

SITE: New BedfordBREAK: 9.10.OTHER: 518408**Fw: State Protocols on Unanticipated Finds**
Leann Jensen to: Cynthia Catri, ElaineT Stanley

06/13/2012 06:19 PM

From: Leann Jensen/R1/USEPA/US
To: Cynthia Catri/R1/USEPA/US@EPA, ElaineT Stanley/R1/USEPA/US@EPA

Sender	Date	Subject
Leann Jensen	06/13/2012 06:19 PM	Fw: State Protocols on Unanticipated Fin

Cindy and Elaine -

In its November 28, 2010 letter to Apex, MBUAR suggested that the SER project proponent develop an unanticipated finds procedure to limit adverse affects to cultural resources discovered in the course of the project's implementation. I spoke with Chet today to determine whether this procedure had been developed. Chet confirmed that the project proponent will rely upon the procedures set out in MBUAR's Policy Guidance for the Discovery of Unanticipated Underwater Archaeological Resources and Policy Guidance on the Discovery of Unanticipated Human Remains to limit adverse affects to any historic resources that are discovered in the course of project implementation. These procedures, which will be written into the contract specs, are attached below.

LeAnn

----- Forwarded by Leann Jensen/R1/USEPA/US on 06/13/2012 06:11 PM -----

From: Chet Myers <cmyers@apexcos.com>
 To: Leann Jensen/R1/USEPA/US@EPA
 Date: 06/13/2012 02:50 PM
 Subject: State Protocols on Unanticipated Finds



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_____:BREAK
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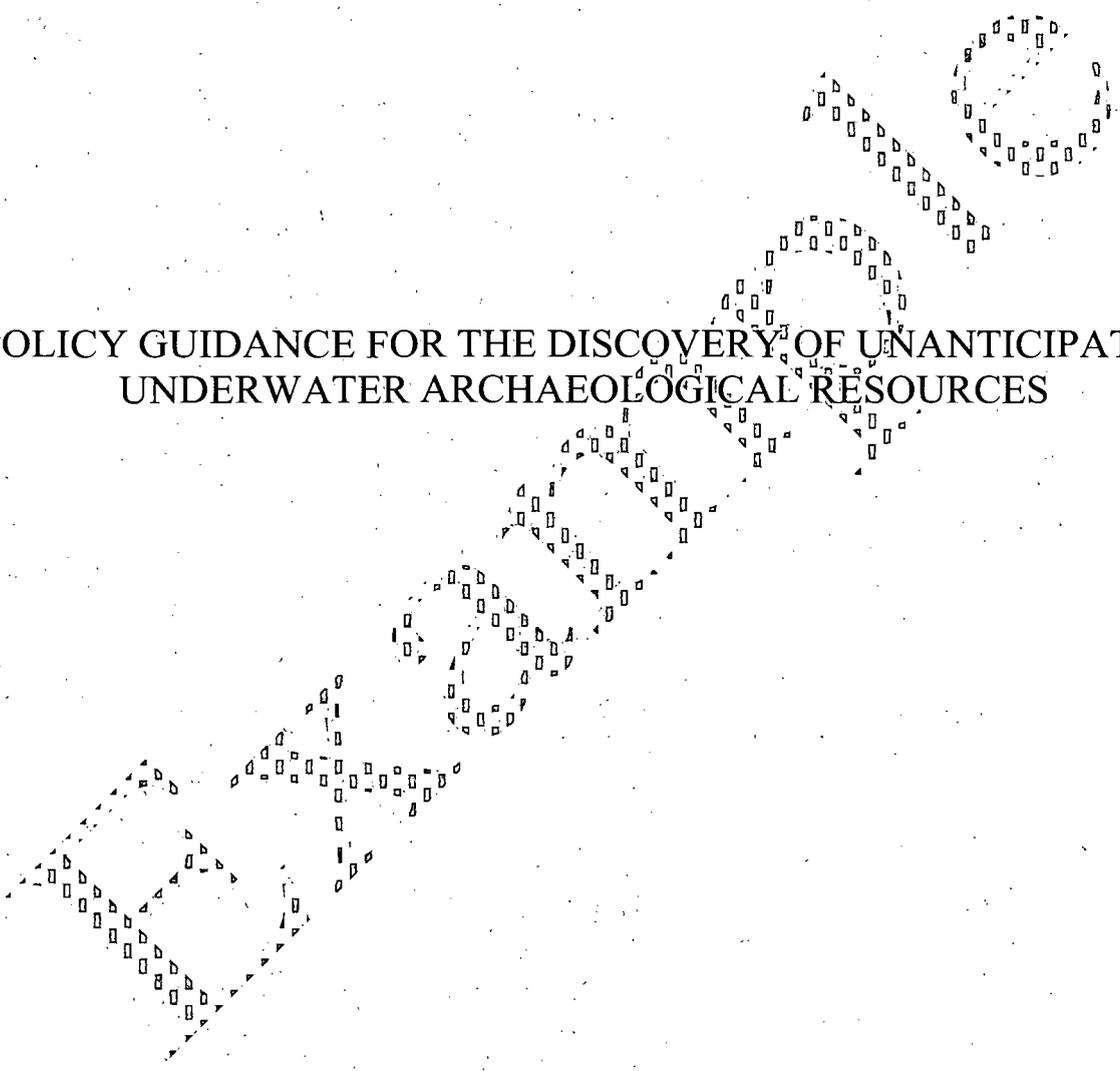
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State Protocols on Unanticipated Finds.pdf



POLICY GUIDANCE FOR THE DISCOVERY OF UNANTICIPATED
UNDERWATER ARCHAEOLOGICAL RESOURCES



The COMMONWEALTH OF MASSACHUSETTS
BOARD OF UNDERWATER ARCHAEOLOGICAL RESOURCES
OFFICE OF COASTAL ZONE MANAGEMENT

251 Causeway Street, Suite 800, Boston, MA 02114-2136

Tel. (617) 626-1200 Fax (617) 626-1240 Web Site: www.mass.gov/czm/buar/index.htm

**POLICY GUIDANCE FOR THE DISCOVERY OF UNANTICIPATED UNDERWATER
ARCHAEOLOGICAL RESOURCES**

Introduction

The Massachusetts Board of Underwater Archaeological Resources (MBUAR) is the state agency charged with the identification, preservation and protection of the Commonwealth's underwater archaeological resources. The purpose of archaeological investigations during the planning process for a project is to determine the presence or absence of culturally related materials and resources within a project area and determine or assess eligibility for listing in the National Register of Historic Places (National Register). This work will be undertaken pursuant to the applicable laws and regulations pertaining to the cultural resources of Massachusetts. Generally, these archaeological investigations are conducted to comply with the National Environmental Policy Act of 1969 (NEPA) and Section 106 of the National Historic Preservation Act of 1966, as amended (1976, 1980, 1992, 1999), and implementing regulations of the Advisory Council on Historic Preservation (Advisory Council) as well as pursuant to Massachusetts General Laws concerning the MBUAR and the Massachusetts Historical Commission (MHC).

The MBUAR recognizes that despite intensive background research, remote sensing surveys, and field investigations, it is always possible that cultural resource deposits such as shipwrecks may still be discovered during the course of construction activities on or below state bottomlands, particularly during excavation. MBUAR procedures that should be followed in the event that unanticipated underwater archaeological resources are inadvertently discovered during the non-MBUAR permitted activities are outlined below. NOTE: MBUAR permittees must also adhere to any general and special conditions placed on their permit.

In the event suspected human remains are encountered, you are directed to follow the MBUAR Policy Guidance on the Discovery of Unanticipated Human Remains as well.

Procedures

Below are steps that should be followed in the event that unrecorded shipwreck sites and/or other underwater archaeological resources are discovered during the project.

1. In the event that a suspected shipwreck or other site is uncovered during construction activity, that activity shall immediately be halted in the area of the find until it can be determined whether the object is a shipwreck or other underwater archaeological resource and if it represents a potentially significant feature or site.
2. The project field staff will immediately notify the project proponent upon the suspension of work activities in the area of the find. Notification will include the specific location in which the potential feature or site is located.

3. The project proponent will immediately contact its cultural resource management consultant to review the information. On-site personnel will provide information on the location and any discernable characteristics of the potential cultural resource (the target), and any survey data depicting the find. This information will be forwarded for review by the project archaeologist for the cultural resource management consultant.
4. If the project archaeologist determines that the site, feature, or target is not potentially cultural, the project field staff through the project proponent will be notified by the project archaeologist that work may resume. The project archaeologist will also notify MBUAR of this determination.
5. If, based upon both previously acquired and current remote sensing survey data, or other indications (e.g., timbers, etc.), it is determined that the new target is possibly a shipwreck or other potential cultural resource, the project archaeologist will inform the project proponent, who will inform the project field staff that work may not resume at the given location until notified in writing by the proponent. The cognizant federal and state review agencies, MBUAR, SHPO (State Historic Preservation Officer), and Advisory Council (if applicable) will be notified of this determination within 2 working days.
6. A visual inspection by archaeological divers or remotely operated vehicle (ROV) will be conducted to determine if the site is potentially eligible for listing in the National Register. The results of the survey will be formally submitted to cognizant federal and state review agencies, SHPO, MBUAR and the Advisory Council (if applicable) for final review and comment. The SHPO and MBUAR will endeavor to respond within 2 working days of receiving the inspection results and recommendations.
7.
 - a. If it is determined that the target, feature, or site does not represent a potentially significant resource, and project proponent is in receipt of written comment from the review agency(s), work may resume in that area.
 - b. If a National Register determination cannot be made in accordance with Step 6, the project proponent may either undertake additional research to satisfy Step 6 or exercise Step 8 (avoidance).
8. If agency review concurs or concludes that the site may be important and is potentially National Register eligible, the project proponent will develop avoidance measures to eliminate the site from the Area of Potential Effects. Any proposed avoidance measures will be made available to the cognizant federal and state review agencies, SHPO, MBUAR, and Advisory Council for review and comment.
9. If avoidance measures cannot be developed and executed, the resource may be excavated and/or removed only under a memorandum of agreement with all interested parties including the State Archaeologist/Deputy SHPO, MBUAR Director, MBUAR permittee and/or project proponent, and, if applicable, the Advisory Council subject to appropriate state permits. This memorandum will outline an adequate data recovery plan that specifies a qualified research team and an appropriate research design. The appropriate permits must also be secured from MBUAR (if not already a permittee of MBUAR) and the MHC prior to conducting any further disturbance to the site. In the event that human remains are associated with other cultural resources, see MBUAR's Policy Guidance on the Discovery of Unanticipated Human Remains for required procedures.

Applicable State and Federal Laws

MGL Chapter 9, § 26-27C - MHC review of state projects, State Archaeologist's Permits

MGL Chapter 91, §63 – Underwater Archaeological Resources Permits

312 CMR 2.00: Board of Underwater Archaeological Resources

950 CMR 70.00: Massachusetts Historical Commission

Section 106 of the National Historic Preservation Act of 1966 (16 USC 470f), as amended (1976, 1980, 1992, 1999)

National Environmental Policy Act of 1969 (“NEPA”)

List of Contacts

Federal

To be named based on applicable federal jurisdiction

State

State Archaeologist/Massachusetts Historical Commission/SHPO

220 Morrissey Boulevard

Boston, Massachusetts 02125

Contact: Brona Simon, State Archaeologist/Acting Executive Director

(617) 727-8470; FAX: (617) 727-5128

mhc@sec.state.ma.us; Brona.simon@state.ma.us

Massachusetts Board of Underwater Archaeological Resources

Executive Office of Environmental Affairs

251 Causeway Street, Suite 800

Boston, Massachusetts 02114

Contact: Victor Mastone, Director and Chief Archaeologist

(617) 626-1141; FAX (617) 626-1240

Victor.mastone@state.ma.us

Others to be named based on applicable state jurisdiction, such as Commission on Indian Affairs and Tribal Historic Preservation Officers

Short list of potential federal and state agencies with applicable jurisdiction (not comprehensive):

Advisory Council on Historic Preservation

Army Corps of Engineers

Coast Guard

Commission on Indian Affairs

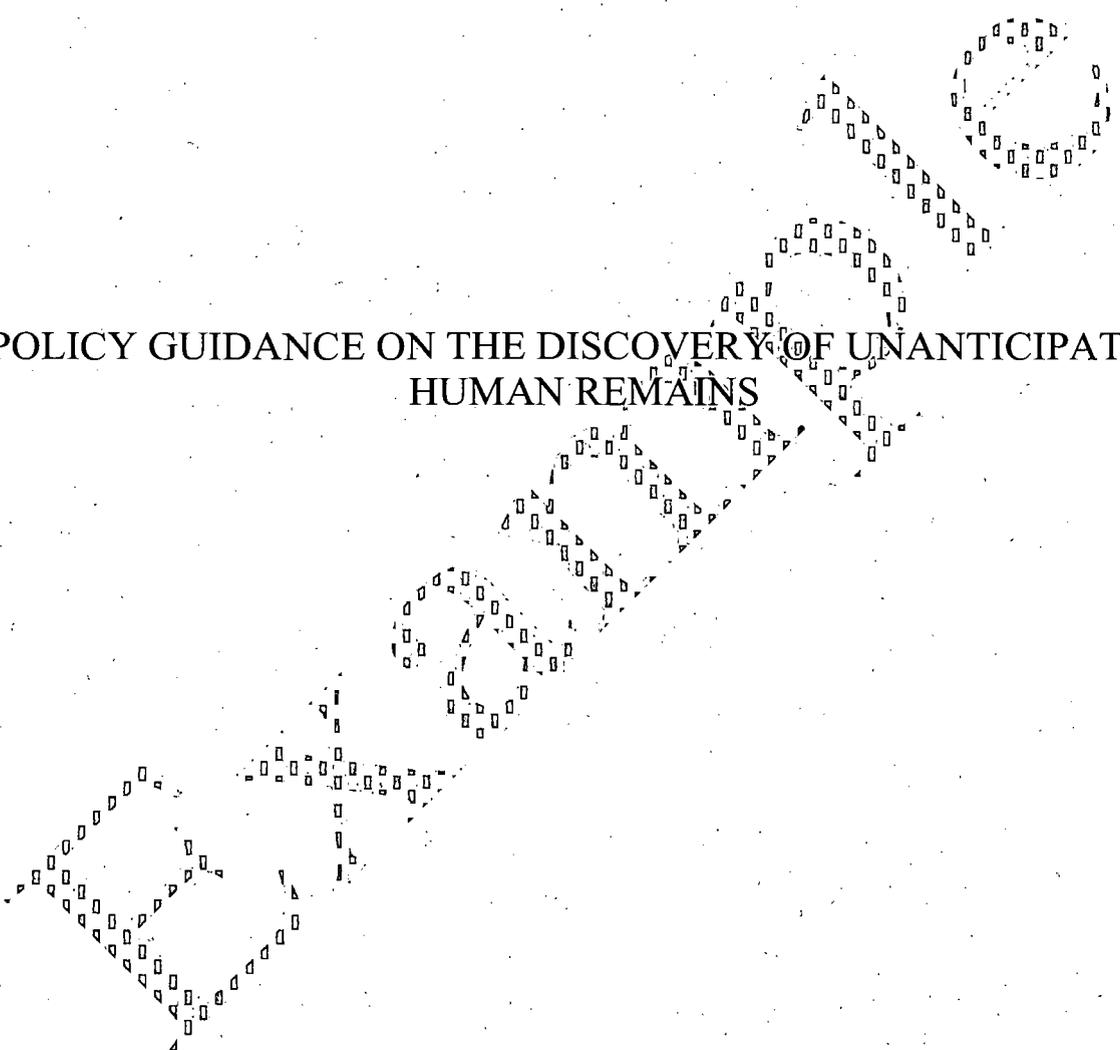
Department of Conservation and Recreation

Federal Energy Regulatory Commission

Fish and Wildlife Service

National Park Service

Tribal Historic Preservation Officer



POLICY GUIDANCE ON THE DISCOVERY OF UNANTICIPATED
HUMAN REMAINS



The COMMONWEALTH OF MASSACHUSETTS
BOARD OF UNDERWATER ARCHAEOLOGICAL RESOURCES
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POLICY GUIDANCE ON THE DISCOVERY OF UNANTICIPATED HUMAN REMAINS

Introduction

The Massachusetts Board of Underwater Archaeological Resources (MBUAR) is the state agency charged with the identification, preservation and protection of underwater archaeological resources. MBUAR recognizes that despite intensive background research, remote sensing research, and field investigations, it is possible that human remains may still be discovered during the course of permitted and non-permitted activities on or below state bottom lands, particularly during excavation. For a concise description of your responsibilities under state law, you should visit the Massachusetts Historical Commission (MHC) website and read the following link regarding the treatment of human remains when accidentally discovered: <http://www.sec.state.ma.us/mhc/mhcpdf/kn4.pdf>. MBUAR procedures that should be followed in the event that suspected human remains are inadvertently discovered during the permitted and non-permitted activities are outlined below (in accordance with the applicable sections of Massachusetts General laws listed in this policy guidance).

Procedures

Generally, the possibility of encountering human remains is not anticipated when conducting background research, remote sensing surveys, or field investigations of shipwrecks or other underwater archaeological resources. However, passengers and crew often die in shipwrecks and for each shipwreck identified there are possibly human remains associated.

If suspected human remains are located within the waters of the Commonwealth of Massachusetts, the following procedures should be followed by MBUAR permittees and/or project proponents:

1. In the event that suspected human remains are encountered, any activity that might affect those remains shall be immediately halted.
2. The Project Director and, if applicable, the Project Archaeologist will be informed and notified of the exact location of the remains. *
3. The Project Archaeologist and the Project Director will be responsible for **immediately** notifying the State Police Detectives at the local District Attorney's Office, the Chief Medical Examiner, the State Archaeologist, the MBUAR, and the Environmental Police

(contact information provided below).

4. If the Chief Medical Examiner determines that the human remains are less than 100 years old, a criminal investigation may be warranted. If the remains are determined to be older than 100 years, the Chief Medical Examiner will notify the State Archaeologist at the Massachusetts Historical Commission.
5. The State Archaeologist, assisted by MBUAR staff, will conduct an examination to determine the age, cultural affiliation, and identity of the remains. If it is determined that the remains are those of a Native American, the State Archaeologist will notify the Commission on Indian Affairs. The State Archaeologist and MBUAR Director will consult to determine whether any prudent and feasible alternatives exist to avoid, minimize, or mitigate impacts to the site. The results of this consultation will be made available in writing.

If it is not possible to protect the remains in situ, they may be excavated and/or removed only under a memorandum of agreement with all interested parties including the State Archaeologist/Deputy SHPO (State Historic Preservation Officer), MBUAR Director, MBUAR permittee and/or project proponent, and, if applicable, the Commission on Indian Affairs. This memorandum will outline an adequate data recovery plan that specifies a qualified research team and an appropriate research design (including a proposal for disposition of the remains). Any excavation of said human remains **must** be conducted under a Special Permit (950 CMR 70.20) issued by the State Archaeologist. In the event the human remains are associated with other cultural resources, such as a shipwreck, the appropriate permit must also be secured from MBUAR (if not already a permittee of MBUAR).

NOTE: * Under state law, the finder is responsible to insure that the proper authority is notified when suspected human remains are encountered.

Applicable Massachusetts General Laws (M.G.L.):

- M.G.L. Chapter 38, §6, as amended – Discovery of Unmarked Human Skeletal Remains
- M.G.L. Chapter 9, §26A – State Archaeologist's duties
- M.G.L. Chapter 9, §27C – Cessation of Activities
- M.G.L. Chapter 7, §38A – Preservation, Excavation and Analysis of Native American Human Remains
- M.G.L. Chapter 114, §17 – Preservation of Ancient Burial Places
- M.G.L. Chapter 272, §71 – Crimes and Punishment: Disinterring Bodies
- M.G.L. Chapter 272, §73, as amended – Crimes and Punishment: Injuring or Removal of Burial Markers
- M.G.L. Chapter 91, §63 – Salvage, Recovery, etc. of Underwater Archaeological Resources; Permits

List of Contacts

State

District Attorney's Office State Police Detectives Unit

Contact: State Police Communications Section
(who will contact detectives at local district attorney's office)
(508) 820-2121

Massachusetts Environmental Police

251 Causeway Street, Suite 100
Boston, Massachusetts 02114
Contact: Communications Center (who will contact local EPO)
(800) 632-8075 or (617) 626-1665

State Office of the Chief Medical Examiner

720 Albany Street
Boston, Massachusetts 02118
Contact: Dr. Ann Marie Mires, Forensic Anthropologist
(617) 267-6767; Fax (617) 266-6763
AnnMarie.Mires@state.ma.us

State Archaeologist/Massachusetts Historical Commission

220 Morrissey Boulevard
Boston, Massachusetts 02125
Contact: Brona Simon, State Archaeologist/Acting Executive Director
(617) 727-8470; FAX: (617) 727-5128
mhc@sec.state.ma.us; Brona.simon@state.ma.us

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251 Causeway Street, Suite 800
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(617) 626-1141; FAX (617) 626-1240
Victor.mastone@state.ma.us

Commission on Indian Affairs

100 Cambridge Street, Suite 300
Boston, MA 02114
Contact: Jim Peters, Executive Director
(617) 573-1291; FAX: (617) 573-1515
Indian_Affairs@hotmail.com