

APA-2
07/04

Alabama Historical Commission

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Historical Commission

RULE NO. & TITLE: 460-X-12-.01. Alabama Underwater Cultural Resources Permits

INTENDED ACTION: To amend the Rule No. 460-X-12-.01 that established the way to investigate and preserve submerged historic and prehistoric resources.

SUBSTANCE OF PROPOSED ACTION: Clarify the terms and definitions used in the rule; change the length of time for permits; delete the Sport and Recreational Divers Permit. This rule established the actions needed for proper ways to explore The State of Alabama's waters to ensure that proper consideration is given to protect and preserve these historic and prehistoric resources for the people of Alabama.

TIME, PLACE, MANNER OF PRESENTING VIEWS: This notice will be published on October 31, 2005. Written comments will be accepted until December 9, 2005, at 5:00 P.M. at the office of the Alabama Historical Commission, 468 South Perry Street, Montgomery, Alabama 36130. There will also be two public meetings. The first will be held in Selma, Alabama, at the Performing Arts Center, 1000 Selma Avenue from 5:30 P.M. to 7:30 P.M. on Thursday November 10, 2005. The second will be held in Mobile, Alabama, at the Mobile Government Plaza, First Floor Multi-Purpose Room, 205 Government Street, please use the Joachim Street Entrance, from 5:30 P.M. to 7:30 P.M. on Thursday November 17, 2005.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: The Alabama Historical Commission will accept written comments received no later than December 9, 2005.

CONTACT PERSON AT AGENCY: Elizabeth Ann Brown, Interim Executive Director of the Alabama Historical Commission, 468 South Perry Street, Montgomery, Alabama 36130

Elizabeth Ann Brown
Interim Executive Director
Alabama Historical Commission

ALABAMA HISTORICAL COMMISSION
CHAPTER 460-X-12
ALABAMA UNDERWATER CULTURAL RESOURCES

TABLE OF CONTENTS

460-x-12-.01 Permits

460-x-12-.01 Permits. The purpose of this regulation is to provide for the lawful protection, exploration, identification, excavation, preservation, and enjoyment of non-renewable underwater cultural resources as described in ~~Alabama Act 99-595~~ The Code of Alabama 1975 Section 41-9-290 through 299.2 which are subject to the exclusive dominion and control of the State of Alabama. This regulation explicitly applies only to objects created or modified by human beings. Excluding sunken logs, cants, and timber resources of any other type not associated as part of a shipping vessel. The Alabama Historical Commission (Commission) as charged in ~~Alabama Act 99-595~~ section 41-9-290 through 299.2 shall oversee the provisions of this Act relating to all submerged cultural resources. The Alabama Department of Conservation and Natural Resources (Conservation) shall assist the Commission with input and approval of actions within their jurisdiction of conservation.

(1) Definitions

(a) Archaeologist. 36 CFR 61 (Appendix A) as amended is adopted by reference as the rule for minimum professional qualifications. Single copies of 36 CFR 61 (Appendix A) which was formulated by the United States Department of the Interior and is published in the Federal Register are available at no cost from the Alabama Historical Commission. 36 CFR 61 (Appendix A) contains the list of educational and experience requirements for persons to perform archaeological work. The principal investigator for excavation of submerged resource investigations meeting the minimal professional qualifications as stated in 36 CFR Part 61 (Appendix A) as amended, may must include a graduate degree from an accredited institution of higher education in anthropology with a specialization in archaeology or a graduate degree in history with a specialization in archaeology, plus: at least one year full-time professional experience or equivalent specialized training in archaeological research, administration, or management; at least nine months of supervised field and analytical experience in general maritime archaeology; and demonstrated ability to carry research to completion. Copies of documentation indicating the attainment of these qualifications shall be submitted to the Commission

(b) CFR. Code of Federal Regulations.

(c) Commission. The Alabama Historical Commission acting as custodian of cultural resources for the State of Alabama

(d) Conservation. The Alabama Department of Conservation and Natural Resources acting as the custodian for the bottoms of the rivers, lakes, bays, and the Gulf of Mexico belonging to the State of Alabama.

(e) Contract. Issued by the Commission pursuant to ~~Alabama Act 99-595~~ The Code of Alabama 1975 Sections 41-9-249 and 41-9-290 through 299.2 and these regulations by which the applicant may conduct explorations, identifications, and/or excavations.

(f) Contractor. Any individual, company, corporation, private or public institution determined by the Commission to be appropriately qualified, that has applied for and received a permit or contract from the Commission to begin exploration or excavation activities in state-owned waters.

(g) Cultural Resources. All abandoned shipwrecks or remains of those ships and all underwater archaeological treasures, artifacts, treasure troves, or other cultural artifacts and materials, whether or not associated with any shipwreck that are contained in or on submerged lands belonging to the State of Alabama and the sea within the jurisdiction of the State, and that have remained unclaimed for more than 50 years, excluding therefrom sunken logs, cants, and timber resources of any other type not associated as part of a shipping vessel and are eligible for or listed in the National Register of Historic Places or the Alabama Register of Landmarks and Heritage.

(h) Excavation. The study and intentional removal from submerged land belonging to the State by accepted scientific methods, of any objects recognized as cultural resources.

(i) Exploration. The systematic examination by actual scientific survey of an area of submerged land belonging to the State for the purpose of locating and recognizing cultural resources.

(j) Permit. Same as (e) above.

(k) Permittee. Same as (f) above.

~~(l) Recreational Dive. The recreational or sport diving to view or to examine submerged cultural resources where not specifically prohibited.~~

(m)(l) Submerged Lands. Lands under navigable waterways owned or controlled by the State of Alabama.

(m)(m) Treasure Trove. Any gold bullion, ingots, gold dust, silver bars, and other precious metals or stones.

(n) Scientific survey. The systematic search of a defined area of submerged land belonging to the state using modern, technical

means to seek cultural resources. A scientific survey often uses a grid or set of parallel transects with known spacing within the search area to investigate an area. Geotechnical technology such as magnetometry, side scan sonar and sub-bottom profiling are often used. The emphasis is upon producing a permanent written or digital record of magnetic signals, acoustic images, or anomalies that may represent submerged cultural resources. The physical location of these results must be clearly recorded using a real-world coordinate system and a report should be generated.

(2) General Requirements

(a) Cultural resources shall not be taken, damaged, destroyed, salvaged, excavated, or otherwise altered without a current contract or permit obtained from the Commission.

(b) Permits which involve the displacement of ten cubic yards or more or that may occur in sensitive areas may also require the approval of Conservation.

(c) It shall be the responsibility of the contract or permit holder to obtain permission from any federal agency having jurisdiction which includes, but is not limited to, the U.S. Navy, the U.S. Coast Guard, the Tennessee Valley Authority and the U.S. Army Corps of Engineers.

(d) Any permit approved by the Commission shall be required to be available for inspection at the dive site.

(e) ★ Once a Search and Identification Permit and or an Excavation/Salvage Permit is issued the Permittee has six months to initiate the survey or excavation and six months from that first day to complete the survey or excavation. are valid for six months unless special circumstances may require a longer period. At the end of the permit period (a maximum of 12 months) and after submission and approval of a report on the permit period, the Permittee may request a new permit. The granting of a new permit shall be determined by the Commission and in some permits, also by Conservation. This determination shall be based, in part, upon the successful completion of the permittee's responsibilities under the previous permit and upon the Commission's determination as to what is in the best interest of the cultural resource and the State.

~~(f) A sport/recreation permit is valid for one year.~~

(g)(f) The permittee shall not disclose the exact location or coordinates of any cultural resources located to anyone except the Alabama State Archaeologist or his/her designee.

(h)(g) No guarantee of being granted a new permit is stated or implied.

(h) Failure to meet the permit requirements may result in the permit being terminated or a new permit request being refused.

(i) Termination of a Search and Identification Permit or an Excavation/Salvage Permit may occur if no significant activity takes place within the permit time frame.

(j) It is the Permittee's responsibility to request a new permit prior to the end of the current permit activities. Failure to do so will result in the permit expiring.

(k) The Commission, Conservation, the State of Alabama, their agents or employees shall in no way be held liable for any accident, incident, or cost incurred as a result of any permitted activity.

(l) The Commission shall respond to permit requests within thirty twenty-five business days of receipt of the request. Typically, permit requests are reviewed by the staff of the Commission, the staff of Conservation and the members of the Maritime Advisory Council.

(m) No individual, institution or group may have more than one active permit or contract at a time.

(n) Permits within Mobile Bay, the Mobile-Tensaw Delta, and that portion of the Gulf of Mexico within State waters will not exceed three contiguous square miles in area.

(o) Individuals involved in recreational diving, spear fishing, or underwater photography do not need any permit from the Commission. This in no way implies that cultural resources should be taken from state land.

(3) Classification of Permits. No permit from the Commission is required to dive in Alabama's waters except as defined herein.

~~(a) Sport or Recreational Divers Permit. The following permit shall be used for sport or recreational divers permission:~~

~~The Alabama Historical Commission issues this permit to _____ for the enjoyment of Alabama's submerged cultural heritage. This permit is for pleasure only and no systematic search is allowed. If a systematic search is desired, the Permittee should apply for the Search and Identification Permit 40-x-12-01(3)(a)(b).~~

~~This permit shall be valid for all waters and bottoms belonging to the State of Alabama with the exception of the Mobile Bay Battlefield Corridor, the Spanish Fort/Diakely Corridor, the Battery Gladden/Battery McIntosh Corridor~~

(a copy of these coordinates may be obtained from the Commission); or other sites determined eligible for or listed on the National Register of Historic Places or the Alabama Register of Landmarks and Heritage by the Commission, or sites within areas under active investigation (permit).
~~SPECIAL NOTE: submerged lands belonging to the Tennessee Valley Authority, the U.S. Army Corps of Engineers, and public utilities may require specific and separate approval from these agencies prior to diving on their submerged bottoms:~~

~~The permit shall be valid for one year effective the date this permit is signed. A single permit held by an accredited dive instructor who teaches diving or who takes groups of divers to sites will be sufficient for the group as a whole if the instructor/leader takes responsibility for the actions of his/her students. A permit for each individual is required for all other groups.~~

~~The Permittee may visit all shipwreck sites and inundated archaeological sites within State of Alabama waters excluding the above noted exceptions. These include: the Mobile Bay Battlefield Corridor, the Spanish Fort/Blakely Corridor, and the Battery Gladden/Battery McIntosh Corridor.~~

~~No excavation, boring, or alteration of a shipwreck site or inundated archaeological site shall be conducted under this permit.~~

~~No artifacts either attached or loose shall be retrieved at a shipwreck site or inundated archaeological site.~~

~~Should the Permittee discover an underwater cultural resource that he/she believes is unknown to the Commission, he/she will provide the Alabama State Archaeologist with a short report that will include a description of the find and a location map~~

~~The Permittee shall not disclose exact location or coordinates of any cultural resources located except to the Alabama State Archaeologist or his/her designee.~~

~~In no way shall the Commission, the State of Alabama, their agents or employees, be held liable for any accident.~~

incident, or cost incurred by this permit activity:

~~The rights and approvals granted to the Permittee by the Commission for this permit activity shall in no way be transferred or subcontracted to any other individuals or companies.~~

~~Issuance of this permit by the Commission to the Permittee shall in no way negate the responsibility of the Permittee from obtaining any and all federal or state permits or approvals or complying with any or all federal or state laws or regulations.~~

~~Issuance of this permit by the Commission to the Permittee shall in no way negate the State of Alabama's ownership of all shipwrecks shipwreck sites, debris fields, inundated archaeological sites, or any and all artifacts associated with these sites.~~

Executive Director Date
Alabama Historical Commission

Date

(b)(a) Search and Identification Permit. The following permit shall be used for search and identification permission:

The Alabama Historical Commission (Commission) grants an exclusive cultural resources Search and Identification Permit to _____ (Permittee), for the purpose of conducting systematic ~~exploration~~ search procedures and diving as may be necessary to locate and identify the _____ with the following stipulations.

This permit shall be valid only for the area described below:

No excavation, boring, or alteration of the site with the exception of hand fanning shall be conducted unless specifically approved by the Commission through a written amendment to this stipulation, attached to this permit.

No artifacts either attached or loose shall be retrieved without a specific amendment to this permit requested and approved by the Commission in writing.

~~This permit shall be valid for six (6) months effective on a date agreed upon by the Commission and the Permittee. A six (6) month extension may be granted by notifying the Commission, in writing, of the need for the extension and an explanation of the reasons for this need. The Permittee has six months to initiate the survey and six months from that first day to complete the exploration. At the end of the permit period (a maximum of 12 months), and after submission and approval of a report on the permit period, the Permittee may request a new permit.~~

The Permittee shall allow, upon reasonable 48-hour notice, Commission staff or their agents access to facilities and search activities.

The Permittee shall provide the Commission a map and description of the site and debris field (if any) upon completion of this permit activity.

The Permittee shall provide coordinates and listings for any and all major anomalies discovered during this permit activity and these shall be plotted on a map provided to the Commission.

A monthly progress report shall be provided by the Permittee to the Commission.

A final report indicating methodology, techniques, maps, photographs or slides, survey data, findings and conclusions shall be submitted to the Commission no later than six (6) months following the conclusion of the permit activity and prior to any further permit consideration.

The Permittee shall not publically disclose to any person the exact location or coordinates of any cultural resources located except to the Alabama State Archaeologist or his/her designee.

In no way shall the Commission, the State of Alabama, their agents or employees, be held liable for any accident, incident, or cost incurred by this permit activity.

The rights and approvals granted to the Permittee by the Commission for this permit activity shall in no way be transferred or subcontracted to any other individuals or companies.

Issuance of this permit by the Commission to the Permittee shall in no way negate the responsibility of the Permittee from obtaining any and all federal or state permits or approvals or complying with any or all federal or state laws or regulations.

Issuance of this permit by the Commission to the Permittee shall in no way negate the State of Alabama's ownership of all cultural resources ~~shipwrecks~~ ~~shipwreck sites~~, ~~debris fields~~, ~~inundated archaeological sites~~, or any and all ~~artifacts~~ located by the permit activity.

Executive Director	Date
Alabama Historical Commission	

	Date

(c)(b) Excavation/Salvage Permit. This permit is for the excavation and/or salvage of a located submerged cultural resource. Due to the unique qualities and sensitivity of submerged cultural resources and due to the technical and preservation needs of submerged cultural resources, these permits are negotiated on an individual basis. This ensures that the submerged cultural resource can be properly and successfully excavated or salvaged and that the preservation of the submerged cultural resource is guaranteed. Excavation/Salvage Permits which require the removal of ten (10) cubic yards of bottom or more shall also require the approval of Conservation which may result in permit modifications. A professional archaeologist is required to be the principal investigator in order to qualify for this permit.

(4) Agency Responsibilities

(a) The Commission shall provide Conservation with all documentation for any permit request which requires the removal of ten cubic yards or more of submerged bottoms or which is within a sensitive area as defined by Conservation. A listing and map of any sensitive areas shall be provided to the Commission by Conservation. The permit shall not become effective until the Commission receives written approval from Conservation.

(b) The Commission may request of Conservation the restriction of commercial fishing activities in or around the immediate vicinity of a known cultural resource when the likelihood of damage or alteration to the cultural resource is deemed evident. The restriction shall not take place until the Commission receives written approval from Conservation.

(c) The Commission may request of Conservation the restriction of activities under its Conservation's jurisdiction in or around the immediate vicinity of a known cultural resource when the likelihood of damage or alteration to the cultural resource is deemed evident. The restriction shall not take place until the Commission receives written approval from Conservation.

(5) Special Circumstances

(a) The Commission may consider requests for grant assistance on a case by case basis if the proposal is determined by the Commission to contribute, in an exceptional manner, to an understanding of state and national history.

(6) Penalties and Enforcement

(a) Any individual, company, corporation, private or public institution who intentionally and knowingly commits the crime of theft or disturbance of a cultural resource protected by the Commission as stated in Section 8 of the Alabama Act 99-595 shall be punishable, upon conviction, as provided by law.

(b) Any violation of the Alabama Act 99-595 (Code of Alabama 1975, Section 41-9-290 through 299.2) caused by activities conducted for purposes not related to the exploration, excavation, or salvaging of cultural resources may be cured if the activities causing the violation are halted and the Commission is notified immediately. If formal investigations are desired, an application for a contract or permit shall be submitted to and subject to approval by the Commission.

(c) In all cases of arrest and conviction under Section 8 of the Alabama Act 99-595, (Code of Alabama 1975, Section 41-9-290 through 299.2) all boats, instruments, and other equipment used directly in conjunction with the offenses are declared to be contraband and shall be seized and brought before the court having jurisdiction of the offense for proper disposal.

(d) All law enforcement agencies and officers, state and local, shall assist the commission in the enforcement of the Alabama Act 99-595 (Code of Alabama 1975, Section 41-9-290 through 299.2).

Author: Gregory HC. Rhinehart and William Little.

Statutory Authority: Code of Ala. 1975, Title 41-9-249.(1) and Title 41-9-249.1, Alabama Act 99-595: Title 41-9-290 through 299.2

History Notes: Effective Date - June 1, 2001.