ALABAMA HISTORICAL COMMISSION
ADMINISTRATIVE CODE

CHAPTER 460-X-12
ALABAMA UNDERWATER CULTURAL RESOURCES

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460-X-12-.01 Permits

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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 defined in the Code of Ala. 1975 Section 41-9-290 through 299.2 which are subject to the exclusive dominion and control of the State of Alabama. This regulation applies only to cultural resources as defined in the law (41-9-291(3)), not to natural mineral resources such as raw gold or fossils. Excluded from the definition of cultural resources are 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 sections 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. The Interior Secretary's (Historic Preservation) Professional Qualifications Standards for archaeology are adopted here as defining an archaeologist. First referenced in 36 CFR Part 61 and defined by the National Park Service these qualifications are:

The minimum professional qualifications in archeology are a graduate degree in archeology, anthropology, or closely related field plus:

1. At least one year of full-time professional experience or equivalent specialized training in archeological research, administration or management;

2. At least four months of supervised field and analytic experience in general North American archeology, and

3. Demonstrated ability to carry research to completion.

In addition to these minimum qualifications, a professional in prehistoric archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the prehistoric period. A professional in historic archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the historic period.

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 the Code of Ala. 1975 Section 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, or 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) Submerged Lands. Lands under navigable waterways owned or controlled by the State of Alabama.

(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 (but see Exceptions within the law at 41-9-299.1).

(b) The issuance of any contract or permit shall also be subject to the prior written approval of the Commissioner of Conservation and Natural Resources.

(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 or contract approved by the Commission shall be required to be available for inspection at the dive site.

(e) An Exploration and Evaluation Permit and an Excavation/Salvage Contract are valid for twelve months. Within 20 calendar days of the end of the permit or contract period, the Permittee or Contractor may request a new permit or contract. The granting of a new permit or contract shall be determined by the Commission and also by Conservation. This determination shall be based, in part, upon the successful completion of the permittee's or contractor's responsibilities (including a final report) under the previous permit or contract and upon the Commission's determination as to what is in the best interest of the cultural resource and the State.

(f) The Permittee or Contractor, and the Commission and Conservation will treat the location information as confidential and only individuals with a specific need to know will be privy to this information until all parties agree that this information can be released to the public.

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

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

(i) Termination of an Exploration and Evaluation 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 or Contractor's responsibility to request a new permit or contract prior to the end of the current permit or contract activities. Failure to do so will result in the permit or contract expiring.

(k) The Commission shall initially respond in writing to permit or contract requests within twenty-five business days of receipt of the request. Typically, requests are reviewed by the staff of the Commission, the staff of Conservation and the members of the Maritime Advisory Council (two members of which shall be from the diving community).

(l) Permits or contracts will be issued commensurate with the permittees or contractor's qualifications, resources, abilities and proposed scope of work. Individuals, institutions, companies or groups seeking multiple active

permits or contracts will need to demonstrate their ability to successfully perform multiple projects concurrently.

(m) Permits or contracts within Mobile Bay, the Mobile-Tensaw Delta, and that portion of the Gulf of Mexico within State waters will not exceed four contiguous square miles in area. Permits or contracts on other submerged lands belonging to the State of Alabama will not exceed ten (10) linear miles.

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

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

(a) Exploration and Evaluation Permit. The following permit shall be used for exploration and evaluation permission:

The Alabama Historical Commission (Commission) grants an exclusive cultural resources Exploration and Evaluation Permit to _____ (Permittee), for the purpose of conducting systematic exploration 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 location of Cultural Resources 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 will last a maximum of 12 months beginning _____. Within 20 calendar days of the end of 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 (including a final report) 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.

The Permittee shall allow, upon 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 location of Cultural Resources 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, Commission, and Conservation will treat the location information as confidential and only individuals with a specific need to know will be privy to this information until all parties agree that this information can be released to the public.

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 located by the permit activity.

_____ _____

Executive Director Date

Alabama Historical Commission

_____ _____
Date

(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. 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 or contract request. A listing and map of any sensitive areas shall be provided to the Commission by Conservation. The permit or contract 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 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 41-9-297 shall be punishable, upon conviction, as provided by law.

(b) Any violation of the Code of Ala. 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 Code of Ala. 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 Code of Ala. 1975, Section 41-9-290 through 299.2.

Author: Gregory C. Rhinehart, Thomas O. Maher, William Little
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