

**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 or his designee, the state archivist or his designee, the director of waterways or his designee, the director of coastal zone management or his designee, the director of environmental law enforcement or his designee, the executive director of the Massachusetts Historical commission or his designee, and three members to be appointed by the governor, who shall include a marine archaeologist, and two of whom shall be qualified or certified divers, one to be appointed by the governor chosen from a list submitted by recognized diving organizations. The members shall be appointed for terms of three years; provided, however, of the initial appointments, two shall be for terms of two years and one shall be for a terms of three years. They shall serve without compensation but shall be reimbursed for actual expenses incurred 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;
Amended by St. 1998, c.194,§8.*

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." St.1998, c.194, §8, was approved on July 30, 1998, and made effective July 1, 1998, deleted the first paragraph and replaced it with the first paragraph.

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.

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"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;

(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

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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 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

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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 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

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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.

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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 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,

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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.

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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.