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*The Commonwealth of Massachusetts*  
*Executive Office of Environmental Affairs*  
*100 Cambridge Street*  
*Boston, Massachusetts 02202*

BOARD OF  
UNDERWATER  
ARCHAEOLOGICAL  
RESOURCES



SDMS DocID **63924**

November 5, 1996

Mr. David Dickerson  
Remedial Project Manager  
E.P.A.  
JFK Federal Building  
Boston, MA 02203-0001

*New Bedford*  
*17.07*  
*63924*

RE: New Bedford Superfund Site

Dear Mr. Dickerson,

On behalf of the Massachusetts Board of Underwater Archaeological Resources, I am taking this opportunity to follow-up on a letter from Brona Simon, Massachusetts State Archaeologist, to you dated 11 October 1996.

Established in 1973, the Massachusetts Board of Underwater Archaeological Resources is the trustee of the Commonwealth's underwater heritage, promoting and protecting the public's interest in these resources for recreational, economic, environmental and historical purposes. Under Massachusetts General Laws Chapter 6, sections 179-180, and Chapter 91, section 63, the Board is charged with the responsibility of encouraging the discovery and reporting, as well as the preservation and protection, of underwater archaeological resources. Generally, those resources are defined as abandoned property, artifacts, treasure troves, and shipwrecks. The Commonwealth holds titles to these resources and retains regulatory authority over their use. **No person may remove, displace, damage or destroy any underwater archaeological resource except in conformity with permits issued by the Board.**

Further, it should be noted that under Massachusetts General Laws Chapter 12, section 11D, and Chapter 30, section 61, underwater archaeological resources have been categorically included among those natural resources protected from damage.

The BUAR conducted a very preliminary review of its files and secondary literature sources to identify known and potential submerged cultural resources. Research strongly suggests there exists the possibility for both prehistoric and historic cultural resources, now submerged, to be located within the vicinity of the New Bedford inner and outer harbor areas, and the upper Buzzards Bay between Dartmouth and Fairhaven. This preliminary review revealed submerged cultural resource (e.g., shipwrecks) in the vicinity of the New Bedford Harbor area.

Given the geomorphological evolution of the northern shore of Buzzards Bay and New Bedford Harbor as a possible inundation feature (limited seaward exposure reducing erosional effects), there exists the strong possibility for the preservation of now submerged prehistoric cultural resources. A regional model for the southern New England suggests the expected site frequency for the study area would be low for all site types dating prior to 6000 BP, but would increase from low (habitation) to high (shell middens) for the period 6000 to 3000 BP. In the period from 3000 BP to Present, the expected site frequency increases to high for habitation, camp, and shell midden sites. During both periods, the size of these sites would be

small. While this model does not provide sufficient resolution to specifically identify potential site locations at the scale of the study area, it points to the need to consider the occurrence of prehistoric sites.

A preliminary review of historic literature strongly suggests there exists some reasonable concern for possible historical site occurrence within the New Bedford Harbor area. In general, we must recognize New Bedford was a major early colonial port in the region and maintained commercial and fishing importance throughout the historic period, and thus maintained a high volume of vessel traffic along the Cape. Additionally, the numerous coves along the shore provided small safe harbors and quays to support both fisheries and manufacturing activities. At the same time, we must recognize that northern shore of Buzzards Bay, like Cape Cod, was a major natural landscape feature that contained numerous hazards to navigation, and thus became the site of shipwrecks. A variety of maritime related cultural resources, such as wharves/piers/quays, anchorages, careening sites, derelict and shipwreck vessels, might be anticipated to be located in the project area, either submerged or along the shore.

While the vast majority of known shipwrecks are described as occurring in Buzzards Bay, a number of shipwrecks are known to have occurred in the vicinity of New Bedford Harbor. Records indicate at least twenty-five shipwrecks to have occurred in the immediate vicinity of New Bedford; many dating into the nineteenth century. Further, secondary sources indicate that as many as sixty shipwrecks might be located in the vicinity of Buzzards Bay. The loss of earlier and smaller coastal vessels and the purposeful abandonment of derelict vessels are generally not found in the documentary record. The level and diversity of maritime commercial, fishing, and recreational activities throughout the Buzzards Bay region may have resulted in the creation of a number of undocumented and anonymous underwater archaeological sites such as small craft, derelict vessels, or dump sites. An excellent example of this type of activity/historic site is the abandoned fishing trawler *EVELINA M. GOULARD* removed from the Fairhaven waterfront in 1990. The *GOULARD* is now on display as an historic vessel at the Essex Shipbuilding Museum. These possible site types represent classes of vessels where our knowledge is severely limited and, thus, are potentially historically and archaeologically important.

Therefore, the BUAR takes this opportunity to express its concern that heretofore unknown cultural resources might be encountered during the course of work and support for the recommendation of the Massachusetts Historical Commission that USEPA conduct a cultural resources reconnaissance survey. The BUAR hopes the USEPA will take steps to limit adverse affects and cooperate with the BUAR.

I will be happy to discuss the Board's program and concerns with you. If I can be of further assistance, do not hesitate to contact me at the address above, by telephone at (617) 727-9800, x.212, fax at (617) 727-2754, or via E-mail at [VMASTONE@STATE.MA.US](mailto:VMASTONE@STATE.MA.US). The best of luck in this endeavor.

Sincerely yours,



Victor T. Mastone  
Director, BUAR

/vtm

enclosures (2)

cc: Brona Simon (w/o enclosures)

**COMMONWEALTH OF MASSACHUSETTS  
BOARD OF UNDERWATER ARCHAEOLOGICAL RESOURCES  
STATUTE AND RELATED STATE LAWS**

**BOARD OF UNDERWATER ARCHAEOLOGICAL RESOURCES**

*Caption added by St.1973, c. 989, § 1*

**6 § 179. Establishment; members; terms; director; staff**

There shall be in the executive office of environmental affairs a board of underwater archaeological resources hereinafter called the board. The board shall consist of the state archaeologist, the state archivist, the commissioner of waterways or his designee, the director of mineral resources or his designee, and five members to be appointed by the governor, who shall include one representative of the Massachusetts Historical Commission, one marine archaeologist, one law enforcement specialist, and two qualified or certified divers, one to be chosen from a list submitted by recognized diving organizations. The public members of the board shall be appointed for terms of three years, their initial appointments, however, being one for a term of one year, two for terms of two years, and two for terms of three years. They shall serve without compensation, but shall be reimbursed for actual expenses incurred by them in the performance of their duties.

The board shall be headed by a director of underwater archaeological resources, appointed by a majority of the members of said board, who shall be responsible for carrying out the work of the board under the supervision of said board. The director shall be qualified by training and experience to carry out the duties, of the board. The director may employ such employees, experts and consultants as may be necessary.

Added by St.1973,c.989,§1. Amended by St.1975,c.706,§6;  
Amended by St.1990, c.177,§7; Amended by St.1993, c.495,§4,5

**Historical Note**

St.1973, c. 989, § 1, adding this section and section 180 of this chapter, was approved Nov. 2, 1973. St.1975, c. 706, § 6, an emergency act, approved Nov. 25, 1975, and by section 312 made effective as of July 1, 1975, substituted "environmental quality engineering" for "public works" in the third paragraph. St.1990, c. 177, § 7, an emergency act, approved Aug. 7, 1990, in the third paragraph, substituted "protection" for "environmental quality". St.1993, c.495, § 4, approved Jan. 14, 1994, and by § 145 made effective upon passage, in the first paragraph, in the first sentence, substitute "executive office of environmental affairs" for "department". St.1993, c.495, § 5, deleted the third paragraph, which read: "As used in this section the word 'department' shall mean the department of environmental protection."

**6 § 180. Powers and duties in preserving underwater archaeological resources; state title; definition**

It shall be the duty and responsibility of the board to encourage the discovery and reporting of and to protect and preserve historical, scientific and archaeological information about underwater archaeological resources located within the inland and coastal waters of the commonwealth. Title to underwater archaeological resources located within the inland and coastal waters of the commonwealth is hereby declared to be in the commonwealth.

"Underwater archaeological resources", shall mean any of the following which have historical value: abandoned properties, artifacts, treasure trove or sunken ships, which have remained unclaimed for one hundred years or more or which are valued at five thousand dollars or more, within the inland or coastal waters of the commonwealth as defined in section one of chapter one hundred and thirty and section one of chapter one hundred and thirty-one, respectively, or upon lands thereunder, or any other objects one hundred years old or judged by the board to be of historical value which are located inside, upon or around said resources.

Said board shall:

(1) cooperate with all departments, boards, officials and institutions of the commonwealth and its political subdivisions that are concerned with matters under its supervision;

(2) cooperate and consult with appropriate federal agencies or the agencies of other states;

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(3) determine after a public hearing, if the board deems such a hearing in the public interest, whether certain objects found under the waters of the commonwealth are of historical value;

Said board may:

(1) enter into agreements relative to the federal administration and enforcement of underwater exploration and removal or salvage of underwater archaeological resources beyond the coastal waters of the commonwealth;

(2) apply for, receive and expend such federal funds or private grants as may be available therefor and accept gifts, contributions, and bequests of funds, equipment and property from individuals, organizations, and government entities, in carrying out its duties;

(3) request assistance from appropriate state and local agencies and private organizations and individuals.

The director, with the approval of the board, shall:

(1) adopt, after public hearing, such rules and regulations regarding reporting and permit requirements for the removal and salvage of underwater archaeological resources as will insure the protection of their historical and educational value;

(2) grant permits in accordance with section sixty-three of chapter ninety-one to qualified persons, organizations, or corporations for the orderly salvage or removal of underwater archaeological resources;

(3) oversee the salvage and recovery operations by said permit holders;

(4) compile and maintain an inventory of the underwater archaeological resources reported and recovered under the provisions of this section and said section sixty-three of said chapter ninety-one, which shall not be a public record; and

(5) designate underwater archaeological preserves to provide special protection to those underwater archaeological resources of substantial historical value reported under the provisions of this section and said section sixty-three of said chapter ninety-one.

Added by St.1973, c.989, §1. Amended by St.1995, c.38, §12, 13.

**Historical Note**

St.1973, c. 989, § 1, was approved Nov. 2, 1973. St.1995, c.38, § 12, was approved June 21, 1995, made effective July 1, 1995, inserted in paragraph three, after the word "therefor" in clause (2) the phrase "and accept gifts, contributions, and bequests of funds, equipment and property from individuals, organizations, and government entities, ". St.1995, c.38, § 13, was approved June 21, 1995, made effective July 1, 1995, deleted clause (4) and replaced it with clauses (4) and (5). St.1996, c.15, §19, was approved on June 30, 1996, and made effective July 1, 1996, deleted clause (4) and replaced it with clause (4).

**91 § 63 Salvage, recovery, etc. of underwater archaeological resources; permits; restrictions; disposition of resources; enforcement; violations; penalties; jurisdiction and venue**

No person, organization or corporation may remove, displace, damage or destroy underwater archaeological resources as defined in section one hundred and eighty of chapter six, except in conformity with the provisions of this section. Any qualified person, organization or corporation desiring to conduct any type of exploration, recovery or salvage operations in the course of which any underwater archaeological resources, with the exception of those specifically exempted from permit requirements, may be removed, displaced or destroyed shall first make application to the director for a permit to conduct such operations. If the director, with the approval of the board, shall find that the operations desired involve underwater archaeological resources and said operations are in the public interest, he shall, within thirty days from the receipt of application, grant the initial applicant a permit which allows said applicant the

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sole right to remove or salvage said resources for a period of one year. Said permits shall include without limitation the location, nature of activity, reporting requirements and time period covered and shall provide for the termination of the rights of the permittee upon violation of any of the terms of the permit. Until such time as a permit for any given site is granted, all records regarding the permit application for said site shall be confidential unless released by the applicant.

A uniform fee for such permits shall be determined annually by the commissioner of administration under the provision of section three B of chapter seven. Said permits shall be renewable by the director upon approval of the board; provided, however, that operations on the location have been conducted during the period of the original permit.

The permittee may, with the approval of the board, subcontract his permit rights to another qualified person, organization or corporation, subject to the provisions of this section and the terms of the original permit.

All exploration, recovery and salvage operations undertaken pursuant to said permit shall be carried out under the general supervision of the board in accordance with its rules and regulations so that the maximum amount of historical, scientific, archaeological and educational information may be recovered, reported and preserved. If the director deems necessary, he may require that a permittee shall work under the direction of a qualified expert designated by the board. Permittees shall be responsible for obtaining permission of any federal agencies having jurisdiction prior to conducting any operations.

Permittees may retain seventy-five percent of the value of said underwater archaeological resources except when recovered from a designated underwater archaeological preserve. The remainder of such value shall be paid to the commonwealth; provided however, that the commonwealth and private museums within the commonwealth shall have the first option to purchase within six months said resources at fair market value. Final disposition of said resources and the proceeds from the sale thereof shall be made within one year from the date of salvage unless extended by mutual agreement between the board and the permittee with the approval of the commissioner of administration and finance. Until final disposition the commonwealth and the permittee shall act in such a way as to preserve and protect all salvaged underwater archaeological resources.

Upon the request of an applicant or permittee, the board may require a public hearing, if said board deems such a hearing in the public interest, on the granting or renewal of a permit, the subcontracting of permit rights, or the disposition of resources recovered under a permit.

The director shall invite information regarding underwater archaeological resources of substantial historical value and the location thereof, and shall cause to be printed a list of resources which shall be designated as underwater archaeological preserves. Access to underwater archaeological preserves for recreational, historical, and scientific purposes shall be guaranteed. The director shall not grant a permit to recover underwater archaeological resources from within an underwater archaeological preserve except for historical or scientific purposes, and provided further, that all materials collected through such activities shall remain the permanent property of the commonwealth. The board may make arrangements for the disposition or display of any such materials recovered from within an underwater archaeological preserve in appropriate institutions located within the commonwealth. A public hearing may be requested regarding the designation of any underwater archaeological resource as a preserve. Persons may petition the director to designate certain resources as a preserve.

The director shall invite information regarding previously discovered or salvaged underwater archaeological resources and the location thereof, and shall cause to be printed a list of previously discovered and commonly known underwater archaeological resources and locations thereof which shall be exempt from the

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preceding permit requirements. A public hearing may be requested regarding the placement of any individual resource on said list. Persons may petition the director to add certain resources to said list.

Law enforcement agencies and officers of the commonwealth and its subdivisions shall enforce the laws, rules and regulations pertaining to underwater archaeological resources and shall protect the permittee from the removal or salvage of said resources by unauthorized parties. If such protection is extended at the request of the permittee for a period in excess of two months, the permittee shall pay reasonable costs of such protection.

Any person violating a provision of this section shall be guilty of a misdemeanor punishable by a fine of not more than one thousand dollars, imprisonment for six months, or both, and shall forfeit any underwater archaeological resources he has obtained thereby. In addition his permit, if any, shall be subject to revocation or suspension. Violations committed within the coastal waters of the commonwealth may be prosecuted in any district which has venue over the coastal waters. The superior court sitting in equity shall have jurisdiction to restrain continuing violations of section sixty-five and shall have jurisdiction to compel the restoration to the commonwealth of any underwater archaeological resources taken in violation of the provisions of this section.

Added by St.1973, c. 989, § 5. Amended by St.1980, c. 572, § 55  
Amended by St.1995, c.38, §122,123.

**Historical Note**

St. 1973, c. 989, § 5, was approved Nov. 2, 1973. St. 1980, c. 572, § 55, approved July 16, 1980, rewrote the first sentence of the second paragraph. Expiration of St. 1980, c. 572, § 572: St. 1980, c 572, § 417, provided "This section shall take effect as of July first, nineteen hundred and eighty and expire on December thirty-first, nineteen hundred and eighty-two." St.1995, c. 38, § 122, was approved June 21, 1995, made effective July 1, 1995, inserted after the word "resources" in the first sentence of paragraph five the phrase "except when recovered from a designated underwater archaeological preserve." St.1995, c. 38, § 123, was approved June 21, 1995, made effective July 1, 1995, inserted after the sixth paragraph a new paragraph adding the proviso for underwater archaeological preserves.

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**MASSACHUSETTS HISTORICAL COMMISSION**

*Caption editorially supplied*

**9 § 26      Establishment; membership; tenure; state archaeologist; gifts; compensation**

There shall be in the department of the secretary of state a Massachusetts historical commission, hereinafter and in sections twenty-six A to twenty-seven D, inclusive, called the commission. Said commission shall consist of the state secretary, or an officer or employee from his department designated by him, who shall be the chairman; the commissioner of environmental management; the commissioner of commerce; two persons to be appointed by the governor; and seven persons to be appointed by the state secretary of whom one shall be selected from a list of three nominees submitted by the Bay State Historical League, one from a list of three nominees submitted by the Massachusetts Historical Society, one from a list of three nominees submitted by the Society for the Preservation of New England Antiquities, one from a list of three nominees submitted by The American Antiquarian Society, one from a list of three nominees submitted by The Trustees of Reservations, one from a list of three nominees submitted by the New England Historical Genealogical Society, and one from a list of three nominees submitted by The Massachusetts Archaeological Society, Incorporated. Upon the expiration of the term of an appointive member his successor shall be appointed in like manner for a term of three years. The chairman shall appoint a state archaeologist who shall be responsible for the preservation and protection of the archaeological resources of the commonwealth as the commission may direct, and in accordance with the provisions of sections twenty-six A to twenty-seven C, inclusive, and who shall not be subject to chapter thirty-one or section nine A of chapter thirty. The commission, the state archaeologist and the board of underwater archaeological resources established pursuant to section one hundred and seventy-nine of chapter six shall advise the state secretary on matters relating to the historical and archaeological assets of the commonwealth and assist him in compiling and maintaining an inventory of such assets. The state secretary may on behalf of the commonwealth for the purposes of this section and section twenty-seven accept gifts of real and personal property, including papers, documents and moneys, and he may provide technical and other assistance, and publish, furnish and disseminate information of an historic nature. All moneys received hereunder shall be transmitted forthwith to the state treasurer, who shall administer the same as a trust fund in the manner provided by section sixteen of chapter ten. The members of the commission shall serve without compensation but shall be reimbursed for actual expenses incurred by them in the performance of their duties as such members.

Amended by St.1978, c. 216, § 1.

**Historical Note**

St.1978, c. 216, § 1 was approved June 6, 1978, in the first sentence, substituted "twenty-seven D" for "twenty-seven C" to conform to enactment of the former section by §2 of the act.

**DEPARTMENT OF THE ATTORNEY GENERAL**

*Caption editorially supplied*

**12 § 11D.    Division of environmental protection**

There shall be in the department of the attorney general a division of environmental protection. The attorney general shall designate an assistant attorney general as director of said division. Said director may appoint and remove, subject to the approval of the attorney general, such expert, clerical or other assistants as the work of the division may require.

The attorney general shall have the authority to prevent or remedy damage to the environment caused by any person, body corporate or politic or any agency, department, board, commission, division or authority of the commonwealth or any political subdivision thereof at the request of an appropriate agency or on his own initiative, by commencing or intervening in a proceeding before an

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appropriate agency, department, board, commission, division or authority, whether state or federal, and before any political subdivision of the commonwealth, or by commencing or intervening in any suit or action, civil or criminal, to enforce any statute, ordinance, by-law or regulation or to secure any common law right or remedy including, but not limited to, the abatement of public nuisances, provided, however, it shall be a defense to any action taken pursuant to this section that any such person is subject to, and in compliance in good faith with, a judicially enforceable administrative pollution abatement schedule or implementation plan the purpose of which is alleviation of damage to the environment.

Each agency, board, commission, division and authority of the commonwealth shall give written notice to the attorney general of all adjudicatory proceedings or public hearings in which damage to the environment is or may be at issue; provided, however, that failure to give such notice shall not invalidate such proceeding or public hearing.

As used in this section, "damage to the environment" shall mean any destruction, damage or impairment, actual or probable, to any of the natural resources in the commonwealth and shall include, but shall not be limited to, air pollution, water pollution, improper sewage disposal, pesticide pollution, excessive noise, improper operation of dumping grounds, or the impairment or eutrophication of rivers, streams, flood plains, lakes, ponds or other surface or subsurface water resources, destruction of seashores, dunes, marine resources, underwater archaeological resources, wetlands, open spaces, natural areas, parks or historic districts or sites. Damage to the environment shall not include any insignificant destruction, damage or impairment to such natural resources.

The attorney general shall receive and maintain appropriate records of complaints from interested persons relating to damage to the environment, and upon the receipt thereof shall refer the same to an appropriate agency or subdivision of the commonwealth for such further corrective action as may be necessary to prevent or remedy damage to the environment.

The attorney general may investigate the administration of environmental statutes, ordinances or regulations by an agency, department, board, commission, division or authority of the commonwealth or of any political subdivision thereof and may make such recommendations as are appropriate to the governor and to the general court

Nothing in this section shall be interpreted to derogate from any existing common law or statutory right or remedy against damage to the environment.

In any action at law or suit in equity brought by the attorney general in any court of the commonwealth involving alleged damage to the environment, whether or not a temporary restraining order or preliminary injunction is sought or granted, after a representation by the attorney general by affidavit that delay in the trial on the merits would prevent the attainment of a full and complete remedy to the alleged damage to the environment, the court, upon finding that the facts alleged in said affidavit are true, shall place said action or suit on the advanced section of the trial list in said court with such order of priority over other cases on said advanced section as the court shall deem appropriate.

Added by St.1972, c. 781, § 1.  
Amended by St.1973, c. 162; St.1973, c. 283; St.1973, c. 989, § 3.

**Historical Note**

St.1972, c 781, § 1, was approved July 18, 1972. St 1973, c. 162, approved April 9, 1973, added the proviso of the third paragraph. St.1973, c. 253, approved May 18, 1973, added the last paragraph. St.1973, c. 989, § 3. approved Nov. 2, 1973, inserted "underwater archaeological resources" in the first sentence of the fourth paragraph defining "damage to the environment."

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**GENERAL PROVISIONS RELATIVE TO STATE DEPARTMENTS,  
COMMISSIONS, OFFICERS AND EMPLOYEES  
ENVIRONMENTAL IMPACT OF PROJECTS, ETC,  
CONDUCTED BY AGENCIES**

*Caption editorially supplied*

**30 § 61. Determination of impact by agencies; damage to environment; prevention or minimizing; definition applicable to this section and section 62**

All agencies, departments, boards, commissions and authorities of the commonwealth shall review, evaluate, and determine the impact on the natural environment of all works, projects or activities conducted by them and shall use all practicable means and measures to minimize damage to the environment. Unless a clear contrary intent is manifested, all statutes shall be interpreted and administered so as to minimize and prevent damage to the environment. Any determination made by an agency of the commonwealth shall include a finding describing the environmental impact, if any, of the project and a finding that all feasible measures have been taken to avoid or minimize said impact.

As used in this section and section sixty-two, "damage to the environment" shall mean any destruction, damage or impairment, actual or probable, to any of the natural resources of the commonwealth and shall include but not be limited to air pollution, water pollution, improper sewage disposal, pesticide pollution, excessive noise, improper operation of dumping grounds, impairment and eutrophication of rivers, streams, flood plains, lakes, ponds, or other surface or subsurface water resources; destruction of seashores, dunes, marine resources, underwater archaeological resources, wetlands, open spaces, natural areas, parks, or historic districts or sites. Damage to the environment shall not be construed to include any insignificant damage to or impairment of such resources.

Added by St.1972, c. 781, § 2. Amended by St.1973, c. 989, § 4.

**Historical Note**

St.1973, c. 781, § 2, was approved July 18, 1972, and by § 3 made effective Dec. 31, 1972. St.1973, c. 989, § 4, approved Nov. 2, 1973, inserted "underwater archaeological resources" in the first sentence of the second paragraph.

**METROPOLITAN DISTRICT COMMISSION**

*Caption editorially supplied*

**92 § 72. Wrecked vessels and property in Charles river basin, removal; underwater archaeological resources, salvage**

The commission shall have the same authority relative to wrecked vessels or other shipwrecked property on the shores or waters of the Charles river basin as is given the department of public works by section thirty-eight of chapter ninety-one relative to such vessels or property on other shores or waters of the commonwealth; and the commission shall have the same authority relative to the removal from said basin of wrecked, sunken or abandoned vessels, or of any unlawful or unauthorized structure or thing deposited or suffered to remain in the waters of said basin and obstructing safe and convenient navigation therein, as is given said department by sections thirty-nine to forty-five, inclusive, of chapter ninety-one, relative to such removal from the tide waters of the commonwealth, and said sections, so far as applicable, shall apply to such removals by the commission; provided, however, that the commission shall cooperate with the board of underwater archaeological resources in the salvage of underwater archaeological resources in accordance with section sixty-three of chapter ninety-one.

Amended by St.1978, c. 989, § 6.

**Historical Note**

St.1973, c. 989, § 6, approved Nov. 2, 1973, added the proviso relating to the salvage of underwater archaeological resources.

312 CMR: BOARD OF UNDERWATER ARCHAEOLOGICAL RESOURCES

312 CMR 2.00: GENERAL PROVISIONS

Section

- 2.01: Preamble
- 2.02: Authority
- 2.03: Purpose
- 2.04: Applicability and Jurisdiction
- 2.05: Definitions
- 2.06: Permit Applications
- 2.07: Permit Application Review and Notification
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- 2.16: Public Meetings and Hearings
- 2.17: Other Activities of the Board

2.01: Preamble

The law establishing the Board of Underwater Archaeological Resources calls for the balancing of the interests of groups with widely divergent agendas and modes of operation. The law speaks to archaeologists, sport divers, the museum community, those with historical interests, and commercial salvors. The challenge has been to strike some balance amongst these groups and both encourage diving into the past and preserve what is there for our children and their children.

Nothing in 312 CMR 2.00 is intended to discourage responsible public participation in underwater archaeological activities. The Board requests the reporting of significant underwater finds, but requires little else of those making such finds unless the Board determines that the historical or monetary significance of such finds dictates otherwise.

The goal of 312 CMR 2.00 is to increase interest in the Commonwealth's underwater heritage, not to impose unnecessary burdens. While these regulations provide guidelines and standards for underwater archaeological research, they also recognize the contribution of the sport diving community to the expanding field of underwater exploration, and recognize that some shipwrecks are best suited for sport diving activities, without direct Board presence or supervision.

The public is encouraged to protect underwater archaeological resources which are on the list of exempt sites.

2.02: Authority

312 CMR 2.00 is issued pursuant to M.G.L. c. 6, ss. 179 and 180; M.G.L. c. 9, s. 26; M.G.L. c. 12, s. 11D; M.G.L. c. 30, s. 61; and M.G.L. c. 91, ss. 63 and 72.

2.03: Purpose

312 CMR 2.00 standardizes the procedures for Board administration and for the investigation, exploration, recovery, reporting and preservation of shipwrecks and other underwater archaeological resources. It also defines the Commonwealth's interest in underwater archaeological finds, and provides for the preservation and dissemination of information about Massachusetts underwater heritage.

2.04: Applicability and Jurisdiction

(1) Board Role. The Massachusetts Board of Underwater Archaeological Resources is the trustee of the state's underwater heritage. In its efforts to promote the wise use of underwater sites, the Board seeks to encourage the participation of sport divers, archaeologists, historians and others with special interests and abilities in preserving the underwater heritage of Massachusetts.

312 CMR: BOARD OF UNDERWATER ARCHAEOLOGICAL RESOURCES

2.04: continued

(2) Board Duties and Responsibilities. It shall be the duty and responsibility of the Board to encourage the discovery and reporting of and to protect and preserve historical, scientific and archeological resources and information about underwater archaeological resources located within the inland and coastal waters of the Commonwealth. Title to underwater archaeological resources located within the inland and coastal waters of the Commonwealth is in the Commonwealth.

The Board shall be authorized to adopt such bylaws, rules or procedures as they shall deem necessary and appropriate for the delineation of the Board's duties and the Director's duties, and for the operation of the Board and committees thereof.

(3) Jurisdiction. Any person who has located a shipwreck or other underwater archaeological resource within inland or coastal waters of the Commonwealth or the lands beneath such waters shall secure a permit from the Board of Underwater Archaeological Resources prior to conducting any activities that may disturb the site or resource. Compliance with the laws and regulations of the Board does not relieve any permit holder of the obligations imposed by other local, state and federal agencies.

(4) Applicability to Existing Permits. All permits for the investigation, exploration and recovery of underwater archaeological resources issued by the Board prior to the effective date of these regulations shall be considered valid under these regulations. Said permits and permittees shall, however, be required to comply with the regulations with respect to all permitted actions taken after the effective date of these regulations.

2.05: Definitions

Artifact - Object showing human workmanship.

Assemblage - A collection of associated artifacts, the significance of which is defined in large part by their association.

Board - The Board of Underwater Archaeological Resources.

Buffer Zone - An area around a permitted area within which no field investigation may be undertaken without permission of the Board.

Conservation - The stabilization of an artifact (by chemical or other means) to prevent deterioration or destruction after removal from the site.

Date of Salvage - see Project Completion Date.

Demonstrable Proof - Clear and convincing evidence of the presence of an underwater archaeological resource.

Director - Director of the Board of Underwater Archaeological Resources.

Excavation Activities - Field investigation which may entail major documentary research and systematic removal of the underwater archaeological resources or scientific, prehistoric, historic or other archaeological data from a given site or sites.

Exempted Sites - An underwater archaeological resource for which neither a reconnaissance permit nor an excavation permit can be obtained and of which any major disruption is prohibited.

Field Investigation - The study of the traces of human culture at any underwater site by means of surveying, digging, sampling, excavating, or removing surface or subsurface objects, or going on such a location with that intent.

Historical Value - Importance or significance to local, regional, national or international history or prehistory. The significance of an underwater archaeological resource is determined by its potential to provide information, its physical condition, the research questions it might answer, or its educational

2.05: continued

or exhibit value. Its value is also judged by its importance in relationship to known archaeological and historical records and future research needs.

Isolated Find - A single unassociated artifact.

Museum - A professional institution which is accredited by the American Association of Museums or meets equivalent standards or which is associated with an accredited educational organization or other organization dedicated to the preservation, study, interpretation and display of significant objects and which operates as a preservation and educational institution in the public interest.

Person - As this term applies to "applicant" or "permittee", person may mean any natural person, legal entity or combination thereof. If more than one such person is granted a permit, all such persons shall be considered to be one and the same person regarding all permit activities.

Project Completion Date - The date on which the Board has approved the final project report and the valuation of recovered resources.

Reconnaissance Activities - Field investigation which may entail documentary research and small scale, non-disruptive field investigation for the purpose of locating and identifying the underwater archaeological resources which exist within a given area, or for monitoring and preserving previously identified resources.

Remote Sensing - The body of scientific techniques which reveal the presence of underwater data without direct physical contact with such data. Remote sensing techniques include but are not limited to proton magnetometry, sonar scanners and photography.

Resource - see Underwater Archaeological Resource.

Shipwreck - The remains of a ship, boat or other vessel and its anchors, cargo, gear, hull, rigging, sails, spars, superstructure and any other equipment or contents of the vessel or any portion thereof.

Site - An area designated for permitted reconnaissance or excavation activities.

Underwater Archaeological Resource - Any of the following which have historic value and are located within the inland or coastal waters of the Commonwealth or the lands under such waters: abandoned properties, artifacts, treasure trove, or sunken ships which have remained unclaimed for one hundred (100) years or more or that are determined to have a value of five thousand dollars (\$5,000) or more; or other objects, one hundred (100) years old or more, or judged by the Board to have historical value, that are located inside, upon, or around underwater archaeological resources.

2.06: Permit Applications

No person may remove, displace, damage or destroy any underwater archaeological resource except in conformity with a permit issued by the Board as provided in 312 CMR 2.00.

Any qualified person desiring to conduct any type of exploration, recovery or salvage operations, in the course of which any resource may be removed, displaced or destroyed shall first make application to the Board, through the Director, for a permit to conduct such operations.

(1) Application Forms. Applications for permits shall be submitted on forms provided by the Director. Only approved forms or photocopies of these forms shall be considered.

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(2) **Confidentiality.** All records pertaining to a permit application shall remain confidential until the application is approved unless released by the applicant. If a permit is denied, all records pertaining to a permit application shall remain confidential unless released by the applicant. While the general location and description of a resource shall be made public and published as part of the agenda for the Board's meeting, the exact location of the resource shall, upon request of the applicant/permittee, be considered confidential after issuance only if the site is included in the Inventory of Historic and Archaeological Assets of the Commonwealth pursuant to M.G.L. c. 9, s. 26A maintained by the State Archaeologist.

(3) **Application Contents.** A complete application shall contain at a minimum, but not be limited to, the following:

(a) A description of the nature of the resource and demonstrable proof that the resource is present at the proposed site.

(b) A project description which includes the purpose and goals of the proposed project plan.

(c) A description of the project plan, including any documentary research, on-site exploration, proposed reconnaissance, testing, and/or excavation activities.

(d) A project schedule.

(e) A personnel/organization chart which identifies all key personnel, their qualifications, duties and responsibilities (including but not limited to documentation that all divers are certified.)

(f) Identification of the Project Director and (where appropriate) Project Archaeologist with appropriate qualifications.

(g) A project budget.

(h) A description of the plans to document activities and finds.

(i) A description of the artifact conservation program.

(j) A description of the inventory and catalogue which shall be maintained for all recovered artifacts.

(k) A copy of an approved chart/map clearly indicating the requested site.

(l) The latitude and longitude of the center point of the requested permit area.

(m) The application fee.

(n) The signature of the Project Director and the Project Archaeologist where the Board requires that one be appointed.

(o) For excavation permits only, an applicant shall be eighteen years of age or older. If a corporation, the applicant shall provide its Massachusetts certificate of incorporation or certificate of doing business.

(p) A statement describing the applicant's current or prospective financial ability to carry out the field and laboratory activities described in the application.

(4) **Submission and Receipt of Applications.** A completed application form and contents shall be filed with the Director and shall be date and time stamped when filed.

Applications shall be reviewed in chronological order of time and date stamp at regular meetings of the Board to determine completeness of application. Only complete applications will be deemed received by the Board.

If, upon review, further information is required of the permittee, the permittee shall be so informed. A permit application which is determined to be incomplete will lose priority status.

(5) **Application Fee.** All applications for new sites or for renewal of previously permitted areas shall be accompanied by the application fee. Failure to submit the application fee or dishonor of the check shall be a basis for refusal of the application. There shall be no additional fee when there is a change in permit types (e.g. from Reconnaissance to Excavation) within the lifetime of an existing permit. Fee schedules are available from the Board.

2.07: Permit Application Review and Notification

(1) Review. Permit applications shall be reviewed at regular meetings of the Board. Only complete application documents filed at least 10 days in advance of public notice being served announcing a regularly scheduled meeting shall be considered at that meeting. The applicant shall be present at the Board meeting when the application is considered. The Board shall, at its meeting, make a determination of whether or not to issue a permit.

(2) Review Criteria. The review criteria include demonstrable proof of the presence of a resource, the qualifications of project personnel, the appropriateness of the proposed project plan, techniques, procedures and methodologies, a demonstration of the applicant's financial ability to carry the project plan to completion, evidence that the operations desired involve underwater archaeological resources, and evidence that said operations are in the public interest.

(3) Notification. Upon the action of the Board, the Director shall mail to the applicant a permit document or notification of denial stating the reasons therefor. The permit is effective on the date of Board action and the permit document shall include, but is not limited to, the permittee's name, the time period covered, the location of the permit area, the types of authorized activities, reporting requirements, any limitations on the permittee's activities, and shall provide for the termination of the rights of the permittee upon violation of any of the terms of the permit. All persons undertaking activities at a permit site shall have immediate access to permit documents and produce such documents for law enforcement personnel, Board members, or agents of the Board.

(4) Compliance with Other Statutes and Regulations. Permits are conditioned upon and subject to compliance with other federal, state, and local statutes and regulations, including but not limited to the Wetlands Protection Act, the Waterways Act (M.G.L. c. 91, Dredging Permit), the Department of Water Pollution (Water Quality Certificate). Permittees shall not commence work at permit sites until they are in compliance with all applicable requirements.

2.08: Issuance of Permits

The Board issues permits to persons who have located a shipwreck or other resource for purposes of investigation, exploration, recovery, reporting, and/or conservation of underwater archaeological resources if the Board deems that such operations are in the public interest. No person shall disturb a resource without the Board's permission, except for minimal artifact collection (entailing minimal site disruption) for purposes of establishing the existence of an underwater archaeological resource. All recovered artifacts shall be reported to the Board. Permits shall not be issued in the absence of demonstrable proof of the existence of a resource.

(1) Permit Types. The Board issues two kinds of permits, one for reconnaissance and one for excavation.

(a) Reconnaissance - This permit is granted for the non-disruptive inspection and identification of an underwater archaeological resource and is characterized by minimal site disturbance. The purpose of the reconnaissance permit is to inventory the site, to protect the discoverer's interest in the site, and to make available the protection and expertise of the Board. Reconnaissance activities shall be limited to historical research, remote sensing, visual or electronic observation, mapping, and limited collection of artifacts found without excavation, solely for the purpose of identification or protection. All resources collected shall be mapped, documented and conserved.

(b) Excavation - Excavation permits are granted to those who wish to uncover and/or recover archaeological resources through the use of disruptive investigation techniques. Disruptive investigation techniques include: the systematic removal, in sample or in entirety, of artifacts or other resources from their context of discovery; or the use of excavation

## 2.08: continued

tools or techniques (such as blowers, airlifts, suction, etc.) to expose resources which are buried in the seabed or lake or river bottoms. Standards for archaeological recovery, recording and reporting of underwater sites shall be maintained under an excavation permit. All recovered resources shall be mapped, documented and conserved.

(2) Permit Characteristics.

(a) Duration - The Board may issue a permit for a period of one (1) year upon review and approval of a permit application. Permits may be renewed upon proper reapplication (under 312 CMR 2.12).

(b) Exclusivity - A permit gives the permittee the sole use of the granted site for the purposes specified in the permit to the exclusion of all other persons.

(c) Number of Permits - No more than one excavation permit may be held by a permittee at any given time, and a total of no more than two permits may be held by a permittee at any given time.

(d) Permit Area - The size of the permit area shall reflect circumstances at the site, including working conditions and anticipated archaeological resources. The permit area shall cover as small and well-defined a geographic extent as the Board deems reasonable and appropriate for the activity to be conducted. In determining the size of a permitted area, the Board shall consider two categories of shipwreck sites:

1. Discrete - A discrete site has clearly defined site limits, e.g. a single vessel which is largely intact; and

2. Amorphous - An amorphous shipwreck site is characterized by single or multiple shipwrecks which are broken up, scattered or largely buried.

Where permits are issued for an amorphous site, the maximum permit area shall be one (1) nautical mile square. As site conditions vary, the Board shall use its discretion in determining permitted area size and activities on a case-by-case basis. In no case shall a permittee be granted an expansion of a site unless the Board is presented with demonstrable proof that associated archaeological resources are present in the sought for area and that the expansion would be justified.

(e) Buffer Zones - The Board shall establish a 0.2 nautical mile buffer zone around each permit area. There shall be a 0.4 nautical mile buffer zone between adjacent permit areas.

(3) Conflicting Claims. If there are more than one application to the same resource or to resources in close proximity, priority shall be given to the first person to file a complete application. A priority preference may be lost by:

(a) failure to substantially comply with application requirements;

(b) failure to abide by the laws, regulations, or conditions governing the applicant's or permittee's activities;

(c) change of circumstances indicating the inability of the applicant/permittee to competently undertake the activities;

(d) potential damage to the resource; or

(e) other special circumstances as determined by the Board.

2.09: Permittee Activities and Responsibilities

(1) General Standards for all Permits. Permittees shall be expected to perform all elements of the work plan as approved by the Board, notifying the Board in writing and immediately of any change affecting the application or resource (such as identity, security, physical conditions, unanticipated finds, etc.) Permittees shall also be expected at all times to protect the resources from destruction and loss. Permittees' activities shall be in conformity with all applicable laws, regulations and permit conditions.

(2) Additional Standards for Excavation Activities.

(a) Introduction. Because excavation activities, by definition, destroy the record left by time, the permittee has a responsibility to maintain high standards for excavation and conservation and stay in ongoing contact with the Board.

2.09: continued

(b) Standards for Permittees. The permittee shall:

1. Assess the adequacy of his/her qualifications for the demands of the project, and minimize inadequacies by acquiring additional expertise, by bringing in associates with the needed qualifications, or by modifying the scope of the project;
2. Be well informed about relevant previous research;
3. Develop a project plan which specifies the objectives of the project, takes into account previous relevant research, employs a suitable methodology, and provides for use of the resource consistent with the objectives of the project;
4. Ensure the availability of adequate staff and support facilities to carry the project to completion, and of adequate curatorial and conservation facilities for artifacts, other objects, and records; and
5. Follow his/her project plan except to the extent that unforeseen circumstances warrant its modification. The permittee shall consult with the Board in order to modify significantly the research plan.

(c) Archaeological Standards.

1. If artifacts or other objects are collected, a system for identifying and recording their proveniences shall be maintained;
2. Uncollectable entities such as environmental data, diver's observations, depositional strata, and the like, shall be fully and accurately recorded by appropriate means, and their locations noted;
3. If fragile specimens are uncovered or removed from their depositional contexts, the permittee shall provide appropriate conservation services in order to preserve or minimize deterioration of the specimens;
4. The methods employed in data collection shall be fully and accurately described. Significant stratigraphic and associational relationships among artifacts, other specimens, and cultural and environmental features shall also be fully and accurately recorded;
5. All records shall be intelligible to the Board;
6. During removal, analysis and storage of specimens and records in the laboratory, the permittee shall take precautions to ensure that correlations between the specimens and the field records are maintained, so that provenience, contextual relationships and the like are not confused, obscured or lost;
7. The Permittee shall, in the public interest, disseminate the results of his/her work within one year of the project completion date.
8. Violation of these standards is grounds for revocation of a permit.

(3) Reporting.

(a) Maintenance of Records. A permittee is required to keep, maintain, and make available to the Board detailed and accurate records of all activities, including reconnaissance, excavation, artifact recovery, conservation and resource disposition. Permittees shall keep the Board apprised of all resources discovered or recovered, making monthly reports during periods of field investigation. The Board may, in addition, require periodic written or oral reports of project activities, and may make such requirements a condition of the permit. Failure to provide reports or other information as requested and within the required time may be the basis for termination of the permit or refusal to renew said permit.

(b) Annual Reports. Permittee activities shall be conducted with the objective of disseminating the knowledge gained by the investigation. The permittee shall be responsible for filing a typewritten Annual Report no later than thirty (30) days prior to the permit expiration date. Reports shall include relevant maps, documents, drawings and photographs. Ten copies of the Annual Report shall be filed with the Board. At a minimum, Annual Reports shall include:

1. Indication of compliance with the project plan or, where there have been changes in the plan, reasons for such changes.
2. An update of any changes in information contained in the application, such as the project budget, personnel and organizational chart, etc.
3. A description of the area.
4. A detailed summary of the project activities during the preceding year, including a description and justification of the project plan, as well

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as methodologies and research techniques used.

5. An approved map of the permit area showing where field investigations were conducted.

6. A site map showing relative locations of any recovered artifacts and the results of any testing (remote or otherwise).

7. A description of the known and expected archaeological resources.

8. An inventory and catalog of any recovered artifacts, including a description of the location, and the contextual and structural characteristics of each recovered artifact, and an accounting of the present condition of such finds.

9. A complete listing of sources, including individuals, records and literature, which were consulted during the field investigation.

10. Photographs and/or sketches of significant features.

11. A description of the artifact conservation program.

12. Any hypotheses, conclusions or insights warranted by the work completed.

(c) Project Completion Report. When the Board decides the project is complete, the permittee shall submit to the Board a comprehensive typewritten report, synthesizing all the material of previous reports, recounting the history of the project, indicating the final results of the work, and giving a complete accounting and inventory of all artifacts. A complete set of all project documentation, including all field notes, logs, maps, plans, photographs, and drawings generated during the research, field testing, excavation, laboratory and conservation activities of the project shall be submitted to the Board for approval and retention prior to the project completion date.

(4) Site Supervision.

(a) Board Option. The Board may require on-site supervision by an archaeologist or other supervisory personnel in cases when the historical significance or monetary value of a site indicates that supervision is necessary for the preservation and protection of the resource. Where supervision is indicated, the Board shall determine the level of on-site involvement and level of professional expertise required of the Project Archaeologist or other supervisory personnel based on the nature of the site and the artifacts, and conditions or problems encountered or anticipated.

(b) Responsibilities of Project Archaeologist. For every project where the Board requires a Project Archaeologist, it is the Project Archaeologist's responsibility to see that professional archaeological standards are maintained throughout the course of the project.

(c) Duties of Project Archaeologist. Specifically the Project Archaeologist shall:

1. Develop a research design and appropriate procedures for its implementation;
2. Supervise excavation work on site;
3. Ensure that adequate records are maintained during all testing, excavation, and laboratory procedures; and
4. Maintain contact with the Board, offering both verbal and written reports of all significant developments as well as periodic reports of all project activities.

(d) Minimum Qualifications of Project Archaeologist. Minimum qualifications of a Project Archaeologist are:

1. A graduate degree or equivalent experience in archaeology, anthropology, history, or a closely related field;
2. Demonstrated ability to carry research to completion, usually evidenced by timely completion of theses, research reports, or similar documents;
3. At least 15 months of professional experience and/or specialized training in archaeological field, laboratory, or library research, administration, or management, including at least one year of maritime archaeology experience and/or specialized training in the kind of activity the individual proposes to practice; and
4. Diving certification from one of the recognized national agencies.

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(5) Security. Primary responsibility for securing the permitted site and all recovered or discovered resources rests with the permittee. Subject to appropriation, the Board may provide up to a total of two months of security protection upon request by the permittee. If protection is required for more than two months, the permittee shall thereafter pay for the reasonable costs of such protection. The Board may enter into contractual arrangements with law enforcement agencies, officers of the Commonwealth or its subdivisions, and/or other security agents to secure the public's interest in underwater sites.

(6) Subcontracting. A permittee may subcontract the entire permit or any portion thereof upon approval of the Board. The original permittee and subcontractor shall remain responsible for operations during the period of subcontractor's activities. The permittee maintains ultimate responsibility for all necessary communications with the Board.

2.10: Permit Suspension, Modification, Revocation or Nonrenewal

A permit may be modified, suspended, revoked or not renewed for cause, including but not limited to, presentation or discovery of new evidence, violation of the law or of these regulations, violation of any of the terms or conditions of the permit, obtaining the permit by misrepresentation or failure to disclose all relevant facts, lack of activity, or activity that jeopardizes underwater archaeological resources.

(1) Suspension. If, in the Board's judgment, continued activity jeopardizes underwater archaeological resources, the Board may suspend a permit. The Board may vote to suspend a permit with good cause without first holding a hearing, but upon suspension and within fourteen days, shall afford the permittee an opportunity for an adjudicatory hearing as defined in 312 CMR 2.14. Once notice of suspension has been served on the permittee, all reconnaissance or excavation activity under the permit shall cease immediately, and permittee shall act so as to preserve and protect all underwater archaeological resources associated with the permitted activity.

(2) Modification. After opportunity to be heard at a public meeting, the Board may modify a permit for cause. The Board shall promptly notify the permittee of any modifications and their cause.

(3) Revocation or Nonrenewal. In the event that the Board intends to revoke or refuse to renew a permit, the Board shall show cause for revocation or nonrenewal and shall afford the permittee an opportunity for an adjudicatory hearing as defined in 312 CMR 2.13.

2.11: Site Inspections

The Board or its authorized agents may undertake site inspections to monitor compliance with laws and regulations and permits, to provide guidance on activities, to inspect and account for recovered resources, and/or to verify the adequacy of artifact preservation and security programs.

The permittee shall allow members of the Board or their authorized representatives (upon presentation of credentials) to

- (a) Enter upon and inspect the permitted site;
- (b) Inspect records required under the terms and conditions of the permit;
- (c) Have access, at reasonable times, to any archaeological resources in the possession of or stored by the permittee or his/her agents; and
- (d) Inspect equipment used in the reconnaissance or excavation of the permitted site.

2.12: Permit Renewal

Permits shall be renewed yearly, subject to any changes in permit terms the

## 2.12: continued

Board deems appropriate. In the event of competing permit applications at a specific site, the Board shall give preference in the issuance of a permit for such site to persons currently permitted to conduct activities at the site, if the permittee is in full compliance with the terms and conditions of the perviously-held permit, these regulations and pertinent laws. Permittees seeking reissuance of permits shall submit an application no sooner than 60 days nor later than thirty (30) days prior to the expiration of the existing permit. The application shall include all the information specified in 312 CMR 2.06 and a copy of the Annual Report.

2.13: Resource Disposition

The following are the general principles governing the disposition of recovered resources, including isolated finds. As each project is unique, the Board may issue specific guidelines as appropriate before a project's completion date. In all cases, the Commonwealth and the permittee shall act in such a way as to preserve and protect all recovered resources until final disposition.

(1) Timing.

(a) Because both the monetary and historic value of individual recovered artifacts are dependent upon the entire assemblage from a site, resources shall not be disposed of until after the project completion date, i.e. all excavation, conservation, and reporting have been completed to the Board's satisfaction, unless otherwise determined by the Board.

(b) Permittee shall dispose of resources within one year of the project completion date, unless extended by the Board with the approval of the Secretary of Administration and Finance, or unless the permittee be designated the permanent custodian of the resources of any portion thereof. In order to request an extension for the period for disposition, the permittee shall submit a written request at least two months prior to the expiration of the disposition period.

(2) Distribution Percentage. The value of recovered resources shall be distributed at the proportion of 75% to the permittee and 25% to the Commonwealth. The distribution may be made in actual recovered resources or the fair market value, at the election of the Board and with the approval of the Secretary of Administration and Finance. This election shall be made within six months of the project completion date. Where the Board elects to claim recovered resources, it shall make its selection of resources on the basis of their unusual, unique, or historic value and shall endeavor to respect any stated preferences of the permittee as to the disposition of those resources.

(3) Priority Purchase. If the permittee elects to dispose of the resources or is denied permanent custodianship, the Commonwealth and museums within the Commonwealth have the right of first purchase of the assemblage of recovered resources for six months following the project completion date. During this period the Commonwealth or museums in the Commonwealth may make proposals to the Board for the curation, conservation and display of the recovered resources. Only proposals for the entire assemblage of recovered resources shall be considered. Where there are two or more proposals, the Board shall select the curatorial facility that demonstrates the best capability for the curation, conservation, research and display of the assemblage. If the Commonwealth exercises its right of priority purchase, it shall pay 75% of the appraised value of the collection to the permittee. Said purchase shall be made and completed subject to appropriation. If a museum exercises its right of priority purchase, it shall pay for the resource at the appraised value, with 75% going to the permittee, 25% to the Commonwealth.

(4) Permittee Dispositon. After the initial six month period following the project completion date, the permittee may elect to dispose of his/her share (or part thereof) of the resources. Permittee shall be guided by the disposition

2.13: continued

standards outlined below, or specified by the Board, and shall complete disposition within one year of the project completion date unless the disposition period is extended by the Board. The permittee may retain custodianship or a share in the custodianship of the resources provided the permittee satisfies the Board of his/her competence as a responsible custodian in the public interest (see "Definitions: Museum").

(5) Resource Valuation. Unless otherwise stipulated, valuation is determined only by the historical value of the resource and its fair market value. Project expenses are not to be included in the valuation of a resource, except that 75% of the reasonable expenses for artifact conservation, including restoration but not reconstruction, can be deducted from the final sale price or final determination of fair market value. The Board shall employ one or any combination of the following methods to determine the value of the assemblage or any part:

(a) Expert Valuation. The Board may require that an independent valuation be undertaken to determine the value of the assemblage and its individual pieces. Such valuation shall be made at the permittee's expense by an expert approved by the Board, following written guidelines supplied by the Board.

(b) Board Valuation. The Board may appoint or enter into contractual arrangements with an expert for the determination of the value or to assess valuations made on behalf of the permittee or other parties.

(c) De minimis Valuation. With the approval of the Secretary, the Board may waive the Commonwealth's interest if the determined value of resources from a project area is less than \$1000 (one thousand dollars).

(6) Disposition Standards and Procedures.

(a) Wherever possible, resources shall be disposed of as an assemblage with supporting documentation.

(b) Wherever possible, resources shall be disposed of at an appropriate curatorial facility or museum which has conservation, curation, display and research facilities.

(c) The Board may, at any time prior to final disposition, exercise its authority over resources if there is a threat to their protection.

(d) Resources shall not be removed from the Commonwealth prior to final disposition, unless otherwise allowed by the Board.

(e) All offers for resource disposition shall be filed with the Board and held for a minimum of ten (10) working days for public inspection. The offer shall include the name of the potential buyer, the amount of the offer, and the plans for conservation and display of the resource.

(f) The permittee shall inform the Board in writing as to the final disposition of any resource within ten (10) working days thereof.

(g) The Commonwealth shall receive its interest in the resources (if any) within ninety (90) working days of disposition.

2.14: Adjudictory Hearings

Title to underwater archaeological resources located within the inland and coastal waters of the Commonwealth is in the Commonwealth. In the event of a denial by the Board of a permit application, the applicant is not afforded an opportunity for adjudictory hearing. In the event of modification, the permittee is not afforded an opportunity for adjudictory hearing. When adjudictory hearings are held as stipulated in 312 CMR 2.10, they shall be conducted in compliance with M.G.L. c. 30A, ss. 10 - 13. An appeal of a final decision by the Board in an adjudictory hearing is reviewable under M.G.L. c. 30A, s. 14.

2.15: Exemptions

(1) Isolated Funds. In cooperation with the diving community and in order to encourage reporting of underwater archaeological resources, the Board, with the approval of the Secretary of Administration and Finance, may waive its

2.15: continued

rights to jurisdiction over isolated finds. Isolated finds shall be reported to the Board and an opportunity shall be presented for the Board to examine the find. If the isolated find is not of major historical value, the Board may relinquish all right, title and interest in the find (including its right to 25% of the fair market value of the artifact.)

(2) Exempted Sites.

(a) Purpose. Where, in the Board's judgment, an underwater archaeological resource, because of its location, condition, history, or resource value, is best left in the public domain, it may declare the site exempt from the permit process. In such case, a permit shall not be issued for such site and any major disruption of these sites is expressly prohibited. Notwithstanding the foregoing, the Board recognizes that circumstances may exist which, if deemed compelling, may enable the Board to reconsider such placement.

(b) Petitions. In order to petition the Board to place a site on the exempt list or to reconsider a previous determination of exemption, any person may present a written petition to the Board, giving the location of the resource, summarizing its history, physical condition, and a statement outlining any evidence concerning placement. Petitions must be submitted in typewritten form and received by the Board no later than ten (10) days prior to a scheduled Board meeting for consideration at that Board meeting. The Board will allow ninety (90) days for interested parties to comment on the proposed action, and shall, thereafter vote on the request at a meeting of the Board.

(c) Public Hearing. Any person may request, in writing, a public hearing be held regarding a petition no later than forty (40) days prior to the meeting scheduled to vote on the petition. Decisions to hold public hearings will be made in accordance with 312 CMR 2.16.

(d) Evaluation Criteria. Underwater archaeological resources are declared exempt for reasons including, but not limited to: previous discovery and commonly known location, previous salvage, recreational value, educational value, or the lack of archaeological or historical value. Factors the Board will consider to revoke the placement on the exempt list include, but are not limited to: historical or archaeological concerns, documentary research, environmental concerns, and the interest of public safety. The Board will not consider commercial salvage of any exempted site to form sufficient basis for revoking exempt status.

(e) List of Exempt Sites. A list of underwater archaeological resources declared exempt with their approximate locations shall be maintained by and available from the Director.

2.16: Public Meetings and Hearings

The Board shall hold meetings as required to conduct its business. The Board may hold a public hearing if it is in the public interest to do so or at the request of an applicant or permittee as provided by law. The Director shall preside at meetings and hearings of the Board. The Director shall be elected by the Board members at the last meeting of the calendar year to serve for one year beginning at the next meeting. The Director shall be the presiding officer but have no independent authority unless specifically voted by the Board. To act in the absence of the Director, the Board shall elect a Deputy Director whose term shall be coterminous with that of the Director.

2.17: Other Activities of the Board

It is the duty and responsibility of the Board to encourage the discovery and reporting of and to protect and preserve historical, scientific and archaeological resources and information about underwater resources. The Board may engage in any activities which it finds would fulfill this or any other statutory obligation.

REGULATORY AUTHORITY

312 CMR 2.00: M.G.L. c. 6, ss. 179 - 180.