

Gulf Coast Divers

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October 20, 2004

Steve Phillips
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Dear Steve;

As per your request in our recent phone conversation, I am writing to give some of my specific objections to the current regulations imposed by the Alabama Historical Commission. It seems clear to me that the AHC has far overstepped the intentions the Alabama Legislature had when it passed the Alabama Underwater Cultural Resources Act.

The AHC has made it illegal for anyone to dive in Alabama's waters without first getting permission and a permit from them. The requirements to get the permit are ludicrous, and then, even if a permit is obtained, the conditions imposed on the diver require paperwork that would turn his recreational activity into a bureaucratic job.

When I first found out that the Historical Commission was drafting regulations concerning diving got a copy of the draft proposal. After reading the proposed regulations I was alarmed at the restrictions they would place on divers, so I attended the public meetings of the Alabama Historical Commission to voice my concerns.

When I expressed my objections, I was first told by the commission that the proposed regulations didn't say what I was claiming they said. When I pointed out exactly where it did, they assured me that **what the regulations actually said was not what they meant.**

I had no objections to the intent they claimed they were trying to accomplish. By the end of the meeting we all seemed to be in agreement about the intent of the regulations, and that the draft proposal did not reflect that intent. Overall I thought it was a good discussion, and I felt like we all agreed on the need and intent, and I assumed changes would be made in the wording of the final regulations.

Later, another meeting in Mobile was announced in the paper asking for public comment on the draft proposal. I went to this meeting, and after reading the proposed regulations there I could not find where any changes had been made since the first meeting I had gone to. All of wording which caused my original concerns were still there.

Once again I explained my concerns, and again, I was told that the regulations didn't say what I claimed they did. After more discussion they agreed that maybe the regulations "could be read that way", but assured me they had no intent of regulating diving in general, or even stopping anyone from picking up random items they might find. As before, they did say that they wanted to be told about significant finds, to which I agreed should be the case.

I again made the point...change the wording to reflect the intent. I was thanked for my input and assured my concerns would be addressed.

When the regulations were implemented nothing had changed. I understood that the purpose of the meeting was to get public comment before finalizing the regulations.

If the AHC was being honest about their intentions, I do not understand why they would not change the regulation's wording after agreeing twice that the wording did not reflect their intent.

I want to point out why I think that the regulations are at best, a horribly written set of regulations which don't reflect what was intended, or at worst, a set of tightly written regulations which could be used to control all diving in Alabama.

The following is from Alabama law Section 41-9-294(a). For clarity, I have highlighted part by putting it in bold. Read just the bold part to better see my concern. But when you include it all you can see that it in no way changes the requirement.

“Any qualified individual, company, corporation, or public institution desiring to conduct any type of exploration or excavation of cultural resources shall first make application to the commission for a permit or contract to conduct the operation.

The only thing not crystal clear here is the definition of “Qualified, individual” and of “exploration”. I would assume qualified means certified as a diver, but that is never defined in the regulations. But the AHC does define “exploration” in their regulations. On page 2 the Regulations specifically defines **“exploration” as “The recreational or sport diving to view the State of Alabama’s submerged bottom lands or...”**.

The definition goes on, but that first part is not changed by anything which comes after “or”..

So AHC regulations define looking at the bottom while diving recreationally as exploring. *Their regulations require me to get their permission to look at the bottom in any of my state’s waters!*

(Also be note that the wording in the regulations for the “Sport or Recreational Divers Permit” on page three specifically states “This permit is for pleasure only...”)

So...if I want to dive for recreation in Alabama, and do it by the letter of the law, I have to get a permit to look at the bottom!

Now, what do the regulations require of me to get that permit?

Section 41-9-294(a) . “...**If the commission finds that the granting of a permit or contract is in the best interest of the state**, it may, subject to the other provisions of this division, grant the applicant a permit or contract for a period of time and under those terms and conditions as the commission considers to be in the best interest of the state.”

So first, I have to convince the Commission that it is in the State’s best interest for me to look at the bottom! I’m not sure I could argue that it is in the state’s interest for me to dive recreationally, but if I can, I may get a permit. However, it is only good for six months. Every six months I have to reapply for a new permit all over.

But let’s say I go through all this and do get permission to dive. Now that I have the permit I have a whole new set of requirements and work to do both on my dives and afterwards.

In the regulations, 3(I) gives the requirements that must meet for a Sport or Recreational Diver’s Permit. Condition 6 says that the permittee must provide the commission with a report, **including pictures and maps**, describing any “finds” I may come across while “looking at the bottom”.

How do I know what a “find” is? I’m not allowed to pick it up or move it if it’s been underwater for more than 50 years. So how do I know how long it been there? And then if I knew, how am I supposed to describe it and take pictures of it without ever picking it up.

Take a look at the Historical Commission’s own Mission statement;

“The mission of the Alabama Historical Commission is to protect, preserve, and interpret historic places in Alabama.”

Note the mission statement specifies historic **places**. Now if we look at the permit, we find that Condition number 1 specifically says the permit is for **all** Alabama waters **EXCEPT the known historical places**. So they are excluding me from diving in the places covered under their Mission Statement, but they want to require me to get a permit from them to look at the bottom anywhere else!

I have already gotten the Commission’s response to these issues. I personally discussed it at length twice, *before the regulations were ever finalized*, and twice they assured me that their intentions are not the same as what the regulations say, But it’s all still there! I would like to know why have they refused to change it. They assured me that they would never enforce them as written. Even if that is so, how can they be sure that future employees will know that *they didn’t really mean it?*

I hope some of this can help your efforts. I think anyone who looks at this closely will come to the conclusion that the existing regulations just aren't right. I hope we can get them changed. I appreciate your efforts in this. I have invested a huge amount of time on this ridiculous set of regulations myself, and I know you have spent far more time on it than I.

Let me know if I can be of any further assistance.

Sincerely,

Bob Cox
Gulf Coast Divers