

312 CMR: BOARD OF UNDERWATER ARCHAEOLOGICAL RESOURCES

312 CMR 2.00: MASSACHUSETTS UNDERWATER ARCHAEOLOGICAL RESOURCES

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2.01: Authority

312 CMR 2.00 is issued pursuant to M.G.L. c. 6, §§ 179 and 180; M.G.L. c. 9, § 26; M.G.L. c. 12, § 11D; M.G.L. c. 30, § 61; and M.G.L. c. 91, §§ 63, M.G.L. c. 92, § 72.

2.02: Purpose

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 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.

2.03. Applicability and Jurisdiction

(1) 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.

(2) 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 312 CMR 2.00 shall be considered valid under 312 CMR 2.00. 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 312 CMR 2.00.

2.04: 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.

2.04: continued

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 pre-history, as determined by the resource's: association with events that significantly contributed to the broad pattern of our history; association with the lives of persons significant to our past; embodiment of the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or have yielded, or may yield, information important to history or prehistory.

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 at least 18 years of age, a legal entity or a combination thereof. If more than one permittee exists for any one site, all permittees shall be considered one person for purposes of permit activities.

Preserve. See Underwater Archaeological Preserve.

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, magnetometry, acoustic, optical, chemical or other forms of sensing.

2.04: continued

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.

Special Use Activities. Exploration for or collection of underwater archaeological resources associated with environmental review and public planning purposes or for scientific purposes and where underwater archaeological resources remain the property of the Commonwealth.

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 100 years or more or that are determined to have a value of \$ 5,000 or more; or other objects, 100 years old or more or judged by the Board to have historical value, that are located inside, upon, or around underwater archaeological resources.

Underwater Archaeological Preserve. Underwater archaeological sites of substantial historical value designated by the Board as a protected area of archaeological or historical importance.

2.05: Director Duties

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. The Director shall preside at meetings and hearings of the Board and administer the day to day duties of the Board. In the event that there is no quorum of Board members in attendance at a regularly scheduled meeting of the Board, or in the event that a permit would naturally expire before the scheduled meeting would take place, the Director may extend the expiration date of expiring current permits to the date of the next regularly scheduled meeting of the Board where a quorum is present. A special use permit may be issued by the Director for a provisional period not to extend beyond the date of the next regularly scheduled meeting of the Board where a quorum is present.

2.06: 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 remove, displace, damage or destroy 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. Permittees shall report, catalogue and inventory all recovered artifacts to the Board. Permits shall not be issued in the absence of demonstrable proof of the existence of a resource, except in the case of special use permits.

(1) Permit Types. The Board may issue three kinds of permits, one for reconnaissance, one for excavation, and special use activities.

(a) Reconnaissance. A reconnaissance 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.

2.06: continued

(b) Excavation. An Excavation permit is granted 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 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.

(c) Special Use. A special use permit is granted to address underwater archaeological investigations associated with a project's environmental review and public planning purposes, or other scientific purposes. Activities and techniques allowed by a special use permit are subject to an approved archaeological research design. A special use permit will be granted only to qualified archaeologist or an organization qualified to undertake archaeological research. All underwater archaeological resources remain the property of the Commonwealth.

(2) Permit Characteristics.

(a) Duration. The Board may issue a permit for a period of one year upon review and approval of a permit application. Permits may be renewed upon proper reapplication (under 312 CMR 2.11).

(b) Exclusivity. A reconnaissance or excavation permit, but not a special use 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. There is no limit on the number of special use permits that may be held by a qualified archaeologist or an organization qualified to undertake archaeological research.

(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 three categories of sites:

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

2. Amorphous. An amorphous site is characterized by single or multiple shipwrecks or other underwater archaeological sites, which are broken up, scattered or largely buried.

Where permits are issued for an amorphous site, the maximum permit area shall be one 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.

3. Project Area of Potential Effect. The project area of potential effect is the study area as defined for environmental review and public planning purposes, or other scientific purposes. This category is restricted to use solely for special use permits.

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 is 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.

The provisions of 310 CMR 2.06(3) do not apply to special use permit applications.

2.07: Permit Applications

(1) No person may remove, displace, damage or destroy any underwater archaeological resource except in conformity with a permit issued by the Board.

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, damaged or destroyed shall first make application to the Board, through the Director, for a permit to conduct such operations.

(2) Confidentiality. All records pertaining to a permit application shall remain confidential until the application is acted upon unless released by the applicant. The general location and description of a resource shall be made public and published as part of the agenda for the Board's meeting. All records pertaining to a permit application shall become public record after the Board acts on the application. Provided, however, that the exact location of the resource shall at all times remain confidential and shall not be a matter of public record.

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

- (a) Application form. Copies of application forms are available from the Director.
- (b) A description of the nature of the resource and demonstrable proof that the resource is present at the proposed site.
- (c) A project description which includes the purpose and goals of the proposed project plan.
- (d) A description of the project plan, including any documentary research, on-site exploration, proposed reconnaissance, testing, and/or excavation activities.
- (e) A project schedule.
- (f) 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).
- (g) Identification of the Project Director and (where appropriate) Project Archaeologist with appropriate qualifications.
- (h) A project budget.
- (i) A description of the plans to document activities and finds.
- (j) A description of the artifact conservation program.
- (k) A description of the inventory and catalogue which shall be maintained for all recovered artifacts.
- (l) A copy of an approved chart/map clearly indicating the requested site.
- (m) The latitude and longitude of the center point of the requested permit area.
- (n) The application fee.
- (o) The signature of the Project Director and the Project Archaeologist where the Board requires that one be appointed.
- (p) For corporate applicants, the applicant shall provide its Massachusetts certificate of registration and, a certificate of good standing from the Secretary of the Commonwealth.
- (q) A statement describing the applicant's current or prospective financial ability to carry out the field and laboratory activities described in the application.
- (r) Provisions 312 CMR 2.07(3)(b), (m), (n), (p), and (q) do not apply to special use permit applications.

(4) Submission and Receipt of Applications. Completed applications 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, the Board determines that 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 denial 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.

2.08: Permit Application Review and Notification

- (1) Review. Complete permit applications shall be reviewed at regular meetings of the Board. Only complete application documents filed at least ten days in advance of scheduled public meeting of the Board shall be considered at that meeting. The applicant or representative shall be present at the Board meeting when the application is considered. The Board shall, at its meeting, make a determination whether or not to issue a permit or may continue its consideration of the application until the subsequent meeting.
- (2) Review Criteria. The review criteria include, but are not limited to, demonstrable proof of the presence of a resource, the qualifications and past performance 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 and Contents. Upon the action of the Board, the Director shall mail to the applicant a permit document or notification of denial stating the reasons therefore. 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 the permit and associated documents or copies thereof and be able to produce such the permit and 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. Permittees shall not commence work at permit sites until they are in compliance with all applicable requirements.

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. Permittee 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 must stay in ongoing contact with the Board.
 - (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 the research plan.

2.09: continued

(c) Archaeological Standards.

1. If artifacts or other tangible objects are collected, a system for identifying and recording their proveniences shall be maintained;
2. Elements 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 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 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.

2.09: continued

(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.

(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 rights under the 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: Inspections

The Board or its authorized agents may undertake 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.

2.10: continued

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.

2.11: Permit Renewal

(1) Permits shall be submitted for renewal on a yearly basis, subject to any changes in permit terms the 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, provided the permittee is in full compliance with the terms and conditions of the previously-held permit, 312 CMR 2.00 and pertinent laws. Permittees seeking renewal of permits shall submit an application no sooner than 60 days nor later than 30 days prior to the expiration of the existing permit. The application shall include all the information specified in 312 CMR 2.07 and a copy of the Annual Report.

(2) The Board shall review an application for renewal pursuant to the standards and review criteria of 312 CMR 2.08. The Board shall show cause for a decision not to renew a permit and shall afford the applicant an opportunity for an adjudicatory hearing as defined in 312 CMR 2.14.

2.12: Permit Suspension, Modification or Revocation

A permit may be modified, suspended or revoked for cause, including but not limited to, presentation or discovery of new evidence, violation of the law or of 312 CMR 2.00, 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 for cause without first holding a hearing, but upon suspension the permittee may request a rehearing or judicial review in accordance with M.G.L. c. 30A, § 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 notice to a permittee and an opportunity to be heard at a public meeting, the Board may modify a permit for cause. The Board shall promptly notify the permittee in writing of any modifications and the reasons therefore. A special use permit cannot be modified into a reconnaissance or excavation permit.

(3) Revocation. In the event that the Board intends to revoke a permit, the Board shall show cause for revocation.

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. All underwater archaeological resources recovered under a special use permit remain the property of the Commonwealth and are not subject to the provisions of 312 CMR 2.13.

2.13: continued

(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 Disposition. 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 standards outlined in 312 CMR 2.13(6)(a) through (g), 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 312 CMR 2.04: Museum).

(5) Resource Valuation. Unless otherwise stipulated, valuation is determined only by the historical value of the resource and its fair market value according to guidelines established by the Board.

(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.

2.13: continued

(e) All offers for resource disposition shall be filed with the Board and held for a minimum of ten 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 working days thereof.

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

2.14: Adjudicatory Hearings

Any party aggrieved by a decision of the Board may request a rehearing or judicial review in accordance with M.G.L. c. 30A, § 14.

2.15: Exemptions

(1) Isolated Finds. 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 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. 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.

(3) Underwater Archaeological Preserves. Where, in the Board's judgment, an underwater archaeological resource, because of its substantial archaeological or historical value, is best left the permanent property of the Commonwealth, it may declare the site to be an underwater archaeological preserve. In such case, any disruption of an underwater archaeological preserve is expressly prohibited, except as specifically provided under a special use permit for historical or scientific purposes. Any and all materials collected will remain the permanent property of the Commonwealth. Notwithstanding the foregoing, the Board recognizes that circumstances may exist which, if deemed compelling, may enable the Board to reconsider such placement.

REGULATORY AUTHORITY

312 CMR 2.00: M.G.L. c. 6, §§ 179 and 180.