

**COMMONWEALTH OF MASSACHUSETTS
BOARD OF UNDERWATER ARCHAEOLOGICAL RESOURCES
MINUTES OF PUBLIC MEETING – 01 DECEMBER 2011**

MEMBERS PRESENT: Marcie Bilinski (Dive Community Representative)
Gary Duncan (Designee of Aaron Gross, Director of Environmental Law Enforcement)
Terry French (Designee of John Warner, State Archivist)
Lenny Loparto (Designee of Brona Simon, State Archaeologist)
Kevin Mooney, Deputy Director (Designee of Director of DCR Division of Waterways)
Jonathan Patton (Designee of Brona Simon, Executive Director of the Massachusetts Historical Commission)
Joe Pelczarski (Designee of Bruce Carlisle, Director of Coastal Zone Management)
Victor Mastone, Director (Staff for the Board)

MEMBERS ABSENT: Brendan Foley (Marine Archaeologist)
Vacant (Dive Community At-Large Representative)

PROCEEDINGS:

The public meeting of the Massachusetts Board of Underwater Archaeological Resources was convened by the Director, Victor Mastone at 1:30 PM on 1 December 2011 in the CZM Conference Room at 251 Causeway Street, Boston.

1. MINUTES

A. Minutes of 29 September 2011

Victor asked the Board if there were any comments or corrections to the minutes of the public meeting held on 29 September 2011. There were no comments or corrections to the minutes.

Marcie Bilinski moved to accept the minutes of the 29 September 2011 public meeting. Gary Duncan seconded. Unanimous vote in favor. So voted.

2. DIRECTOR'S REPORT

Victor reported that the Board's meeting agenda had a large number of action items for consideration at today's meeting.

A. Elections of Board Officers

Victor stated that the Board annually elects its two officers, Director and Deputy Director. Victor reminded the Board that it could nominate whoever it would like to serve as Director and Deputy Director, but suggested that the Board keep with past practice and consider nominating its staff to facilitate administration. Vic noted that prior to 2008 the position of Deputy Director had been held by Board staff as well. He did not believe backfilling the other staff position would happen in the foreseeable time. He noted that the Deputy Director position basically serves to allow the Director to step out of the meeting chair role and participate in debate. Further, he noted the Board had not held a meeting when he [Victor] could not be in attendance. In 2011, Victor Mastone served as Director and Board member Kevin Mooney as Deputy Director. Victor asked the Board members for nominations.

Kevin Mooney nominated Victor Mastone for the position of Director. Marcie Bilinski seconded the nomination.

Joe Pelczarski nominated Kevin Mooney for the position of Deputy Director. Marcie Bilinski seconded the nomination

Lenny Loparto moved to elect Victor Mastone as Director and Kevin Mooney as Deputy Director of the Board for 2012. Gary Duncan seconded. Unanimous vote in favor. So voted.

B. Schedule of Board Meetings for 2011

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Victor proposed a continuation of the bi-monthly schedule of regular public meetings in 2012. 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 summer months. He noted that this would not preclude the Board from holding additional public meetings if there were a need. Victor proposed scheduling meetings in 2012 for 26 January, 29 March, 31 May, 27 September and 29 November. He noted he would still reserve meeting space for the last Thursday of February, April, June, July, August, and October. He did not reserve space for December.

Kevin Mooney moved to adopt the dates of 26 January, 29 March, 31 May, 27 September and 29 November as the Board's schedule of public meetings for 2012. Terry French seconded. Unanimous vote in favor. So voted.

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.

3. 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 reminded the Board this permit was UDU's southern area, where the *White Squall* is located.

Mr. Snow reported that they had opened the two concretions recovered last year. He distributed before-and-after color photographs of each concretion. One was wood and iron and appeared to be a portion of rail, approximately 39 inches long. The other was links of chain. Their archaeologist believes these links may be much older than the *White Squall*. Mr. Snow described some of their equipment. He noted UDU planned to get a larger vessel for next increasing from 36 feet to 45 feet and be based out of Provincetown. Mr. Snow then showed the Board a chart of the permit area that depicted the vessel remains. It was 147 feet in length and appears to be broken into three parts. He pointed out the location of the stern post which as left in situ, the approximate location from where the concretions were recovered, and the area where they believe tin cargo still remained. Mr. Snow noted they experienced swells over the field work period. Mung had obscured visibility in the shoal water.

Kevin Mooney 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. Gary Duncan seconded. Unanimous vote in favor. So voted.

Mr. Snow thanked the Board. He said he would be going down to the Cape Cod National Sea headquarters. He noted he goes down there quite often. He reminded the Board that a couple of years ago here were two white vessels in their permit area, one with divers, but they not been observed since that time. He noted they, with the Seashore, have been keeping the area under close surveillance.

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 and had additional information to distribute to the Board.

Mr. Bradbury reviewed the past few years of activities. He introduced Dave Chapman. They had been working together on another project and last summer he started assisting him on this project. Mr. Chapman had contacted a friend in Maryland, William Dudley (retired Director of the Naval Historical Center). He then discussed the project with Mr. Dudley. Victor noted that he had been contacted by Mr. Dudley and the Naval Historical Center and verified the permit's status. Victor also noted Mr. Bradbury is one of the Board's longest standing permittees.

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Marcie Bilinski moved to renew the Reconnaissance Permit held by Mr. William Bradbury for his Gloucester (Annisquam) site with all standard conditions in effect. Kevin Mooney seconded. Unanimous vote in favor. So voted.

C. Joseph Dietlin

Victor reported that Joseph Dietlin had submitted his 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 his renewal application.

Mr. Dietlin said he was very inactive over the past year due to the use of the vessel being held up in probate and a law suit filed against him by a local lobsterman. He said he was no longer counting on the use of their long-time dive vessel. He was considering the use of a subcontractor to help identify or eliminate the two targets identified by Gary Kozak during his magnetometer survey. They intended to follow the previously approved detailed work plan. If they use a subcontractor he would look to the Board for its approval.

Marcie Bilinski moved to renew the Excavation Permit (00-003) held by Joseph K. Dietlin for his Salem site with all standard conditions in effect. Kevin Mooney seconded. Unanimous vote in favor. So voted.

Change in the order of Business

Victor stated that as chair he would be changing the order of business at this point to accommodate applicants in the audience and move to New Business.

4. New Business

A. John Milner Associates/Joel Klein

Victor reminded the Board that John Milner Associates had submitted a Special Use Permit renewal application for an underwater archaeological reconnaissance survey as part of the South River Dredging Project in Salem. Vic said the provisional permit was issued by the Director on November 11, 2011. Peter Leach of John Milner Associates, and Mary Bruno and Greg Harper of Apex were present to represent the application.

Peter Leach described the survey they were conducting for the CAD cell location off Derby Wharf. Noting the recently discovered paleosol at the new ferry terminal, they conducted a seismic reflection profiling data, a relatively low frequency system, to get a really good stratigraphic profile and collected vibra-cores. They were currently reviewing the cores at Salem State University to assess the archaeological preservation potential. Most of the field work has been finalized and they are analyzing data. Greg Harper noted that Lee Cox would be reviewing the remote sensing data as well.

Kevin Mooney moved to grant John Milner Associates Special Use Permit (11-007) for the South River Dredging Project in Salem (areas as specified in the application) with all standard conditions in effect and the further condition that John Milner Associates submit its survey research design and methodology to the SHPO for review. Gary Duncan seconded. Unanimous vote in favor. So voted.

Change in the order of Business

Victor stated that as chair he would be changing the order of business at this point and return to Old Business.

C. Dolan Research

Victor reported that Dolan Research had submitted a Special Use Permit renewal application for its work as part of the New Bedford South Terminal Infrastructure Project. Unfortunately, the application and annual report was received after the submission deadline. He noted the permit will expire at this meeting unless renewed by the Board. These archaeological monitoring services may be needed during the next phase of the terminal project.

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Kevin Mooney moved to renew Special Use Permit (10-004) held by the Dolan Research, Inc. for the New Bedford South Terminal Infrastructure Project area, as specified in the application as amended, with all standard conditions in effect. Gary Duncan seconded. Unanimous vote in favor. So voted.

D. John Milner Associates

Victor noted that the Board received complete renewal applications from John Milner Associates (JMA) for the New Bedford South Terminal Infrastructure Project. Unfortunately, these applications were received after the submission deadline. The permits will expire at this meeting unless renewed by the Board. These archaeological monitoring services may be needed during the next phase of the terminal project.

1. New Bedford Harbor South Terminal Infrastructure Subtidal Special Use Permit

Kevin Mooney moved to renew Special Use Permit (10-005) held by John Milner for the New Bedford South Terminal Infrastructure Project subtidal area, as specified in their application, with all standard conditions in effect. Marcie Bilinski seconded. Unanimous vote in favor. So voted.

2. New Bedford Harbor South Terminal Infrastructure Intertidal Special Use Permit

Marcie Bilinski moved to renew Special Use Permit (10-006) held by John Milner for the New Bedford South Terminal Infrastructure Project intertidal area, as specified in their application, with all standard conditions in effect. Kevin Mooney seconded. Unanimous vote in favor. So voted.

E. Neil Good

Victor reported that the Reconnaissance Permit, 00-002, had submitted a Reconnaissance Permit application in accordance with the Board's regulations for issued to Neil Good would expire on December 3, 2010 if not extended by the Board in accordance with the Board's regulations. Mr. Good had contacted the Board and requested additional time to prepare his renewal application. Mr. Good was not able to make today's meeting.

Kevin Mooney moved to renew the Reconnaissance Permit (00-002) held by Neil Good for his East Falmouth/Mashpee site 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). Gary Duncan seconded. Unanimous vote in favor. So voted.

F. 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 is complete. Victor reminded the Board that Mr. Medeiros was granted an Isolated Find permit for the buttons in 2004. He subsequently located anomalies off shore of that area. Mr. Medeiros was not in attendance to represent the application.

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

G. Harry Noyes and Gary Gianotti

Victor reported that Harry Noyes and Gary Gianotti had submitted a renewal application after the deadline. He had spoken to Mr. Noyes who has requested an extension. Mr. Noyes explained he had been ill most of the field season and Mr. Gianotti had family medical issues as well as suffered home damage during the September storm. The cannon was in Vermont still undergoing conservation treatment, but a treatment update was not received by Mr. Noyes until yesterday. Vic noted he had received a renewal application in today's mail, but had not had a chance to review it. Since the renewal application was received after the deadline, he was looking for the Board to extend the permit until the next meeting.

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Kevin Mooney moved to extend the expiration date until the next meeting of the Board scheduled for January 26, 2012 for the Reconnaissance Permit (10-007) held by Harry Noyes and Gary Gianotti for their Marblehead Channel site with all standard conditions in effect. Gary Duncan seconded. Unanimous vote in favor. So voted.

5. NEW BUSINESS

A. Isolated Find Exemption – Adam McKay

Victor reported that Adam McKay of Plymouth, MA had submitted an application for an Isolated Find Exemption for an iron anchor recovered off Plymouth. Victor said he was contacted Mr. McKay. He had explained to Victor that the anchor had gotten tangled in their lobster trawl line. Victor added that he had gone to Plymouth and documented the anchor. The anchor is an eighteenth century old-style long-shank iron anchor with wooden stock and pudding on the ring. If it were from a naval vessel, it was likely a kedge anchor. If it were from a commercial vessel, then that vessel was about 100 tons. It was the only hang in that area. Victor noted this is a very common occurrence on approaches to harbors which often goes unreported to the Board.

Marcie Bilinski moved to waive jurisdiction over isolated find number 2011-IF-0002 from the Town of Plymouth and relinquish all rights, title and interest to Adam McKay. Gary Duncan seconded. Unanimous vote in favor. So voted.

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)

C. List of Exempted Sites

Victor noted that he had previously informed the Board of his nomination of the State's 40 exempted shipwreck sites for inclusion in the National System of Marine Protected Areas. In preparing these nominations, he found that he needed to update the Board's web page and develop supporting materials.

Victor reminded the Board that during a previous Governor's regulatory reform program in 1996, our regulations underwent some shortening which included the removal of the explicit procedures used to list exempted site. At that time, EEA's legal office told Victor that the Board could simply set up those as administrative procedures outside the regulations. Unfortunately, the Board did not craft those procedures back then. He had now been able to address that unintentional oversight and had prepared a draft nomination process. This was distributed for Board review on October 25, 2011 and again today [a copy is attached]. These nomination procedures mirror the language in our pre-1996 revised regulations. I would like to add this to the web page on Exempted Sites.

Kevin Mooney moved to adopt the *Exempted Site Nomination Process*. Marcie Bilinski seconded. Unanimous votes in favor. So voted.

Victor stated that he also developed a general management plan for the exempted sites function of our program. While it is general in nature, it will be helpful to us for developing individual site management plans in the future. Still under development are scuba diving safety guidelines. Those guidelines are currently being developed with assistance from Holly Bourbon and Vin Malkoski of the Division of Marine Fisheries. These will also be posted on our webpage along with the nomination procedures. Vic said he hoped to use these documents as templates for similar ones concerning underwater archaeological preserves should the opportunity arise to designate such sites.

Finally, as you know, I served as an appointed member of Federal Advisory Committee on Marine Protected Areas. One of the goals of this group is to create a national system of MPAs to recognize important marine resources. Our Exempted Sites are important marine cultural resources for recreational and heritage tourism purposes. To that end, Victor nominated all 40 of these sites to the national system. He received concurrence from the Navy and Coast Guard to include the seven exempted sites that remain under their ownership. Vic assured the Board that nomination and inclusion in the national system does not change any aspect of our management of these resources or the aspects of public use - it does not give the federal government any additional authority; it does not

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change our authority; and it does not entail any restrictions on access or use of these sites. It simply gives our sites a higher level of recognition at the national level. Additionally, it may open the door to funding opportunities to better develop these sites for the enjoyment of the recreational diving community. I believe you will agree that having our exempted sites included in the national system is an important achievement for the Board.

D. William Carter

Victor reported that well-known recreational diver, William “Bill” Carter, had recently passed away. He reminded the Board that Bill had been a member of the Bassings Cove Maritime Association permit. He noted that while never a Board member, Bill had worked with Senator Saltonstall to craft the Board’s enabling statute. Bill was responsible for the Board receiving the shipwreck research files of the late Paul Sherman. Bill was very generous with sharing his information and knowledge. He asked the Board to formally recognize Bill’s dedication and commitment.

Joe Pelczarski moved: It is resolved by the Massachusetts Board of Underwater Archaeological Resources to express its appreciation and gratitude to William “Bill” Carter for his efforts to explore and encourage others to explore the Commonwealth’s submerged cultural heritage. Bill willingly shared information on the wrecks he explored and provided invaluable guidance to many researchers, recreational divers, and the Board. His efforts contributed greatly to the Board’s mission. Kevin Mooney seconded. Unanimous vote in favor. So resolved

E. NPS American Battlefield Protection Program

Victor reported they had submitted their draft report and were presently working on revisions. Vic reviewed some of the battle events and documents. He noted the grant will expire on December 31, 2011. He hoped to have the entire report available as a pdf file on line at the board’s web page. Copies of the final document would be filed with the NPS, MHC, and local historical commissions

F. NOAA’s Marine Protected Areas Federal Advisory Committee

Victor reported that he had several items to report related to NOAA’s Marine Protected Areas (MPA) Federal Advisory Committee (FAC). He reminded the Board he is an appointed member of the MPA FAC and co-chair of their Cultural Heritage Resources Working Group (CHRWG):

1. The full CHRWG with met in New Orleans (LA) on November 14th-17th conjunction with the full FAC. They completed development of a white paper entitled, “*Recommendations for Integrated Management Using a Cultural Landscape Approach in the National MPA System*”.
2. He attended the meeting of the full FAC in New Orleans (LA) on November 15th-17th. The FAC approved the CHRWG’s recommended revisions to the Framework governing the National System of MPAs. These recommendations were forward to the Secretary’s of Commerce and Interior. He will provide copies of the white paper and recommendations to the Board members once it is submitted to the Secretaries of Commerce and Interior.

Victor noted that all travel expenses are paid directly by NOAA’s MPA Center. Victor stated that his single-term appoint to the FAC had now expired. He was grateful and honored to have participated in this national service.

G. Area Committee (Oil Spill Response)

Victor reported he would be attending the meeting of the USCG Area Committee on Oil Spill Response on December 13, 2011. He noted that Board members, Joe Pelczarski, Jonathan Patton, and Gary Duncan are also members representing their respective agencies, CZM, MHC, and MEP. Joe also serves as liaison to MEMA.

H. Society for Historical Archaeology’s Annual Conference

Victor reported that he would be attending the Annual Conference of the Society for Historical Archaeology in Baltimore, MD in January 3-8, 2012. Victor noted that he and Chris Amer of the South Carolina Institute for Archaeology and Anthropology organized the Annual Government Maritime Managers’ Forum representing state, federal, and foreign government programs. This year’s forum is entitled *Government Maritime Managers’ Forum XX: To Go in Harm’s Way or the Daily Life of a Government Manager*. This seemed quite an appropriate theme given the

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current universal fiscal situation. Victor said he will be participating in a panel on *Solving Problems in the Public Interpretation of Maritime Cultural Heritage*. He would also be participating in the annual meeting of the SHA UNESCO Committee. Funding for this travel was personal and he would be using vacation time for this important professional meeting.

3. BOARD MEMBER REPORTS

Kevin Mooney stated he had some sad news to share with the Board. The wife of former Board member and Waterways Director, Gene Cavanaugh, had recently passed away. There were no other Board member reports.

4. SUBCOMMITTEE REPORTS: OUTREACH

A. Massachusetts Archaeology Month

Victor noted the Board participated in the Museum of Science/Archaeological Institute of America "Archaeology Fair" at MOS on October 7 and 8 as part of Massachusetts Archaeology Month. He was assisted by Craig Brown, BUAR Research Fellow, on both days, by Craig's wife Sarah and daughter Bonnie on Friday, and by a rotating group of student volunteers on Saturday. Victor stated their assistance was terrific. 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 using the shipwreck mosaic prepared by Jim.

B. Bay State Council of Divers Meeting

Victor reported that he attended November 30th meetings of the Bay State Council of Divers. The meeting focused on the review of Bay State Council's Club Picnic/Treasure Hunt on September 25th and activities to assist the Board. The activities included the re-installation of the Minot's Ledge Lighthouse memorial plaque and monitoring of the Exempted Sites. The next Council meeting is scheduled for February 8, 2012.

C. Friends of Belle Isle Marsh

Victor reported he will be giving a presentation on the Revolutionary War Battle of Chelsea Creek to the Friends of Belle Isle Marsh in the near future. The date has yet to be determined.

Marcie Bilinski moved to adjourn the meeting at 2:24 PM. Gary Duncan seconded. Unanimous vote in favor. So voted.

Respectfully submitted,

Victor T. Mastone
Director

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Exempted Site Nomination Process

Purpose

Where, in the Board's judgment, an underwater archaeological resource, because of its location, condition, history, or resource value, is best left in the public domain, it may declare the site exempt from the permit process. In such cases, a permit shall not be issued for such site and any major disruption of these sites is expressly prohibited.

Legal Authority

The designation of an underwater archaeological resource as an exempted site is established in Massachusetts General Law (Chapter 91, Section 63) and the Code of Massachusetts Regulations (312 CMR 2.15(2)).

Nomination Procedures

In order to petition the Board to place a site on the exempted list, any person may present a written nomination to the Board. The nomination must include, at a minimum: the name and contact information for the nominating party, the name (if known) and location of the resource, a summary of its history, physical condition, and dive condition, and a statement outlining any evidence concerning placement. Nominations must be submitted in typewritten form and received by the Board no later than ten days prior to a scheduled Board meeting for consideration at that Board meeting. The Board will allow 90 days for interested parties to comment on the proposed action, and shall, thereafter vote on the request at a meeting of the Board. All Board meetings are open to the public and subject to the State's Open meeting Law (Massachusetts General Law, Chapter 30A, Section 11A½). Any person may request, in writing, a public hearing be held regarding a petition; such request must be received by the Board no later than 40 days prior to the meeting scheduled to vote on the petition.

Evaluation Criteria

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

List of Exempt Sites

A list of underwater archaeological resources declared exempt with their locations shall be maintained by and available from the Director. Once an underwater archaeological resource is declared exempt, it will be included on the list. Information on specific exempted sites included in the list will be made available by contacting the Board's Director or on the Board's webpage at: <http://www.mass.gov/czm/buar/buares.htm>.

Reconsideration of Exempted Status

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Notwithstanding the foregoing, the Board recognizes that circumstances may exist which, if deemed compelling, may enable the Board to reconsider such placement. The Board will follow the same timeline and procedures described under the Nomination Procedures section (above) for the reconsideration of previous placement