the National Register. Those that do not help define the property's character do not contribute to its significance, integrity, and eligibility. We regularly discuss whether a given piece of a building, part of a site, or segment of a landscape contributes to the property's eligibility. Examples can be found occasionally in National Register nominations. More often they are found in eligibility documentation. Still more frequently they appear in rehabilitation plans and in arguments about what does and does not have to be attended to during review of project impacts. Does the elevator lobby help define the character of the court-

house? Does the disturbed 19th century component contribute to the archaeological site's research value? Does the southeast slope of the valley contribute to the character of the landscape? *Contributing element* is not always the phrase we use in identifying important parts of a property, but it is a widely used term and is as good a term as any.

Can a Cow Contribute?

So, can an animal—or a herd, pride, pod, covey, or other group of animals—contribute to the eligibility of a property? Can it help define such a property's character? The answer, I think, is obviously “yes.” Consider a historic zoo—say, the National Zoo in Washington D.C. If you took away the animals, would the National Zoo lose an important aspect of its character? Certainly. Would it become ineligible for the National Register? Probably not because it would still have historical associations and architectural qualities that would make it eligible. But would it have lost an important degree of integrity? Certainly because the animals are an important and, indeed, central feature defining the zoo's character.

The same is obviously true of a landscape in which buffalo roam or deer and antelope play. This is why the *Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes* defines the term *cultural landscape* to include *wildlife or domestic animals* (Birnbaum and Peters 1996:4). As an example, consider a bay in which a community has traditionally maintained a fishery. There are many specific features around the bay that are associated with the community's fishing practices—docks, wharfs, piers, boats, a cannery, a fish hatchery. Some of these might be eligible for the National Register in their own rights, but collectively they are the elements that contribute to—the properties that define the character of—the bay as a National Register eligible historic district. But there is another element that is crucial to the character of the district: *fish*. If the fish go away, fishing will cease and the district will lose a key aspect of its character. It will become a sort of ghost town, a museum display. It may regain vitality with the rehabilitation of its cannery as a shopping mall and the conversion of its piers into a theme park, but its char-

acter will be fundamentally changed from what it was as the living core of a fishing community. The fish are fundamental to the bay's significance. So are the fishermen, of course, but that is another topic.

This is not to say that the bay will be ineligible for the National Register if the fish all go belly-up. There are many former fishing communities that are on the National Register for their association with fishing, even though fishing is no longer very important to their existence. Cannery Row in Monterey, California is an obvious example. A place like Cannery Row can be eligible for the National Register because it evokes a past condition, but the character of such a place is very different from that of a place in which the past condition has continued into the present. Cannery Row and a living fishing community may both be eligible for the National Register, but the things we want to try to keep in one case are beyond being of concern in the other. In the case of Cannery Row, we may not be much troubled by changes in the local sardine population—the fish no longer contribute much to the Row's character. In the case of the living community, on the other hand, change in the fish population on which the community depends is a matter of serious concern to anyone who values the community's historic and cultural character. So, I think it is entirely appropriate to identify animals—as well as plants, of course—as contributing elements, or character-defining features, of a historic property, provided they actually do contribute to that property's historic or cultural character.

This conclusion may seem self-evident; indeed, it did to me until I had to think it through in connection with the cases alluded to at the beginning of this article. This is why *National Register Bulletin 38, Guidelines for Identification and Documentation of Traditional Cultural Properties*—the only bulletin with my name on it (Parker and King 1998)—does not discuss animals, or even contributing elements. It seemed self-evident that animals—just like plants, rocks, the water in a spring—could contribute to the eligibility of a traditional cultural property, provided they have something to do with that property's character.

It is true that “the National Register doesn't

list animals,” but this is a truth without meaning. The National Register doesn’t list cornices, either, or staircases, or fenestration, or stratigraphic levels in an archeological site, but all these features may contribute to the character, the significance, the integrity, and hence the eligibility of a place. So may animals, and it is as contributing elements or character-defining features that animals are appropriately included in the National Register of Historic Places.

But Why Bother?

In discussing this issue with colleagues, I’ve been asked whether I didn’t have something better to do with my time. After all, there are lots of laws protecting animals as animals, and their habitats as habitats; what good does it do to think of them in National Register terms? I think there are three reasons to do so.

First, the fact that one law applies to something doesn’t make another law inapplicable. The fact that we review project impacts under the National Environmental Policy Act of 1969, as amended (NEPA), for example, does not excuse us from considering them under the National Historic Preservation Act of 1966, as amended (NHPA), as well. An animal may be a member of an endangered species and therefore have to be considered under the Endangered Species Act of 1973 (ESA), but this does not excuse us from considering it under NEPA, or under NHPA if it has something to do with a National Register eligible property.

Second, while the consideration afforded endangered species under ESA, NEPA, and some other statutes is substantial, the consideration afforded species that *are not* particularly endangered is pretty paltry. But such plain old garden-variety species can often be of considerable cultural importance. Beef cattle aren’t endangered, but they’re pretty central to the cultural character of a cattle ranch.

Third, the interests we’re likely to be concerned about with an animal under NHPA may be quite different from those that underlie biological protection laws like the Endangered Species Act. They may even be contrary to the interests of the mainstream natural resource conservation community. The cultural significance of an animal may lie in its being hunted,

for example, while biological interests or public sympathy for cuddly critters may discourage hunting.

Remember the Makah Tribe’s taking of whales, for example (Solomon n.d.), and the Hopi use of baby eagles for ritual purposes (Revkin 2000). Tribes are not the only ones whose cultural interests in animals may not be entirely in synch with those of biologists and animal welfare aficionados. It is easy to imagine a case in which the continuing existence of a sport hunting club, intimately and historically associated with a tract of animal-rich land, might conflict with conservationists’ desires to end hunting on the same tract. Or consider the conflict between environmentalists who want to return grazing land to natural conditions and multi-generational ranchers who want to continue grazing. Desires to hunt, gather, and graze do have cultural dimensions that are often not very thoroughly considered when we look at animals only through the lens of laws like NEPA and ESA. This situation is so however one feels about the relative merits of whale hunting versus whale conservation, eaglet gathering versus eagle conservation, recreational hunting versus letting the animals live, and grazing versus natural area restoration.

Conclusion

While it is true that “the National Register does not list animals,” this does not mean that animals, and impacts on animals and their habitats, are not considered or should not be considered under NHPA. Animal populations may be culturally important elements or features of a historic property, and their presence may—by itself or in combination with other features—make a property eligible for the National Register. Cultural interests in the management of animals that contribute to a historic property’s character may coincide or conflict with those of environmentalists and other segments of the population. Particularly when dealing with rural landscapes and traditional cultural properties, where animals are likely to be involved in human use or perception of the land, the relevance of animals to National Register eligibility should be explicitly considered. Where animals are relevant to a place’s cultural significance and a

federal decision may affect them, such effects need to be addressed under Section 106 of the National Historic Preservation Act. ○

Notes

1. Thomas F. King's 1976 Ph.D. in anthropology is from the University of California at Riverside. His past experience as a federal employee in cultural resource management now serves him in his practice as a consultant, teacher, and writer currently associated with SWCA Environmental Consultants. You may contact him at tfking106@aol.com by e-mail, at 240-475-0595 by telephone, or at P.O. Box 14515, Silver Spring, Maryland (MD) 20911-4515 USA by regular mail.

2. Rather confusingly, the statute includes another section, Section 404 (16 United States Code 470x), and comprises definitions pertaining to Title IV of the National Historic Preservation Act, which created the National Center for Preservation Technology and Training of the National Park Service in Natchitoches, Louisiana.

References Cited

Andrus, Patrick W.

1999 *National Register Bulletin 40: Guidelines for Identifying, Evaluating, and Registering America's Historic Battlefields*. Revised edition. First published in 1992. Washington: National Register of Historic Places, National Park Service. U.S. Department of the Interior. Accessed on September 14, 2004, see <http://cr.nps.gov/nr/publications/bulletins/nrb40/> and see http://cr.nps.gov/nr/publications/bulletins/nrb40/nrb40_5.htm.

Andrus, Patrick W. and Rebecca H. Shrimpton
2002 *National Register Bulletin 15: How to Apply the National Register Criteria for Evaluation*. Revised edition. First published in 1990 and revised in 1991, 1995, 1995, 1997, and 2001. Washington: National Register of Historic Places, National Park Service. U.S. Department of the Interior. See <http://cr.nps.gov/nr/publications/bulletins/nrb15/> and see as accessed on September 14, 2004, http://www.cr.nps.gov/nr/publications/bulletins/nrb15/nrb15_8.htm#defining.

Birnbaum, Charles A and Christine Capella Peters
1996 *Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes*. Washington: National Park Service, U. S. Department of the Interior.

Dugong v. Rumsfeld

2005 *Okinawa Dugong (Dugong dugong); Center for Biological Diversity; Turtle Island Restoration Network; Japan Environmental Lawyers Federation; Save the Dugong Foundation; Dugong Network Okinawa; Committee Against Heliport Construction, Save Life Society; Anna Koshiishi; Takuma Higashionna; and Yoshikazu Makishi versus Donald H. Rumsfeld, in his official capacity as the Secretary of Defense; and U.S. Department of Defense; Civil Action No. C-03-4350 (MHP)*. For information on the case and its at least temporary resolution in favor of the plaintiffs, the dugongs and the equivalence of the Japanese and United States registers, see <http://www.commondreams.org/news2005/0302-08.htm>, accessed on April 18, 2006.

Jester, Thomas and Sharon Park

1993 *Preservation Brief 32, Making Historic Properties Accessible*. Washington: National Register of Historic Places, National Park Service, U.S. Department of the Interior. See, accessed on September 14, 2004, See <http://www.cr.nps.gov/tps/briefs/brief32.htm>.

King, Thomas F.

2004 *First Salmon: The Klamath Cultural Riverscape and the Klamath River Hydroelectric Project*. Hoopa, California: Klamath River Intertribal Fish and Water Commission.

McClelland, Linda Flint, J. Timothy Keller, Genevieve P. Keller, and Robert Z. Melnick

1999 *National Register Bulletin 30, Guidelines for Evaluating and Documenting Rural Historic Landscapes*. Revised edition. First published in 1989. Washington: National Register of Historic Places, National Park Service. U.S. Department of the Interior. See <http://www2.cr.nps.gov/nr/publications/bulletins/nrb30/>.

National Park Service

n.d. "Form for Certification of a Rehabilitation Project for Federal Income Tax Credits." Washington: National Park Service. U.S. Department of the Interior. See, accessed on September 14, 2004, <http://www2.cr.nps.gov/tps/tax/download/hpca-instructions.pdf>.

National Register of Historic Places

1997 *National Register Bulletin 16A: How to Complete the National Register Registration Form*. Appendix IV. Washington: National Register of Historic Places, National Park Service. U.S. Department of the Interior. See online, accessed on September 14, 2004: http://www.cr.nps.gov/nr/publications/bulletins/nrb16a/nrb16a_appendix_IV.htm and see <http://www.cr.nps.gov/nr/publications/bulletins/nrb16a/> and http://www.cr.nps.gov/nr/publications/bulletins/nrb16a/nrb16a_III.htm#description.

Parker, Patricia L. and Thomas F. King

1998 *National Register Bulletin 38, Guidelines for Evaluation and Documentation of Traditional Cultural Properties*. Second revised edition. First published in 1990 and first revised in 1992. Washington: National Register of Historic Places, National Park Service. U.S. Department of the Interior. See <http://cr.nps.gov/nr/publications/bulletins/nrb38/>.

Revkin, Andrew

2000 "U.S. Plan Would Sacrifice Baby Eagles to Hopi Ritual." *The New York Times*, October 29, 2000. Accessed September 14, 2004, see <http://www.stpt.usf.edu/~isokolov/divhopi.htm>.

Solomon, Daniel

n.d. "My Moral Dilemmas over the Makah Whale Hunt." *Loblolly Environmentalist*. See <http://faculty.salisbury.edu/~jdhatley/loblolly.htm>, accessed September 14, 2004.