

**COMMONWEALTH OF MASSACHUSETTS
BOARD OF UNDERWATER ARCHAEOLOGICAL RESOURCES
MINUTES OF PUBLIC MEETING – 04 DECEMBER 2008**

MEMBERS PRESENT: Terry French (Designee of John Warner, State Archivist)
John Hoagland (Dive Community Representative)
Martha King, Director of DCR Division of Waterways
Jonathan Patton (Designee of Brona Simon, Executive Director of the Massachusetts Historical Commission)
Joe Pelczarski (Designee of Leslie-Ann McGee, Director of Coastal Zone Management)
Jerry Santos (Designee of Aaron Gross, Director of Environmental Law Enforcement)
Victor Mastone, Director (Staff for the Board)

MEMBERS ABSENT: Marcie Bilinski (Dive Community Representative)
Brendan Foley (Marine Archaeologist)
Lenny Loparto (Designee of Brona Simon, State Archaeologist)

PROCEEDINGS:

The public meeting of the Massachusetts Board of Underwater Archaeological Resources was convened by the Director, Victor Mastone at 1:30 PM on 4 December 2008 in the CZM Conference Room at 251 Causeway Street, Boston.

Victor introduced Lt. Jerry Santos of Massachusetts Environmental Police. He would be serving as the designee Director Aaron Gross for today's meeting. For future meetings, either he or Captain John Tulik would be serving as the designee of the MEP Director. They will be replacing Major Kathleen Dolan who recently left state service.

1. MINUTES

A. Minutes of 25 September 2008

Victor asked the Board if there were any comments or corrections to the minutes of the public meeting held on 25 September 2008. There were no comments or corrections to the minutes.

John Hoagland moved to accept the minutes of the 25 September 2008 public meeting. Jonathan Patton seconded. Unanimous vote in favor. So voted.

2. DIRECTOR'S REPORT

A. Elections of Board Officers

Victor stated that the Board annually elects its two officers, Director and Deputy Director. In 2008, Victor Mastone served as Director and David Trubey served as Deputy Director. Victor reminded the Board that it could nominate whoever it would like, but suggested that the Board keep with past practice and consider nominating its staff for these positions to facilitate administration. He noted that in his recent communications with the Board that he also recommended keeping the Deputy Director position vacant until we know if we can backfill the position. Further, he noted the Board had not held a meeting when he could not be in attendance. Victor asked the Board members for nominations. It was a sense of the Board to follow Victor's recommendation to leave the position of Deputy Director vacant at this time.

John Hoagland nominated Victor Mastone for the position of Director. Jonathan Patton seconded the nomination.

John Hoagland moved to elect Victor Mastone as Director of the Board for 2009. Joe Pelczarski seconded. Unanimous vote in favor. So voted.

B. Schedule of Board Meetings for 2009

Victor proposed a continuation of the bi-monthly schedule of regular public meetings in 2009. He noted that this would not preclude the Board from holding additional public meetings if there were a need. In addition, he asked the Board to consider not scheduling meetings in June, July, and August, as it is difficult achieving a quorum in the

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summer months. Victor proposed scheduling meetings for 29 January, 26 March, 28 May, 24 September and 3 December as the last Thursday of November is Thanksgiving. He noted he would still reserve meeting space February, April, June, July, August, and October.

Joe Pelczarski moved to adopt the dates of 29 January, 26 March, 28 May, 24 September and 3 December as the Board's schedule of public meetings for 2009. Terry French seconded. Unanimous vote in favor. So voted.

C. Board Staffing

Victor reported he had still received no word on backfilling the position vacated by David Trubey at the end of September. He noted the state currently has a hiring freeze.

Change in the order of Business

Victor stated that as chair he would be changing the order of business at this point and move directly to Old Business. He would return to other business later in the meeting. Under Old Business, he said he would start with Underwater Discoveries Unlimited to accommodate a request by Mr. Snow. He noted that he checked with the other permittees and they were also agreeable to this change.

5. OLD BUSINESS

A. Underwater Discoveries Unlimited

Victor reported that Underwater Discoveries Unlimited (UDU) had submitted its Excavation Permit renewal application and Annual Report in accordance with the Board's regulations. Mr. Oscar Snow was in attendance to present UDU's application. Vic noted Mr. Snow had some supplemental information to distribute as well as some that information did not reproduce well. Vic reminded the Board this permit was UDU's southern area, where the *White Squall* is located.

Mr. Snow reported that he would be going out again this coming Spring. He noted he had conducted two new magnetometer surveys of both his northern and southern permit areas. He distributed a colored copy of the magnetometer survey of the area around the White Squall. He also showed pictures of survey operations. Mr. Snow stated that for spring operations, he will be using a vessel owned and captained by David Dutra, who is very familiar with this area. They would be proceeding out of Provincetown. Mr. Snow noted that UDU would be otherwise utilizing the same project archaeologist and staff. Victor noted the Board had received two signed notes from the Project Archaeologist, Barbara Kratchenfeld. One stated she was serving in that capacity. The second note confirmed her approval and adherence to the work plan.

Victor noted the renewal packet also contained photographs of the shipwreck remains that turned up last January in the vicinity of Newcombs Hollow. He noted the remains being depicted were of the section north of the parking lot. Victor confirmed with Mr. Snow that this was most likely from his northern permit area.

Mr. Snow noted both permit areas were under complete surveillance at all times. These observations included patrols by NPS/CCNS, Wellfleet police, relatives in area, and nearby residents. Any time he is notified by them, he would insure the Board would be notified as well.

Joe Pelczarski asked Victor to clarify the permit number was correct. Victor stated a new permit number was assigned to the permit when it was modified in status from a reconnaissance permit (05-001) to an excavation permit (06-003) in 2006.

Joe Pelczarski moved to renew the Excavation Permit (06-003) held by Underwater Discoveries Unlimited for the White Squall site in Wellfleet with all standard conditions in effect and the further conditions that all excavation activities be conducted under the direct supervision of the project archaeologist and in accordance with the submitted work plan, and the UDU coordinates all field activities with the staff of the Cape Cod National Seashore. John Hoagland seconded. Unanimous vote in favor. So voted.

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B. William Bradbury

Victor reported that Mr. William Bradbury had submitted his Reconnaissance Permit renewal application and Annual Report in accordance with the Board's Regulations. Mr. Bradbury was in attendance to present his application.

Mr. Bradbury reported he was unable to visit the site during the past year due to a combination of factors. This included bad weather and lack of availability of a boat at other times. He had been working with an author to write an historical novel about the shipwreck, but he was no longer doing that. He distributed to the Board members a highlighted excerpt of the writing which had led him to stop that particular project. Mr. Bradbury noted the highlight of past year's research was his locating a first-hand account of the wrecking event. In his renewal packet, he had included a transcription of Captain Kennedy's experiences during and after the wrecking event.

Discussion turned to the environmental conditions in the permit area. Mr. Bradbury postulated that the accretion of sand over his permit area could be a direct result of the erosion along Plum Island. He reminded the Board that during the previous season he encountered significant sand accretion over the permit area and could not relocate any of his anomalies. Mr. Bradbury also noted he had spoken with David Trubey about possibly assisting him with his research. Victor noted that David's new boss had undertaken some research in nearby Ipswich Bay and that might be helpful to Mr. Bradbury in understanding what is taking place in that area. John Hoagland asked if there was seasonal variation. Victor was not sure. Joe Pelczarski noted that Mr. Bradbury should keep aware of any potential dredging of the Annisquam River and potential for dredge spoil disposal in the vicinity of his permit area. Victor noted that while he generally receives notice on such projects, he suggested Mr. Bradbury let him know if hears anything.

John Hoagland moved to renew the Reconnaissance Permit held by Mr. William Bradbury for his Gloucester (Annisquam) site with all standard conditions in effect. Terry French seconded. Unanimous vote in favor. So voted.

Mr. Bradbury informed the Board that he was a volunteer shipwright with the replica *Friendship* of Salem at the NPS Salem Maritime site. He invited the Board members to visit the ship where he could point out various features of the vessel. He stated the *Friendship* is similar design to his possible shipwreck.

C. Joseph Dietlin and Duane J. Rine

Victor reported that Joseph Dietlin and Duane Rine had submitted their Excavation Permit renewal application and Annual Report in accordance with the Board's regulations. He noted the permittee had again submitted a very thorough renewal package. Mr. Dietlin was in attendance to present their application.

Mr. Dietlin reported they had a very brief season as most of the year was spent outfitting their new vessel. In addition, poor weather was also a limiting factor. They have moved their efforts back to the area where the main anchor was located years ago. They were also conducting magnetometer survey in the area of Pope's Head Island where they encountered fairly large anomalies, but they believe they are natural in origin. They will be excavating another test pit as planned next to the previous one where the iron fittings were located to mainly to eliminate that area. He said they would then turn their attention toward the southern Gooseberry. Victor reminded the Board that while the permittee has an excavation permit, they have not been doing any recovery of cultural materials from these test pits and they recognize need for appropriate curation and conservation.

Victor observed they had further developed the idea of creating a museum. Mr. Dietlin said that has always been their goals. He said they were now looking more toward Boston rather than Salem. Victor asked if they were still sailing out Beverly and suggested they might consider that area. Mr. Dietlin thought they might do a small conservation lab/museum in that area, but their main goal is to be in Boston as that is where the ship was from and a greater target audience. Terry French asked if they had been in contact with the Peabody-Essex Museum (PEM). Mr. Dietlin observed that PEM's interest seems to be more in the project after they have completed fieldwork and conservation. He was not sure as to what might happen with them after that. He noted that, otherwise, their archives there has been incredibly helpful. His group's interest is to get the artifacts on display and the story told. Mr. Dietlin noted a bronze cannon was found in the late 1940s, but it was dropped in the late 1940s.

John Hoagland asked about the statement in their annual report about their limited partnership agreement, especially the cost for creating a conservation lab. Mr. Dietlin responded viewed this as initially a start-up to insure

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everything was done correctly; not just a treasure trove to be seen, but a learning experience. He believed in this way it was less likely to see the collection distributed, but kept whole.

Victor noted the Board had previously approved their work plan and need not be part of the renewal motion.

Joe Pelczarski moved to renew the Excavation Permit (00-003) held by Joseph K. Dietlin and Duane J. Rine for their Salem site with all standard conditions in effect. Terry French seconded. Unanimous vote in favor. So voted.

D. Neil Good

Victor reported that the Reconnaissance Permit, 00-002, issued to Neil Good would expired at today's meeting is not extended by the Board in accordance with the Board's regulations. Due to record keeping error in the transition of David's departure that he and David had inadvertently overlooked the impending expiration of Mr. Good's permit and did not send him notice. Victor apologized for this error and said he was implementing a reminder system in his calendar to insure this did not occur in the future. He noted the while the Board had implemented a one-extension policy per renewal, Mr. Good would be able to request an additional extension, if necessary, since this extension was a result of Board error.

John Hoagland moved to extend the expiration date of the Reconnaissance Permit (00-002) held by Neil Good for his East Falmouth/Mashpee site until the next meeting of the Board scheduled for January 29, 2009, with all standard conditions in effect and the further condition that the permittee coordinate his activities with the Department of Conservation and Recreation (DCR) staff at the Waquoit Bay National Estuarine Research Reserve, maintain regular communication with the DCR archaeologist, DCR Areas of Critical Environmental Concern (ACEC) Program, the Tribal Historic Preservation Officer for the Mashpee Tribal Council and the Tribal Historic Preservation Officer for the Wampanoag Tribe of Gay Head (Aquinnah). Jonathan Patton seconded. Unanimous vote in favor. So voted.

E. Kenneth J. Medeiros

Victor reported the Kenneth Medeiros had submitted a Reconnaissance Permit application in accordance with the Board's regulations for an area off Duxbury Beach adjacent to which he found historic buttons in 1992. The application appears to be complete. Victor reminded the Board that Mr. Medeiros was granted an Isolated Find permit for the buttons in 2004. Mr. Medeiros was not in attendance to represent the application.

Victor said he as not sure why Mr. Medeiros was not present. It is not necessarily a requirement for renewal. Victor noted it was a fairly thorough annual report they are not moving aggressively. He believed some better mapping would be helpful. He noted the Board has three options. They could act to extend, renew, or not renewal the permit at this meeting. He would recommend renewal as he could see nothing questionable on the archaeological side.

Joe Pelczarski moved to renew the Reconnaissance Permit (07-003) held by Kenneth J. Medeiros for his Duxbury site with all standard conditions in effect. Terry French seconded. Unanimous vote in favor. So voted.

F. Cathrine Macort/Cape Cod Corner Stone Project

Victor reported that he had received an email from Cathrine Macort, which he distributed to the Board at today's meeting. She was resigning from the project due to heavy workload at her job. She stated, "I deeply regret that I am unable to fulfill my obligations to the project or to the State, but I cannot in good conscience continue as archaeologist and permit holder." With her resignation, the permit must be terminated. Cape Cod Corner Stone group will now need to secure a new project archaeologist who can then apply for the permit on their behalf.

Victor said he had informed Mr. Farber of this status change. In his email, he encouraged Mr. Farber to move forward in addressing the Board's concerns as this would be helpful in securing a new archaeologist as permittee for this project. Victor noted Mr. Farber had asked to address the board by tele-conference, but rejected that request as he did not want to set precedence as well as the fact that Ms. Macort had resigned.

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6. NEW BUSINESS**

A. Fathom Research/David Robinson

Victor reported that Fathom Research, LLC, had submitted a Special Use Permit application for a marine archaeological reconnaissance surveys as part of the Weaver's Cove Project. The permit application was inadvertently omitted from the agenda for the September 25, 2008 meeting. The survey will incorporate the use of a marine magnetometer, side scan sonar and sub-bottom profiler and will be under the direction of marine archaeologist David Robinson. Victor stated that the application, including Mr. Robinson's credentials meets the requirements specified in the Board's regulations and that he provisionally issued the permit on July 7, 2008 and approved revised application on August 13, 2008. Vic also noted the provisional approval letter contained the following statement which he would consider to be a standard condition of Special Use permits, "For projects subject to Section 106 of the National Historic Preservation Act of 1966, as amended (36 CFR 800), permittees are directed to consult with and provide their proposed research design and methodology to the State Historic Preservation Office/Massachusetts Historical Commission and the lead federal agency in accordance with 36 CFR 800.4, prior to conducting the field investigation." He would consider this to be a standard condition of Special Use permits as it is standard language in provisional approval letters issued by the Board.

John Hoagland asked Victor to explain why we utilize a special use permit for this project rather than a reconnaissance permit. Victor stated the proposed scope of work was for compliance archaeology as part of the environmental study. It grants no exclusivity to the permittee.

Jonathan Patton moved to grant Fathom Research, LLC a Special Use Permit (08-003) for the Weaver's Cove Project areas (as specified in the application), retroactive to September 25, 2008, with all standard conditions in effect. Martha King seconded. Unanimous vote in favor. So voted.

B. Letter from Paul Adler

Victor reported that he had spoken with and received a letter from Mr. Paul Adler. In his letter, Mr. Adler raised some very interesting questions. After speaking with and reading the letter, Vic believed it might be useful for Mr. Adler to address the Board at our meetings.

Mr. Alder stated that he lives on Martha's Vineyard. He had been involved in treasure hunting, and archaeological finds and conservation. He just completely building the largest bridge on Martha's Vineyard and the conservation people said he did a great job. By way of background, he received a call from a BUAR permittee last winter, not to be named, about participating in that venture. He noted he was contacted by project archaeologist who knew he invested successfully in these types of ventures. He noted the permittee claimed not to have funds to get to the meeting and he had to arrange for transportation for them to meet with him at their site. He knew about this site, but they explained in more detail. Based on that, he thought this was a project for him and he offered to fund entire operation immediately, to sign a contract, ready to go in two weeks. He described their negotiation over possible shares in the venture. In the end, it did not go anywhere. So, he started researching the Board's process. He explained he was involved in a similar project in Uruguay. An individual had a permit, but year after year came back to their review Board with little or no progress each year. He was part of a three person group who were also interested in that site. There is a provision in Uruguay protects the finder of a site with a ten percent finders fee, but allows other group to undertake the site's salvage. In their case, the finder's fee was paid and they took over the salvage of that site.

Mr. Adler posed a scenario where parties made an earnest attempt to work with an existing permittee and that partnership did not happen for whatever reason. They could then register their name with the Board and when the permittee next came into renewal their application, the permittee could be renewed with an understanding they needed to do a certain level of work or would be subject to review. He was looking for some sort of provision that would require permittee to perform to a certain level of expectation or otherwise open up the permit area for a new permittee. If there is not a competing interest, then there is no problem. But if there is a competing person there should be a provision for certain performance standards that if not met would open up the permit area for discussion. A provision where someone could write in a competing request and that there would then be performance standards placed on that area that if not met then others should have the opportunity for that area. In reviewing our minutes, he noted that some things can go on for 10 years or longer with very little happening, little activity. That was the main point of his letter.

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Victor noted he had two lengthy telephone discussions with Mr. Adler over this issue. He had encouraged him to present his issue to the Board to raise our awareness. He was not sure how we could set these provisions up as performance standards. He said it would be helpful to the Board to see the Uruguay agreement even if just excerpts. Jonathan Patton echoed the Board's interest in seeing the agreement with the Uruguayan government. Victor could not find provision in statute for us to set such standards. Even to consider implement through regulations, the Board would need statutory authority and still would need to go to legal counsel for review. Vic said the Board was developing reporting standards which may elevate performance standards. Victor noted the only statutory language tied to performance was in 4th paragraph of Section 63 of Chapter 91, Massachusetts General Laws, which states "*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.*" Further in that section, the statute states permits are for one year, but renewable without further guidance.

Vic acknowledged Mr. Adler raised interesting and valid points. Mr. Adler noted these are state waters that we should all have equal access to. He would like to be kept informed if the Board takes any action on his concerns. Vic noted that by their very nature the Board's permit restrict actions by permittees in order to maximize historical, scientific, archaeological and educational value of the resource. Victor asked if Mr. Adler wanted a written response to his letter. Mr. Adler said no and that he just wanted to raise his concerns with the Board. Victor thanked Mr. Adler for making his presentation to the Board.

Change in the order of Business

Victor stated he would now change the order of business and return to the order in the agenda.

2. DIRECTOR'S REPORT (continued)

D. Ocean Management

Victor reported he has providing technical support regarding the management of the Commonwealth's offshore cultural resources as well as the use of the Commonwealth's coastal waters by recreational divers to the Social/Recreational Working Group. He noted that Ed Bell, representing the Massachusetts Historical Commission (MHC) and Arne Carr have joined the working group. For the months of October and November, he has provided over 25 hours of services to research, writing, and meetings related to the initiative.

E. NOAA Marine Protected Areas Federal Advisory Committee

Victor reported he had been invited to attend the Fall meeting of NOAA's Marine Protected Areas Federal Advisory Committee in Monterey, CA from November 17-21, 2008. The work on the MPA FAC is quite useful his work with MCZM. The creation of a National System of Marine Protected Areas was formally announced at this meeting. He noted all travel expenses are covered by NOAA.

F. Area Committee (Oil Spill Response)

Victor reported he had attended the meeting of the USCG Area Committee on Oil Spill Response on December 2, 2008. He noted that Board members, Joe Pelczarski, Jonathan Patton, and John Tulik are also members representing their respective agencies, CZM, MHC, and MEP. Joe and John were also in attendance at the meeting. Martha King noted she attended the one for Cape Cod to RI on the same day.

G. UNESCO Convention

Victor reported that Barbados recently signed in support the UNESCO Convention on the Protection of Underwater Cultural Heritage. He noted that 20 signatory states have ratified the Convention and it will enter into force on January 2, 2009. He noted the Board has adopted the Annex Rules as best management practices. Victor said that while the US is unlikely to sign the Convention, several federal agencies also recognize these as best management practices.

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3. BOARD MEMBER REPORTS**

A. John Hoagland

John reported that he had participated in Massachusetts Archaeology Month event at the Cape Cod Maritime Museum. The program was co-sponsored by the Board, Stellwagen Bank National Marine Sanctuary, and Cape Cod Maritime Museum. He gave a presentation on some work he had done in Narragansett Bay, Rhode Island, on a site he has been managing.

4. SUBCOMMITTEE REPORTS: OUTREACH

A. Massachusetts Archaeology Month

Victor noted the Board had undertaken three events that coincided with this year's Massachusetts Archaeology Month.

(1) AIA/MOS Archaeology Fair

Victor, participated in the Museum of Science/Archaeological Institute of America "Archaeology Fair" at MOS on October 10 and 11. He was assisted by BUAR Member Marcie Bilinski and volunteer Sharon Mastone. The first day was devoted to school groups and the second day was open to the general public. BUAR sponsored activities included participation in a mock "dig" of a shipwreck, simulation of black water diving (touch not sight), and use with a drop camera to examine artifacts underwater. For our mock shipwreck, we used the shipwreck mosaic prepared by Jim Karos.

(2) Cape Cod Shipwreck

Victor reported he was invited give a presentation as part of the Snow Library, Orleans, Lifetime Learning Lecture series on Cape Cod Shipwrecks. His presentation given on October 16, was entitled Massachusetts Submerged History the Lifetime Learning Seminar.

(3) Cape Cod Maritime Museum

Victor reported that the Board held its final Archaeology Month event on October 20th at the Cape Cod Maritime Museum in Hyannis. Co-sponsoring/participating in two-day event highlighting marine archaeology was the Stellwagen Bank National Marine Sanctuary and the Cape Cod Maritime Museum (Hyannis). The first day will be devoted to "WSI: Wreck Scene Investigation" and the second day will be a symposium entitled "Maritime Mumbblings." Activities will include participation in a mock "dig" of a shipwreck, simulation of black water diving (touch not sight), and use a drop camera to examine artifacts underwater. Board member John Hoagland will give a presentation as part of the symposium.

5. OLD BUSINESS (continued)

G. Nipmuc Nation Tribal Historic Preservation Officer

Victor reported that he had been working with two volunteer divers, Bob Michelson and Michael Prange, to photo-document the mishoons in Lake Quinsigamond. On November 12 and December 2, Bob and Michael relocated and dove on mishoons #1 and #2. They obtained still and video footage of the mishoons. They were discussing the possibility of an ice dive, which they anticipated greater site visibility. The project director, Cheryl Stedler was present at both dives. Victor said he was also working with Professor Allen Gontz to get one of students. They would conduct a Ground Penetrating Radar survey to reconstruct the historic shoreline.

Joe Pelczarski moved to adjourn the meeting at 2:36 PM. Martha King seconded. Unanimous vote in favor. So voted.

Respectfully submitted,

Victor T. Mastone
Director